

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



1999

Public hearing

held on Monday, 15 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

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

Saint Vincent and the Grenadines
represented by

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

as Agent;

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

as Deputy Agent and Counsel;

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

and

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

as Counsel and Advocates.

Guinea
represented by

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

as Agent and Counsel;

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

and

Mr. Namankoumba Kouyate, Chargé d'Affaires, Embassy of Guinea, Bonn, Germany,
Mr. Rainer Lagoni, Professor at the University of Hamburg and Director of the Institute for Maritime Law and Law of the Sea, Hamburg, Germany,
Mr. Mamadi Askia Camara, Director of the Division of Customs Legislation and Regulation, Conakry, Guinea,
Mr. André Saféla Leno, Judge of the Court of Appeal, Conakry, Guinea,

as Counsel.

1 **THE PRESIDENT:** Mr von Brevern, I take it you are continuing with the examination of
2 witness Sow?
3
4 **MR VON BREVERN:** Yes, Mr President. Professor Lagoni will do this.
5
6 **LIEUTENANT AHMADOU SOW,** recalled
7 **Examined by PROFESSOR LAGONI,** continued
8
9 **Q** Mr Sow, we proceed with the questions from yesterday. You remember the chart
10 shown down there?
11 **A** (Interpretation from French) Yes, I remember.
12
13 **Q** I have some questions relating to the signals given from your patrol boats to *The*
14 *Saiga*. You mentioned that you were calling *The Saiga* before 4 o'clock on the radio.
15 Is that right?
16 **A** I said at 3.50 when we detected *The Saiga* and we knew that it was *The Saiga* we
17 immediately started to call *The Saiga* on channel 16 from the big patrol boat.
18
19 **Q** Did *The Saiga* react to that?
20 **A** No, there was no reaction.
21
22 **Q** You mentioned also that the small patrol boat was the first to arrive at *The Saiga*. Did
23 the small patrol boat use any signals and, if it used signals, please explain which
24 signals?
25 **A** At 8.30 the small patrol boat left to go to *The Saiga*. I gave instructions to the Captain
26 of P35 not only to put his radio on to channel 16 and to continue calling *The Saiga* as
27 I had done since 3.30, but also to emit light signals and sound signals. On the small
28 launch there is a blue rotating light signal plus a siren and I asked the Captain to add
29 these to the calls that he continued to emit on the radio.
30
31 **Q** Are you sure that the captain of the small patrol boat switched on these signals?
32 **A** I am sure that he emitted these signals because not only did I see the blue rotating and
33 flashing light but, as I had my VHF on channel 16, I heard him calling.
34
35 **Q** Are these the signals you usually give in an ordinary police action against a ship on
36 the seas?
37 **A** Yes, whether it is a fishing vessel or any other vessel that we want to make contact
38 with, we often use these signals.
39
40 **Q** Do you often use them or do you usually use them in this situation, for example, if
41 you want to stop a fishing vessel?
42 **A** If we want to stop a fishing vessel, we use these signals.
43
44 **Q** It has been said by another witness that there was ringing of a bell also. What kind of
45 bell was that?
46 **A** In the small patrol boat there is no bell but on the big launch we have a bell. To my
47 recollection we did not use the bell. Maybe the bad weather meant that the bell rang
48 but it was not one of our signals.
49

1 Q The witness was on the big patrol boat. Are there any signs on your patrol boats
2 outside on the hull?

3 A Yes, on the outside of the hull we have the numbers of the various patrol boats: P,
4 for example, 328 on the big patrol boat and then we have the letter P and the numbers
5 35 which are painted on the outside of the small patrol boat.
6

7 Q Did you fly a flag on the patrol boat on the big one and on the small one?

8 A On all of the patrol boats it is compulsory to fly the flag carrying the national colours,
9 whether we are at the dock or at sea.
10

11 Q This was the flag of the Republic of Guinea I understand?

12 A This is correct.
13

14 Q Can you indicate to the Tribunal how big the numbers you were referring to are, just
15 indicate it with your hands?

16 A On the large patrol boat the letter P is about this size and also the numerals and on the
17 small patrol boat these are a bit smaller. (Witness indicates a dimension about 20" to
18 24")
19

20 Q Now, to take another tack, you mentioned that there are mounted machineguns on
21 both patrol boats. Is it possible that the machinegun of the small patrol boat was used
22 in order to stop *The Saiga*?

23 A To my knowledge, no.
24

25 Q So you did not get a report on this, did you?

26 A When they were in contact with *The Saiga* which was trying to flee - that is the small
27 patrol boat - after my arrival I was given a report by the Captain of P35 who said that
28 they had used their own weapons to emit warning signals, but they did not indicate
29 that they had used the mounted guns on board for this purpose.
30

31 Q Who had used their own weapons -- the Customs officers or the Navy officers?

32 A It was the Customs officers. There were no naval officers in the small patrol boat. It
33 was the Customs officers who used their own arms which they had on them when
34 they came on board the small patrol boat.
35

36 Q According to your naval rules, can you use the 12.7 mounted machinegun in order to
37 stop a foreign vessel at sea when the foreign vessel resists stopping?

38 A For the use of arms on board the patrol boats we have two types of orders; one
39 general one that the patrol boats, in the case of extreme necessity when the crew and
40 the patrol boat are threatened by danger they can use the mounted machineguns to
41 issue warning shots; and then, depending on the conditions, if the small patrol boats
42 are out on a mission, the arms can be used. We are allowed to use them in the case of
43 a vessel which is not responding. But before using these arms you have to be sure
44 that the vessel that you are trying to stop has identified clearly who you are and you
45 have had to try to stop them by other means.
46

47 Q Are you allowed to use the vessel in order to give warning shots or shots in order to
48 break their resistance: which are you referring to, or both, possibly?

1 A We used these arms in order to issue a warning in order to draw attention quite clearly
2 to ourselves and to prove to the object that we are trying to stop that we are trying to
3 stop them.
4

5 Q Where are you shooting when you shoot warning shots: in front of the ship, before
6 the bow, or above the ship?

7 A This question is one which I find difficult to answer because it depends on the
8 position where the first vessel is, the one that is closest to the vessel. The usual orders
9 are that they shoot upwards into the air.
10

11 Q Can you tell me about the weather conditions when both patrol boats arrived at *The*
12 *Saiga*?

13 A When the two patrol boats arrived at *The Saiga* the sea state was rough; it was rough
14 for the small patrol boat. It was rough for the patrol boats in view of their size.
15

16 Q But is it possible that *The Saiga* did not consider it rough?

17 A I think that for *The Saiga* the sea state was normal in view of its size and its cargo. It
18 was stable on the seas.
19

20 Q Do I understand you correctly that the sea and weather conditions are dependent on
21 the point of view: they may be different as seen from a big boat or seen from a small
22 boat?

23 A That is precise, yes.
24

25 Q When you arrived with the big patrol boat at *The Saiga*, did you see any damage on
26 board *The Saiga*?

27 A When I arrived aboard *The Saiga*, I was not able to take cognisance of the vessel
28 because the sea was so rough that I was just able to have my crew aboard *The Saiga*
29 and then to move the patrol boat away from *The Saiga* for reasons of safety.
30

31 Q Have you been aboard *The Saiga*?

32 A No, I was not on board *The Saiga*.
33

34 Q Would you please look at the map? There is a straight line from the position where
35 the patrol boats arrested *The Saiga* towards Conakry. Which course is that?

36 A It was 66°, I remember very well. I recall that this was our heading, 66°.
37

38 Q I just wanted to know if this was the course that the boat took back to Conakry. I did
39 not want to know the exact geographical course.

40 A Yes, it was the route that *The Saiga* and the two launches took in order to return to the
41 base in Conakry.
42

43 Q *The Saiga* went on its own engine to Conakry, is that right?

44 A Yes, that is correct.
45

46 **PROFESSOR LAGONI:** Thank you very much, Lieutenant Sow. Mr President, I have no
47 further questions.
48

49 **THE PRESIDENT:** Thank you very much. Is that the end of the examination?
50

1 **MR VON BREVERN:** Yes, Mr President.

2

3 **THE PRESIDENT:** Dr Plender?

4

5 **DR PLENDER:** Maître Thiam will be put questions to the witness, Mr President.

6

7 **Cross-examined by MAITRE THIAM**

8

9 **Q** (Interpretation from French) Lieutenant Sow, can we start by addressing your
10 training?

11 **A** Yes, if you feel that this is necessary.

12

13 **Q** Have you had further training, continuing training in the Navy?

14 **A** In 1982 I joined the Navy. From 1982 until 1985 I attended nautical school in
15 Liberia. From 1987 until 1992 I was at the Marine School in the Soviet Union, in
16 Baku.

17

18 **Q** Did your training include law?

19 **A** As far as law is concerned, I did not have any law training in these various schools,
20 but when I returned and started to go on board, we were given some notion of law.

21

22 **Q** You said on Saturday that you were told what the various maritime zones were?

23 **A** On Saturday I said that I was given some idea about the law of the sea by the chief of
24 staff, but I learnt what I know about the zones and their delimitations at the courses in
25 the Soviet Union from 1987 till 1992.

26

27 **Q** It was at the courses there that you learnt the precise delimitations or imprecise
28 delimitations of the various maritime zones?

29 **A** That is correct.

30

31 **Q** Was it precise or imprecise? Was it exact or not that exact?

32 **A** I was given the notion and idea in an imprecise manner of the various types of zones
33 that a country can have, and in a very precise manner as to what the delimitations are.
34 I said "imprecise" because the various zones differ according to different countries.

35

36 **Q** Once you were back in Guinea, in your country, were you able to determine precisely
37 the various maritime zones?

38 **A** Yes, I was able to do this.

39

40 **Q** Independently of this, did your training teach you to distinguish various ways of
41 calculating the speeds of a vessel through the water, overground?

42 **A** Yes.

43

44 **Q** Do you know the different ways of calculating various units of measure, that is
45 distances at sea?

46 **A** Yes.

47

48 **Q** Can you tell the Court which these are, the units to measure the distances at sea?

49 **A** Speed at sea is measured in knots.

50

1 Q And distance?
2 A The measurement of distance is nautical miles and cables. A cable is a tenth of a
3 nautical mile.
4
5 Q Who taught you that a cable is a tenth of a nautical mile?
6 A My teachers taught me this.
7
8 Q Were your teachers in Russia?
9 A Yes.
10
11 Q How many metres is one nautical mile?
12 A One nautical mile is 1852 metres. This is the standard.
13
14 Q And a cable?
15 A A cable is a tenth of a nautical mile.
16
17 Q I prefer the actual calculation.
18 A *(no English translation)*
19
20 Q A brass is what?
21 A I do not know this term fathom.
22
23 Q If you do not know about fathoms, how can you calculate a cable, which is 120
24 fathoms?
25 A *(no English translation)*
26
27 Q If you do not know that, there is nothing very unusual. You cannot answer this
28 question. I would now like, if you would agree, to turn to your mission. Can you tell
29 us that you inserted the lines on this chart?
30 A Yes.
31
32 Q As far as *The Saiga's* route is concerned, can you remind the Tribunal of how you
33 were able to insert these courses?
34 A The course of *The Saiga* was done with the aid of the logbook of *The Saiga*.
35
36 Q With the aid of the logbook of *The Saiga*?
37 A Yes.
38
39 Q But at no time were you able to establish positions which would have enabled you to
40 plot the course of *The Saiga*?
41 A We could not plot the course of *The Saiga* because we did not know where *The Saiga*
42 was navigating. We had a position of *The Saiga*, 1, but we did not know which the
43 heading was or where *The Saiga* was going. We were able to ascertain this afterwards
44 in the logbook.
45
46 Q So you did not plot this route on the chart when you were on board?
47 A I plotted my route at different times during my mission. The course of *The Saiga* was
48 plotted on the chart after the mission and after having consulted the logbook of *The*
49 *Saiga*.
50

1 Q So you read the logbook of *The Saiga*?

2 A Yes.

3

4 Q If you are familiar with the various positions which were indicated in order to be able
5 to plot its route, it is because you ascertained that there were no errors in *The Saiga's*
6 logbook?

7 A Yes.

8

9 Q The logbook was precise?

10 A It was precise.

11

12 Q But it was only towards 0000 hours until 0400 hours in the morning in the logbook
13 that there is a doubt here about the distance, according to the speed given?

14 A We were unable to modify what *The Saiga* had written in its logbook.

15

16 Q But at least *The Saiga* had a logbook? Have you got a logbook?

17 A As I declared, in view of the small size of our patrol boats, we do not have a logbook
18 on board our launches. We have sheets of paper on which we put down hours and
19 positions in order to make a report afterwards, because most often our missions are of
20 short duration.

21

22 Q Can you tell the Tribunal whether there is a regulation in Republic of Guinea,
23 especially in its armed forces and its Navy, which lays down upwards of which size a
24 vessel must have a logbook?

25 A It is not stated as such that in our vessels in Guinea we do not have logbooks. Of
26 course, there are logbooks.

27

28 Q Mr Sow, the question was: is there a rule or regulation in the Republic of Guinea
29 which determines from which size onwards a vessel must have a logbook, and at
30 which size a logbook is no longer necessary?

31 A I cannot say that there is a rule. We receive instructions, we are given the material.
32 We have persons of higher rank who can answer this question.

33

34 Q You received the order of mission on 26 October or the 27th?

35 A The 27th. I did not receive the order of mission I was made aware of the order of
36 mission on the 27th.

37

38 Q How were you informed of this? Was it submitted to you?

39 A I was shown the order of mission because the order of mission is often remaining with
40 the head of the mission from the time he wants to cast off to sea, but we are given
41 verbal instructions to leave and told about the purpose of the missions. But it is the
42 head of the mission who retains these orders.

43

44 Q I think we would save time, Mr Sow, if you would listen to my questions. We have
45 understood that the order or mission was retained by the Customs officers. Is that
46 true?

47 A Yes.

48

49 Q But did you read it?

50 A No.

1
2 Q Your notes on the logbook which you held - or relative to the logbook, to be more
3 precise - you drafted on the basis of preliminary notes. Did you add anything later
4 because what you have submitted here - I want to be very precise - was something
5 that you wrote out in a clean version. These were not the notes you took before. Do
6 you have the notes you took on board?
7 A I have them in Conakry. We take simple notes just to jog our memories.
8
9 Q It did it not seem important to take them with you because it seemed to you important
10 to bring the cleaner version?
11 A When I am on a mission I make a report on the events of the mission. This report that
12 I made to my authorities I think is sufficient for me to enable me to reply to your
13 questions.
14
15 Q But when you put this clean version - there was nothing added to it?
16 A Nothing.
17
18 Q Everything which is in the logbook is in the notes you took on board?
19 A I can say "yes".
20
21 Q The order of mission: you read it, you told me?
22 A We refer to the number of the order of mission to say that we cast off on a certain
23 mission on a certain day and there is reference to this in the various reports that we
24 make.
25
26 Q But in the case in point, Lieutenant, you have no number, no date. Can you say where
27 you had the date of the order of the mission?
28 A It is on the order of the mission itself.
29
30 Q Is there a date on the order of mission?
31 A Yes.
32
33 Q Mr von Brevern submitted a copy of the order of mission. I will hand it over to you
34 and ask you to indicate to the Tribunal where the date of the order of the mission is.
35 (*Same handed*)
36 A The date of the order of the mission is 26 October 1997 because the order of mission
37 takes effect as from the beginning of the mission, so we must not depart before that.
38
39 Q Lieutenant Sow, I see that the order of mission does indicate that you must leave on
40 the 26th but I would like you to show me and point to the precise date of the mission.
41 Please indicate this to me.
42 A The date of departure, I consider this as the date of the order of the mission.
43
44 Q Is it correct, Lieutenant, that you showed me this date? (*Indicating document*)
45 A Yes.
46
47 Q I read here the date of departure. Do you consider the date of departure is the date of
48 the order of the mission?
49 A Yes, I do.
50

1 Q What was the precise mission which you were given?
2 A The precise mission given to me was to cast off with a Customs crew to conduct a
3 search at sea.
4
5 Q Did they talk to you about *The Saiga*?
6 A Before leaving, no.
7
8 Q Do you think that it is normal if you are the head of the mission, at least from the
9 point of view of the Navy, to give you a mission which has a particular purpose but
10 without giving you the reason or explaining the reason and the purpose of the mission
11 to you?
12 A The reply to this question, I would say, is as I explained before here on Saturday.
13 Often when one of these sectors, the fishing environment and so on - when we are
14 given a particular mission at sea, we are told to prepare for a particular mission. This
15 particular mission was for a search on behalf of the Customs.
16
17 Q But nobody told you that it was about *The Saiga*?
18 A Nobody told me about *The Saiga* before I left and no member of the crew knew that
19 we were leaving to search for a vessel called *The Saiga*.
20
21 Q The Customs: is this the same department as those who have to do with the marine
22 environment?
23 A I do not understand your question.
24
25 Q In Guinea, the Customs and the department to do with the marine environment is the
26 same because you said that sometimes you said that you were going on missions for
27 the Customs, the environment, and so on. The Customs and the environment, are they
28 one and the same thing?
29 A No.
30
31 Q So sometimes you are required to address questions to do with the environment?
32 A Yes.
33
34 Q And sometimes questions to do with Customs?
35 A Yes.
36
37 Q In this particular case you were not sent on a mission for questions to do with the
38 environment?
39 A No, for hot pursuit for the Customs.
40
41 Q So your mission was to go on a hot pursuit on behalf of the Customs?
42 A Yes.
43
44 Q Lieutenant, I am going to ask you to approach the chart. There is a microphone on the
45 table. Perhaps you can explain to us, I hope, a certain number of issues. You can
46 retain your headset; it is linked up. (The witness approached the screen) Lieutenant
47 Sow you will see on the chart a blue line. Can you see it?
48 A Yes.
49
50 Q It leaves from point 2 going to point 6. Is that it?

1 A Yes.
2
3 Q Does that correspond to the plot of the route of your small launch?
4 A The blue point does not finish at point 6. I am sorry, the blue line does not finish at
5 point 6.
6
7 Q Where does it finish?
8 A At point 7, if I see correctly -- point 5.
9
10 Q It is a question of colours. Does it touch point 6?
11 A From point 6 the blue line continues to point 5.
12
13 Q But it does touch point 6?
14 A Yes.
15
16 Q Do you see a red line leaving from point 5 finishing at point 11?
17 A Yes.
18
19 Q Does this correspond to the plot of the route of the two launches?
20 A Yes.
21
22 Q Do you see another line leaving from a point just before A and finishing at point G?
23 A Yes.
24
25 Q Does that correspond to the plot of the route of *The Saiga*, according to you?
26 A I would like to have a more precise chart with the meridians.
27
28 Q We will show the chart that you saw before. Can you tell the Tribunal if there is a
29 difference between the route of *The Saiga* on this chart?
30 A I am not saying that there is a difference, but I would like this chart to have more
31 precise information to enable me to reply.
32
33 Q Thank you very much. Now that we have seen this chart, we will put on the other
34 chart. Do you see a difference?
35 A There may be a difference in terms of precision.
36
37 Q A difference in terms of precision?
38 A Yes.
39
40 Q I would like to inform you that it is exactly the same chart and the same plot.
41 Lieutenant Sow, the small launch leaves from point 2 and goes to point 3. What is it
42 going to do at that time?
43 A The small launch leaving from point 2 going to point 3 had to go on to point A.
44
45 Q But we have a witness who said that it simply left on a reconnaissance.
46 A I am not informed of that but I know that the launch left towards point A.
47
48 Q Tell me, you explained to the Tribunal that when you left, that is later than the launch,
49 you did not have a precise idea of the mission, you did not know that you were going
50 to search for *The Saiga*. Is that true?

1 A Yes.
2
3 Q The person commanding the small launch - did he have more information than you?
4 A Because he left before me, he could have had more information than I had.
5
6 Q So the sub-commandant in Guinea has more information than the head of the
7 mission?
8 A Yes, because he left before me. He could have had more information.
9
10 Q So he knew that he was going off in search of *The Saiga*?
11 A Yes.
12
13 Q He knew that?
14 A He knew that.
15
16 Q When you arrived at point 3, why did you return? I want to be more precise to save
17 time. We know that it has already been explained that the commander gave you the
18 order to return, but why did he give you the order to return?
19 A It was the command that had information that we could not continue on the smaller
20 launch, because the target at point A had already changed its position.
21
22 Q Let us come back to this. You have already explained that you were hoping that *The*
23 *Saiga* was coming towards you. You explained this on Saturday?
24 A Yes.
25
26 Q So why did the small vessel have to return?
27 A It is because in consideration of the initial position *The Saiga* was progressing more
28 towards the high seas, and the small vessel was not capable of sailing in such deep
29 waters.
30
31 Q But you said that you could not do the distance?
32 A It could cover this distance along the coastline, and in proximity of our base, but not
33 in deep seas.
34
35 Q What is the maximum distance which the small launch can cover?
36 A The small launch, if it is full of fuel, can cover 120 nautical miles.
37
38 Q So you want to say that 120 nautical miles can be covered in the proximity of the
39 coastline, but not on high seas?
40 A Yes.
41
42 Q Can you explain what this means, is there a particular risk in covering 120 miles along
43 the coastline in comparison to high seas?
44 A Yes, as I said before you have to take into account the state of the sea, you cannot
45 have the smaller vessel sailing on high sea. If it is within sight of land we think it is
46 more secure than on high seas.
47
48 Q The Tribunal will judge this, thank you. But in any case, you could have continued
49 hot pursuit?
50 A If the command had told us, we would have done, but we only received instructions.

1
2 **Q** I know that if you receive instructions you obey them Lieutenant, I have nothing to
3 say about that. But if the small launch could leave, you would have been able to
4 follow. Would you have been able to follow it?
5 **A** If I had received instructions I could follow it.
6
7 **Q** You could follow it?
8 **A** Yes of course.
9
10 **Q** So what logic has been followed by the command at this point, saying that the small
11 launch had returned, whereas you could have continued your pursuit?
12 **A** I cannot reply to that question .
13
14 **Q** Thank you. Tell me, on the blue line you see a point 4.
15 **A** Yes.
16
17 **Q** You see there is a question mark in front of that?
18 **A** Yes.
19
20 **Q** Do you know what it means, this question mark?
21 **A** No.
22
23 **Q** But you see, Lt. Sow, I have come up with the following question. At point 4 you
24 indicated a change of heading of the launch
25 **A** Yes.
26
27 **Q** But this does not result from the notes you took on board.
28 **A** That is true.
29
30 **Q** How did you note then that the launch had changed heading?
31 **A** If I recall correctly, I was on board the small launch, and with the aid of the portable
32 GPS, when the direction changes, it is possible to note the coordinates at this point.
33
34 **Q** So you want to see that this smaller launch noted the coordinates of this heading at
35 that time?
36 **A** Yes.
37
38 **Q** So there are notes taken on board the small vessel?
39 **A** I do not know if there are notes taken on board, but in this particular case I was able to
40 establish this point as the meeting point, and so it was the south of the islands.
41
42 **Q** Lt. Sow, please. If we have understood you correctly the smaller launch did have
43 notes on board.
44 **A** I cannot reply to that.
45
46 **Q** But you have just said that the position was noted, all the same?
47 **A** When it returns, it does note its position.
48
49 **Q** What does it note it on, on a certain document, a loose sheet?
50 **A** Yes, loose sheets of paper.

1
2 **Q** So these notes are taken on loose sheets of paper?
3 **A** Yes.
4
5 **Q** And then you take these sheets and incorporate them in your journal?
6 **A** Yes.
7
8 **Q** So at what point in your document did you note this change in heading?
9 **A** I did not - I never note the route of a vessel which has left on its own in my journal.
10
11 **Q** But you just said that you indicate in your journal the notes that were taken on board
12 the small launch. I am asking you then Lt. Sow, at what point in your board notes did
13 you note this change of heading; this is what I want to know?
14 **A** When I go out with the small launch, I use these notes to make my report.
15
16 **Q** I am sorry to interrupt you, but do try to understand my question. All of us know that
17 you were not on board the small launch. I am asking you what you were doing on the
18 small vessel. I am asking about that particular day. You said that on that day there
19 were notes taken on the small launch and these were indicated in your journal. I
20 would like you to point out to the Tribunal at what point in your journal did you
21 indicate the change of heading of the small launch?
22 **A** I think in the journal I note the movements of the small launch when we are operating
23 together, and these are only information reported from the commandant of the launch
24 when they moved from point A to point 3 to point 5 so that we could continue the
25 mission together.
26
27 **Q** The question once more, I am sorry Mr. President, but I would like the witness to say
28 he can or cannot answer. Once again Lt. Sow, at what point in your journal, in your
29 board notes did you indicate this change of heading; at what point? Please be precise.
30 At what point in your journal did you change this heading? If you would like, I will
31 give you a copy.
32 **A** In the journal I did not indicate the change of heading of the small launch from point
33 4.
34
35 **Q** Thank you. So you see now we are going back to point 1 - this is a red point - to
36 point 5, which is also a red point. Point 5 and the first point is the start of your route
37 line, is that right?
38 **A** Yes, at 1625 we left the port. We arrived at point 5 at 1705. At 1705 we towed the
39 small vessel to point 5.
40
41 **Q** Where you have written 1625. Can you explain to the Tribunal why you did not mark
42 the route between point 1 and point 5?
43 **A** Between 1 and point 5, normally you cannot talk about a route, because this is the
44 south exit of the port of Conakry and we have to pass the chenal.
45
46 **Q** If I have understood you correctly, the chart does not reflect all of your movements?
47 **A** The chart does reflect our movements.
48
49 **Q** OK. Point 7. It is 1920.
50 **A** Yes.

1
2 **Q** That is it approximately. You have heard conversations, is that true?
3 **A** Yes.
4
5 **Q** And you said that you heard a voice which was familiar to you at this point?
6 **A** According to the confirmation of the people on board.
7
8 **Q** Could you be more precise than that, please?
9 **A** On board, when the radio emitted a signal, there were people from the Customs who
10 said "I think I recognise the voice", but it was not me personally who said that.
11
12 **Q** So when you note in your logbook that this voice is "from you to us", you are
13 excluding yourself from this "us"?
14 **A** No, I am not excluding myself from the "us".
15
16 **Q** So was the voice familiar to you?
17 **A** Well, from the time at which it is familiar to those involved in the mission, it is
18 familiar to me as well.
19
20 **Q** Well I think the court will judge your response. Thank you very much. But this voice
21 was speaking Greek?
22 **A** Yes.
23
24 **Q** Who recognised it as Greek?
25 **A** I do not speak Greek, but when Greek is spoken I know that it is Greek. I do not
26 understand Greek, but when Greek is spoken, I know what it is.
27
28 **Q** Who on board recognised that it was Greek; was it you or anyone else?
29 **A** I recognised, and someone else recognised it.
30
31 **Q** Someone else? Who is that?
32 **A** A member of the mission.
33
34 **Q** A customs official, or a naval officer like you?
35 **A** A customs official.
36
37 **Q** So there were two of you who recognised that it was Greek?
38 **A** Yes.
39
40 **Q** What was being said?
41 **A** I said I do not understand Greek, but I can feel that Greek is being spoken.
42
43 **Q** So you had the impression that Greek was being spoken. Can you explain this better
44 to the Tribunal, when you have the impression that someone is speaking Greek?
45 **A** I listen to Greek, but I do not understand Greek.
46
47 **Q** You do not understand any Greek?
48 **A** Nothing.
49
50 **Q** Thank you. So you decided then to continue on your heading?

1 A Yes.
2
3 Q And you arrived at point 8?
4 A Yes.
5
6 Q And at point 8 there was still radio silence?
7 A Before arriving, round about point 8, there was another radio conversation where the
8 same gentleman was conversing with *The Saiga*, and this is why we changed heading,
9 and went slightly towards the north.
10
11 Q So it was 2019 as indicated on the chart, and at 2020 precisely you changed heading
12 towards north?
13 A Yes.
14
15 Q Why? Why were these radio conversations so different from the radio conversations
16 you had heard an hour before?
17 A Well because the search which we left to conduct the target, we were searching for.
18 When *The Saiga* started transmitting, we were heading towards *The Saiga*.
19
20 Q I am sorry to interrupt you, but you said you knew that you were leaving to search for
21 *The Saiga*, but before that you said you did not know.
22 A Before leaving the port I did not know that we were searching for *The Saiga*, but
23 when the launch was ready, we had to cast off and the officer told me this is the
24 frequency fixed on radio, and you are heading to look for a vessel which is
25 transmitting on this frequency.
26
27 Q Did they tell you the name?
28 A Yes.
29
30 Q So why did you change heading?
31 A We changed heading because after the gentleman called "trawler" and then *The Saiga*
32 responded, we headed north in the direction indicated by our radio direction finder,
33 and the response came from the north, and this is why we changed the heading.
34
35 Q The response from whom, from the trawlers?
36 A From the trawlers, and *The Saiga*. *The Saiga* had replied at 1920.
37
38 Q Is this also indicated in your logbook; is this indicated on your notes you took on
39 board?
40 A *The Saiga* replied at 1920.
41
42 Q Does this emerge from the notes you took on board and from the declaration which
43 you submitted for the Tribunal?
44 A I think that it is noted in the logbook, that is conversation between the gentleman and
45 *The Saiga* and the gentleman and *Salvatore Primo*.
46
47 Q You wrote at 2019 north 9 degrees 19.5 west, 14 degrees 3.8. Again radio
48 conversation between the gentleman, *Salvatore Primo* and *The Saiga* on the same
49 frequency?
50 A Yes.

1
2 **Q** So you want to say in this sentence we can understand that *The Saiga* had respond
3 **A** Yes.
4
5 **Q** So in your opinion at that time where was *The Saiga*?
6 **A** I cannot be very precise here but I know that *The Saiga* was towards the north. I did
7 not know a precise position.
8
9 **Q** At that time you did not have a precise idea but, because you have made note of the
10 position of *The Saiga* from its logbook, can you say precisely where *The Saiga* was at
11 2019 approximately?
12 **A** At approximation at 2019 *The Saiga* was towards the north.
13
14 **Q** Is there a point C marked in blue on the chart?
15 **A** Yes, there is blue point C.
16
17 **Q** Is that point C?
18 **A** Yes.
19
20 **Q** At 2000 hours. Is that approximately the position of *The Saiga* at 2020?
21 **A** Perhaps.
22
23 **Q** Well, you first of all followed course from 5 to point 8?
24 **A** Yes.
25
26 **Q** To search for a vessel which was towards the north. Can you explain this to the
27 Tribunal?
28 **A** I can explain it.
29
30 **Q** Please go ahead?
31 **A** From point 8 we followed the direction towards point 9.
32
33 **Q** Why?
34 **A** Because ---
35
36 **Q** That is not my question. My question is: from point 5 to point 8 you followed a
37 heading. You see point 5 and point 8?
38 **A** Yes.
39
40 **Q** You followed a heading?
41 **A** Yes.
42
43 **Q** I am asking you why you were following this heading when you were searching for a
44 vessel which was located in the north?
45 **A** We followed this heading because, from the time we received a report from our
46 observation post that the vessels to the north had dispersed, we recalled the launch
47 and we thought that *The Saiga* was continuing to move towards the south. So we
48 tried to head towards the south until the point where, on the basis of the radio
49 conversations, we knew that *The Saiga* was still in the north.
50

1 Q You said that you had hoped -- this was your term -- that *The Saiga*, which came from
2 Dakar, was going south in the region of Liberia. This is what you said on Saturday.
3 This is the substance of what you said. I am not using your precise wording. This is
4 what you had in mind. Well, for what reason did you suddenly decide at point 8 to go
5 north? Why did you abandon the logic which led you to follow a course which is
6 given between points 5 and 8?

7 A It was there that we had wanted to meet *The Saiga* before we passed outside of our
8 waters. We wanted to increase the probability. We wanted to go north to meet *The*
9 *Saiga*.

10

11 Q You said that Guinea has a land-based radio station: where is it?

12 A It is at Cap Verga.

13

14 Q Could you please take the ruler and point to where it is?

15 A Our radar station is here. (indicating)

16

17 Q What is the range of the radar?

18 A The range of the radar so 115 nautical miles.

19

20 Q And it is this radar which indicated to you that the ships were moving, they were
21 dispersing?

22 A Exactly.

23

24 Q This radar can distinguish between a trawler and a tanker?

25 A I cannot say this with any precision because this is a land-based station. I know naval
26 stations but I have never urn a radar on land or one that has 150 miles range.

27

28 Q But your radars have a smaller range on board, do they? Can this radar enable you to
29 distinguish between - if you look at the echoes - the size and the speed. Can you
30 differentiate the size and the speed of a trawler and a tanker?

31 A Yes.

32

33 Q I suppose that a land-based radar allows you to make the same distinction. Would it
34 be unreasonable if I assumed this of a land-based station? Did you hear the question,
35 M. Sow?

36 A I did not understand it.

37

38 Q Would my supposition be unreasonable if I proceeded on the principle that a land-
39 based radar which has a higher range than your radars allows you to make the same
40 distinction?

41 A No, this is not unreasonable.

42

43 Q Therefore, the land station could at any time know where *The Saiga* was?

44 A Not definitely because *The Saiga* is not the only large vessel in the region because
45 there are other merchant vessels, there are other tankers. You cannot have the
46 certainty of following *The Saiga* only.

47

48 Q I have the pleasure of knowing your country and the region of Kamsar is rather far
49 from the Island of Alcatraz.

1 A All the vessels which enter or come from Kamsar go to Alcatraz in order to pick up
2 international routes.
3

4 Q If they were following *The Saiga* at a point where they were able to tell you that all
5 the ships had dispersed, is the dispersion a reason to lose *The Saiga's* echo on the
6 radar?
7 A The radar surveyed and monitored a grouping of vessels at a certain position. They
8 had monitored this and they reported about it. They monitored it up to a certain
9 moment and then the vessels moved. They said that they were moving. They did not
10 say that such and such a vessel is *The Saiga* and therefore you must pursue it.
11

12 Q Ah, therefore as a consequence you did not know that in this grouping of vessels *The*
13 *Saiga* was there?
14 A Yes, we knew it because *The Saiga* had given its position and it was on the basis of
15 this position that we gave indications to the radar station to monitor this area.
16

17 Q So the radar station gave a very precise position?
18 A This is correct.
19

20 Q And in this precise position there were tankers and trawlers?
21 A There might also have been cargo ships that came to bunker. This is not excluded.
22 There might be cargo ships too.
23

24 Q But the radar echoes would have enabled you to know that there were several large
25 vessels?
26 A Maybe.
27

28 Q Is it indicated somewhere that the radar reflections had ascertained that there were
29 several large ships at this position?
30 A The radar station monitored the grouping of ships.
31

32 Q Until now, Lieutenant Sow, we consider that in this grouping, as you said, there was
33 *The Saiga* and there were trawlers. When they moved away the radar reflections were
34 able to monitor the movement of *The Saiga*, the movement away?
35 A Whether the radar could monitor the fact that *The Saiga* was moving away is
36 something I cannot answer. We would have had less problems in meeting *The Saiga*
37 if this had been the case.
38

39 Q Lieutenant Sow, I am asking you please to undertake an effort in order to enable the
40 Tribunal to shed light on this matter. My question is simple. You confirm that *The*
41 *Saiga* was being monitored by radar by the land-based station?
42 A Yes.
43

44 Q You confirm that after a certain point in time there was dispersion of vessels?
45 A Yes.
46

47 Q Would it be unreasonable for the Tribunal to consider that if all this is true, as you
48 have ascertained, the radar station would have been able to continue to monitor and
49 follow *The Saiga*?
50 A I cannot confirm that they can do this.

1
2 Q If I confirm, Lieutenant Sow ---
3
4 **THE PRESIDENT:** The witness has said he was not on the radar station, that he has not
5 operated radar before. He has said that he thinks that they might have but he cannot say
6 whether they could or could not. I think perhaps you could move on to another question.
7
8 **MAITRE THIAM:** Thank you, Mr President.
9
10 Q You were on heading 303 from point 8 to point 9 with total radio silence, not knowing
11 where *The Saiga* was?
12 A Yes.
13
14 Q And then at point 9 you decided suddenly to change heading and to go 245. What
15 was the reason for this?
16 A Because in the screen of our radar we had a number of targets and at 344 we saw that
17 most of the targets were on our left and therefore we had to take a course which
18 would enable us to approach these targets in order to have a clearer picture and
19 continue our search.
20
21 Q You said last time that you had not explained that most of the objectives were on your
22 left, the targets. You said that they were in the north but that you were able to
23 distinguish that none of these was *The Saiga*?
24 A This is correct.
25
26 Q So they were not on your left?
27 A Yes.
28
29 Q They were where? Could you take the ruler and demonstrate to the Tribunal?
30 A (*Witness indicates on chart*) If we are here and the target is on this side, it is on our
31 left. If we are at this point and there are targets which are here, I think it is on our left.
32
33 Q At this precise place you sought trawlers?
34 A Yes.
35
36 Q Why did you not follow these trawlers?
37 A We did not consider boarding trawlers because there were no fisheries officers on
38 board.
39
40 Q If there was a trawler that was bunkering diesel which had been smuggled into the
41 country, was it not committing a crime or a misdemeanour?
42 A Yes, of course.
43
44 Q Why did you not go towards these trawlers?
45 A At this position we did not see a trawler that we felt had been bunkering at this
46 position. We had not yet met with trawlers which had already bunkered, otherwise
47 we would have stopped them, but we did not meet with any.
48
49 Q Good. At 3.50 you changed course. That it because, as you said or noted in your
50 notes, you had an answer from *The Saiga* on the radio. What do you say in your

1 board notes? You say that you had seen that there was an answer, you had heard an
2 answer. What was your course?
3 A The course we were sailing was still 245.
4
5 Q Where did you locate *The Saiga*?
6 A We located *The Saiga* at 44.5 miles of distance and approximately 40° on the port of
7 our course.
8
9 Q If you are sailing a course 245, 40° to port is which course?
10 A 205.
11
12 Q There is a green line, a darker line, on the chart. Does this correspond more or less to
13 a heading of 205?
14 A Yes.
15
16 Q Therefore *The Saiga* was on this line?
17 A I hope so.
18
19 Q Can you explain to the Tribunal why, on the chart that you transmitted to the
20 Tribunal, you did not at any time put *The Saiga* on this line?
21 A I would like us to replace that and again show the chart that I plotted in order to
22 explain to the Tribunal.
23
24 Q (Chart placed on board) On this chart, Lieutenant, the heading 205 is slightly on the
25 left of the course that you were sailing that is indicated there. It is slightly on the left
26 of this. Could you show the Tribunal where you would have positioned *The Saiga* on
27 this heading 205, at 44.5 miles according to you, but we will come back to this, from
28 your position at 3.50.
29 A From our position at 3.50 when *The Saiga* emerged we had a net distance from *The*
30 *Saiga* and a heading from *The Saiga* which meant that it was 40° to the port, not
31 exactly 40° but more or less, about 40°, and we located *The Saiga* here therefore.
32
33 Q Lieutenant, the question which I put to you was precise, but maybe I am not
34 expressing myself correctly. You assessed the distance from *The Saiga* at precisely
35 44.5 (today you say) nautical miles but we will come back to the unit of measure that
36 you used. If we take your position and follow the heading, if we follow the course
37 205 at some point in time and if we pursue it for 44.5 nautical miles, according to
38 your affirmation today, where should *The Saiga* be? Point to the chart for the
39 Tribunal, please.
40 A It should be here.
41
42 Q On the heading 205?
43 A Yes. We did not take a heading 205; it is in the direction 205.
44
45 Q I calculated 205 in comparison to yours, 205 at 3.50, and you said 40° to port?
46 A About 40° to port.
47
48 Q This gives us more or less a heading of 205?
49 A More or less, yes.
50

1 Q I will give you a new instrument. (*handed*) Can you demonstrate to the Tribunal
2 where *The Saiga* was, using this protractor?
3 A With your permission, can I use my instruments? I have them in the witness room.
4
5 **THE PRESIDENT:** Do you want this to be done with the instruments?
6
7 **MAITRE THIAM:** Mr President, if the Lieutenant has his own instruments which will
8 allow him to do the calculations, I see no objection to his going to get them, or can somebody
9 go and get them for him? Maybe one of the officers can go and get the instruments.
10
11 **THE PRESIDENT:** Is it possible for somebody to get the instruments for him? Lieutenant
12 Sow, perhaps you could put the receiver either in your pocket or hang it on your jacket
13 pocket. Can you hear when it is in your pocket?
14 A Yes.
15
16 **THE PRESIDENT:** Thank you. (*The witness's instruments were produced*) It looks as
17 though we are ready now.
18
19 **MAITRE b:** Lieutenant Sow, you can use my desk if you wish.
20 A Thank you very much. (*Witness demonstrates*)
21
22 Q Lieutenant, could you now indicate to the Tribunal where this line ends which you
23 have just plotted?
24 A The line that I have just plotted ends here.
25
26 Q Is this not just south of the exclusive economic zone?
27 A No, it is not in the south, it is in the north.
28
29 Q Look at your line, Lieutenant Sow. It seems to me that the line ends but that the
30 distance, which is more important for us, the line that you drew ends just on the other
31 side of the southern boundary?
32 A It has not ended because we have not marked the distance.
33
34 Q The line which you have drawn ends just under the southern boundary - yes or no?
35 A (*no English translation*)
36
37 Q Does it end? It is you who have put this line.
38 A The line touches the boundary.
39
40 **MR VON BREVERN:** Mr President, I understand that there are advocates who have
41 temperament and others who have not so much temperament, but I think we all have to
42 accept that the dignity of the witness requires the cross-examiner to be as polite as the cross-
43 examiner expects to be treated by the witness. Therefore, Mr President, I would like you to
44 ask Maître Thiam to allow the witness to complete his answers without being interrupted. As
45 I have the floor, Mr President, it is up to individuals to raise their voices when cross-
46 examining, but I think we have to avoid giving the impression of threatening the witness.
47 Finally, I would like you, Mr President, to ask Maître Thiam to refrain from making
48 comments such as "The Tribunal will have to judge that". That is not a question concerning
49 the facts. Thank you, Mr President.
50

1 **THE PRESIDENT:** I do not think I need to say anything. Maître Thiam has heard the
2 points that you have made and I think we should continue. Maître Thiam, please continue.
3

4 **MAITRE THIAM** (translation): Thank you, Mr President, but I should like to remind Mr
5 von Brevern of something once said by President Senghor: that reason is Hellenic (and he
6 may have reason on his side) while emotion is Black (and I may have emotion on my side).
7

8 I am confident that Lieutenant Sow and I have kindred emotions and that he did not
9 feel threatened by my remarks.
10

11 Mr President, the line just plotted by Lieutenant Sow touches the line of the
12 movements of the Saiga just south of the southern boundary of the exclusive economic zone
13 of Guinea.
14

15 (*To the witness*) I would now like to ask Lieutenant Sow, following the line which he
16 has just drawn, to measure a distance of 44.5 miles. Can you measure a distance of 44.5
17 miles starting from your point 11, from the point where you were at 3.50? (Witness
18 demonstrates)
19

20 **MR VON BREVERN:** Mr President, would it be possible to get a table for the witness,
21 which would ease his task?
22

23 **MAITRE THIAM:** Actually, Mr President, he has finished.
24

25 **THE PRESIDENT:** There was a round table there. Where has it gone? Lieutenant Sow, if
26 you have finished your calculation, could you please give the answer?
27

28 **MAITRE THIAM:** Can you show the Tribunal on the projected chart? According to what
29 we have just done, the position is under and below the southern boundary. Can you show the
30 Tribunal where this point is on the projected chart?
31 **A** On the projected chart, the position is here, above the line of the southern boundary.
32

33 **Q** Mr von Brevern and the Tribunal have been able to see that you are showing a point
34 on the line of *The Saiga's* movement?
35 **A** That is correct.
36

37 **Q** Can you again show the precise point to the Tribunal? (*Witness indicates*) On the
38 document that you drew here, does the point that you have indicated touch the red line
39 which shows *The Saiga's* course and movement?
40 **A** The point does not touch the line of the movement of *The Saiga*, but the point is north
41 of the southern boundary line.
42

43 **Q** Could you now take this up on the projected chart and indicate to the Tribunal where
44 the point is that you have plotted on the other chart?
45 **A** On this chart the position of *The Saiga* is slightly on the right of this line, above the
46 southern boundary line.
47

48 **Q** Lieutenant Sow, could you explain to the Tribunal if you have ascertained this?
49 Could you explain to the Tribunal why, if this is what you have ascertained, you

1 submitted to the Tribunal a chart which does not correspond to your own affirmations,
2 your own calculations and your own points?
3 A I did not submit to the Tribunal a chart which does not correspond to my calculations.
4
5 Q You submitted to the Tribunal a chart where you have plotted the route of *The Saiga*.
6 True or false?
7 A Yes.
8
9 Q The route of *The Saiga* on this chart is the route which you confirmed as being
10 followed by *The Saiga*?
11 A Yes.
12
13 Q You have confirmed in your written oaths that *The Saiga* was at a point to the north at
14 3.50. According to your notes *The Saiga* was to the north of the route you indicated
15 on this line.
16 A Yes.
17
18 Q Can you explain then to the Tribunal why you are submitting to the Tribunal a chart
19 where the plotted points do not coincide with your affirmations?
20 A These points do correspond to what has been shown on the chart.
21
22 Q The point that we have fixed together just now, does it appear on the route of *The*
23 *Saiga*?
24 A Allow me. In navigation, with all the precision of the instruments we have, you have
25 to expect slight errors, more or less. But you cannot navigate without errors. No
26 matter what instruments you are using, you cannot have a very clear precision, 100
27 per cent.
28
29 Q I am absolutely convinced of that, Lieutenant, but having said that without emotion,
30 Mr von Brevern, a chart was drawn up on the basis of affirmations?
31 A Yes.
32
33 Q And your findings have led you to indicate that *The Saiga* was to the north of the
34 course which appears on your chart?
35 A I did not understand.
36
37 Q The affirmations we have just made together, according to your notes, would have
38 positioned *The Saiga* on a line to the north of that which appears on the chart.
39 A I do not believe so.
40
41 Q But we have just done this together, Lieutenant.
42 A *The Saiga* is not to the north. *The Saiga* ---
43
44 Q I am sorry, Lieutenant, to interrupt you.
45 A At 3.50 *The Saiga* was at 40° port and 44.5 miles, 44.5 nautical miles.
46
47 Q The distance is approximately 40° port?
48 A Approximately.
49

1 Q So you take a compass and you start at a point where you were at 3.50. You plot an
2 arc and at a certain point this arc is going to coincide with the line which you
3 indicated as being that plotted by *The Saiga*?

4 A Could you repeat your question, please?

5

6 Q I am going to repeat it on the chart. (*Maitre Thiam approached the chart*). You are at
7 3.50 here?

8 A Yes.

9

10 Q The heading 205 is approximately this one? It passes approximately here?

11 A Yes.

12

13 Q 44.5 miles apart starting from this point here -

14 A Yes.

15

16 Q -- leads us exactly here to the north, north of the southern limit. Look at your chart.

17 A Yes.

18

19 Q So it takes us here?

20 A Yes.

21

22 Q Do you agree?

23 A Yes.

24

25 Q No, no, north of the limit.

26 A Not 15°?

27

28 Q No, I said north of the limit here at 44.5?

29 A Yes.

30

31 Q 44.5 miles, if I try to take this with a compass, would plot a semi-circle. Do you think
32 that at a certain point this will coincide with this line?

33 A With?

34

35 Q If I take a compass to fix a radius of 44.5 miles?

36 A At a precise time?

37

38 Q Yes, at 3.50. We are here at 3.50. We agree. So, starting from here, if I fix a radius
39 of 44.5 miles, which is going to stop here, according to your own calculations,
40 approximately?

41 A Yes.

42

43 Q Or here, if I trace a circle, an arc, passing through this point here, do you think that
44 this will coincide with this line?

45 A No.

46

47 Q Perfect. Why are you saying that *The Saiga*, even if you are not sure of the heading,
48 is more or less 40° port? Why are you submitting to the Tribunal a chart on which
49 there is the movement of a vessel, this line here, which is not what you have affirmed?

1 I can only deduce from this, Lieutenant Sow, that you have submitted to the Tribunal
2 a false chart.

3 **A** I am sorry, this movement of *The Saiga* was taken on the basis of the logbook of *The*
4 *Saiga*.

5

6 **Q** Lieutenant Sow, you are a brilliant naval officer. You know the difference between a
7 cable and a mile. If I told you that a fathom is 1.624 metres, does this seem
8 reasonable to you?

9 **A** (No reply)

10

11 **Q** I am waiting for your answer, Lieutenant.

12 **A** I cannot reply to that question.

13

14 **Q** OK. We will take this a priori. If I said to you that a fathom is 1.624 metres and a
15 cable is 120 fathoms, this gives us 194 metres, approximately, and 450 cables is
16 86.72. Can you say where you were at 3.50 and indicate a point on this chart?

17 **A** At heading 205, at 71.6 kilometres.

18

19 **Q** Yes. (*Witness approaches chart with his instruments*)

20

21 **PROFESSOR LAGONI:** The chart which is in the hands of Lieutenant Sow is to be
22 deposited as documentary evidence to the Tribunal. I would request that no other lines are
23 drawn on this chart, no spots made on it or holes made in it. This is the chart on which our
24 calculation is based. We have this morning made photocopies, so perhaps we may use them?

25

26 **THE PRESIDENT:** Thank you very much.

27

28 **MAITRE THIAM:** Mr President, I did not ask the Lieutenant to make holes in the chart.

29

30 **THE PRESIDENT:** I was just about to say that the Lieutenant must ensure, in using the
31 equipment, that he does not make any dents or holes in the chart. Is it the same chart as the
32 one that we have here? Is it on the same scale?

33

34 **PROFESSOR LAGONI:** No.
35 (*Professor Lagoni provides photocopies*)
36 (*Witness draws on chart*)

37

38 **THE PRESIDENT:** We would very much like to have a chart on the same scale, because
39 the small scale one that we have is not as helpful. However, Lieutenant Sow, please go ahead
40 and answer the question. (After a discussion, off microphone, between Maître Thiam and the
41 witness) May we have the conclusion of that tête-à-tête?

42

43 **MAITRE THIAM:** Mr President, I am sure that the witness is going to show you the point
44 which has been fixed on the chart, which is on the projector here.

45

46 **THE WITNESS:** The 71.6 km are situated approximately here.

47

48 **MAITRE THIAM:** Lieutenant Sow, when you said in your report that you were
49 calculating in cables, were you calculating in cables or miles?

50

1 A We were counting in nautical miles and in cables.
2
3 Q That is not a response. You cannot calculate in both at the same time. Were you
4 counting in cables or miles?
5 A In cables.
6
7 Q In cables. According to you, the vessel was much further to the north of the point
8 indicated on the chart.
9 A I cannot confirm that the vessel was further to the north because here we took this
10 calculation in kilometres and we measure, we take our nautical miles, in cables, not
11 kilometres.
12
13 Q Thank you, Lieutenant. Let us look at the course of *The Saiga*. I showed you the
14 chart with the various points. (*Chart projected on screen*) On the course of *The*
15 *Saiga* do you see point B?
16 A Yes.
17
18 Q *The Saiga* was there at 16.00 hrs. Is that true?
19 A Yes.
20
21 Q You see point C? *The Saiga* was there at 2000 hrs?
22 A I cannot confirm this.
23
24 Q This is the information from the logbook which you used. You cannot say that we
25 cannot use them either.
26 A I did not calculate the position of *The Saiga* to 2000 hours on the chart.
27
28 Q I am saying to you that according to the logbook which you used as well, and I think
29 you would admit that we can use this as well, this information, that at 2000 hours *The*
30 *Saiga* was at point C. Does it seem to you reasonable Lieutenant to determine the
31 distance which *The Saiga* covered in one hour, to divide this portion of the lines
32 between B and C into four?
33 A I do not know on what basis you defined this portion into four. I did not mention the
34 position of *The Saiga* at 2000 hours.
35
36 Q Lieutenant I will give you some more information. Suppose that the vessel was
37 sailing at a constant speed. Does it seem to you reasonable to divide a portion of the
38 line from point B to point C in four, to know what the distance is?
39 A Yes.
40
41 Q Four hours passed?
42 A Yes.
43
44 Q So you can assume that if you divide these portions of the line by four you would
45 have the distance covered by *The Saiga* in one hour?
46 A Yes.
47
48 Q Do you see smaller segments of red lines on this chart, on this line?
49 A Yes, I do.
50

1 Q I did them very approximately, but Lieutenant does it seem to you approximately the
2 division of this segment of line in four. There are three red line sections dividing the
3 section from B to C in four equal parts, is that true?
4 A Approximately, yes.
5
6 Q So consequently you could consider that from point B to the first section of the red
7 section this is the distance *The Saiga* could cover in one hour?
8 A Yes.
9
10 Q You see from point B to point G there are other red line segments?
11 A Yes.
12
13 Q Which are also of the same distance?
14 A Yes.
15
16 Q Could you count for the Tribunal the time represented by each segment of red line?
17 A If we admitted for this first division that each interval corresponds to one hour, then
18 this point E *The Saiga* should be here at 2300 hours.
19
20 Q Precisely, continue. At midnight where was it?
21 A There.
22
23 Q At 1 o'clock in the morning?
24 A There.
25
26 Q At 2 o'clock?
27 A There.
28
29 Q At 3 o'clock
30 A Here.
31
32 Q And this line is therefore below the limit ---
33 A But this chart ---
34
35 Q Lieutenant Sow, it was you who drew up this chart.
36 A I drew up the chart, but I did not make these divisions. I did not estimate the speed of
37 *The Saiga*. I did not mention this time, this position at 2000 hours.
38
39 Q Lt. Sow, you said you were absolutely sure that the movements of *The Saiga* are those
40 which you have taken from its logbook?
41 A Yes.
42
43 Q There is nothing in the logbook to make you think that this was not true?
44 A Yes, if the speed of *The Saiga* is mentioned in the logbook. We have only taken these
45 two positions, and this position of detection until immobilisation. I did not do
46 anything else.
47
48 Q Show us exactly the positions you have taken?
49 A This position, this one, this, and this position.
50

1 Q This is what you have taken from the logbook of *The Saiga*?
2 A Yes.
3
4 Q In any case Lieutenant, if we consider point B and point E excluding point C, would
5 there be a difference?
6 A A difference of what, I did not understand?
7
8 Q You were able to check the speed.
9 A You are saying there is a difference between ---
10
11 Q On these segments.
12 A In these segments, I have no idea about these segments.
13
14 Q I am asking you, Lt. Sow to forget about point C. I would ask you now to consider
15 points B and E.
16 A Yes.
17
18 Q If we were to divide the line between point B and point E into various equal segments,
19 would this come up with any difference on the chart?
20 A A slight difference.
21
22 Q Yes, OK. This difference would lead us to 3 o'clock in the morning. Where would
23 that be, precisely?
24 A At 3 o'clock in the morning, slightly higher from point G.
25
26 Q The Tribunal will note that he is pointing to a point which is below the southern limit
27 of the exclusive economic zone at 3 o'clock in the morning.
28 A Yes, at 3.50 the vessel was here.
29
30 Q That is what you mentioned.
31 A I did not ---
32
33 Q At 3.50 was the vessel here, *The Saiga*?
34 A No.
35
36 Q Where was it?
37 A *The Saiga* at 3.50 was still above the southern limit, that is to the north of the southern
38 limit.
39
40 Q On this line?
41 A Above it. This is the southern limit line, and at 3.50 *The Saiga* was north of this line.
42
43 Q But on this line?
44 A On the north of the line.
45
46 Q I am sorry, I will come over to the chart. (*approached the board*) Can you show the
47 Tribunal from this point where was *The Saiga* exactly at 3.50, according to you?
48 A According to me. At 3.50 *The Saiga* was above this line there.
49

1 Q Lt. Sow, if you calculate the speed of *The Saiga*, which is constant according to its
2 logbook, and its point of movement from point B to point E ---
3 A I did not calculate.
4
5 Q I have not finished my question. Mr Von Brevern will have noticed here that it was
6 you who interrupted me. If you note the difference, the time of shifting from point B
7 to point E, could you make sections corresponding to one hour of movement?
8 A Point B to point E. I can do it.
9
10 Q What would that give us, approximately? You said just now that this would be
11 slightly different?
12 A It is slightly different. Perhaps it could correspond or not, I do not know, I have not
13 done that yet.
14 Q Would it correspond, or would it be slightly different?
15 A I do not know. If it is slightly different you could say the difference was negligible.
16 Q If we neglect the difference, or forget about the difference, because it is slight
17 according to you, and I believe so to Lt. Sow, when you count the sections do you not
18 arrive at 3 o'clock in the morning at the south of the exclusive economic zone limit of
19 Guinea?
20 A According to what you have done, *The Saiga* is below the line of the southern limit at
21 3.50.
22
23 Q If you look at my chart at 3.50 the vessel was stopped, more or less. So let us go back
24 to the sections one by one, starting from B.
25 A I am sorry, Maître, but I cannot give you any explanation on work which I have not
26 done. I do my own work and explain that, but I simply want to say that what has been
27 presented to the court ---
28
29 **THE PRESIDENT:** May I try to explain the situation as I see it. Maître Thiam, I understand
30 that you wish the witness to tell us at which point the Saiga would be at a particular time,
31 assuming that the distance is as you have calculated it. You are also asking him about the
32 speed and he says he has not so far made any calculations regarding the speed. I think it
33 would be more helpful if you asked him whether or not he agrees with your calculations of
34 the distance. As regards the speed he says he has not calculated it, so your questions should
35 be different. In any case I note that it is only three minutes to 12 noon when we have to
36 adjourn the sitting. I wonder if you feel you can complete the cross-examination in that time
37 or if you would rather wish to continue it after the adjournment.
38
39 **MAITRE THIAM:** Mr President, first of all on your first question, perhaps there are
40 problems in translation. Perhaps I have misunderstood, but it seems to me that the witness
41 recognised that the vessel was moving at constant speed. Consequently, according to its
42 logbook, so it does not really matter about the speed. What is interesting for me is to know if
43 he can calculate the movement of the ship over a period of an hour. This is to reply to your
44 first question.
45
46 The second question, if you will allow me. I would like to say that it seems to me that
47 here that there are other points that I would like to ask the witness about, so we can continue
48 later.
49
50 **THE PRESIDENT:** Mr Von Brevern?

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MR VON BREVERN: Mr President, I would like to give to the protocol that the witness did not say that *The Saiga* went at a constant speed. This was the assumption of Maître Thiam.

THE PRESIDENT: Yes, I think I was going to make the same point. You have not yet asked the witness to either agree or disagree that the vessel was at a constant speed.

MAITRE THIAM: Perhaps I can stop at this point for the morning.

Q Perhaps the witness can tell us if he knows that the vessel was moving at constant speed, and if he thinks the speed changed between point B and point E?

A I cannot say that the vessel was sailing at constant speed. I have just noted various points.

Q Could you say that this was not true, could you say that this was the contrary, or could you say there was a constant speed between B and E?

A According to what is written in the logbook the ship was moving at a certain speed.

Q Was it constant or not?

A The speed cannot be constant, because there are influences of the sea, for example. But only what is written in the logbook is what we are considering here today.

Q And you are saying 7 knots, more or less, and you are saying that there was no variation in the speed, so you could reasonably start from the hypothesis that between point B and E the speed was constant?

A If there have been no indications in *The Saiga's* logbook, you mean indications to the contrary?

Q If there are no indications to the contrary.

A If there is no indication of influences of currents or wind to be taken into account.

Q So it would be reasonable to divide the distance between point B and point E by the number of hours passed and for the vessel to go from point B to E?

A Not necessarily.

Q Why not; it would be necessarily so?

A Because according to the speed that you indicate in the logbook, there may be certain influences on the speed.

Q Could you give the Tribunal an approximate indication of this?

A I do not know.

Q I think, Mr President, we could interrupt at this point.

THE PRESIDENT: We will resume at 2 o'clock. The meeting is suspended.

(Adjournment 12.00 hours)