

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



1999

Public hearing

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

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

President Thomas A. Mensah presiding

in the M/V “SAIGA” (No.2)

(Saint Vincent and the Grenadines v. Guinea)

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
	Anatoli Lazarevich Kolodkin
	Choon-Ho Park
	Paul Bamela Engo
	L. Dolliver M. Nelson
	P. Chandrasekhara Rao
	Joseph Akl
	David Anderson
	Budislav Vukas
	Joseph Sinde Warioba
	Edward Arthur Laing
	Tullio Treves
	Mohamed Mouldi Marsit
	Gudmundur Eiriksson
	Tafsir Malick Ndiaye
Registrar	Gritakumar E. Chitty

Saint Vincent and the Grenadines
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:** We will now resume. Mr von Brevern?

2

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

8

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

12

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

21

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

25

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

27

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

29

30

31 **LEONARD BANGOURA, sworn**

32 **Examined by MR VON BREVERN**

33

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

37 A (Interpretation from French)Yes.

38

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

41 A Yes.

42

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

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

47

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

3 A On 26 November 1997 we received a mission order from the Customs Authority.
4

5 Q What was your reaction after you had received that order? What orders did you give?
6 A We prepared this mission by setting up logistics and getting in contact with the
7 état-major of the National Marine Authority.
8

9 Q Why did you have to cooperate with the Navy?
10 A We cooperated with the Navy because we did not have adequate logistical means in
11 order to go out on to the sea. The Navy is the body which has the patrol boats for
12 operations at sea and we always refer to the Navy if we need to go out on to the sea.
13

14 Q Is my understanding correct that the boats that you used were not Customs boats but
15 were boats from the Guinean Navy?
16 A Affirmative.
17

18 Q How many patrol boats did you ask for in order to execute the order?
19 A We asked the Navy to prepare this mission and the Navy made available to us two
20 patrol boats, one small one and one big one?
21

22 Q Can you indicate the difference between the two boats in relation to size, the number
23 of crew members and speed?
24 A I am unable to give the speed of these two boats. I know that the smaller one is faster
25 than the big one.
26

27 Q Is it correct that the small boat did not have cabins?
28 A It has no cabins, no, not like the big patrol boat.
29

30 Q Is it correct that it was a so-called open air boat?
31 A Yes, that is correct.
32

33 Q Could the length of that vessel be about 6 metres?
34 A Yes, about that.
35

36 Q After you had contacted the Navy, you had to organize the trip out. Did it take some
37 hours before you could go?
38 A Yes.
39

40 Q Why? What had to be organized?
41 A This delay was due to logistics. We had to find fuel, we had to find food for those
42 who were on board. It was due to logistics.
43

44 Q Did you also have to organize arms?
45 A Yes.
46

47 Q I understand that on these two vessels the crew of the Navy was the ordinary crew and
48 then your people from the Customs side. Is that correct?
49 A That is correct.

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

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

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

1 A I think that we arrived at *The Saiga* at about 9 or 9.05, something like that.
2
3 Q What did you find there? What did you see?
4 A On arrival?
5
6 Q Perhaps you could explain to the Tribunal what the situation was when you came
7 there. What happened to *The Saiga*? Was it already immobilized, what did you see
8 with respect to the crew? Can you explain a little bit?
9 A When we arrived at *The Saiga* we saw that it had already been stopped and that our
10 people were on board. On the deck I saw some members of the crew who had been
11 shown to me, who were presented to me, by those of us who were already on board.
12 There were three of the crew members. After they had been presented to me, they
13 then found others and brought them, again numbering three.
14
15 Q You told us *The Saiga* had already stopped. Was the Captain with the people from the
16 small patrol boat? Did you meet the Captain at once when you came on board?
17 A No.
18
19 Q Did you finally talk to the Captain?
20 A When the second three were brought to me I asked who the Captain was. Nobody
21 came forth. One of the two who were shown to me pointed the Captain out.
22
23 Q When you arrived at *The Saiga* did you see that there might have been a fight? Did
24 you see any damage to the vessel?
25 A No, at first sight when we boarded the vessel we were unable to see what had
26 happened because I was on deck.
27
28 Q I understand that. When finally the crew was found, also the Captain, did you explain
29 to him that the vessel would have to go to Conakry and would be arrested?
30 A Yes.
31
32 Q On your way then to Conakry, did you remain on board *The Saiga*, do you remember?
33 A No, I was in the big patrol boat on the return journey.
34
35 Q Before you returned to your patrol boat, did you inspect *The M/V Saiga* more
36 thoroughly and did you realize, did you see, damage on the vessel?
37 A There was no major damage because when I asked the Captain to have his crew
38 assemble on the deck there, we went into his cabin and I saw that the first door was
39 broken in order to go into the pilot house.
40
41 Q I understand that after *The Saiga* arrived in Conakry you were often on board of *The*
42 *Saiga*. Did you see at that time -- perhaps there you had more chance to see more
43 parts of the vessel -- more damage than at the first moment on the high seas?
44 A No.
45
46 Q Can you tell us when you escorted *The Saiga* into the port of Conakry what was the
47 status of the vessel? What was the state of the crew? Were they in detention, had they
48 been arrested, could they leave the vessel if they so wanted?

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

3
4 Q As Customs, you had brought the vessel into the port of Conakry. Did you feel
5 responsible for the vessel in any way and did you do anything in that connection?

6 A Yes. We put guards on board for the security of the members of the crew and the
7 vessel itself.

8

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

16

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

22

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

24

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

30

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

36

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

1 Tribunal you would be asking of him. That evidence cannot, therefore, be permitted to be
2 given because it would be contrary to the Rules of the Tribunal.

3
4 I think that it is also fair to say that it will be unfair not only to the other party but also
5 to the Tribunal. It is, in effect, a surprise to all of us.

6
7 **MR VON BREVERN:** Mr President, Honourable Judges, all the statements of the witnesses
8 presented by Saint Vincent and the Grenadines we received only very recently before they
9 were called. Therefore, so far there is no difference from the statement of Mr Bangoura,
10 which we have presented to you. We are on the same lines. The subject on which
11 Mr Bangoura was, indeed, nominated to you, was the customs legislation. You will realize
12 that we had nominated two witnesses to you. We thought that we would not call the other
13 witness because it would be sufficient to have one. I am still firmly of the opinion that
14 everything that Mr Bangoura has told us is in connection with the customs legislative situation
15 in Guinean waters.

16
17 There is one point under the issues I have mentioned in connection with Mr Bangoura;
18 that is, applicability of Guinean laws to *M/V SAIGA*. Mr President, I think that everything said
19 here could be put under this heading.

20
21 **THE PRESIDENT:** Mr von Brevern, the point I am making, which I think is the same point
22 that was made by Dr Plender, is not the question of what Captain Bangoura knows or does
23 not know. The question is that in your communication, which was required under our rules,
24 you informed us that Captain Bangoura and Mr Mamadi Camara will be giving evidence on
25 the laws and regulations of Guinea according to which offshore bunkering in the Customs
26 radius is prohibited; the enforcement rules of Custom laws; applicability of Guinean laws to
27 *M/V SAIGA* and legal measures taken against the fishing vessels after having been supplied by
28 *M/V SAIGA*.

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

42
43 **DR PLENDER:** Mr President, before Mr von Brevern replies, I am prepared to go some
44 way in his direction. The point to which I raise particular objection is that Mr Bangoura
45 should be asked about exchanges between him and Captain Merenyi. There is no indication
46 whatever that he was to be asked about these points. Had we known that evidence was to be
47 given about negotiations with Captain Merenyi, we would, of course, have asked Captain
48 Merenyi about this and asked him to remain. If Captain Bangoura is, notwithstanding what
49 the President has said, to be asked questions about the mission and his presence on the

1 mission, I, for my part, am quite prepared to allow Mr von Brevern latitude on that. But we
2 are placed at a serious disadvantage when the witness is asked to explain exchanges between
3 himself and Captain Merenyi, without warning.

4
5 **THE PRESIDENT:** Thank you very much. I am very grateful for that accommodation.
6 However, I think that the issue is fundamental as far as the Tribunal's rules are concerned. We
7 now have evidence of a completely novel kind. We have a situation in which the witness is
8 being led to give evidence that the Tribunal has not been informed about. It is, of course,
9 entirely for you, Mr von Brevern if you wish Captain Bangoura to give evidence of the type
10 that you said another witness was going to give. But, as I have said, I do not believe that this
11 line of questioning at this time, to this witness, is permissible.

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

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

33
34 **MR VON BREVERN:** I, indeed, had the wish, and I put it to the other party, that we would
35 like Captain Laszlo to remain here after our witnesses have been heard so that we would have
36 a chance to call Captain Orlov again.

37
38 **PROFESSOR LAGONI:** Captain Laszlo?

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

1 put any further questions. However, I would very much like you not to strike out all the
2 questions I have put before. Dr Plender could have objected before but he did not. Therefore,
3 I am at the end of questioning the witness. Thank you very much, Mr President.

4
5 **THE PRESIDENT:** Mr von Brevern, I think you have misunderstood me. I did not say that
6 we have struck out the evidence given by the witness. I have repeated that since you have
7 indicated that you are going to call evidence with regard to the circumstances leading to the
8 arrest of *The Saiga*, you are perfectly within your rights to present that to us. I was talking
9 about the evidence concerning the negotiations between the witness and Captain Laszlo. That
10 evidence was not foreshadowed in your communication to the Tribunal and it was not
11 foreshadowed in the communications that you had with the other parties under my good
12 offices. That is what I was referring to. If you wish to continue your line of questioning with
13 regard to the circumstances leading to the arrest of the vessel, that is perfectly in order.

14
15 **MR VON BREVERN:** Thank you very much, Mr President. I fully accept your decision,
16 and I am indeed at the end of my examination.

17
18 **THE PRESIDENT:** Thank you very much indeed. Dr Plender, would you like to cross-
19 examine? Just a moment, Dr Plender. Professor Lagoni, please.

20
21 **PROFESSOR LAGONI:** Mr President, would you allow me to ask the witness one or two
22 short additional questions along the line that Mr von Brevern has taken?

23
24 **THE PRESIDENT:** Yes, that will be perfectly all right.

25
26 **PROFESSOR LAGONI:** Can I do it from *here*?

27
28 **THE PRESIDENT:** No, I think it would be much better for you to do it from the podium.

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

40
41 **THE PRESIDENT:** Mr von Brevern, I would be grateful if you could clarify the matter
42 raised by Maître Thiam.

43
44 **MR VON BREVERN:** Mr President, I have no doubt that the name as I have mentioned it
45 in the letter which Maître Thiam quoted is written correctly.

46
47 **THE PRESIDENT:** Thank you very much. Maître Thiam, does that satisfy you?
48

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

3
4 **MR VON BREVERN:** Mr President, I am sorry to say that I have to correct myself. The
5 correct spelling is L-e-n-o.

6
7 **THE PRESIDENT:** The more important question as I see it, as asked by Maître Thiam, is
8 whether M. André Saféla Leno (L-e-n-o) is one and the same person as the person who signed
9 the judgment against the captain.

10
11 **MR VON BREVERN:** I cannot see that this question is of so much importance, but I can
12 answer this in the affirmative.

13
14 **THE PRESIDENT:** This gentleman is not now going to appear as an expert on behalf of
15 Guinea?

16
17 **MR VON BREVERN:** No. It has been decided that Mr Leno would be part of the
18 delegation and would address the Court in that capacity, instead of being an expert.

19
20 **THE PRESIDENT:** I would suggest, Maître Thiam, that we cross the bridge when we come
21 to it. It is, of course, entirely up to the agent of Guinea to call any person, and at that point it
22 would be within the rights of the applicant and also the responsibility of the Tribunal to
23 determine whether, in the light of antecedent facts, the appearance of the person for the
24 purpose intended will be appropriate or not. I would therefore suggest that we leave the
25 matter pending until the appropriate time.

26
27 **MAITRE THIAM:** Thank you, Mr President. However, if I have understood it correctly,
28 Mr Lenaud will not be called as an expert, because he is in the room, nor as a witness.

29
30 **THE PRESIDENT:** That is correct.

31
32 **MAITRE THIAM:** Even though he will come to address the Tribunal as a magistrate who
33 has convicted Mr Orlov and he is going to support the position of the State of Guinea, is that
34 correct?

35
36 **THE PRESIDENT:** I understand that he will be addressing the Court in some capacity on
37 some points which I think will become apparent later on. I think that Mr von Brevern is quite
38 clearly going to take advice about this matter, in the light of this exchange.

39
40 **MAITRE THIAM:** Thank you, Mr President.

41
42 **THE PRESIDENT:** Professor Lagoni, please.

1 **Examined by PROFESSOR LAGONI**

2
3 Q Mr Bangoura, in addition to what Mr von Brevern asked you, I would like to ask you
4 a few more questions. The first is in relation to a *procès-verbal*, number 29, the date
5 of which is 31 October 1997. Who wrote this *procès-verbal*? You can see it here.
6 Do you want to have a look at it?

7 A It was the head of the Mobile Brigade.

8
9 Q Is it signed by you, or is it not from you?

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

12
13 Q The Mobile Brigade is from the Navy?

14 A No, it belongs to Customs.

15
16 **DR PLENDER:** Mr President, I think there may be a small translation point from German to
17 English. The witness has been asked about a *procès-verbal* of the 31st. We have
18 a *procès-verbal* of the 13th. I think that Professor Lagoni may be referring to the 13th
19 and describing it as the 31st. Perhaps we may have that point checked.

20
21 **PROFESSOR LAGONI:** Mr President, I think we are talking about the same *procès-verbal*
22 which is Annex 19 to the Memorial, and the date, as I read it, is the 31st, but I think it
23 does not make any difference. It is "Conakry le 31/10/97" on page 271 of your
24 Memorial.

25
26 **MAITRE THIAM:** Mr President, we are talking about the same document but it is certainly
27 dated 13 November, and perhaps if you look at it closely you can see it for yourself.

28
29 **PROFESSOR LAGONI:** Mr President, this may be right. I am looking at the signature in
30 Conakry on page 271. This is obviously the signature of the captain on the 31st.
31 Thank you very much.

32
33 Q So it is not made by you. Who gave the information in this *procès-verbal*?

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

35
36 Q In the *procès-verbal*, there were some specific times and hours given. *Inter alia*, it
37 says in the English version "At about 4 o'clock on the following day." Was this given
38 from your estimation?

39 A Yes.

40
41 Q I have another question. How many officials from the Customs were on board the
42 small patrol boat?

43 A Three.

44
45 Q Were they all armed?

46 A The three, yes, with PMAK.

47
48 Q Could the Customs officials use the mounted machine gun on the small patrol boat?

49 A No.

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

A If there is someone fleeing, for example.

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

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

Cross-examined by DR PLENDER

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

A (*Witness nods*)

Q Do you see any disadvantage in having such light shed on the subject?

A Yes. You see, this is not appropriate. I would like to have my advocate here.

Q Mr Bangoura, I am asking you several questions to inform the Tribunal.

A Yes, but I would like my advocate to be here to help me in my response.

Q You have your advocate and you are under the direction of the President.

THE PRESIDENT: Mr Bangoura, you do not have an advocate. You are a witness for this Tribunal. You are not charged with or accused of any offence. You are here to provide evidence to assist the Tribunal.

A Thank you Mr President. I do apologize.

MR PLENDER: Mr Bangoura, for how long have been working for the Customs?

A Me?

Q Yes.

A 25 years.

MR VON BREVERN: Mr President, I intervene, but is it correct that Mr Plender asked, or told the witness, I have not quite understood, that he puts questions to the witness not on behalf of St Vincent and the Grenadines, but for whom else? Perhaps I can ask for clarification. For whom does he put these questions?

THE PRESIDENT: Mr Plender?

MR PLENDER: If there is a misunderstanding I do apologize. I am an advocate of St Vincent, but I wanted to say is that the truth is important, not for me, not for St Vincent, but for the Tribunal. Have you understood?

A Yes.

1 Q According to you, with your experience of 25 years you have undoubtedly been trained
2 for your functions?
3 A Please continue, because I have not heard the question.
4
5 Q The reply is yes, you did receive training?
6 A Yes.
7
8 Q And this training informs you of certain elements concerning your competence?
9 A. Yes.
10
11 Q In what zone of the sea are you competent?
12 A Our competence extends to 150 km from the coast.
13
14 Q Thank you. This is the customs zone, maritime customs zone?
15 A Yes.
16
17 Q And what are the relations between this customs zone and the economic zone of
18 Guinea?
19 A The relation between the economic zone? Could you rephrase your question please?
20
21 Q Do you consider that you are competent beyond the exclusive economic zone if you
22 are in the customs zone?
23 A I ask you with respect to see article 34 of the Code des Douanes. This will reply to
24 your question.
25
26 Q And it is article 35 which says that the Customs zone extends to 250 km, is it not?
27 A No, not article 35; article 34. I did not say 35.
28
29 Q I am sorry, it was my error. But the question is to know whether this article is the
30 article which mentions the 250 km.
31 A Yes.
32
33 Q So you consider that your competence is regulated by this article according to the
34 national law.
35 A Yes.
36
37 Q And if you embark on a mission you concentrate on this customs zone?
38 A Yes.
39
40 Q Your attention is not fixed to the limits of the exclusive economic zone, it is rather
41 fixed on the customs zone, the maritime zone?
42 A Exactly.
43
44 Q Thank you. Do you think that one of your duties is to prevent bunkering of fishing
45 vessels in this customs zone?
46 A The vessels authorised may do so, but those which are not authorised must not.
47
48 Q Do you consider that one of your functions is to prevent bunkering of those vessels
49 which do not have a permit?

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

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

1
2 Q I am going to ask you some questions regarding the mission against *The Saiga*. Is it
3 correct to say that you received the order of the mission on 26 November?
4 A Yes, the order for the mission was drawn up on 26 November.
5
6 Q And this order was communicated to you on 26 November?
7 A The head of the mission, yes.
8
9 Q What time?
10 A I do not remember.
11
12 Q According to the information that you received, could *The Saiga* have entered the
13 Guinean zone on 26 November?
14 A No.
15
16 Q According to this information where was this vessel on 26 November?
17 A The 26 November?
18
19 Q 26 November, yes. I apologize, I should have said 26 October. I do apologize.
20 A Repeat your question please?
21
22 Q Is it true that you received the order for the mission on 26 October?
23 A The head of the mission received the order for the mission on 26 October.
24
25 Q And according to the information which you had at the time, where was *The Saiga*
26 located?
27 A *The Saiga* was located to the north.
28
29 Q Within the Guinean zone or beyond the Guinean zone?
30 A Beyond the Guinean zone.
31
32 Q If the vessel were outside the Guinean zone, why did the Guinean authorities bother
33 about it?
34 A Well, they knew that they were going to continue and they were going to rendezvous
35 with certain vessels.
36
37 Q On what date did you set out from the port of Conakry?
38 A 27th.
39
40 Q On 13 November did you sign a *procès-verbal* concerning *The Saiga*?
41 A Yes.
42
43 Q Was this *procès-verbal* precise?
44 A Yes.
45
46 Q In the very first line you say that you set off from Conakry on 26 October. Is that true
47 or not? We will show you a copy.
48 A 26 October, is that what is written?
49

1 Q Yes?
2 A No. In execution of the order of the mission of 26 October we did not leave Conakry
3 on 26th.
4
5 Q The copy is not very legible. This mission against *The Saiga*, was it of a punitive
6 nature or a preventative nature?
7 A The mission was neither punitive nor preventative, no.
8
9 Q So in your opinion how would you describe this? What would you say was the object
10 of the mission? The object of the mission was to look for and to combat fraud.
11 A What type of fraud exactly?
12
13 Q You said that the point of the mission was to combat fraud.
14 A I am talking about smuggling fuel.
15
16 Q Within Guinean territory?
17 A Yes, we are Guineans.
18
19 Q If I have understood you correctly, you say that fraud included bunkering of fishing
20 vessels within the Guinean zone?
21 A Yes.
22
23 Q Did you affirm in your *procès-verbal* that you had received information on the
24 so-called clandestine presence of the tanker in the Guinean zone?
25 A Yes.
26
27 Q Is it true that your authorities had listened to and recorded radio conversations
28 between the tanker and the fishing vessels?
29 A Yes.
30
31 Q In these conversations did *The Saiga* announce its precise position over the radio?
32 A Did you say "renounce" or "announce"? Could you repeat?
33
34 Q Announce.
35 A Yes.
36
37 Q At the time of departure did you precisely locate *The Saiga* or did you know only the
38 locality of the vessel because of the radio conversations?
39 A If I understand your question correctly, you are saying at the beginning: did we locate
40 *The Saiga* or was the location of *The Saiga* due to the radio conversations?
41
42 Q Yes, that is the question.
43 A I would say that it was the radio that enabled us to listen to *The Saiga* and her
44 conversations.
45
46 Q How, therefore, would you judge the statement to the effect that the presence of the
47 tanker was clandestine?
48 A Well, the tanker had no authorization.
49

1 Q Do you consider it normal for a tanker on a clandestine mission to announce over the
2 radio its precise position?
3 A Well, it did not announce to the authorities to say, "I am here". The ship was in
4 conversation with its customers, its clients.
5
6 Q You refer to the presence of a ship as clandestine when it is not announced to the port?
7 A When it is not announced to the port services, then it is a clandestine presence.
8
9 Q So by the word "clandestine" you are saying that it did not announce its position
10 directly to the Guinean port?
11 A Yes.
12
13 Q Is it true that you headed south of the Guinean zone?
14 A No.
15
16 Q Because *The Saiga* had a rendezvous at a position close to the point where you found
17 the vessel.
18 A We headed there because *The Saiga* changed direction.
19
20 Q But *The Saiga* had announced precisely where the next rendezvous would be, is that
21 true?
22 A I said that we, too, changed our heading because *The Saiga* changed its course and we
23 heard the communication.
24
25 Q At what time in the morning did you have radar contact?
26 A At about 3.30 in the morning.
27
28 Q Which was the heading of *The Saiga* at this precise moment?
29 A I cannot tell you this because I am only a Custom officer on board.
30
31 Q Do you know on the basis of the radar the speed of *The Saiga*?
32 A No, I do not know. I did not know myself.
33
34 Q Is it precise that you signed a *procès-verbal* according to which *The Saiga* was
35 travelling at a high speed?
36 A Where, in which place?
37
38 Q In your *procès-verbal* of 13 November? I can read the words to you. "We
39 immediately moved forward in its direction, increasing the speed in order to catch up
40 with it, but it seemed to go faster than us in the direction of the southern border".
41 A This is after its detection.
42
43 Q You can see it was after the detection by radar.
44 A Yes, this is what I said.
45
46 Q In your words "it seemed to go faster than us"?
47 A Affirmative.
48
49 Q So the maximum speed of the small patrol boat is what?

1 A The speed of the small patrol boat, no, I cannot say. It is the captain of the boat who
2 can tell you this.
3
4 Q If I inform you that we have technical information according to which the maximum
5 speed is 35 knots, would you then like to make us understand that *The Saiga* seemed
6 to be going at a speed of 35 knots?
7 A No, I do not think that this can be seen anywhere.
8
9 Q Is it precise that the vessel seemed to be going faster than you?
10 A Affirmative.
11
12 Q Therefore you were going very slowly?
13 A Yes.
14
15 Q In this *procès-verbal* you said that you increased your speed -- in the preceding line.
16 A Yes.
17
18 Q After increasing your speed, you went very slowly. Can you then please explain why
19 you were not catching up?
20 A Why?
21
22 Q Why you were not going even faster still?
23 A It depends on the capacity of the engines.
24
25 Q Could you then make a guess of the speed of the tanker for the Tribunal?
26 A The technician of the Navy will explain this to you. I am unable to do this as
27 a Customs officer because I did not receive this information on board.
28
29 Q Mr Bangoura, is it not quite clear, even to a small child, that a tanker is not faster than
30 an armed patrol boat?
31 A I can neither confirm this nor not confirm it. It depends on the engines of the patrol
32 boat.
33
34 Q According to your testimony, the tanker seemed to be going faster than your patrol
35 boat?
36 A Yes.
37
38 Q Was there any time or at any moment did the tanker stop and slow down and drift?
39 A I cannot confirm this because I was not on board the tanker.
40
41 Q If I said that it stopped its engines at 4.25 in the morning, what would you say?
42 A I cannot say anything about this.
43
44 Q Did you read the log of *The Saiga*?
45 A Yes, I did then,
46
47 Q And the logbook says that the engines were stopped at 4.25 in the morning.
48 A I cannot remember that because I read it a year ago and I have not re-read it.
49

1 Q Is it possible that before the arrival of the patrol boats *The Saiga* was drifting?
2 A I cannot confirm this because I was not in the small patrol boat.
3
4 Q Would you like to indicate that it is possible?
5 A No, I cannot mention this. I cannot say anything like that.
6
7 Q Because if the vessel was adrift, this would have been an extremely important element,
8 would it not?
9 A But I cannot say this because I was not in the small patrol boat.
10
11 Q But you signed a *procès-verbal* in which you said that the vessel seemed to be going
12 faster than yours and you say nothing about the possibility that *The Saiga* was drifting.
13 A I cannot say so because I was not in the small patrol boat which was the first one to
14 reach *The Saiga*. I was not present.
15
16 Q If, in truth, *The Saiga* was adrift for several hours, you should have mentioned it in the
17 *procès-verbal*. Is that not so?
18 A If it was proven that *The Saiga* was drifting, I would have mentioned it, if it had have
19 been proven.
20
21 Q Therefore, there are two possibilities. Either *The Saiga* was not drifting during several
22 hours and your *procès-verbal* is correct or your *procès-verbal* is not exact. Do you
23 agree that there are only two possibilities?
24 A I cannot say that the *procès-verbal* is not precise. There is not this possibility to say
25 that a *procès-verbal* is not exact.
26
27 Q If the *procès-verbal* is precise, it follows, therefore, that the logbook is not exact.
28 A This is what you are putting to me, not what I am putting to you.
29
30 Q M. Bangoura, according to the logbook, the vessel was drifting for a period of four
31 hours. Is the logbook correct and precise or not?
32 A Maître, I cannot say so because I was not party to making, putting things in the
33 logbook and it was a year ago since I read the logbook, or two years.
34
35 Q If the logbook was incorrect, this would have been a very important point, would it
36 not?
37 A I am not able to say anything about the truthfulness or lack of truthfulness about the
38 insertions in the logbook. I cannot say anything about this. I cannot make a judgment
39 here.
40
41 Q If the Master of the vessel was taken to court, it would have been extremely important,
42 would it not, to make it known to the Tribunal that the Captain had not kept a precise
43 and correct logbook with correct entries?
44 A You said "if".
45
46 Q If the logbook is incorrect, this is an important element. Is that not so?
47 A I said that I cannot judge here about the logbook.
48

1 Q Why did you not draw the attention of the court in Conakry to the contents of the
2 logbook?

3 A (No reply)

4

5 **THE PRESIDENT:** Dr Plender, I would suggest that the witness cannot be asked why he
6 did not do that because he has been at pains to say that he did not know anything
7 about the truthfulness or otherwise of the contents of the logbook. If that is the case,
8 he could not possibly be expected to draw this to the attention of the Tribunal.

9

10 **DR PLENDER:** That is right. I shall not persevere. The witness did say that he had seen the
11 logbook.

12

13 **THE PRESIDENT:** Yes, but he says that he cannot say whether it was true or not true.

14

15 **DR PLENDER:** (To the witness) In approaching *The Saiga*, did you look at it through your
16 glasses, through your binoculars?

17 A With which patrol boat? Which patrol boat are you referring to?

18

19 Q I asked whether you observed *The Saiga* from the patrol boat, which you were
20 stationed on.

21 A We were not stationed on it, we were moving. We were in passage.

22

23 Q Yes, naturally, but did you observe *The Saiga* using binoculars?

24 A First of all we were unable to observe *The Saiga* through binoculars at the full
25 distance.

26

27 Q In approaching *The Saiga* did you use your binoculars?

28 A I have not got any binoculars.

29

30 Q In approaching *The Saiga* did you observe persons on deck?

31 A I said that *The Saiga* was first reached by the small patrol boat. I was in the big patrol
32 boat and I cannot say anything about what happened because I was not present. Even
33 when I was asked earlier on I did say that we arrived once the officers from the small
34 patrol boat had already entered *The Saiga* and were already on board *The Saiga*.

35

36 Q All this has been well understood and I would like to put this question to you. When
37 you arrived alongside *The Saiga*, did you see people on board?

38 A When my patrol boat arrived, I said that there were three members of our crew and our
39 officers on the deck.

40

41 Q Did you at this moment in time see members of the crew of *The Saiga*?

42 A Yes.

43

44 Q Where were they and what were they doing at this moment?

45 A I do not know whether we are able to understand one another. I said that the small
46 patrol boat was the first one to come alongside. When we came alongside *The Saiga*
47 they had already found some members of the crew numbering three who were on deck.
48 But to say where they were at that time and what they were doing, this is something I
49 cannot say, I cannot answer.

1
2 Q Is this because you do not remember?
3 A I cannot remember an operation that I did not participate in. The first patrol boat,
4 I was not on it. When we arrived in the second patrol boat I said, and I underscored,
5 that there were three members of the crew who were already on deck, but to say now
6 before our arrival at the boat – I cannot say what happened then. I cannot speak about
7 this because I cannot lie.
8
9 Q M. Bangoura, did I understand correctly that according to your testimony, when you
10 arrived near *The Saiga*, alongside *The Saiga*, before you went on board, you did not
11 see any member of the crew of *The Saiga*?
12 A Maybe I have been misunderstood on this point. I do not know what you are trying to
13 achieve but I said that the first small patrol boat was the first one. When we arrived,
14 members of our team – members of the crew were already on deck. This is all that I
15 can say, Maître.
16
17 Q The members of the crew who were on deck, were they members of the crew of your
18 patrol boats or were they members of the crew of *The Saiga*?
19 A When the big patrol boat arrived; when it arrived, yes.
20
21 Q When the big patrol boat arrived with you at that moment, did you see members of *The*
22 *Saiga's* crew on board *The Saiga*?
23 A Yes.
24
25 Q Thank you. Were they guarded? What were they doing?
26 A Under the guard of whom?
27
28 Q Of your soldiers, of members of Navy representatives.
29 A No, not Navy guard.
30
31 Q What were they doing, the *Saiga* crew members?
32 A They were on deck waiting for the others to be found.
33
34 Q These crew members, were they armed?
35 A I did not see any weapons. I did not see them carrying any weapons.
36
37 Q Before your arrival, did you have any serious reason to believe that they were armed?
38 A We were unable to know anything about this.
39
40 Q In approaching *The Saiga*, did you personally see any signals or hear any signals which
41 were emitted by the small patrol boat?
42 A Yes.
43
44 Q Was there a radio message?
45 A I was not in the radio room.
46
47 Q Do you know whether a radio message was emitted?
48 A I was not in the radio room.
49

1 Q You repeated your answer and I repeat the question. Do you know, yes or no,
2 whether there was a radio message?

3 A I cannot know this. I was not in the radio room.

4

5 Q Did you listen to any signals which were emitted?

6 A I said at the beginning that I heard the siren signal from the small patrol boat. I saw
7 the rotating blue light.

8

9 Q Did you hear any empty shots being fired, blank shots?

10 A At the distance I was at, I cannot confirm this, because I was not in the small patrol
11 boat.

12

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

16

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

18

19 **THE PRESIDENT:** May I request the agents kindly to meet with me either immediately at
20 12.15 or at quarter-to-2, at your convenience? Which would you prefer?

21

22 **DR PLENDER:** Immediately.

23

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

25

26 **(Adjournment 12:00)**