

**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 2.00 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President Thomas A. Mensah presiding

in the M/V “SAIGA” (No.2)

(Saint Vincent and the Grenadines v. Guinea)

Verbatim Record

**Uncorrected
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:** Could the witness Mr Niasse be called to the witness stand. Mr Niasse,
2 you are still covered by the declaration you made.

3
4 **MR VON BREVERN:** Mr President, my colleague Mr Lagoni wishes to continue with the
5 cross-examination, if you agree.

6
7 **THE PRESIDENT:** Very well, Mr Lagoni.

8
9 **MR DJIBRIL NIASSE**

10 **Cross-examined by MR LAGONI, continued**

11
12 Q Mr President, Members of the Tribunal. Mr Niasse, to continue with very few
13 questions asked to you this morning by Mr Von Brevern. You mentioned in your
14 statement that you heard many bullets. Could you give us briefly any idea how many
15 you heard just as a rough estimation; was it five, or for example twenty, one hundred,
16 one thousand? What does "many" mean?

17 A I must tell the truth, I cannot say how many, because I was not outside. I only heard
18 the impact. I could not say whether it was one or two or more. I am unable to do this.
19 One thing is certain, and that is that I heard many impacts.

20
21 Q Thank you very much Mr Niasse. To come back to your cabin, there was first of all a
22 slight problem of translation. When there was a reference to a "bull-eye" this was the
23 expression of the German Navy for portholes. So the reference was made to
24 portholes. You said that you looked out of your porthole, your window. Were you
25 seeing the sea, or were you seeing the aisle to the galley, when you looked out?

26 A When I looked out I was unable to look out because as soon as I raised my head to
27 look out, the bullet hit me.

28
29 Q Mr Niasse, when you at any other time looked out of your porthole, were you looking
30 on the sea, or were you looking practically inside the ship, on the aisle of the ship?

31 A I did not look for a long time. I raised my head to look through the porthole, and then
32 the bullet was there.

33

34 **THE PRESIDENT:** If I may just interrupt, I think this morning the question was put to him,
35 and he said when he looked out he saw the sea. Maybe you could confirm that,
36 because he is still thinking about the time of the attack, not the time before.

37

38 **MR LAGONI:** Thank you Mr President.

39

40 A The question was put, if I look through my porthole what do I see. Usually when
41 I look through the porthole I see the sea, but that day when I raised my head and
42 I wanted to look out I was not able to see anything because as soon as I raised my
43 head the bullet was there, under the circumstances that I have already described.

44

45 Q Thank you for that. Mr Niasse, how much did you earn per day, can you remember
46 that?

47 A I was paid – where? When I was working on board? The salary I was paid where?

48

1 Q When you were working on board?
2 A I was paid by the day 100,000 CFA francs. The trip was for 15 days, so that is about
3 US\$150 or the equivalent of that. A little less than US\$150.
4
5 Q For the whole trip?
6 A Yes. The trip took 15 days. 15 times the amount leads us to this amount in dollars.
7
8 Q Thank you. Who paid for the medical treatment, did you pay for it?
9 A When I was in Dakar? Where?
10
11 Q In Dakar.
12 A In Conakry I do not know, but in Dakar it is a risk, and therefore it is paid.
13
14 Q Who paid, did you pay for the medical treatment in Dakar, for your medical treatment?
15 A No, it was not me who paid, it is Oryx who paid. Oryx paid the bill.
16
17 Q Did you receive any money as compensation for your injuries, and if yes, from whom
18 did you get any money for compensation?
19 A When I was in hospital there were no problems at all, because at the end of each month
20 I was given money. Oryx gave me money in order to meet the needs of my family and
21 also in order to meet my own needs.
22
23 Q After you left the hospital, have you received money from Oryx, or from anybody else?
24 A When I was in hospital, while I was in hospital, and even when I left hospital and went
25 home I was given money, because I was in convalescence for a long time without
26 working, and Oryx paid me.
27
28 Q Thank you very much Mr Niasse. Mr President, that ends my questions.
29
30 **THE PRESIDENT:** Thank you very much. Maître Thiam, do you want to re-examine
31
32 **MAITRE THIAM:** Thank you Mr President.
33
34 **Re-examined by MAITRE THIAM**
35
36 Q Mr Niasse spoke this morning about M. Sylla and I thought maybe there were some
37 errors, and this is why I would like to put to Mr Niasse the following question. Was
38 M. Sylla on board *The Saiga* with him? (No English translation of answer) The
39 Tribunal this morning saw that photograph no. 1 was projected and shown to the
40 witness, and I would like it to be projected again please. The Tribunal will remember
41 that when this photograph was presented to him Mr Niasse asked for it to be turned
42 round. He did not know that a photograph of this type of course cannot be turned
43 round but what he wanted to do was to see the other side of the vessel. I would like to
44 ask him whether from this position at the back he can describe where he would have to
45 go in order to gain access to his cabin.
46 A I am at the rear on deck here?
47

1 Q Yes, that is right, to go to your cabin.

2

3 (The witness indicated on the screen)

4

5 A I can go in this way, I can go via the galley, and then go to this side in order to get to
6 my cabin.

7

8 Q Mr Niasse, when the vessel came under attack, was it moving?

9 A No, the vessel was moving very slowly, it was probably drifting. The vessel was
10 moving at a very slow speed, it was not moving at great speed. The vessel stopped at
11 about 8 in the morning, when we got up it was moving slowly. Yes, it was moving
12 slowly.

13 Q Could you tell the Tribunal whether before the attack you heard a siren, a bell, or some
14 other signal coming from the Guinean patrol boats?

15 A I did not hear anything. If I had heard a siren I would have thought I was in harbour.
16 If you hear a siren or a bell in port I know that I must flee, because there is a danger.
17 Above all, if there is a siren which starts to sound there is a danger, you must not stay
18 where you are, you must flee, but we did not hear anything.

19

20 Q Mr Niasse, can you tell the Tribunal whether to your knowledge the Captain of your
21 ship tried to make any movement or manoeuvre to attack the Guinean patrol boats?

22 A To attack the Guinean patrol boats? No, nothing like that, nothing like that.

23

24 Q I would like to put a last question. At which point in time did he know that the
25 attackers were Guinean?

26 A It is when we arrived at the port of Conakry that I knew that the attackers were
27 Guinean.

28

29 **THE PRESIDENT:** Perhaps I may ask a question. When Maître Thiam asked you whether
30 to your knowledge any attempt was made by the Captain to attack the Guinean patrol boats,
31 you said "No", but you had previously said that you were, all the time, in your cabin. Would
32 you have known if something had happened while you were in your cabin?

33 A (No English interpretation)

34

35 **THE PRESIDENT:** We are not getting an interpretation.

36 A How could you flee? Nobody was on deck. How could you flee and at the same time
37 think of attacking because everyone fled; there was no one on deck.

38

39 Q So you could not tell what the Captain was doing?

40 A I cannot exactly say what the Captain was doing; I do not know. But I have a friend
41 who, according to what he told me – the Captain too was below deck. This is what
42 this friend told me.

43

44 **THE PRESIDENT:** I wanted to ask the question before you left that. Maybe you would like
45 to ask another question?

46

1 **MAITRE THIAM:** Maybe to ask the witness whether the vessel undertook any brusque or
2 sudden movement; whether it hit something, he would have been able to notice this from his
3 cabin – whether he would have been able to feel this. In English, whether he hit something.

4 A Yes. Probably if the vessel had have done - made a sudden movement - I would not
5 have felt it. The situation was an extremely difficult one, and in the state I was in,
6 would I have been able to feel it? I was in my cupboard.

7
8 **MAITRE THIAM:** Thank you very much.

9
10 **THE PRESIDENT:** Dr Plender?

11
12 **DR PLENDER:** Before the witness leaves, we received no English translation of the very
13 first question. Nothing turns upon it but accuracy. It may, however, be helpful to have the
14 question put. The question was whether M. Sylla was on board. We appear to have received
15 no translation of the answer.

16
17 **THE PRESIDENT:** Could you kindly answer the question, Mr Niasse? You heard the
18 question. Could you please give us your answer?

19 A M. Sylla was not on board the vessel. He is the head of the depot and he was at the
20 depot. The vessel had someone who was in charge of the crew on board, but M. Sylla
21 himself was not on board. He stays at the depot.

22
23 **MAITRE THIAM:** The depot that you are referring to, is this on land?

24 A The depot is within the port area, on the docks.

25
26 Q On the orders of the Captain or on the orders of someone else?

27 A Not an order on board. The orders given by M. Sylla are ones on land. On board the
28 vessel it is the Captain, the Master, and the bosun who divides up the work, because
29 the instructions were given by the Master to him and he transmits them to the members
30 of the crew.

31
32 **THE PRESIDENT:** Thank you, Mr Niasse, for helping us. I know that you have gone
33 through a very difficult experience. I am very pleased to know that you have been able to deal
34 with all the questions very competently. We are very grateful to you. Unless any counsel
35 wishes to put any further questions from your side, you are excused. As I have said before,
36 you may stay here if you wish, but if you want to leave, you are at liberty to do so.

37
38 **(The witness withdrew)**

39
40 **THE PRESIDENT:** Dr Plender, I think that you are going to call your next witness?

41
42 **DR PLENDER:** With your permission, Mr President.

43
44 **THE PRESIDENT:** Yes, you may do so.

45
46 **DR PLENDER:** The final witness for the applicant State is Allan Stewart.

47
48 **THE PRESIDENT:** May Mr Stewart please be called to the witness stand.

1 **ALLAN STEWART, affirmed**

2 **Examined by DR PLENDER**

3

4 Q Is your name Allan Stewart and are you managing director of Seascot Management
5 Limited?

6 A I am.

7

8 Q Do Seascot have any functions in relation to the vessel, *The Saiga*?

9 A Yes, our function is to act as technical and commercial managers of the ship on behalf
10 of Tabona Shipping, the owners.

11

12 Q Did Seascot occupy those functions on 27 and 28 October 1997?

13 A We did, yes.

14

15 Q Do you continue to exercise those functions?

16 A We do.

17

18 Q In your capacity as manager, would you be aware of those working aboard the vessel?

19 A Yes, we have direct contact with the Captain on a more or less daily basis on what is
20 the position of the vessel. And, of course, we are in contact with the Chief Engineer
21 on technical supplies and operations of the ship. So yes, we are well aware of the
22 people on board the vessel.

23

24 Q Were you aware, on 26 and 27 October, of the engagement on board the vessel of
25 Mr Niasse?

26 A Yes, we were.

27

28 Q Did Mr Niasse have a written contact?

29 A No, he did not have a written contract but he was given an undertaking that we would
30 pay him a certain figure per day. This was explained to him and the Captain gave him
31 that reassurance. What happens is that at the end of every month, or end of a voyage,
32 he has a list made out of the days he has been working and he is given the total amount
33 and he signs a piece of paper saying that he agrees with the Captain that that is the
34 amount of wages due.

35

36 Q What salary was he paid?

37 A My recollection is that he was paid approximately \$300 per month.

38

39 Q How did that compare with the salary of a qualified seaman?

40 A A qualified seaman, able seaman – his salary is approximately \$600 per month.

41

42 Q Mr Stewart, evidence has been given of damage done to the vessel on 27 and
43 28 October.

44 A Yes, that is correct.

45

46 Q Are you aware of any temporary repairs made to the vessel?

47 A When the vessel arrived at Conakry the engineers on board had to make some
48 temporary repairs - because of the damage caused by gunfire in the engine room - to
49 enable the engine to operate.

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Q Was the vessel fully repaired in Conakry?

A No, it was not possible to do that.

Q Where was it taken for repair?

A In due course it was taken to Dakar, which is the nearest port with reasonable repair facilities in that area.

Q Did you see the vessel there?

A Yes, I attended the vessel when it arrived – eventually arrived from Conakry.

Q Did you make an assessment of the extent of damage?

A I did. I went through with the Captain the damages and compiled a list of all the repairs we thought we could do in Dakar. We also made a list of all the ones which obviously required either specialist equipment or specialist material from abroad. Also, there was a number of repairs which we thought we would not be able to do in the short term, but we could defer them until a later time.

Q Did any other person assist in making an estimate of the extent of damage?

A Yes, we obtained the service of a qualified professional hull machinery surveyor to assess the damages, together with myself and the Captain.

Q Can you remember now what was his estimate of the cost of repair?

A Yes, the cost of repairs which we intended to do in Dakar equated to – his estimate equated to 58 million Senegalese francs. That is about \$100,000.

Q What items of damage can you now remember being detected on the vessel?

A Well, there was a good number of damages.

Q What damage?

A As I said, the most obvious ones were the damages caused by gunfire to the structure of mostly the accommodation, though there was gunfire damage midships on the vessel, broken windows in the wheelhouse. We also had damages in the engine room. Some had been partially repaired, as I said before, to allow the engine to work; some were actually caused to the electrical generating systems, I think through either direct gunfire or ricochets of bullets, which had put one of them out of action. We had also some structural damage to a ballast tank at the forward end of the vessel because at the time of this attack I understood they were carrying out some ballasting operations for adjusting the trim of the vessel. For security the Captain had been down in the engine room and the pump was running and had been forgotten about until later on when the situation became a little more calm and some of the crew were allowed to go back to their station to start up the engine and proceed towards Conakry. Also the radio communication system was badly damaged by gunfire.

Q For the purpose of the French translation, did I hear you say that "some of the crew were allowed back"?

A Yes, a good number of the crew I understand and read from the Captain's report were taken off the vessel and put on the Guinean naval cutter. I think it was six of the crew members were allowed to stay on board to sail the vessel under escort to Conakry.

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Q Was there any other type of damage which was detected, other than damage to the ballast tanks and damage caused by gunfire?

A There were damages alongside the accommodation which had been caused by, first of all, the outside doors, which showed evidence of violent entry by shooting locks off the doors. Obviously a search had been made of the accommodation. Doors were broken down in the accommodation.

Q What was the state of the hull?

A Due to its long period of idleness in Conakry, the underwater area of the hull was quite badly deteriorated and covered with heavy marine growth -- the propeller, rudder, all that area -- and the external decks and the ship's side also had deteriorated, due to the humid conditions and no materials to maintain the vessel during that long period of inaction at anchor.

Q Have you prepared a detailed file of costs associated with this incident?

A We have.

Q So far as the file relates to costs resulting from the attack, can you tell the Court briefly what is to be found at tabs 1 – 52?

A Yes. That is actually a separate list of the medical expenses for the Second Officer and painter, for their injuries, treatment, surgery, repatriation costs and also their sickness and salary benefits for the period they were incapacitated thereafter.

Q Who bore those costs?

A The shipowner bore these costs, or we bore them as Seascot on behalf of this shipowner.

Q Does the figure so calculated include compensation for pain and suffering or disfigurement?

A Not at all, no.

Q At tabs 53 – 161 you have prepared an inventory of costs of detention of the vessel. Would you summarise the content of that section?

A Yes. This covers, first of all, disbursements from our agents in Conakry covering supplies of fuel oil, payments to pilots, general agency costs, water supply, tugs for manoeuvring the ship in and out of port, general port dues, things associated with, let us say, a semi-normal visit to a port. That figure comes to about \$50,000 in total for the period of detention.

Q At tabs 155 – 159 you have prepared a bundle of costs of removal to Dakar. Will you summarise to the Tribunal the nature of these costs?

A Yes. This is simply the costs and, as the vessel was only steaming at 2 knots, it took much longer than normal to reach Dakar from Conakry, three to four days. So it is the cost of fuel, it is the cost of wages, the costs of oil and general expenses for that journey, in fact.

Q Finally, you have prepared inventories of costs of repairs at Dakar at tabs 155 – 195.

A Yes, that is correct.

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Q Will you tell the Tribunal in your own words what is the nature of these costs?

A These costs are the actual costs of repairs carried out in Dakar, which are the principal costs. The biggest expenditure was incurred doing the repairs at Dakar Marine, which is a shipyard repair facility, and the other costs are repairs to navigation, electric equipment, also the supply of new radio equipment, new satellite communication equipment, general freight costs, et cetera: in fact, all associated with the damages.

Q Have you also made a calculation of the time charter loss?

A Yes. The ship was out of action a total of 153 days, of which 123 were at Conakry, but then we had to spend additional 30 days in Dakar repairing the ship to enable it to re-enter service and be reclassified by the classification society. So, the ship effectively was off-hire, according to the terms of our charterparty, during that period and obtained no income for employment.

Q In so far as a claim has been made for sums spent, have you satisfied yourself that those sums have actually been paid?

A Yes, all the costs we have listed have long since been paid. The only exception is some of the repairs which we were not able to do at Dakar, and we agreed with the classification society they could be deferred until the ship reaches its main survey and overhaul date, which is April 1999; we could defer these repairs to that time. Some was specialized equipment, some were just repairs that could not actually be done in that part of the world; they have to be done in an area which has sophisticated repair facilities. We have made an estimate for that and the estimate for that is \$30,000 of outstanding repairs that is included in the overall costs.

Q In so far as your calculations relate to sums which have not been paid but which represent losses, are the sums which you have specified reasonable and proper in your view?

A Yes, we just paid the normal rates for repairs. We tried to negotiate the bill down to the lowest possible figure and for replacement of equipment we generally have contracts with the suppliers for other vessels which show a discount. The costs are probably the lowest number we could achieve to do the repairs and replace the equipment.

Q Mr Stewart, I shall now ask you some questions about photographs. The first will be photograph No. 2. (Photograph 2 shown)

A That is an overall view of *The Saiga* at the oil terminal in Dakar after she has been repaired, probably ready to commence loading again.

Q As the vessel sits in the water, is that the amount of discharge that would be expected when she is ordinarily at sea and at work?

A Yes. If you look at the different colours in the vessel, you see this black hull and the light coloured area. The light coloured area is the area which is effectively under water when the vessel is loaded. That gives you a good idea of the amount the vessel would sink into the water when it is fully loaded.

Q Now, we see photograph 5. (Photograph 5 shown) Where is that photograph taken?

A That is taken from the quay at Dakar at the oil-loading terminal.

- 1
- 2 Q Now, a room can be seen on the deck with a door which appears to be blue. What is
3 that room?
- 4 A The centre section of the vessel has a pump room. The pump room is midships on this
5 vessel, as we say. To this housing is the top part of the pump room. Down below that
6 there are the actual cargo pumps and ballast pumps of the vessel.
7
- 8 Q If the crew are in the engine room, do they have access to the pump room?
- 9 A No, it is necessary to come out of the engine room, proceed along the main deck and
10 go half-way up the main deck of the vessel to reach this housing, which is the pump
11 room. There is no access from the engine room because between that pump room and
12 the engine room there is a series of cargo tanks.
13
- 14 Q Now we will see photograph 6. Which part of the vessel is that which can be seen at
15 the right?
- 16 A That is the starboard bridge wing.
17
- 18 Q Is this above or below the bridge room?
- 19 A This is level with the bridge. If you walk out of the bridge on the starboard side, you
20 arrive at that deck.
21
- 22 Q Is this the monkey island?
- 23 A No, the monkey island is the deck above that deck, in fact. It is essentially the roof of
24 the wheelhouse.
25
- 26 Q Now we can see photograph 8. What can be seen in this photograph?
- 27 A This effectively is the top deck of the pump room, which again is midships on the
28 vessel, and this shows what we call a Yokohama fender, which is a large fender for
29 placing between the vessel's hull and one of the perhaps big fishing vessels that you
30 would bunker to keep the vessels apart. It shows one inflated and one deflated. The
31 one that is deflated in fact had some gunfire damage, some bullet holes.
32
- 33 Q We are going to see photograph 9. What is the pipe that can be seen in the centre of
34 the picture?
- 35 A That is a ventilator. I think from its location that is the ventilator for the radio room.
36 That deck is actually what we call the monkey island. It is above the radio room. It
37 shows a bullet hole through the ventilator.
38
- 39 Q Is it possible to tell from the position of the bullet hole the side of the vessel from
40 which firing has taken place?
- 41 A I think the picture is the wrong way round. It is the negative. There we are, that is the
42 right way round. That is actually if you look out to the sea, of course, that is on the
43 portside of the vessel, so I think actually this is the exit hole of the bullet, not the
44 entrance hole, because it has taken a large piece of metal away. On the other side
45 there is a hole, so the firing was from the portside, I think.
46
- 47 Q How close is this position from the engine room?

- 1 A This is the very top of the structure and it is about as far away from the engine room
2 that you can get on the accommodation level. It is the very top of the structure. The
3 engine room, of course, is the very bottom of the structure.
4
- 5 Q Now we will see photograph 10. What can be seen in this photograph?
6 A This is one of the radar antennas, which has got a few bullet holes in it. When we
7 opened up the casing – this is a fibreglass casing – when you open up the casing you
8 see that the internals are quite badly damaged by the passage of bullets through it.
9
- 10 Q Is it right, Mr Stewart, indeed is it obvious, that the antenna is well away from the
11 engine room?
12 A Yes, again that antenna is on the monkey island. It is above the monkey island, in fact.
13 It is quite high up on the vessel.
14
- 15 Q Now we will see photograph 12. What part of the vessel does this show?
16 A I am pretty sure that that is the structure of the radio room, which is actually on the
17 bridge deck behind the bridge, on the portside.
18
- 19 Q What is the thickness of metal at this point?
20 A The accommodation structure metal is about 7mm thick just there.
21
- 22 Q Is it correct that the holes are of different diameters?
23 A Yes. You can see the big one, of course. It is not so easy to see on the photograph
24 but you can certainly get your finger right through the hole, so it is probably about
25 20mm. The other marks you see where it has been touched up, the paint has been
26 broken off, you can see that they are quite small indents, so to me it appeared like
27 these were small bullets which have not penetrated the steel and, of course, the heavy
28 calibre bullet has penetrated the steel.
29
- 30 Q Now may we see photograph 13? What part of the vessel can be seen here?
31 A This is the bridge wing rail, in fact. It is the wooden taff rail on top of the steel
32 bulwark, as we call it, on the bridge wing. That hole is about level with your waist if
33 you are standing looking out across the sea from the bridge deck.
34
- 35 Q What is the thickness of metal on the vessel here?
36 A That is also about 7mm, and that hole again is, I would think, more than 20mm
37 because it shows the passage of something from the other direction. This is the
38 opened out metal as it passes through, so obviously a heavy calibre bullet to go
39 through the steel.
40
- 41 Q Now we will see photograph 14. Is that the right way up?
42 A Yes, it is at a little bit of an angle, but it actually shows the bottom of the lifeboat. If
43 you are standing on the deck and you look up, you see the bottom of the lifeboat. The
44 photograph is slightly angled, but nevertheless that is okay; that is better, actually. It
45 shows a fibreglass lifeboat and it has been temporarily repaired with a plastic material.
46 It also had some holes from bullets.
47
- 48 Q Are you able to recall whether these were large or small calibre bullet holes?

1 A Actually, I do not remember. This was something that was temporarily patched up
2 before I got there, I think.
3

4 Q Now may we see photograph 15? What is the inflatable boat visible there?
5 A This is, I would not call it a fast rescue craft but it is a semi-rigid, inflatable boat which
6 is used for manoeuvring the discharge hose. You see the collar partially deflated here.
7 It again had some holes from bullets which later on were temporarily patched with
8 vulcanised patches.
9

10 Q Where is the inflatable boat in relation to the radio antenna?
11 A The inflatable boat in fact is on the main deck, and that is just above the pump room.
12 It is about midships on the ship, so it is a long way from the radio antenna. The radio
13 antenna is the top of the structure and this, in terms of metres, is probably about 70-80
14 metres away.
15

16 Q Now may we see photograph 16? What can be seen in that picture?
17 A That is a partially dismantled electric generator.
18

19 Q Is that in its normal condition? I mean is it in good condition?
20 A No, it has damaged windings. The wiring has been damaged and cut. It seemed to be
21 by ricochets or bullets – I am not too sure exactly what – but the circular casing on the
22 right-hand side contains the stator or windings and they have been damaged by
23 projectiles.
24

25 Q In what part of the vessel was the generator?
26 A That is in the engine room.
27

28 Q Now may we see photograph 17? What can be seen here?
29 A That is another part of the generator. Actually, it is the voltage regulator unit on the
30 side of the generator. It is a little bit the wrong way round at the minute; that is fine
31 now. Again, the wiring was damaged there by something cutting the wiring.
32

33 Q Were you able to see how the wiring came to be damaged?
34 A Yes, it has been cut by something passing through it with great velocity. It is quite
35 thick wiring. It has an open grille which is to allow ventilation, so obviously if bullets
36 were flying around they can go through the open grille quite easily - there is nothing to
37 stop it – through the air gap, shall we say.
38

39 Q May we now see photograph 18? What can be seen in that photograph?
40 A Actually, that is another shot of the same thing from a different angle. It is a voltage
41 generation unit on the alternator.
42

43 Q Now photograph 19?
44 A That is the non-rotating part of the generator, which shows the size and configuration
45 of the wiring. If you damage one of these wires, it is a continuous circuit that goes
46 right round and by rotation of the rotor through this stator or magnetic field you
47 generate electricity, so obviously if you cut one of these wires you do not get a
48 complete circuit, and actually that is what is wrong, one or two of the wires are cut

1 inside the machine, again close to the air gap. They seem to have been caused by
2 projectiles.
3

4 Q Is the damage visible in photographs 16 to 19 consistent with what you would expect
5 had a machine gun been fired in that area?
6 A Yes, quite possibly. There was other damage which I have not taken pictures of, but
7 there were holes in various fuel, water and lubricating oil pipes which are roughly the
8 diameter of a bullet, maybe 10-12mm, which the engineers had previously repaired
9 temporarily before I arrived.
10

11 Q Now we will see photograph 24. Is this the radio room?
12 A This is the radio room. Some parts of the radio apparatus have been taken out of their
13 casings. It is maybe not quite so easy to see, but on the little gold box with the holes
14 on top of it on the left-hand side you see a long gash, and that in fact is damage caused
15 by what looks like a bullet gone through it completely.
16

17 Q When a person is in the radio room sending a message, what would be the distance
18 between the operator and the point where the bullet hole can be seen?
19 A Pretty close, I would think. I would not like to be there. I am not completely sure
20 which piece of equipment that has just come out of, but that is actually the radio
21 operator's desk.
22

23 Q Forgive me, Mr Stewart, did you say "Pretty close, I would not like to be there"?
24 A I did.
25

26 Q I just say that for the interpreter. Now would you please continue?
27 A Yes. That is actually the radio operator's desk. He would sit there. The piece of
28 equipment looks like it has come from the left-hand transmitter, so it would be within
29 half a meter of where he was sitting.
30

31 Q Now may we see photograph 27. What can be seen in this photograph?
32 A It is a piece of radio equipment which has been taken out of its casing. Again, you can
33 see marks of the bullets having passed through it. It looks like a fairly big calibre
34 bullet, because it has not made a simple hole, it has left a big gash.
35

36 Q Were you present when these photographs were taken?
37 A Yes.
38

39 Q Did you take some of them?
40 A Yes.
41

42 Q At the time when the photographs were being taken did you see other damage than
43 that which you have photographed?
44 A Yes, as I say, I only took photographs of the principal parts of damage, really just for
45 our own record, to keep in our office. If you walk round the vessel there were various
46 marks on the accommodation which seemed to be – well certainly were not there
47 before. There were fresh marks on the hull which in some places the crew had touched
48 them up where they had damaged the steel. Some of these marks you could also see

1 midships close to the fender, and obviously close to the FRC boat, but I didn't bother
2 to photograph these bits and pieces, we had enough of the principal parts.

3
4 Q Mr Stewart, have you made a written statement for this Tribunal?

5 A I have, yes.

6
7 Q Is the statement that you have presented true in every respect?

8 A Yes, it is.

9
10 Q Mr Stewart, I have no further questions. You may be cross-examined.

11
12 **THE PRESIDENT:** Mr Plender, before you leave, I just want this for the record.

13 Mr Stewart where were these photographs taken?

14 A They were taken in Dakar in fact, when the ship arrived in Dakar.

15
16 Q All of them?

17 A All of them were taken in Dakar, yes.

18
19 Thank you. Mr von Brevern?

20
21 **Cross-examined by MR VON BREVERN**

22
23 Q Thank you Mr President. Mr Stewart, I would like to put some questions to you
24 relating to your position as ship's manager, whereas my colleague Professor Lagoni
25 will perhaps have some questions with respect to the damages. Mr Stewart, as we
26 have read, you are the Managing Director of Seascot, and Seascot is the manager of
27 this vessel. I assume that there is a contract with the owner of the vessel?

28 A That is correct, we have a thing called a management contract which sets out fairly
29 clearly what manager's responsibilities are in respect of services we provide to the ship
30 owner. That would be in respect of crew, technical matters, insurance costs,
31 maintenance costs, general administration and also can cover the commercial operation
32 of the vessel whereby we would find employment for the vessel and we would receive
33 the charter hire, we would check it against the charterparty and we would provide an
34 additional service, accountancy service shall we say, to the owner for his guidance.
35 That is part of the service.

36
37 Q And when did you conclude the agreement with the owners?

38 A I do not remember exactly, but this vessel came into our management I think about
39 February 1997.

40
41 Q Have you, as Seascot Management Company been in contact with the owner of this
42 vessel.

43 A The vessel was purchased by this company round about February, and this in fact was
44 the time when we took over the management, and the owners had in fact previously
45 another vessel which we managed for I think three or four years. That vessel was sold
46 previous to the purchase of this one, so we had, yes, a relationship going on with the
47 owner.

1 Q And this vessel was, as you told us, bought in February 1997. Do you know where it
2 was bought, who was the owner before?

3 A The ship was purchased – it was laid up in England. It was purchased and then taken
4 to the shipyard for repair. It was purchased by Tabona Shipping in February at that
5 time.
6

7 Q Could it be possible it has been purchased in an auction?

8 A Yes, it was purchased at an auction, that is correct. The ship was in England and it
9 was put through a judicial sale, as I say. In Falmouth, in fact.
10

11 Q Do you know the former owners?

12 A Do you mean the immediate one, or some other ones?
13

14 Q No, before the owners that have lost their ownership of the vessel through the auction?

15 A We did not know who the owners were. We had their name of course, but we had no
16 relationship with these particular owners.
17

18 Q Do you know which particular nationality it was, and my additional question in this
19 connection is which flag; do you know which flag?

20 A I know which flag it was, it was a Malta flag because it still had "Valletta" on the
21 stern. My recollection was that I think the beneficial ownership of the vessel was an
22 Israeli company, that is all I know about the ownership.
23

24 Q What did you mean when you said there was still a stamp of Malta? Where was the
25 stamp?

26 A If you look at the photographs of *The Saiga* you see "Kingston" on the stern of the
27 vessel, which was the port of registry. Before it had "Valletta", which is the capital of
28 Malta. You can see that on the stern of the vessel.
29

30 Q In your contract with the owners, you have indicated all the various tasks you would
31 have to do. Does that include charterparties on behalf of the owner? Did you
32 negotiate the charterparties?

33 A In this particular case yes. This can or cannot be a service we provide. It depends a
34 little bit on the owner's other business. Sometimes the owner would be a cargo owner,
35 and he has his own cargo, and he does not require services to bring cargoes to the
36 vessel or negotiate charterparties. That would be something which he handles himself.
37 But in this case yes, we negotiated the charterparty on behalf of the owner and took
38 responsibility for ensuring the hire was paid in the proper way, etc.
39

40 Q Was it the same when you managed the other vessel from the same company in the
41 first three to four years?

42 A Yes.
43

44 Q Why did you say "in this case we negotiated the charterparties because the ship owner
45 company did not have cargo"?

46 A No, what I meant was that we manage some ships for companies which let us say may
47 be a grain house. For example, they have their own shipments of grain from the
48 United States to the Far East, and they buy a ship to carry their own cargoes in, so
49 they do not have a technical and crewing division or a knowledge of legislation for the

1 vessel, so they use us to do technical management. It is not necessary to be involved in
2 the commercial trading of the ship, they do that themselves.

3
4 Q With respect to the charterparty, you said you have negotiated this and finally it was on
5 your advice that it was signed with the approval of the owners. The contents of the
6 charterparty, do you remember – you have referred that it was two years charterparty,
7 do you know who the charterparty was?

8 A Yes, the name of the charter was Lemania Shipping, a two year charterparty.

9
10 Q Was it for a particular purpose, this charterparty? Did you know what the intended
11 voyage and trading of that vessel would be?

12 A Yes, we did not know the voyages, but we knew the intended purpose, that the vessel
13 would be used as a bunkering vessel, supplying bunkers offshore. This was
14 understood to be part of the employment of the vessel, but the charterparty is quite a
15 wide ranging document, it allows the charterer to trade the ship anywhere worldwide
16 in any legal trades, in fact, so it is not restricted in any way.

17
18 Q Do you remember whether any trade restrictions had been included in the charterparty?

19 A Well I did not personally negotiate a charterparty, that was done by the Commercial
20 Director. The details of the charterparty I am not completely familiar with, but I do
21 not remember being any restrictions, because it has worldwide trading, this is quite a
22 common terminology, because the ships may be employed in one area for a short
23 period, and then may find some other employment in some other area for a short
24 period. Sometimes even the ship can be sublet to another charterer, and they are all
25 rights that the charterer has. So I do not remember any particular restrictions, apart
26 from you have to do it in a legal way, of course.

27
28 Q Did you know the charterer, the company. Did you know whether they had a lot of
29 vessels engaged and what their normal business was?

30 A No, not really. Always before we engaged on behalf of the owner, the shipowner
31 service, where we have to get paid for it, we would like to find out if the charterer is
32 able to pay the charter hire, because it is a lot of money, and a lot of expense if
33 anything goes wrong. In the normal course of events we would use a credit checking
34 agency to come up with some information about the charterer, whether it was part of a
35 group, a small company or whatever. So that information would be available, yes.

36
37 Q Did you or one of your employees or colleagues instruct the crew at the beginning of
38 this charterparty; were any particular instructions given to observe because this was,
39 perhaps you would agree, it is not a normal business. Did they receive any particular
40 instructions?

41 A Yes, we have for all vessels which we manage, especially a tanker, we have a special
42 code called the ISM Code now, which is an international safety management code.
43 That entails that certain procedural information must be passed to the vessel, certain
44 levels of trading have to be in place and procedures for communication, procedures for
45 accident, procedures for various things. So that information is all passed to the captain
46 as a normal event. What happens normally if a ship is on a time charter, the time
47 charter or perhaps their agent would sent specific instructions to the captain, usually in
48 the form of a document which gives the list of the people who will be supplying him
49 with instructions, information of what bunkers he should have on board, the likely

1 trade he will be involved in, and just the general day to day information of how he
2 should proceed.

3

4 Q Do you know, has the charterer handed over such a book of instructions?
5 A My recollection is that the Master got instructions in that form, yes.

6

7 Q Related to what?
8 A It relates to the normal day to day business of what the ship would be employed in.
9 For example it says---

10

11 Q The schedule, or---?
12 A Well, I would say in this sort of trade I do not think there is a very strict schedule, it is
13 not like a liner service where the ship goes from say Rotterdam to New York back and
14 forward. Like lots of the ships we have, they are what we call tramp ships. They trade
15 from one employment to the next, so you complete one voyage and the next voyage
16 instructions would not be there until near the end of the voyage and then you give new
17 instructions, because you have re-employed it.

18

19 Q Is that just a guess from you, that some instructions have been handed over, or do you
20 know that for sure?
21 A Well, I do not recollect having seen these particular instructions myself, but I asked the
22 Captain on one of the occasions I was there, and of course our marine department
23 would also have done that, to say does he have written instructions from the charterer,
24 written instructions on all the information he needs to operate the vessel, and he said
25 yes.

26

27 Q When you say "by the charterers" you mean the charterers, Lemania Shipping Group?
28 A The charterer or their agent. In actual fact, rather like quite often the name of a
29 charterer is just a name – like the similar relationship we have with Tabona Shipping.
30 We are managers for Tabona so we issue all instructions on behalf of the owner. The
31 charterer can have what we call an operating agent, which is maybe part of his own
32 group, shall we say, but a different division of a group which issues instructions
33 directly on behalf of that formal charterer.

34

35 Q I am still after the instructions. Did they come from Lemania, its charterers, or did
36 they come from their agents, and if so, who were the agents?
37 A No, they come from their operating agents. that is correct. The actual instructions
38 come from the operating agents.

39

40 Q Do you know who that was?
41 A Yes, that is Addax Bunkering Services in Geneva.

42

43 Q If such operating agent from the charterer instructs your crew, do you tell your crew,
44 your Captain, that he has to follow the orders of the agent of the charterer?
45 A Yes, in terms of employment of the vessel, he is obliged to follow the instructions of
46 the charterer or his agent. That is what the charterparty says.

47

48 Q It is in the charterparty, that he has to follow the instructions of --
49 A The charterer or his agent, yes.

1
2 Q Or his agent?
3 A Yes. I am not sure if it spells it out specifically, but that is the implication.
4
5 Q You would not have a line in the charterparty where that may be said?
6 A No.
7
8 Q You do not remember? We have it before us, the charterparty.
9 A Yes, I do not remember exactly whether that was said.
10
11 Q So in this case you have instructed your Captain that Addax Bunkering Services would
12 be the company that would give instructions to him?
13 A Yes, in terms of deployment of the ship. That is correct.
14
15 Q In terms of?
16 A Deployment of the ship. Everything else - instructions we give him for the safety of
17 the vessel, the operation of the crew, technical operations, insurance - everything else
18 we control. He reports to us on that. He also reports, of course, his position and what
19 he is doing. As soon as he gets his orders to go somewhere he sends us – most
20 charterers also send us, we have a communication between our own operation
21 department and the charterer's operation department where they would tell us, "Well,
22 look, the next deployment looks like the ship is going to go from A to B. The aegis
23 will be such and such", and then they send us information, more or less simultaneously
24 as the Captain gets it, so that we are all in the picture.
25
26 Q One of the main items of the claims is the loss of hire.
27 A Yes.
28
29 Q Hire is normally, under the charterparty, paid by the charterer to the owner where you
30 receive the money?
31 A Yes.
32
33 Q It is quite a lot of money. Has there been any dispute between the owner and
34 charterer? I understand normally you would ask the charterer to pay the hire.
35 A Yes.
36
37 Q In the present case, did you ask for it – I mean after *The Saiga* was detained in
38 Conakry?
39 A Yes, of course. We asked for the hire.
40
41 Q You asked for the hire?
42 A Yes.
43
44 Q After that time?
45 A The hire is obliged to be paid every month in advance, so we send an invoice and ask
46 for the hire.
47
48 Q And has it been paid?
49 A For the period the ship was detained, no.

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Q Did you accept non-payment or did you, perhaps, go to arbitration? I assumed that you agreed to arbitrate in London instead of the International Tribunal?

A Yes. That is in the charterparty, of course. There is a procedure. A signed charterparty has an arbitration clause, of course, which in this case is that if you have a dispute that you cannot resolve then yes, you have a right to go to arbitration under English law. But we have not got to that stage yet inasmuch as we have kindly asked for it and they have said that, well, the circumstances are such that more or less you might say, they were following, in their view, all the correct regulations, they committed no offence. So, under the terms of the charterparty the ship is out of action for something which is beyond their control.

Q I understand you to say, "As yet, we have not done anything".

A But we have had many discussions.

Q There are still many discussions.

A Yes.

Q So it is not yet finally decided whether you will accept that behaviour of the charterers?

A No.

Q When you said that under your management contract you are allowed to do a lot of things, claims for example: your management contract was in relation to Tabona, to the owner?

A Yes.

Q Are you allowed under this contract to pursue claims before the court under your own name or under the name of Tabona, or what is the regulation?

A In the contract it is covered in the insurance section, shall we say. We will use our best endeavours to look after the owner's interest. For example, if you have a cargo claim or cargo shortage claim - for some reason the ship delivers some cargo which is short or perhaps was damaged - then, of course, there would be a claim against the ship which we would defend. Then we would use the vessels protection and indemnity insurance to defend that claim.

Q Would you do it on the risk of the owner?

A It is done on the risk as the owner. We are acting as the agent of the owner, yes.

Q In case of *The Saiga*, with all the many costs you have referred to, did you, as representative of your company, Seascot Management, bear any costs that you have not yet been reimbursed by the owners, or by someone else?

A Strictly speaking, we do not accept any liability for the costs. As I say, we do our best endeavours to protect the owner's interests and, at the end of the day, where something has to be done and paid for, the owner has to pay for it. The only thing I would say in this particular case is that having, let us say, encouraged in some way the owner to enter into this contract because it seemed a very good contract and seemed that it would tie in very well with the type of ship etc, one feels a slight embarrassment about all the costs you are not able to - you have had to pass on to the owner. Also, at the end of the day, because of this loss of income, the owner, I know, is suffering

1 very greatly because the vessel had a two-year charter which, if it went the full two
2 years, would earn a certain amount of money, of course. At the end of that charter it
3 has to go through a major survey. The income from that charter would pay for most
4 of that survey, or pay a large proportion of that survey. Now a lot of that income is
5 missing, so obviously the owner has –

6
7 Q My concrete question is: we have received from Saint Vincent and the Grenadines a
8 bundle of many invoices.

9 A Yes.

10
11 Q Dakar, and so on. I assume that all these invoices have been paid. My question is,
12 have you paid these amounts and were you reimbursed from anybody else?

13 A No, we were only reimbursed from the owner.

14
15 Q From the owner?

16 A Yes.

17
18 Q Did you receive from the owner –

19 A Yes, yes.

20
21 Q Nearly all big amounts?

22 A Nearly all big amounts. Exactly, yes.

23
24 Q I have one further question that relates to your statement You said under number 1:

25
26 "Its duties as ship manager include"

27
28 *inter alia:*

29
30 "dealing with the regulation of flag States and statutory bodies"

31
32 Could you explain what that includes, that obligation?

33 A Yes, we have to pay attention to the flag States' requirements. These flag States'
34 requirements are generally delegated to the classification society in respect of safety;
35 construction of the vessel; the load line which determines the amount of cargo it can
36 carry; the safety of the vessel; the radio systems of the vessel. They are all statutory
37 requirements in accordance with the IMO, MARPOL and SOLAS, of course. That is
38 what I mean by that.

39
40 Q The vessel which you managed before *The Saiga*, under which flag was that vessel –
41 for Tabona - do you remember that?

42 A Yes, I think that was Vanuatu, actually, that one.

43
44 Q Vanuatu?

45 A Vanuatu, yes.

46
47 Q So you are an expert in Vanuatu merchant shipping law. Have you got information
48 about the law of the new flag which *The Saiga* was flying?

49 A Saint Vincent and the Grenadines?

1
2 Q Yes.
3 A Yes, we have other ships also under the Saint Vincent and the Grenadines flag.
4
5 Q So you know your obligations under this flag, more or less?
6 A Yes.
7
8 Q Did you represent the owner in the action?
9 A No, it was done in a slightly different way. There was a solicitor representing the
10 parties of the ship at the time, yes.
11
12 Q Do you remember which certificate of registration the *M/V SAIGA* had when you took
13 it over, when it was bought?
14 A As I said, the certificate of registration was an expired Maltese one, but I do not think
15 the actual document was on board the vessel.
16
17 Q The Maltese one was expired?
18 A My impression was because I do not remember, I do not recollect getting documents
19 from the vessel because we just had been led to understand, so we knew there was a
20 Malta flag on it.
21
22 Q When did you take over the operation? The moment the vessel was bought?
23 A Shortly afterwards, yes.
24 Q So you had the responsibility?
25 A Yes.
26
27 Q So at that time, it had at first been in the yard?
28 A Yes, we took it to the shipyard.
29
30 Q At that time was it still under Maltese registration?
31 A Yes, we took it by tug to the shipyard. It was laid up here so rather than start to do
32 piecemeal repairs in Falmouth, which really has no facility, we made a contract with
33 the shipyard in Brest, which is very close by. So we towed it to the shipyard.
34
35 Q Who then, from your company, took care of the new registration? Obviously you
36 decided to fly the Saint Vincent flag and I think you must have done something with
37 respect to the registration. Who has done it and when?
38 A Yes, that was done by our commercial department during the period that the ship was
39 under repair. So obviously we had all the flag sorted out and all these surveys done on
40 the vessel before she could enter service. So that was all done more or less at the one
41 time.
42
43 Q Do you know how it was done or was it just that you are the general manager and you
44 knew that everything had to be done and you did not take care of the –
45 A I did not personally do it but I know the principle of what is involved in registering a
46 vessel. You have to give certain information. You fill in an application form. Actually
47 for Saint Vincent and the Grenadines we deal with the service office they have in
48 Geneva which is a very efficient office. As I say, we have other ships registered in
49 Saint Vincent and the Grenadines so we know what information is required. We fill in

1 an application form for a provisional registry, as they call it, and a provisional radio
2 licence. Subject to the ship being acceptable, you obtain provisional radio licence and
3 provisional register.

4
5 Q And did you receive that?

6 A We received that, yes.

7
8 Q Do you remember the expiry date of that registration document?

9 A Yes, that is right. Usually, the initial, provisional registry document is issued for six
10 months. You can get another extension of six months if the ship happens to be in a
11 place and you cannot finally get all the bits and pieces together within the six months
12 for permanent registration, or issuance of a permanent registration document, as they
13 call it, because obviously, once you fill in the application form and the ship is accepted
14 for the registry, it remains on the register until or unless it is deleted for some reason or
15 other - is cancelled for some reason or other.

16
17 Q So you told us that there is someone specialized in your firm who has to take care of
18 that? He applied to receive for the provisional certificate. What happened in your
19 company thereafter, in connection with registration? I should like to know what has
20 happened in your company. Do you know that?

21 A Yes. To reach permanent registration, you have to comply with certain requirements
22 which are laid down by the flag State. You have to show proof that it has not
23 registered in the previous registry. Also you obtain a document called a deletion
24 certificate. So, in due course the Maltese registry was contacted and they confirmed
25 that the ship was no longer registered with them.

26
27 Q Is that your recollection? Do you know that, or do you think that was the rule, that
28 that should have been done? Was that all done, what you have just told us?

29 A That was done. That was done, yes. The deletion certificate was obtained and that
30 was, in due course, sent to the Saint Vincent and the Grenadines registry.

31
32 Q Do you know when it was, the deletion certificate?

33 A No.

34
35 Q You do not know. It was a provisional certificate. Did you receive a permanent one?

36 A Yes.

37
38 Q When?

39 A In due course the vessel received a permanent one. I think actually the permanent one
40 was issued in about the November time. I think I recollect that it was about the
41 November time.

42
43 Q And the provisional one was issued when, do you remember that? At the beginning of
44 March or the middle of March?

45 A Yes.

46
47 Q And the expiry date was, do you remember that?

48 A Well, it would be six-monthly.

49

1 Q That would be before November, would it not?
2 A Yes, that would be the end of October.
3
4 Q Did that mean anything to you or to your colleague?
5 A I am not sure what the process was. Usually what happens is that shortly after the ship
6 enters service you get this deletion certificate from the previous registry and I think
7 there are some other documents also you are required to produce. They are sent to
8 Saint Vincent and the Grenadines or the flag State and in due course the administration
9 will issue a certificate which says it is a permanent registry to put on board the vessel.
10 But I have seen occasions of course when it may go past the six months and you have
11 to apply for another one, just to keep the record straight on the vessel, shall we say,
12 but it does not always get to the vessel at precisely the right moment because you
13 might be at sea or wherever. Sometimes she could be on a assage and it may expire on
14 the way and the ship will arrive at the port and the agent will say, "Well, your registry
15 document appears to have expired, so we will just get the fax and fax the other one so
16 that you have something for sailing".
17
18 Q It may be really difficult for you to remember every single application and the date of it
19 but would you agree that, at least until 12 September, which was the expiry date of the
20 original provisional certificate, that before that date you have not received another
21 certificate and have not applied for another certificate? You have just mentioned that
22 you remember that it may have been November.
23 A I seem to remember it was beyond the date of expiry until we got another one, another
24 temporary one.
25
26 Q Quite a different point, a point concerning damages: you said you have paid Mr
27 Niasse. He is only one of many crew members, I think. I was a little astonished. Is
28 that really correct? You know Mr Niasse?
29 A Yes, I do.
30
31 Q And Seascot paid him as employer? Were you the employer?
32 A No. The employer is always the owner. Seascot act as agents for the owner, so he
33 was paid on board the vessel. He would normally be paid on board the vessel in cash
34 by the Master.
35
36 Q But the Master will not do so without your approval.
37 A No, of course not.
38
39 Q Do you know how much he received and when?
40 A His salary is £300 per month, yes.
41
42 Q Has he been employed for months?
43 A I do not recollect how long he was employed actually but he was employed some time
44 before the ship was detained at Conakry.
45
46 Q We have been told by Mr Niasse, and perhaps you can comment on this, that his
47 employment company was a company in Dakar. Is that possible? Can he have two
48 employers?

1 A It could be. The way we arranged it was that because the crew on this particular type
2 of business is very busy all the time, maybe with the operation of the vessel they are
3 working 24 hours a day bunkering vessels which can be launched in the night of
4 course, and through the day and so on and so forth, nearly all the crew have an
5 assignment involved that is either maintaining the ship in position, running the engines
6 or in fact handling the bunkering system. So we took the view that it would be useful
7 to have some extra maintenance men on board the vessel. I know on one of my visits
8 to Dakar to see the vessel we were discussing this point with Mr Mark Vervaeet, who is
9 the General Manager of Oryx at Dakar. I understand that is part of the Addax Group.
10 He had suggested that we use people here in his own maintenance area, shall we say,
11 and I am sure, if we wanted to take on some extra people, we could take them and sign
12 them on abroad the ship as extra maintenance men. It may be in fact that Mr Niasse
13 was previously working with Oryx in this way, so he would just continue. The Captain
14 would agree the rate and he would just continue, yes.

15
16 Q One question, going back to your management work: you referred to the
17 classification societies you use. Does they change or do you have a policy in your
18 company to make use of one particular classification society?

19 A No. We use a number of classification societies. There are various reasons for that.
20 Usually we take over an existing ship. If it is a new building then of course you have
21 complete choice of what classification society you use to supervise the construction
22 and eventually handle the classification of the vessel. But if the ship is a second-hand
23 vessel it will already have a classification society. If it is one of what we call the IAX
24 group, which is a society which has the highest standards of credentials accepted by all
25 the insurance companies, we would probably not change the classification society of
26 that ship; we would just leave it with that particular classification society.

27
28 Q And in relation to *The Saiga*, did Tabona or you yourself or anybody else decide which
29 classification society you should make use of?

30 A It was Russian Marine Registry. We have other vessels also with the Russian Marine
31 Registry, so we said, "Just leave it as it is".

32
33 Q The last question, again on damage: are you aware of the total amount of repair costs
34 for the vessel? You have demonstrated some particular items but if you take the repair
35 costs and installations of the vessel altogether, have you that figure at present?

36 A Yes. It is broken down in different sectors: so much we spent at Conakry, so much
37 we spent Dakar, so much we have deferred to later because we cannot repair it. The
38 total figure is, according to my sheet here when we add them all up, \$595,000

39
40 Q Do you know the value of the vessel at that time?

41 A At that time in its damaged condition of course it would, I think, probably be worth
42 about \$750,000.

43
44 Q In the damaged condition?

45 A Yes.

46
47 **MR VON BREVERN:** Thank you, Mr Stewart. Thank you, President. Professor Lagoni
48 would like to continue.

49

1 **THE PRESIDENT:** Yes.

2

3 **Cross-examined by PROFESSOR LAGONI**

4

5 Q Mr Stewart, you mentioned in your statement at number 2: "As a consequence of the
6 crew abandoning various pumping and transferring operations in order to save
7 themselves from death and serious injury" – I refer to this little sentence – and that
8 refers to the constructive damage the vessel suffered from the pump.

9 A Yes.

10

11 Q It is also shown in photograph 20 of these photographs. This structural damage was
12 caused by the ballast pump?

13 A Yes, I understand that from the Captain's report.

14

15 Q During the attack or this turmoil apparently the crew was conducting some ballasting
16 operation there?

17 A Yes, I understand that they were probably not doing much ballasting operations but
18 they were just putting some ballast in the forward tanks to adjust the trim of the vessel
19 because they had discharged quite a lot of cargo from the forward tanks the previous
20 day in fact.

21

22 Q These pumps do not have security switch and when you pump you can sink the boat
23 when you go on pumping, as I understand it.

24 A No. The ship is in some ways rather old-fashioned in so much as it has steam pumps
25 driven by steam pressure. So it is not like an electric switch you can switch off. You
26 have to manually control the pumps at the pump station, shall we say, and these pumps
27 are in the pump room. It is a progressive operation. You need probably three people:
28 one is controlling the pumps, another one is probably manoeuvring some valves and
29 the other chap would be checking the level in the tank so that you do not over-fill and
30 over-pressurise the tank.

31

32 Q But you apparently also mentioned, if I understood you rightly, that after this turmoil
33 they forgot to switch it off.

34 A I think it was after the turmoil. During the turmoil everybody headed for cover, I think
35 is the way to describe it. Whatever was happening to the ship was the least of their
36 worries. They were more concerned actually for their own position rather than what
37 they were doing.

38

39 Q I understand that. Dr Plender has shown you some pictures and you recollect this
40 midships picture of the pump station. As I can see it, this blue door which he was
41 referring to was on the starboard side of the ship. Is that right?

42 A Yes.

43

44 Q Of course the attack was from the port side and I understood from Dr Plender that
45 there was no possibility to get from the engine room back here to switch off the pump.

46 A You have to come out on the deck to get there in fact from the engine room.

47

48 Q But the deck is here.

1 A The picture is a bit confusing because in the centre of the deck rows of pipes go from
2 forward and aft of the vessel. There is a walkway above that and what you see there is
3 the walkway in the centre of the vessel.
4

5 Q You have to use this walkway to get to midships.
6 A Exactly; you can also walk on the deck but that is the simple way to go.
7

8 Q In photograph 13 we see the bridge wing with a bullet hole. You mentioned that the
9 size of the structure is about 7mm steel. Is that right?
10 A Yes, generally speaking. It varies in different places. This is quite a heavily-
11 constructed vessel. She was built in Bulgaria where things tend to be heavy duty, shall
12 we say, so she has got quite heavy steel. Yes, that would be about 7mm, I think.
13

14 Q According to your impression was that hole caused by solid bullets or by explosive
15 bullets?
16 A I am not a ballistics expert but I would think it was a solid bullet because it has left its
17 opening.
18

19 Q It would have been ---
20 A A big hole, I think.
21

22 Q When you came on board to place all the different damages on record, did you count
23 the number of bullet holes? Have you any idea how many bullets were shot?
24 A No, I did not count the bullet holes.
25

26 Q Certainly that would be a very boring and tedious operation.
27 A When I was at school I was a British Army cadet, as they called it. I did four years
28 with that, so I learnt a little about automatic Sten guns and Bren guns and how many
29 bullets they fire per second. Obviously, if you fire a machinegun you get a lot of
30 bullets in a few seconds. If you look at the vessel, scattered about the accommodation,
31 particularly on the port side as the Captain mentioned and the front of the
32 accommodation. the windows are broken and above that the antenna. Then of course
33 there are bullets in the engine room and there must have been some bullets across the
34 midships there and the fender is punctured. I am not sure, 50 or 60 or something.
35

36 Q I was just going to refer to the midship damage. There was this inflatable Yokohama
37 fender, I learnt, as well?
38 A Yes.
39

40 Q And an inflatable lifeboatt. Is it possible that they were destroyed because of ricochet
41 or direct firing?
42 A Yes, it could be ricochet.
43

44 Q It could be ricochet?
45 A It could be ricochet. If you were firing and you hit the deck, for example, the deck is
46 very thick, so normally bullets would not go through the deck but, of course, they
47 would ricochet back up again.
48

1 Q Your impression was that the majority, the bulk of the bullets and the bullet holes were
2 in the upper part of the ship, or where have they been? I understand that most of them
3 are from the portside at a 45° angle to the bow?
4 A Yes, mostly from the portside. The heavy holes are certainly on the upper decks.
5
6 Q You estimated, although you were in the Naval Cadets or the British Army Cadets,
7 that the diameter is about 20mm, or you estimated that the calibre of the big hole shots
8 was 20mm, more or less. Are you aware that the patrol boats have 12.7mm machine
9 guns fixed on deck and that the arms carried by the soldiers are usually Kalashnikovs,
10 which is think are usually 7.6mm?
11 A Yes.
12
13 Q So you say that it is a rough estimation?
14 A Yes. In my days it was a 303, and it is 0.303 of an inch. 0.3 of an inch is ---
15
16 Q It is nothing?
17 A Given 11mm, I suppose it is the same size of bullet, yes.
18
19 Q Just let me briefly turn to another question. How can one stop the engine on site?
20 A You stop the engine from the control station on the bottom platform.
21
22 Q On the bridge or downstairs in the ---
23 A Down in the engine room.
24
25 Q So you give an order from the bridge, "Stop engine now"?
26 A Yes.
27
28 Q How do they do that, with these traditional ---
29 A Absolutely, telegraphs, yes.
30
31 Q Telegraph transmission?
32 A It rings a bell and it indicates what the captain wishes.
33
34 Q In order to stop the engine, you have to go into the engine room?
35 A There are other ways to stop the engine. If you are a technician, you know other ways
36 to stop the engine, but from the straightforward layman's point of view there is a big
37 lever, you pull the lever, it says "Stop" and it does stop the engine, yes. That is on the
38 bottom of the ---
39
40 Q If the technician gets the information, he stops the engine?
41 A Yes.
42
43 Q It is a diesel engine?
44 A A diesel engine.
45
46 Q It is not electric?
47 A No, it is a diesel engine, a slow speed engine.
48

1 Q Did you take a photograph of the broken porthole of the cabin of Djibril Niasse? Is
2 there any photograph that we have not seen?

3 A No. The reason for that was that we had some spare porthole glasses on the vessel
4 and the captain and his crew were in Conakry and took all the broken ones, or a
5 number of the broken ones - and I think Mr Niasse's cabin was one of them - and put
6 spare glasses in, so when I got there the glasses were replaced.

7
8 Q They were already replaced?

9 A Yes.

10
11 Q Is there any reason why the photographs were not taken in Conakry? They were taken
12 afterwards in Dakar, I understand. Would it not have been better or usual at the place
13 where the ship was, which was quite a while in Conakry?

14 A For a start, I am sure the captain did not have a camera, but maybe Captain Merenyi
15 may have had a camera. He certainly made a report. His report on the damages, and
16 also the captain's report on damages, when I went there it was more or less absolutely
17 correctly described. Sometimes also, to be fair, when you are in ports which are
18 controlled by Customs and guards, there is a rule that you are not allowed to take your
19 camera in the port, so this could have been the same thing.

20
21 Q That is your experience?

22 A Yes.

23
24 **DR PLENDER:** Thank you very much, Mr Stewart. That ends my questions.

25
26 **THE PRESIDENT:** Thank you very much, Professor Lagoni. Dr Plender, we have ten
27 minutes. Do you think that is adequate for you to re-examine?

28
29 **DR PLENDER:** More than adequate.

30
31 **Re-examined by DR PLENDER**

32
33 Q Mr Stewart, to the best of your recollection, can you give the date of the provisional
34 registration of *The Saiga*?

35 A As far as I understand, my memory – and I would have to check the record – seems to
36 indicate that it was about 23 February, the original registration, yes.

37
38 Q For what period is provisional registration obtained in Saint Vincent and the
39 Grenadines?

40 A You get a piece of paper which says that it is six months. The piece of paper that you
41 get to put on board a ship says that it is a six month provisional document, but my
42 understanding also is that once you apply for registration, the vessel is entered as
43 registered on the register, so until it is deleted it in fact remains on the register.

44
45 Q What then is your understanding of the word *provisional* when used in the expression
46 "Provisional Registration Certificate"? What is provisional?

47 A It is a temporary document. That is my understanding of *provisional*.

48

1 Q It is a temporary document. Is the registration, on your understanding, temporary or
2 indefinite?

3 A My understanding is that the registration is indefinite, unless there is some reason why
4 you take the ship away from that registry or it is deleted by the registrar's office.
5

6 Q Was there in the case of *The Saiga* a subsequent permanent registration?

7 A Yes.
8

9 Q As you understand the regulations of Saint Vincent and the Grenadines, from what
10 date was *The Saiga* registered on the Saint Vincent Register?

11 A As I say, my recollection is that it was late February 1997.
12

13 Q As you understand the regulations of Saint Vincent, has she continued to be registered
14 there at all times since?

15 A Yes.
16

17 **DR PLENDER:** Mr President, I have no further questions, unless the Tribunal has any
18 questions.
19

20 **THE PRESIDENT:** Thank you very much.
21

22 **Questioned by THE PRESIDENT**
23

24 Q Mr Stewart, do you have *this* bundle of photographs?

25 A I do not have it. Perhaps I could borrow Dr Plender's. (*handed*)
26

27 Q If you look at photograph number 4, you have some black marks. If you look at the
28 first set of portholes at the top of the structure, you will see that there is a black mark
29 to the extreme right, there is one just below, and there is one just below the words "No
30 Smoking"?

31 A Yes.
32

33 Q They are black marks?

34 A Black marks, yes.
35

36 Q In fact, there is another one just below the one below "No Smoking", directly below it?

37 A Yes, I see that.
38

39 Q What are those?

40 A It appears to me that those are areas of steel that have had some damage which has
41 been touched up with grey undercoat paint.
42

43 Q Were they damaged by bullets, do you know?

44 A Actually I do not recollect, to be honest, because there were many places marked by
45 bullets which the crew touched up with primer, and, of course, later on the whole
46 structure would be painted white.
47

1 **THE PRESIDENT:** I see. Thank you very much. That will be all. Like your colleagues,
2 you are released. You may, of course, stay if you wish, but you may leave now if you
3 wish to.

4
5 **THE PRESIDENT:** Mr von Brevern?

6
7 **MR VON BREVERN:** Mr President, I have a problem again. I would like to put at least
8 one more question to the witness with respect to the provisional registration. Would
9 you allow me to do that?

10
11 **THE PRESIDENT:** Mr von Brevern, I do not think I can. As I said, the procedure is quite
12 clear. The party calling the witness examines in-chief and the other party has the right
13 to cross-examine. Thereafter, the party calling the witness is given the opportunity to
14 ask questions in order to clarify any doubts that may have been raised. If we were then
15 to give you the opportunity of further cross-examination, we would have to give the
16 other party the opportunity for further re-examination, and that, of course, would be
17 an impossible situation.

18
19 I think that it should be entirely left to you to make reference in your submissions to
20 any points which happen to involve a contradiction. This is the situation, as we agreed
21 during our meeting. There may be situations when an entirely new situation has arisen,
22 but the question of registration and provisional registration has loomed so large in the
23 document and in the representations that it cannot possibly be described as new. In the
24 circumstances, therefore, I do not think that we can break from the normal tradition.
25 Mr Stewart, you are released.

26
27 **(The witness withdrew)**

28
29 **THE PRESIDENT:** Dr Plender?

30
31 **DR PLENDER:** Members of the Tribunal, that concludes the evidence for the Applicant
32 State. Tomorrow morning, with the leave of the President, we propose to deliver
33 three short addresses on the basis of the evidence, and the case for the Applicant State
34 will conclude tomorrow morning.

35
36 **THE PRESIDENT:** Thank you very much indeed. It is just about four minutes to time.
37 I suggest that we break at this point. The sitting will be suspended and we will resume
38 tomorrow morning at 10 o'clock.

39
40 **(Adjourned at 1600 hrs until 1000 hrs on Thursday, 11 March 1999)**