

II. Minutes of Public Sitings – Procès-verbaux des audiences publiques

PUBLIC SITTINGS HELD ON 27 AND 28 NOVEMBER 1997
AT THE CITY HALL OF THE FREE AND HANSEATIC CITY OF
HAMBURG

27 November 1997, 3.00 p.m.

28 November 1997, 2.30 p.m.

Present:

President	Thomas A. Mensah
Vice-President	Rüdiger Wolfrum
Judges	Lihai Zhao Hugo Caminos Vicente Marotta Rangel Alexander Yankov Soji Yamamoto Anatoly Lazarevich Kolodkin Choon-Ho Park Paul Babela 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 is represented by:

Mr. Nicholas Howe,
Solicitor, Partner,
Stephenson Harwood, London, United Kingdom,

as Agent;

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

Mr. Oliver Heeder,
Barrister, Büsing, Müffelmann & Theye,
Bremen, Germany,

as Counsel.

Guinea is represented by:

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

as Agent;

Mr. Alpha Oumar Barry,
Barrister,
Conakry, Guinea,

Capt. Mamadou Salion Kona Diallo,
Legal Adviser, Guinean Navy Headquarters,
Conakry, Guinea,

as Counsel;

Capt. Ibrahim Khalil Camara,
Commander, Naval Operation, Guinean Navy Headquarters,
Conakry, Guinea,

Major Leonard Ismael Bangoura,
Head of Customs Squad, Port of Conakry,
Conakry, Guinea,

Mr. Mamadi Askia Camara,
Head of Research and Regulations Division, Customs Service,
Conakry, Guinea,

as Advisers.

AUDIENCES PUBLIQUES DES 27 ET 28 NOVEMBRE 1997 À
L'HÔTEL DE VILLE DE LA VILLE LIBRE ET HANSÉATIQUE
DE HAMBOURG

Le 27 novembre 1997, 15 h 00

Le 28 novembre 1997, 14 h 30

Présents :

Président	M.	Thomas A. Mensah
Vice-Président	M.	Rüdiger Wolfrum
Juges	MM.	Lihai Zhao Hugo Caminos Vicente Marotta Rangel Alexander Yankov Soji Yamamoto Anatoly 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
Greffier	M.	Gritakumar E. Chitty

Saint-Vincent-et-les-Grenadines est représentée par :

M. Nicholas Howe,
avocat, associé du cabinet Stephenson Harwood,
Londres, Royaume-Uni,

comme agent;

M. Yérim Thiam,
avocat, bâtonnier de l'Ordre des avocats du Sénégal,
Dakar, Sénégal,

M. Oliver Heeder,
avocat, associé du cabinet Büsing, Müffelmann & Theye,
Brême, Allemagne,

comme conseils.

La Guinée est représentée par :

M. Hartmut von Brevern,
avocat, cabinet Röhreke, Boye, Remé et von Werder,
Hambourg, Allemagne,

comme agent;

M. Barry Alpha Oumar,
avocat,
Conakry, Guinée,

Le capitaine Mamadou Salion Kona Diallo,
conseiller juridique à l'état-major de la marine guinéenne,
Conakry, Guinée,

comme conseils;

Le capitaine Ibrahim Khalil Camara,
le commandant des opérations à l'état-major de la marine guinéenne,
Conakry, Guinée,

Le commandant Léonard Ismael Bangoura,
Chef de la Brigade des douanes du port de Conakry,
Conakry, Guinée,

M. Mamadi Askia Camara,
Chef de la division des études et de la réglementation à la direction nationale des
douanes,
Conakry, Guinée,

comme conseillers.

Public sitting held on 27 November 1997 Audience publique du 27 novembre 1997

Introduction

The Registrar:

The Tribunal will now take up its hearings in Case No. 1 in the List of cases, the *M/V "Saiga" Case*, Saint Vincent and the Grenadines, Applicant, and the Republic of Guinea, Respondent.

The Tribunal, having postponed the oral hearings of 21 November 1997 at the request of Guinea by its Order of the same date, will now resume the oral proceedings. Agents and Counsel for both Saint Vincent and the Grenadines and the Republic of Guinea are present.

The President:

The Tribunal notes the presence in court of Mr. Nicholas Howe, Agent of Saint Vincent and the Grenadines, and the presence of Mr. von Brevern, Agent of Guinea. I will now call on the Agent for the Applicant, Mr. Nicholas Howe, to note the representation of Saint Vincent and the Grenadines and give us the name of his team.

Mr. Howe:

Thank you, Mr. President. The Counsel with me are Mr. Thiam and Dr. Heeder, and we also have a translator and Dr. Heeder's assistant at the table with us.

The President:

Thank you. I now call on the Agent of the Respondent Guinea, Mr. von Brevern, to note the representation of Guinea.

Mr. von Brevern:

Thank you, Mr. President. The delegation of the Republic of Guinea is a rather big one: the Minister of Justice, the Ambassador of Guinea in Germany, Mr. Alpha Oumar Barry, Mr. Amadou Diallo, Mr. Ibrahim Khalil Camara, Mr. Askia Camara, and Mr. Leonard Ishmael Bangoura.

The President:

Thank you. The Tribunal meets today in open session pursuant to article 26 of the Statute of the Tribunal to hear the parties present their oral evidence and argument in the *M/V "Saiga"* case.

The case was submitted to the Tribunal under article 292 of the United Nations Convention on the Law of the Sea by the filing of an Application with the

Registrar of the Tribunal on 13 November 1997. In the Application the Applicant submits, and I quote, that: "The Tribunal should determine that the vessel, her cargo and crew be released immediately without requiring that any bond be provided. The Applicants are prepared to provide any security reasonably imposed by the Tribunal to the Tribunal itself, but in view of the foregoing seek that the Tribunal do not determine that any security be provided directly to the Respondents."

By Order of 21 November 1997 the Tribunal fixed 27 November for the continuation of the oral proceedings. The Respondent had, under article 111, paragraph 4, of the Rules until twenty four hours before the opening of the continuation of the proceedings to submit a response to the Application submitted by the Applicant. The Respondent availed itself of this right and a Response was filed with the Registrar of the Tribunal on 26 November 1997, that is yesterday, twenty four hours before the opening of these proceedings.

In its Response the Government of Guinea concluded that: "Guinea committed no illegal act and no violation of the procedure; it sought and is still seeking to protect its rights. "That is why" – according to the Response – Guinea "is requesting that it may please the Tribunal to dismiss the Applicant's action."

Copies of the Application and the Response have been made available to the public in accordance with the Rules of the Tribunal.

Following consultations with the Agents of the parties, it has been decided that the Applicant, Saint Vincent and the Grenadines, will be the first to make its presentation. Accordingly, the Tribunal will hear oral arguments from Saint Vincent and the Grenadines first. This will be followed by a short break before the reply of Guinea. All presentations will be given this afternoon and evening. I now give the floor to the Agent of Saint Vincent and the Grenadines.

Argument of Saint Vincent and the GrenadinesSTATEMENT OF MR. HOWE
AGENT OF SAINT VINCENT AND THE GRENADINES

Mr. Howe:

Thank you very much, Mr. President. If I could start with three matters of housekeeping; I lodged with Mr. Chitty late last night, outlining submissions on behalf of the Applicant, which were written to supplement a bundle of documents which was provided yesterday afternoon; could I ask if all the judges have had an opportunity to receive those documents and possibly have an opportunity to look at them before today?

The President:

The judges have had such opportunity as was possible in the time available to look at the documentation. So the documentation is validly in the hands of the Tribunal.

Mr. Howe:

I am obliged. Two further matters: In relation to the witnesses the Government of Saint Vincent and the Grenadines wish to call, we understand that a notice that was provided yesterday has been distributed identifying two witnesses that we wish to call, Captain Dimitros Exarchos and Mr. Sergey Klyuyev, but there is in fact a further third witness, Mr. Mark Vervaet, that we gave indication to Mr. Chitty's office, again late last night, that we would like to call as a witness here today. Has that been duly noted, Mr. President?

The President:

That has been duly noted. With regard to the witnesses, I recall that a list of three witnesses was given to the Tribunal. As you know the Tribunal needs to be informed of the witnesses being called as well as the evidence that they are intended to introduce. We were informed that the witnesses to be called included Captain Dimitros Exarchos who is the captain of a vessel alleged to have been previously attacked by gunboats from Guinea in May 1996. The Tribunal finds it difficult to see the relevance of the evidence of that witness to the present case; and therefore it is our ruling that the evidence will not be admissible. However, the notification in respect of the other two witnesses has been duly noted, and they may be called at the appropriate time.

I would suggest, in accordance with the normal practice, Mr. Howe, that you address the Court from the podium.

Mr. Howe:

The third matter of housekeeping relates to a supplementary submission concerning the applicability of article 292 of the Convention. This was finalized

very late this morning. It would have been given to Mr. Chitty shortly before the convening of this hearing this afternoon, and I do not know if he has had an opportunity to give a copy of that and the additional documents attached to that to any of the judges?

The President:

Will you be addressing that matter in your submission?

Mr. Howe:

It supplements the submissions I have already lodged and there are one or two additional documents attached to it which I would like the Court to have the opportunity to review. But I think if the judges have not had an opportunity to see the document I can bring it up as it arises during the course of my submissions.

The President:

I think that would be a much more appropriate procedure.

Mr. Howe:

Thank you, Mr. President. This Application is an application made on behalf of the Government of Saint Vincent and the Grenadines for the prompt release of the vessel M/V *Saiga* from where she is currently detained in the port of Conakry by the Government of the Republic of Guinea and instrumentalities acting on the Government of Guinea's behalf.

The Application is brought before the International Tribunal for the Law of the Sea pursuant to article 292 of the Convention which I will refer to below as "the Convention".

The Tribunal has my outline submissions. I do not propose to read every word of the submissions as we go through; I think that would not be a sensible use of time.

The President:

You should take it that the Tribunal is fully aware of the terms of the articles of the Convention.

Mr. Howe:

I am sure they are, Mr. President. What I would propose to do is to take my submissions as they arise through the submissions and on occasions I will simply refer to the submissions without reading verbatim everything I deal with as I go through it.

The provisions of article 292 envisage situations for the release of vessels:

"... for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security ...".

These words mirror other provisions in the Convention which are specifically articles 73, 220 and 226, which respectively deal with rights of the coastal State in its exclusive economic zone in relation to fisheries matters, pollution matters and investigation of foreign vessels generally. There is some discussion, and I will make submissions later on, as to whether the provisions of article 292 may properly relate to other provisions in the Convention if none of those articles actually are applicable.

The Tribunal will be fully aware of article 113 of its Rules which sets out the manner in which it should determine an application pursuant to article 292, and I am sure will be aware of the difficulties in reconciling the interests of both the coastal State and its rights to exercise sovereign jurisdiction in the areas over which it may exercise sovereign jurisdiction, and the rights of the flag State of a vessel operating outside of the territorial waters of the coastal State.

This is mirrored in the provisions of article 113. It is mirrored in article 292 by the fact that the Tribunal should not have regard to or should not investigate the substantive allegations in the Application. I will come to that later in my submissions.

This Application concerns activities and instrumentalities of the Government of Guinea in the exclusive economic zone of the Government of Guinea and its neighbouring State, Sierra Leone.

The Convention accords the coastal State limited and very specific rights to exercise its powers as a sovereign over the area of its exclusive economic zone, which are particularly set out in article 56.

So far as this Application is concerned the Applicant submits that insofar as the Government of Guinea may have had any jurisdiction over the vessel, the *M/V Saiga*, it has failed to comply with the relevant provisions for the prompt release of that vessel and crew pursuant to the relevant articles in the Convention.

Secondly, and I would suggest more importantly in terms of the time that will be taken up in the course of this hearing, the Applicant also submits that the Government of Guinea has wrongly purported to exercise its sovereign jurisdiction within the bounds of its exclusive economic zone beyond the limited and prescribed rights that a sovereign State may exercise as prescribed in the Convention, and moreover, indeed, the rights that are permitted by the local laws in Guinea. Consequently the Government of Guinea has wrongfully interfered with the rights of the Saint Vincent and the Grenadines flag, *M/V Saiga*, operating in its exclusive economic zone. Submissions will be made as to the effect of that in the context of the Application under article 292 in due course.

At the time this Application was lodged the Government of Guinea had not sought any bond or other financial security in respect of the detention of *M/V Saiga*. Possibly more importantly, it had not advised any interested party – the owners, the Government of Saint Vincent and the Grenadines, the charterers and, I understand, the crew – of the reasons for its action. Nor had it allowed the owners or the charterers or other representatives of the vessel access to the crew on the vessel. Accordingly, at the time the memorial was lodged with the Court, it was quite difficult for us to anticipate exactly what allegations were being made

against the vessel by Guinea. Fortunately the Government of Guinea has since done a number of these things and these will be discussed in the course of presenting the evidence in due course.

To do this, and to demonstrate how the allegations against M/V *Saiga* come within the provisions of article 292, the Applicant wishes to set out in considerable detail the events leading up to the detention of M/V *Saiga* and to demonstrate, by doing so, how we allege the matter comes within article 73 and, possibly to a more limited extent, article 220.

If the Tribunal determines in due course that the allegation is well-founded, the Applicant, the Government of Saint Vincent and the Grenadines, will request that the Tribunal determine the amount and nature and form of any bond or financial security, if any, that should be posted for the release of the vessel and the crew. To do this, and particularly to determine the amount, if any, of such a bond or financial security, we submit that it will be necessary for the Tribunal to properly review the evidence concerning the detention of M/V *Saiga* in order to determine whether there has, in fact, been any breach of any provision of either Guinean law or the Convention which should enable the Government of Guinea to demand such a bond and, if so, the nature and extent of such breach to determine the amount of such bond.

I have set out the outline submissions in the volume of academic argument concerning the Tribunal's powers to review the substantive issues, mindful of the fact that the Tribunal will not want to interfere with any subsequent proceedings before any court in Guinea in due course. I do not propose to talk the Tribunal through those submissions in any great detail and would propose instead to move on to setting out the evidence in the context of the relevant background matters.

I turn to the relevant background matters that bring the parties before the Tribunal today concerning the ratification of the Convention. The Applicant deposited an instrument of ratification of the Convention on 1 October 1993. The Respondent deposited an instrument of ratification of the Convention on 6 September 1985. It is fair to note that the Respondent made a reservation at the time of depositing that instrument of ratification to the effect that it reserved the right to interpret any article in the Convention in the context and taking due account of the sovereignty of Guinea and of its territorial integrity as it applied to the land space and sea.

In our submission that is merely another way of saying that the Government of Guinea may exercise its rights within its sovereign jurisdiction but it does not have any effect over its rights to exert sovereign powers over the exclusive economic zones and you would not give it any further rights than would be contained within the Convention.

The Government of Saint Vincent and the Grenadines has authorized this Application to be made on its behalf pursuant to article 292, paragraph 2. The documents evidencing that appear in the bundle submitted to the judges underneath tab 2. Underneath tab 3 in the bundle is a document received from the United Nations attaching the document by which the Respondent, the Government of Guinea, has given due publicity to the geographical co-ordinates

of its exclusive economic zone by depositing Decree No 336 of 30 July 1980 of the Republic of Guinea with the Secretary General of the United Nations pursuant to article 75 of the Convention.

These relevant provisions of that decree are set out in the submissions. I would now like to show to the Tribunal, with reference to an overhead projector, the exact parameters of the exclusive economic zone of Guinea. That will be developed in relation to the movements of M/V *Saiga* in due course.

By mapping the parameters set out in article 4 of 30 July 1980 Decree, the exclusive economic zone can be seen to be the area roughly on this side. A much better map has been prepared. We shall try to get the clearer map to the Tribunal later during the day, possibly after the interval, but for the time being we can work with this document.

I now propose to put the detention of M/V *Saiga* into the context in which it occurred. To do this I would invite the Tribunal to review the documents that should be included in the bundle at tab 4 concerning a multi-national oil company, the Addax and Oryx Group.

The President:

You may proceed. We have seen the documentation on the multi-national company. It is not here but I think that most of us have at least had sight of them; so you can make your presentation.

Mr. Howe:

I appreciate it is not here. It is simply to put M/V *Saiga* in context as she is a bunkering vessel. She operates off seas in international waters and also in exclusive economic zones of a number of countries. Her function is to supply gasoil primarily to fishing and mining vessels. To do that she operates and moves around the coast of West Africa and other places.

The M/V *Saiga* takes her bunkers from a storage terminal in Dakar and the Tribunal also has the papers showing that the two previous supplies to the loading on board M/V *Saiga* were purchased legitimately from refineries in Portugal and Italy. There has been no suggestion that there could be anything improper about either the refineries or the circumstances in which the oil was purchased, which relates in particular to the submissions of the Government of Guinea that the vessel was dealing in smuggled gasoil. This was perfectly legitimately purchased and sold gasoil. There is nothing smuggled about it; there is nothing improper about the activities involving this gasoil.

The gasoil is stored at the Oryx Terminal. It is purchased by an entity called Addax Bunkering Services, part of the AOG Group, purchased on cif terms, which means it takes title upon the product entering into tanks at Dakar and it remains their product, and we would submit remains their product today, until it is sold legitimately by ABS to the fishing vessels.

Addax also charter vessels to carry the product to supply to the fishing vessels, and in this instance the chartering company was called Lemania Shipping Company.

Addax and their associated companies had previously had incidents involving attacks by gunboats off Guinea. Details of two of those are included in the bundle at Tabs 5 and 6. The first in fact is not, as I understand it, a vessel related to Addax in any way whatsoever. It is a vessel owned by the Government of Sierra Leone, the *Napetco 1*, and on or shortly before 13 May 1993 the *Napetco 1* was shot at and attacked by gunboats coming from Guinea. A report of that incident is at tab 5 of the bundle.

More recently a vessel also chartered by the Addax Company and Lemania Shipping Company was shot at and attacked by gunboats from Guinea, this being the *Alfa 1*, in the early part of May 1996. I understand from your indication, Mr. President, that you do not want us to adduce evidence from the Master of the *Alfa*. I do not propose to develop discussion concerning those previous incidents in any further detail.

Turning to the movements and developments concerning the *Saiga*, I had prepared a chronology of her developments that should have been attached to the outline submissions received by the Tribunal. If that is the case, I do not propose again to go into any great detail to track through the movements of the *Saiga* bunkering each and every one of the fishing vessels that she bunkered prior to the incident and after she left Dakar on 23 October.

In passing, though, I would comment, and it will probably be clearer when we can get the more accurate map, that the most recent fishing vessels to be bunkered were bunkered in the exclusive economic zone of Guinea, approximately 100 miles off the coast of Guinea, and some considerable way out of its territorial waters. We have tried to indicate the rough position of that with the first top cross shown on the map.

There was some suggestion that the fishing vessels that have been bunkered by the *Saiga* might have been flying the Guinean flag. We were able to adduce evidence ourselves concerning two of those three vessels, showing one of them registered in Senegal and the other I believe registered in Honduras. There was some question of the third but we helpfully received some documents this morning from Mr. Chitty which would indicate that the third vessel, the *Giuseppe Primo*, was also registered under the flag State of Italy. I submit that nothing will turn on that in any event but it may be relevant for the Tribunal.

Audition des témoins**INTERROGATOIRE DE M. KLYUYEV
PAR M. THIAM (SAINT-VINCENT-ET-LES-GRENADINES)**

M. Thiam :

Monsieur le Président, je demande la permission de faire entendre le deuxième officier, M. Klyuyev.

The President:

Yes. Please proceed.

Mr. Sergey Klyuyev, called

M. Thiam :

M. Klyuyev, pouvez-vous décliner vos nom et profession au Tribunal ?

Mr. Klyuyev:

My name is Sergey Klyuyev. I am Second Officer on the tanker *Saiga*.

M. Thiam :

Etiez-vous en activité en avril 97 sur ce navire ?

Mr. Klyuyev:

On 4 April 1997? Yes, I have been on this vessel on 4 April 1997.

M. Thiam :

Donc, depuis avril vous êtes sur ce navire ?

Mr. Klyuyev:

Since March. We arrived at Brest where the vessel was under repair at the shipyard on 12 March.

M. Thiam :

Et à Dakar ? A quelle date ?

Mr. Klyuyev:

Repeat, please, the translation?

M. Thiam :

Vous êtes arrivé à Dakar à quelle date ?

Mr. Klyuyev:

In Dakar we arrived as I remember at the end of April. No, at the end of June – May. We have for the first time taken bunkers at [inaudible] and then we have proceeded -

The President:

May I draw your attention to the fact that we have perhaps gone too fast. The witness has to be sworn in before he completes his evidence. May I ask the Registrar to arrange for the witness to make the declaration required under our Rules?

Mr. Sergey Klyuyev, sworn in
Examined by Mr. Thiam

The President:

Thank you very much. I am sorry I interrupted you and I hope you appreciate why. Please go ahead.

M. Thiam :

Est-ce que vous pouvez indiquer au Tribunal les activités du *Saiga* ?

Mr. Klyuyev:

We have bunkered the fishing vessel.

M. Thiam :

Dans quelles zones en général ?

Mr. Klyuyev:

In general off Morocco, Mauritania, Guinea Bissau.

M. Thiam :

Est-ce qu'il vous arrive souvent de passer au large de la Guinée ?

Mr. Klyuyev:

At the end of August we have proceeded with the cargo to the Pointe Noire, previously Republic of Congo, then we proceeded off Nigeria and then we have proceeded to Dakar, so we have proceeded to the ports of Guinea Bissau, or Guinea.

M. Thiam :

D'accord. Lorsque vous êtes passés en Guinée, vous avez procédé à du soutage en mer ?

Mr. Klyuyev:

No, we have taken cargo off Nigeria and proceeded to Dakar. We have not at that time intended bunkering of any fishing vessel.

M. Thiam :

Et lors du dernier voyage ?

Mr. Klyuyev:

The last voyage, the last two or three vessels have been bunkered off Guinea Bissau and then we have received a telex from Addax Bunkering Service to proceed to the appointed point for bunkering of the fishing vessel.

M. Thiam :

Et qu'avez-vous fait alors ?

Mr. Klyuyev:

After what?

M. Thiam :

Après les soutages que vous avez indiqués et surtout les instructions que vous avez reçues d'aller au point suivant.

Mr. Klyuyev:

After we have received instructions to proceed to the next point, we have proceeded to the next point. I do not remember exactly, but at that point we were at 4 or 5 o'clock GMT, and we were adrift till the beginning of that time.

M. Thiam :

Et qu'est-ce qu'il s'est passé après ?

Mr. Klyuyev:

Approximately at 8 o'clock I have a rest because my watch is from 0000 till 0400. I heard like hitting nuts but I heard automatic firing and then in two or three minutes later or maybe more, maybe five minutes because I was thinking, I heard the announcement of the Captain that there is a piracy attack of the vessel and all the crew should proceed downstairs to the engine room.

M. Thiam :

Vous confirmez donc bien que, à ce moment, le navire était en dérive ?

Mr. Klyuyev:

Yes, the vessel was drifting and, as I know, in such a position, the engine is 30 minutes' readiness, for preparing the vessel for movement, it is necessary about 30 minutes but maybe in the case of emergencies this time can be reduced to 20 minutes but not less.

M. Thiam :

Est-ce que vous avez entendu dire par le capitaine ou un membre de l'équipage qu'il aurait perçu des avertissements visuels ou sonores de la part des autorités guinéennes ?

Mr. Klyuyev:

No; as I know, there was no announcement from the Guinean authorities because in that case there was no announcement from the Captain. All the announcements – this is my impression – were that the vessel will be inspected by the official forces. As I remember, we do not know what these forces are until we have been beside on the small boat, all the crew.

M. Thiam :

Et justement. Lorsqu'ils sont arrivés à bord, comment se sont-ils comportés, les membres de la force armée ?

Mr. Klyuyev:

At what time do you mean they arrived? Once upon arrival on the vessel or later when the vessel was proceeding to Conakry? What time exactly?

M. Thiam:

Au moment de leur montée à bord.

Mr. Klyuyev:

All the crew except, as I remember, three members, two at the cabin and one at the pump room, have been at the engine room. We were all together. There was firing inside from automatic machine, from the light automatic gun machine, and then it was a long shouting, maybe five or six shouting. We did not know what that meant. Then there was silence. Then at approximately five or ten minutes later our Captain proceeded upstairs and returned with handcuffs and all the crew was taken to the boat by the armed forces.

We sat on the deck for approximately 40 minutes and then they took part of the crew for proceeding of the vessel to Conakry to see what the problem is with the engine and can the vessel proceed to Conakry. After that, we have all been taken inside the boat and maybe at 11 or 12 o'clock or maybe 1 o'clock – I do not remember the exact time because we were inside – the vessel started proceeding to Conakry and we were proceeding after the *Saiga*. We were inside. At that time on the boat they came and as I know on the vessel they have treated some people, the cook and asked him to get something to eat and drink. They take guns and put them at his head and said, "If you don't give us what we want to eat, we will kill you". This was exactly what the cook said. On the boat maybe one hour later they gave us food and started speaking with us but they did not say where we were going for approximately maybe more than two hours. We do not know where we are going, to Conakry or somewhere. Then two people on the vessel have studied in the previous Soviet Union at the (inaudible) Academy. The most conversation

proceeding from these crew members and our crew and they said to us, "Don't be afraid. The vessel will proceed to Conakry and be put under arrest and I and Mr. Niasse will receive medical assistance at the port of Conakry."

M. Thiam :

Sauf erreur de ma part, je n'avais pas entendu dire que vous étiez blessé. Vous avez été blessé ? Je ne vous ai pas entendu le dire.

Mr. Klyuyev:

I was wounded when I was at the engine room. I was proceeding to the place where all the crew were. I received two fragments of bullet, in the left hand. That was approximately when they were on the main deck exactly but I do not know, maybe they were firing from the special ...

M. Thiam :

Si vous regardez la photo, c'est bien vous ?

Mr. Klyuyev:

Yes.

M. Thiam :

(Indiquant la diapositive) : Et ce monsieur qui est à côté, est-ce qu'il était dans l'équipage avec vous ?

Mr. Klyuyev:

Yes, this was one of three Senegalese crew members on our vessel.

M. Thiam :

Il a été également blessé ?

Mr. Klyuyev:

As I know, he has received glass in his throat and something happened to his eyes, but on the boat he was lying very quiet and we do not know exactly what was wrong with him. I only know that he had glass in his throat when we arrived at Dakar. At Conakry, as I remember, they did not state it in the affirmative.

M. Thiam :

Est-ce que les soldats guinéens avaient une raison de tirer sur vous et sur le monsieur sénégalais ?

Mr. Klyuyev:

No. On the vessel there were no arms, ammunition or any equipment with which we could struggle with anybody.

M. Thiam :

Est-ce que néanmoins vous auriez tenté de résister pour justifier que l'on vous tire dessus ?

Mr. Klyuyev:

No, we did not prevent any arrest. We did not make any steps to prevent arrest or inspection of the vessel. I do not know of any such steps.

M. Thiam :

Et à Conakry, est-ce que vous avez été débarqué pour être soigné ?

Mr. Klyuyev:

Yes. When we arrived at Conakry, *Saiga* was sited at anchor and I on the small speedboat was taken to the Conakry hospital where for about four hours they were trying to take the fragments out but with local anaesthesia they could not take them out, and they only sewed the wounds. I was taken again at 6 or 6.30 again to the boat. All the crew except those who have been taken to the *Saiga* have been all night on this boat. Then we have been taken on board the *Saiga* and proceeded to Conakry to the port for vessels. Then at all times they were trying to take me again to this hospital but, as I have been before to a Russian hospital under the Embassy of the Russian Federation, but only on the second day they took me to our Embassy, first to the Embassy of the Russian Federation, and then I met with the Ambassador of Ukraine and then they agreed to present me at the Russian hospital where I took some medicine. Then the representative of the Addax Company arrived, Mr. Mark Vervaet took me the next day to Dakar for an operation.

M. Thiam :

La compagnie Addax, ils vous ont trouvé à l'ambassade d'Ukraine ? Est-ce que c'était le cas ?

Mr. Klyuyev:

No, I met him at the Russian hospital.

M. Thiam :

Alors, est-ce que vous avez entendu des commentaires des soldats guinéens qui étaient sur le navire ?

Mr. Klyuyev:

Yes. We have received comments only after we were taken inside the boat. They said the first reason why they started shooting was that they saw three black men on this (inaudible) who were Senegalese. I do not know; maybe it is permitted for them to fire. Then they said that if they had known that the other crew is white and there is a Ukrainian citizen, or one of the previous Soviet Union, they will never

fire. They said that it is not permitted to bunker in their economic zone. They do not say why they did not make any announcement.

M. Thiam :

Si j'ai bien compris, les soldats guinéens ont indiqué que s'ils avaient su que sur le bateau il n'y avait que des Ukrainiens ils n'auraient pas tiré, mais que si c'était des Sénégalais ils auraient tiré. C'est ce que vous avez compris ?

Mr. Klyuyev:

They said that if they had known there were white people on the boat they would never fire.

M. Thiam :

La conclusion est que s'ils ont tiré, c'est parce qu'ils pensaient qu'il y avait des noirs ?

Mr. Klyuyev:

Yes.

M. Thiam :

Personnellement, j'en ai terminé, Monsieur le Président.

Ma dernière question, je m'excuse. Je voulais juste savoir : est-ce qu'il vous a été indiqué que le navire a été pillé à bord ? Est-ce que vous avez pu le constater ? Il y a eu quelques vols ?

Mr. Klyuyev:

I am sorry – “theft”?

M. Thiam :

Est-ce que vous avez entendu dire ou est-ce que vous avez pu constater vous-même que le navire a été pillé ?

Mr. Klyuyev:

I have said that I know exactly that after their soldiers had arrived on the vessel they took a hammer and started opening all the cabins. With such hammers they opened the cabins where two of our people were, the bosun and the A/B. They handcuffed them and after that, in all the cabins except maybe two or three, they robbed and they tore my – it was just like after a bomb, all the cabins. We do not know what they were finding. I know exactly that they stole money and some goods: shoes, shirts, and we have seen how they have taken the drinks, the food, on their boats.

M. Thiam :

Personnellement, j'en ai donc terminé, Monsieur le Président.

II. Minutes of Public Sitings – Procès-verbaux des audiences publiques

PUBLIC SITTINGS HELD ON 27 AND 28 NOVEMBER 1997
AT THE CITY HALL OF THE FREE AND HANSEATIC CITY OF
HAMBURG

27 November 1997, 3.00 p.m.

28 November 1997, 2.30 p.m.

Present:

President	Thomas A. Mensah
Vice-President	Rüdiger Wolfrum
Judges	Lihai Zhao Hugo Caminos Vicente Marotta Rangel Alexander Yankov Soji Yamamoto Anatoly Lazarevich Kolodkin Choon-Ho Park Paul Babela 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 is represented by:

Mr. Nicholas Howe,
Solicitor, Partner,
Stephenson Harwood, London, United Kingdom,

as Agent;

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

Mr. Oliver Heeder,
Barrister, Büsing, Müffelmann & Theye,
Bremen, Germany,

as Counsel.

Guinea is represented by:

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

as Agent;

Mr. Alpha Oumar Barry,
Barrister,
Conakry, Guinea,

Capt. Mamadou Salion Kona Diallo,
Legal Adviser, Guinean Navy Headquarters,
Conakry, Guinea,

as Counsel;

Capt. Ibrahim Khalil Camara,
Commander, Naval Operation, Guinean Navy Headquarters,
Conakry, Guinea,

Major Leonard Ismael Bangoura,
Head of Customs Squad, Port of Conakry,
Conakry, Guinea,

Mr. Mamadi Askia Camara,
Head of Research and Regulations Division, Customs Service,
Conakry, Guinea,

as Advisers.

AUDIENCES PUBLIQUES DES 27 ET 28 NOVEMBRE 1997 À
L'HÔTEL DE VILLE DE LA VILLE LIBRE ET HANSÉATIQUE
DE HAMBOURG

Le 27 novembre 1997, 15 h 00

Le 28 novembre 1997, 14 h 30

Présents :

Président	M.	Thomas A. Mensah
Vice-Président	M.	Rüdiger Wolfrum
Juges	MM.	Lihai Zhao Hugo Caminos Vicente Marotta Rangel Alexander Yankov Soji Yamamoto Anatoly 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
Greffier	M.	Gritakumar E. Chitty

Saint-Vincent-et-les-Grenadines est représentée par :

M. Nicholas Howe,
avocat, associé du cabinet Stephenson Harwood,
Londres, Royaume-Uni,

comme agent;

M. Yérim Thiam,
avocat, bâtonnier de l'Ordre des avocats du Sénégal,
Dakar, Sénégal,

M. Oliver Heeder,
avocat, associé du cabinet Büsing, Müffelmann & Theye,
Brême, Allemagne,

comme conseils.

La Guinée est représentée par :

M. Hartmut von Brevern,
avocat, cabinet Röhreke, Boye, Remé et von Werder,
Hambourg, Allemagne,

comme agent;

M. Barry Alpha Oumar,
avocat,
Conakry, Guinée,

Le capitaine Mamadou Salion Kona Diallo,
conseiller juridique à l'état-major de la marine guinéenne,
Conakry, Guinée,

comme conseils;

Le capitaine Ibrahim Khalil Camara,
le commandant des opérations à l'état-major de la marine guinéenne,
Conakry, Guinée,

Le commandant Léonard Ismael Bangoura,
Chef de la Brigade des douanes du port de Conakry,
Conakry, Guinée,

M. Mamadi Askia Camara,
Chef de la division des études et de la réglementation à la direction nationale des
douanes,
Conakry, Guinée,

comme conseillers.

Public sitting held on 27 November 1997 Audience publique du 27 novembre 1997

Introduction

The Registrar:

The Tribunal will now take up its hearings in Case No. 1 in the List of cases, the *M/V "Saiga" Case*, Saint Vincent and the Grenadines, Applicant, and the Republic of Guinea, Respondent.

The Tribunal, having postponed the oral hearings of 21 November 1997 at the request of Guinea by its Order of the same date, will now resume the oral proceedings. Agents and Counsel for both Saint Vincent and the Grenadines and the Republic of Guinea are present.

The President:

The Tribunal notes the presence in court of Mr. Nicholas Howe, Agent of Saint Vincent and the Grenadines, and the presence of Mr. von Brevern, Agent of Guinea. I will now call on the Agent for the Applicant, Mr. Nicholas Howe, to note the representation of Saint Vincent and the Grenadines and give us the name of his team.

Mr. Howe:

Thank you, Mr. President. The Counsel with me are Mr. Thiam and Dr. Heeder, and we also have a translator and Dr. Heeder's assistant at the table with us.

The President:

Thank you. I now call on the Agent of the Respondent Guinea, Mr. von Brevern, to note the representation of Guinea.

Mr. von Brevern:

Thank you, Mr. President. The delegation of the Republic of Guinea is a rather big one: the Minister of Justice, the Ambassador of Guinea in Germany, Mr. Alpha Oumar Barry, Mr. Amadou Diallo, Mr. Ibrahim Khalil Camara, Mr. Askia Camara, and Mr. Leonard Ishmael Bangoura.

The President:

Thank you. The Tribunal meets today in open session pursuant to article 26 of the Statute of the Tribunal to hear the parties present their oral evidence and argument in the *M/V "Saiga"* case.

The case was submitted to the Tribunal under article 292 of the United Nations Convention on the Law of the Sea by the filing of an Application with the

Registrar of the Tribunal on 13 November 1997. In the Application the Applicant submits, and I quote, that: "The Tribunal should determine that the vessel, her cargo and crew be released immediately without requiring that any bond be provided. The Applicants are prepared to provide any security reasonably imposed by the Tribunal to the Tribunal itself, but in view of the foregoing seek that the Tribunal do not determine that any security be provided directly to the Respondents."

By Order of 21 November 1997 the Tribunal fixed 27 November for the continuation of the oral proceedings. The Respondent had, under article 111, paragraph 4, of the Rules until twenty four hours before the opening of the continuation of the proceedings to submit a response to the Application submitted by the Applicant. The Respondent availed itself of this right and a Response was filed with the Registrar of the Tribunal on 26 November 1997, that is yesterday, twenty four hours before the opening of these proceedings.

In its Response the Government of Guinea concluded that: "Guinea committed no illegal act and no violation of the procedure; it sought and is still seeking to protect its rights. "That is why" – according to the Response – Guinea "is requesting that it may please the Tribunal to dismiss the Applicant's action."

Copies of the Application and the Response have been made available to the public in accordance with the Rules of the Tribunal.

Following consultations with the Agents of the parties, it has been decided that the Applicant, Saint Vincent and the Grenadines, will be the first to make its presentation. Accordingly, the Tribunal will hear oral arguments from Saint Vincent and the Grenadines first. This will be followed by a short break before the reply of Guinea. All presentations will be given this afternoon and evening. I now give the floor to the Agent of Saint Vincent and the Grenadines.

Argument of Saint Vincent and the GrenadinesSTATEMENT OF MR. HOWE
AGENT OF SAINT VINCENT AND THE GRENADINES

Mr. Howe:

Thank you very much, Mr. President. If I could start with three matters of housekeeping; I lodged with Mr. Chitty late last night, outlining submissions on behalf of the Applicant, which were written to supplement a bundle of documents which was provided yesterday afternoon; could I ask if all the judges have had an opportunity to receive those documents and possibly have an opportunity to look at them before today?

The President:

The judges have had such opportunity as was possible in the time available to look at the documentation. So the documentation is validly in the hands of the Tribunal.

Mr. Howe:

I am obliged. Two further matters: In relation to the witnesses the Government of Saint Vincent and the Grenadines wish to call, we understand that a notice that was provided yesterday has been distributed identifying two witnesses that we wish to call, Captain Dimitros Exarchos and Mr. Sergey Klyuyev, but there is in fact a further third witness, Mr. Mark Vervaeet, that we gave indication to Mr. Chitty's office, again late last night, that we would like to call as a witness here today. Has that been duly noted, Mr. President?

The President:

That has been duly noted. With regard to the witnesses, I recall that a list of three witnesses was given to the Tribunal. As you know the Tribunal needs to be informed of the witnesses being called as well as the evidence that they are intended to introduce. We were informed that the witnesses to be called included Captain Dimitros Exarchos who is the captain of a vessel alleged to have been previously attacked by gunboats from Guinea in May 1996. The Tribunal finds it difficult to see the relevance of the evidence of that witness to the present case; and therefore it is our ruling that the evidence will not be admissible. However, the notification in respect of the other two witnesses has been duly noted, and they may be called at the appropriate time.

I would suggest, in accordance with the normal practice, Mr. Howe, that you address the Court from the podium.

Mr. Howe:

The third matter of housekeeping relates to a supplementary submission concerning the applicability of article 292 of the Convention. This was finalized

very late this morning. It would have been given to Mr. Chitty shortly before the convening of this hearing this afternoon, and I do not know if he has had an opportunity to give a copy of that and the additional documents attached to that to any of the judges?

The President:

Will you be addressing that matter in your submission?

Mr. Howe:

It supplements the submissions I have already lodged and there are one or two additional documents attached to it which I would like the Court to have the opportunity to review. But I think if the judges have not had an opportunity to see the document I can bring it up as it arises during the course of my submissions.

The President:

I think that would be a much more appropriate procedure.

Mr. Howe:

Thank you, Mr. President. This Application is an application made on behalf of the Government of Saint Vincent and the Grenadines for the prompt release of the vessel M/V *Saiga* from where she is currently detained in the port of Conakry by the Government of the Republic of Guinea and instrumentalities acting on the Government of Guinea's behalf.

The Application is brought before the International Tribunal for the Law of the Sea pursuant to article 292 of the Convention which I will refer to below as "the Convention".

The Tribunal has my outline submissions. I do not propose to read every word of the submissions as we go through; I think that would not be a sensible use of time.

The President:

You should take it that the Tribunal is fully aware of the terms of the articles of the Convention.

Mr. Howe:

I am sure they are, Mr. President. What I would propose to do is to take my submissions as they arise through the submissions and on occasions I will simply refer to the submissions without reading verbatim everything I deal with as I go through it.

The provisions of article 292 envisage situations for the release of vessels:

"... for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security ...".

These words mirror other provisions in the Convention which are specifically articles 73, 220 and 226, which respectively deal with rights of the coastal State in its exclusive economic zone in relation to fisheries matters, pollution matters and investigation of foreign vessels generally. There is some discussion, and I will make submissions later on, as to whether the provisions of article 292 may properly relate to other provisions in the Convention if none of those articles actually are applicable.

The Tribunal will be fully aware of article 113 of its Rules which sets out the manner in which it should determine an application pursuant to article 292, and I am sure will be aware of the difficulties in reconciling the interests of both the coastal State and its rights to exercise sovereign jurisdiction in the areas over which it may exercise sovereign jurisdiction, and the rights of the flag State of a vessel operating outside of the territorial waters of the coastal State.

This is mirrored in the provisions of article 113. It is mirrored in article 292 by the fact that the Tribunal should not have regard to or should not investigate the substantive allegations in the Application. I will come to that later in my submissions.

This Application concerns activities and instrumentalities of the Government of Guinea in the exclusive economic zone of the Government of Guinea and its neighbouring State, Sierra Leone.

The Convention accords the coastal State limited and very specific rights to exercise its powers as a sovereign over the area of its exclusive economic zone, which are particularly set out in article 56.

So far as this Application is concerned the Applicant submits that insofar as the Government of Guinea may have had any jurisdiction over the vessel, the *M/V Saiga*, it has failed to comply with the relevant provisions for the prompt release of that vessel and crew pursuant to the relevant articles in the Convention.

Secondly, and I would suggest more importantly in terms of the time that will be taken up in the course of this hearing, the Applicant also submits that the Government of Guinea has wrongly purported to exercise its sovereign jurisdiction within the bounds of its exclusive economic zone beyond the limited and prescribed rights that a sovereign State may exercise as prescribed in the Convention, and moreover, indeed, the rights that are permitted by the local laws in Guinea. Consequently the Government of Guinea has wrongfully interfered with the rights of the Saint Vincent and the Grenadines flag, *M/V Saiga*, operating in its exclusive economic zone. Submissions will be made as to the effect of that in the context of the Application under article 292 in due course.

At the time this Application was lodged the Government of Guinea had not sought any bond or other financial security in respect of the detention of *M/V Saiga*. Possibly more importantly, it had not advised any interested party – the owners, the Government of Saint Vincent and the Grenadines, the charterers and, I understand, the crew – of the reasons for its action. Nor had it allowed the owners or the charterers or other representatives of the vessel access to the crew on the vessel. Accordingly, at the time the memorial was lodged with the Court, it was quite difficult for us to anticipate exactly what allegations were being made

against the vessel by Guinea. Fortunately the Government of Guinea has since done a number of these things and these will be discussed in the course of presenting the evidence in due course.

To do this, and to demonstrate how the allegations against M/V *Saiga* come within the provisions of article 292, the Applicant wishes to set out in considerable detail the events leading up to the detention of M/V *Saiga* and to demonstrate, by doing so, how we allege the matter comes within article 73 and, possibly to a more limited extent, article 220.

If the Tribunal determines in due course that the allegation is well-founded, the Applicant, the Government of Saint Vincent and the Grenadines, will request that the Tribunal determine the amount and nature and form of any bond or financial security, if any, that should be posted for the release of the vessel and the crew. To do this, and particularly to determine the amount, if any, of such a bond or financial security, we submit that it will be necessary for the Tribunal to properly review the evidence concerning the detention of M/V *Saiga* in order to determine whether there has, in fact, been any breach of any provision of either Guinean law or the Convention which should enable the Government of Guinea to demand such a bond and, if so, the nature and extent of such breach to determine the amount of such bond.

I have set out the outline submissions in the volume of academic argument concerning the Tribunal's powers to review the substantive issues, mindful of the fact that the Tribunal will not want to interfere with any subsequent proceedings before any court in Guinea in due course. I do not propose to talk the Tribunal through those submissions in any great detail and would propose instead to move on to setting out the evidence in the context of the relevant background matters.

I turn to the relevant background matters that bring the parties before the Tribunal today concerning the ratification of the Convention. The Applicant deposited an instrument of ratification of the Convention on 1 October 1993. The Respondent deposited an instrument of ratification of the Convention on 6 September 1985. It is fair to note that the Respondent made a reservation at the time of depositing that instrument of ratification to the effect that it reserved the right to interpret any article in the Convention in the context and taking due account of the sovereignty of Guinea and of its territorial integrity as it applied to the land space and sea.

In our submission that is merely another way of saying that the Government of Guinea may exercise its rights within its sovereign jurisdiction but it does not have any effect over its rights to exert sovereign powers over the exclusive economic zones and you would not give it any further rights than would be contained within the Convention.

The Government of Saint Vincent and the Grenadines has authorized this Application to be made on its behalf pursuant to article 292, paragraph 2. The documents evidencing that appear in the bundle submitted to the judges underneath tab 2. Underneath tab 3 in the bundle is a document received from the United Nations attaching the document by which the Respondent, the Government of Guinea, has given due publicity to the geographical co-ordinates

of its exclusive economic zone by depositing Decree No 336 of 30 July 1980 of the Republic of Guinea with the Secretary General of the United Nations pursuant to article 75 of the Convention.

These relevant provisions of that decree are set out in the submissions. I would now like to show to the Tribunal, with reference to an overhead projector, the exact parameters of the exclusive economic zone of Guinea. That will be developed in relation to the movements of M/V *Saiga* in due course.

By mapping the parameters set out in article 4 of 30 July 1980 Decree, the exclusive economic zone can be seen to be the area roughly on this side. A much better map has been prepared. We shall try to get the clearer map to the Tribunal later during the day, possibly after the interval, but for the time being we can work with this document.

I now propose to put the detention of M/V *Saiga* into the context in which it occurred. To do this I would invite the Tribunal to review the documents that should be included in the bundle at tab 4 concerning a multi-national oil company, the Addax and Oryx Group.

The President:

You may proceed. We have seen the documentation on the multi-national company. It is not here but I think that most of us have at least had sight of them; so you can make your presentation.

Mr. Howe:

I appreciate it is not here. It is simply to put M/V *Saiga* in context as she is a bunkering vessel. She operates off seas in international waters and also in exclusive economic zones of a number of countries. Her function is to supply gasoil primarily to fishing and mining vessels. To do that she operates and moves around the coast of West Africa and other places.

The M/V *Saiga* takes her bunkers from a storage terminal in Dakar and the Tribunal also has the papers showing that the two previous supplies to the loading on board M/V *Saiga* were purchased legitimately from refineries in Portugal and Italy. There has been no suggestion that there could be anything improper about either the refineries or the circumstances in which the oil was purchased, which relates in particular to the submissions of the Government of Guinea that the vessel was dealing in smuggled gasoil. This was perfectly legitimately purchased and sold gasoil. There is nothing smuggled about it; there is nothing improper about the activities involving this gasoil.

The gasoil is stored at the Oryx Terminal. It is purchased by an entity called Addax Bunkering Services, part of the AOG Group, purchased on cif terms, which means it takes title upon the product entering into tanks at Dakar and it remains their product, and we would submit remains their product today, until it is sold legitimately by ABS to the fishing vessels.

Addax also charter vessels to carry the product to supply to the fishing vessels, and in this instance the chartering company was called Lemania Shipping Company.

Addax and their associated companies had previously had incidents involving attacks by gunboats off Guinea. Details of two of those are included in the bundle at Tabs 5 and 6. The first in fact is not, as I understand it, a vessel related to Addax in any way whatsoever. It is a vessel owned by the Government of Sierra Leone, the *Napetco 1*, and on or shortly before 13 May 1993 the *Napetco 1* was shot at and attacked by gunboats coming from Guinea. A report of that incident is at tab 5 of the bundle.

More recently a vessel also chartered by the Addax Company and Lemania Shipping Company was shot at and attacked by gunboats from Guinea, this being the *Alfa 1*, in the early part of May 1996. I understand from your indication, Mr. President, that you do not want us to adduce evidence from the Master of the *Alfa*. I do not propose to develop discussion concerning those previous incidents in any further detail.

Turning to the movements and developments concerning the *Saiga*, I had prepared a chronology of her developments that should have been attached to the outline submissions received by the Tribunal. If that is the case, I do not propose again to go into any great detail to track through the movements of the *Saiga* bunkering each and every one of the fishing vessels that she bunkered prior to the incident and after she left Dakar on 23 October.

In passing, though, I would comment, and it will probably be clearer when we can get the more accurate map, that the most recent fishing vessels to be bunkered were bunkered in the exclusive economic zone of Guinea, approximately 100 miles off the coast of Guinea, and some considerable way out of its territorial waters. We have tried to indicate the rough position of that with the first top cross shown on the map.

There was some suggestion that the fishing vessels that have been bunkered by the *Saiga* might have been flying the Guinean flag. We were able to adduce evidence ourselves concerning two of those three vessels, showing one of them registered in Senegal and the other I believe registered in Honduras. There was some question of the third but we helpfully received some documents this morning from Mr. Chitty which would indicate that the third vessel, the *Giuseppe Primo*, was also registered under the flag State of Italy. I submit that nothing will turn on that in any event but it may be relevant for the Tribunal.

Audition des témoins**INTERROGATOIRE DE M. KLYUYEV
PAR M. THIAM (SAINT-VINCENT-ET-LES-GRENADINES)**

M. Thiam :

Monsieur le Président, je demande la permission de faire entendre le deuxième officier, M. Klyuyev.

The President:

Yes. Please proceed.

Mr. Sergey Klyuyev, called

M. Thiam :

M. Klyuyev, pouvez-vous décliner vos nom et profession au Tribunal ?

Mr. Klyuyev:

My name is Sergey Klyuyev. I am Second Officer on the tanker *Saiga*.

M. Thiam :

Etiez-vous en activité en avril 97 sur ce navire ?

Mr. Klyuyev:

On 4 April 1997? Yes, I have been on this vessel on 4 April 1997.

M. Thiam :

Donc, depuis avril vous êtes sur ce navire ?

Mr. Klyuyev:

Since March. We arrived at Brest where the vessel was under repair at the shipyard on 12 March.

M. Thiam :

Et à Dakar ? A quelle date ?

Mr. Klyuyev:

Repeat, please, the translation?

M. Thiam :

Vous êtes arrivé à Dakar à quelle date ?

Mr. Klyuyev:

In Dakar we arrived as I remember at the end of April. No, at the end of June – May. We have for the first time taken bunkers at [inaudible] and then we have proceeded -

The President:

May I draw your attention to the fact that we have perhaps gone too fast. The witness has to be sworn in before he completes his evidence. May I ask the Registrar to arrange for the witness to make the declaration required under our Rules?

Mr. Sergey Klyuyev, sworn in
Examined by Mr. Thiam

The President:

Thank you very much. I am sorry I interrupted you and I hope you appreciate why. Please go ahead.

M. Thiam :

Est-ce que vous pouvez indiquer au Tribunal les activités du *Saiga* ?

Mr. Klyuyev:

We have bunkered the fishing vessel.

M. Thiam :

Dans quelles zones en général ?

Mr. Klyuyev:

In general off Morocco, Mauritania, Guinea Bissau.

M. Thiam :

Est-ce qu'il vous arrive souvent de passer au large de la Guinée ?

Mr. Klyuyev:

At the end of August we have proceeded with the cargo to the Pointe Noire, previously Republic of Congo, then we proceeded off Nigeria and then we have proceeded to Dakar, so we have proceeded to the ports of Guinea Bissau, or Guinea.

M. Thiam :

D'accord. Lorsque vous êtes passés en Guinée, vous avez procédé à du soutage en mer ?

Mr. Klyuyev:

No, we have taken cargo off Nigeria and proceeded to Dakar. We have not at that time intended bunkering of any fishing vessel.

M. Thiam :

Et lors du dernier voyage ?

Mr. Klyuyev:

The last voyage, the last two or three vessels have been bunkered off Guinea Bissau and then we have received a telex from Addax Bunkering Service to proceed to the appointed point for bunkering of the fishing vessel.

M. Thiam :

Et qu'avez-vous fait alors ?

Mr. Klyuyev:

After what?

M. Thiam :

Après les soutages que vous avez indiqués et surtout les instructions que vous avez reçues d'aller au point suivant.

Mr. Klyuyev:

After we have received instructions to proceed to the next point, we have proceeded to the next point. I do not remember exactly, but at that point we were at 4 or 5 o'clock GMT, and we were adrift till the beginning of that time.

M. Thiam :

Et qu'est-ce qu'il s'est passé après ?

Mr. Klyuyev:

Approximately at 8 o'clock I have a rest because my watch is from 0000 till 0400. I heard like hitting nuts but I heard automatic firing and then in two or three minutes later or maybe more, maybe five minutes because I was thinking, I heard the announcement of the Captain that there is a piracy attack of the vessel and all the crew should proceed downstairs to the engine room.

M. Thiam :

Vous confirmez donc bien que, à ce moment, le navire était en dérive ?

Mr. Klyuyev:

Yes, the vessel was drifting and, as I know, in such a position, the engine is 30 minutes' readiness, for preparing the vessel for movement, it is necessary about 30 minutes but maybe in the case of emergencies this time can be reduced to 20 minutes but not less.

M. Thiam :

Est-ce que vous avez entendu dire par le capitaine ou un membre de l'équipage qu'il aurait perçu des avertissements visuels ou sonores de la part des autorités guinéennes ?

Mr. Klyuyev:

No; as I know, there was no announcement from the Guinean authorities because in that case there was no announcement from the Captain. All the announcements – this is my impression – were that the vessel will be inspected by the official forces. As I remember, we do not know what these forces are until we have been beside on the small boat, all the crew.

M. Thiam :

Et justement. Lorsqu'ils sont arrivés à bord, comment se sont-ils comportés, les membres de la force armée ?

Mr. Klyuyev:

At what time do you mean they arrived? Once upon arrival on the vessel or later when the vessel was proceeding to Conakry? What time exactly?

M. Thiam:

Au moment de leur montée à bord.

Mr. Klyuyev:

All the crew except, as I remember, three members, two at the cabin and one at the pump room, have been at the engine room. We were all together. There was firing inside from automatic machine, from the light automatic gun machine, and then it was a long shouting, maybe five or six shouting. We did not know what that meant. Then there was silence. Then at approximately five or ten minutes later our Captain proceeded upstairs and returned with handcuffs and all the crew was taken to the boat by the armed forces.

We sat on the deck for approximately 40 minutes and then they took part of the crew for proceeding of the vessel to Conakry to see what the problem is with the engine and can the vessel proceed to Conakry. After that, we have all been taken inside the boat and maybe at 11 or 12 o'clock or maybe 1 o'clock – I do not remember the exact time because we were inside – the vessel started proceeding to Conakry and we were proceeding after the *Saiga*. We were inside. At that time on the boat they came and as I know on the vessel they have treated some people, the cook and asked him to get something to eat and drink. They take guns and put them at his head and said, "If you don't give us what we want to eat, we will kill you". This was exactly what the cook said. On the boat maybe one hour later they gave us food and started speaking with us but they did not say where we were going for approximately maybe more than two hours. We do not know where we are going, to Conakry or somewhere. Then two people on the vessel have studied in the previous Soviet Union at the (inaudible) Academy. The most conversation

proceeding from these crew members and our crew and they said to us, "Don't be afraid. The vessel will proceed to Conakry and be put under arrest and I and Mr. Niasse will receive medical assistance at the port of Conakry."

M. Thiam :

Sauf erreur de ma part, je n'avais pas entendu dire que vous étiez blessé. Vous avez été blessé ? Je ne vous ai pas entendu le dire.

Mr. Klyuyev:

I was wounded when I was at the engine room. I was proceeding to the place where all the crew were. I received two fragments of bullet, in the left hand. That was approximately when they were on the main deck exactly but I do not know, maybe they were firing from the special ...

M. Thiam :

Si vous regardez la photo, c'est bien vous ?

Mr. Klyuyev:

Yes.

M. Thiam :

(Indiquant la diapositive) : Et ce monsieur qui est à côté, est-ce qu'il était dans l'équipage avec vous ?

Mr. Klyuyev:

Yes, this was one of three Senegalese crew members on our vessel.

M. Thiam :

Il a été également blessé ?

Mr. Klyuyev:

As I know, he has received glass in his throat and something happened to his eyes, but on the boat he was lying very quiet and we do not know exactly what was wrong with him. I only know that he had glass in his throat when we arrived at Dakar. At Conakry, as I remember, they did not state it in the affirmative.

M. Thiam :

Est-ce que les soldats guinéens avaient une raison de tirer sur vous et sur le monsieur sénégalais ?

Mr. Klyuyev:

No. On the vessel there were no arms, ammunition or any equipment with which we could struggle with anybody.

M. Thiam :

Est-ce que néanmoins vous auriez tenté de résister pour justifier que l'on vous tire dessus ?

Mr. Klyuyev:

No, we did not prevent any arrest. We did not make any steps to prevent arrest or inspection of the vessel. I do not know of any such steps.

M. Thiam :

Et à Conakry, est-ce que vous avez été débarqué pour être soigné ?

Mr. Klyuyev:

Yes. When we arrived at Conakry, *Saiga* was sited at anchor and I on the small speedboat was taken to the Conakry hospital where for about four hours they were trying to take the fragments out but with local anaesthesia they could not take them out, and they only sewed the wounds. I was taken again at 6 or 6.30 again to the boat. All the crew except those who have been taken to the *Saiga* have been all night on this boat. Then we have been taken on board the *Saiga* and proceeded to Conakry to the port for vessels. Then at all times they were trying to take me again to this hospital but, as I have been before to a Russian hospital under the Embassy of the Russian Federation, but only on the second day they took me to our Embassy, first to the Embassy of the Russian Federation, and then I met with the Ambassador of Ukraine and then they agreed to present me at the Russian hospital where I took some medicine. Then the representative of the Addax Company arrived, Mr. Mark Vervaet took me the next day to Dakar for an operation.

M. Thiam :

La compagnie Addax, ils vous ont trouvé à l'ambassade d'Ukraine ? Est-ce que c'était le cas ?

Mr. Klyuyev:

No, I met him at the Russian hospital.

M. Thiam :

Alors, est-ce que vous avez entendu des commentaires des soldats guinéens qui étaient sur le navire ?

Mr. Klyuyev:

Yes. We have received comments only after we were taken inside the boat. They said the first reason why they started shooting was that they saw three black men on this (inaudible) who were Senegalese. I do not know; maybe it is permitted for them to fire. Then they said that if they had known that the other crew is white and there is a Ukrainian citizen, or one of the previous Soviet Union, they will never

fire. They said that it is not permitted to bunker in their economic zone. They do not say why they did not make any announcement.

M. Thiam :

Si j'ai bien compris, les soldats guinéens ont indiqué que s'ils avaient su que sur le bateau il n'y avait que des Ukrainiens ils n'auraient pas tiré, mais que si c'était des Sénégalais ils auraient tiré. C'est ce que vous avez compris ?

Mr. Klyuyev:

They said that if they had known there were white people on the boat they would never fire.

M. Thiam :

La conclusion est que s'ils ont tiré, c'est parce qu'ils pensaient qu'il y avait des noirs ?

Mr. Klyuyev:

Yes.

M. Thiam :

Personnellement, j'en ai terminé, Monsieur le Président.

Ma dernière question, je m'excuse. Je voulais juste savoir : est-ce qu'il vous a été indiqué que le navire a été pillé à bord ? Est-ce que vous avez pu le constater ? Il y a eu quelques vols ?

Mr. Klyuyev:

I am sorry – “theft”?

M. Thiam :

Est-ce que vous avez entendu dire ou est-ce que vous avez pu constater vous-même que le navire a été pillé ?

Mr. Klyuyev:

I have said that I know exactly that after their soldiers had arrived on the vessel they took a hammer and started opening all the cabins. With such hammers they opened the cabins where two of our people were, the bosun and the A/B. They handcuffed them and after that, in all the cabins except maybe two or three, they robbed and they tore my – it was just like after a bomb, all the cabins. We do not know what they were finding. I know exactly that they stole money and some goods: shoes, shirts, and we have seen how they have taken the drinks, the food, on their boats.

M. Thiam :

Personnellement, j'en ai donc terminé, Monsieur le Président.

The President:

Thank you very much indeed. May I inquire whether the representatives of Guinea wish to cross-examine the witness at this stage?

M. Barry :

J'ai la parole, Monsieur le Président ?

The President:

Do you wish to cross-examine the witness at this stage?

M. Barry :

Il a été convenu que notre porte-parole allait répondre et que nous, nous aurions complété, et comme il est dans l'autre salle de réunion nous préférons attendre qu'il intervienne et nous interviendrons après lui. Nous aurons effectivement des questions à lui poser. S'il y a des contre-vérités ... parce que le problème de vol, le problème d'argent et tout ça dont on parle, si cela avait été cité cela aurait fait partie du mémoire. Il n'a pas cité ce mémoire-là. Ça ressemble tellement à un montage que j'attends d'abord le premier ...

The President:

The question is whether you want to cross-examine. I do not think it would be appropriate for you to make a response at this stage.

M. Barry :

Nous préférons attendre.

The President:

In that case we will ask the witness to retire. Mr. Howe, would you propose to continue with your submission? The witness is excused.

INTERROGATOIRE DE M. VERVAET PAR M. THIAM
(SAINT-VINCENT-ET-LES-GRENADINES)

Mr. Howe:

At this stage, Mr. President, I would propose that we call our second witness, Mr. Mark Vervaeet, to take up the factual circumstances after the arrival of the *Saiga* in Conakry. Again, I would defer to my colleague, Mr. Thiam, to conduct that examination.

Mark Vervaeet, sworn in

M. Thiam :

M. Vervaeet, est-ce que vous pouvez décliner vos nom, profession et qualité ?

Mr. Vervaeet:

My name is Mark Vervaeet. I am based in Senegal where the Addax Group has an affiliate. I am responsible for the area of Senegal. On this incident I was called to go to Conakry and see what the problems were. I have been responsible for bunkering activities, which *Alfa 1* was doing too.

M. Thiam :

Est-ce que la Société Addax affrétait *Alfa 1* ?

Mr. Vervaeet:

Alfa 1 has been on charter for five or six years, doing exactly the same bunkering activities as we have chartered the *Saiga* for.

M. Thiam :

Est-ce que l'*Alfa 1* a eu des incidents sur les côtes de Guinée ?

Mr. Vervaeet:

Alfa 1 has been operating over six years all over the coast of Africa, let us say from Morocco up to Cape Town and has only had one incident. That was last year in May, again off Conakry, where she was attacked and half-destroyed with damage of \$ 500,000.

M. Thiam :

Est-ce que vous pouvez indiquer au Tribunal très rapidement comment l'attaque a été menée ?

M. Vervaeet :

(Continuant en français) : Au mois de mai, c'est une situation similaire. Le navire était parti de Dakar pour faire des opérations vers Abidjan. A environ 50 milles du Port de Kamsar, c'est-à-dire au nord de la Guinée, Conakry, il a été simplement

attaqué par surprise, et pendant une demi-heure, avec des larges coups de feu, une centaine de trous dans le navire. Le navire a pris feu.

The President:

You may recall that I informed you that the Tribunal does not consider that the evidence in respect of ships not involved in the incident is relevant to this particular case. Therefore I repeat: if the evidence to be given is in connection with the *Alfa* incident, then the Tribunal has already ruled that such evidence is not permissible. You indicated that you would be calling three witnesses, but I informed you that the evidence on an incident on a vessel not connected at all with the incident before the Tribunal would not be admitted. Accordingly you should, please, not ask the witness to give us any evidence relating to the alleged attack on the *Alfa*. Evidence about what took place on the arrested vessel and what took place after the arrest would, of course, be perfectly in order. I hope I am clear on the point.

M. Thiam :

Monsieur le Président, je crois précisément qu'il s'agit de cela. Si vous me permettez de vous expliquer très brièvement, il y a dans les dossiers qui vous ont été fournis certains messages qui ont été envoyés par l'armateur au capitaine du navire *Saiga*. Certains de ces messages demandent au capitaine de faire route vers une autre position et ce message a été interprété par les autorités guinéennes comme étant la preuve que nous cherchions à les fuir, en raison d'une prétendue contrebande. Or, nous tentons d'expliquer, par ce témoignage, que si l'armateur a donné des instructions au capitaine de s'éloigner de la zone guinéenne, ce n'est pas parce que nous faisons de la contrebande, mais c'est parce que nous avons sauvagement été attaqués dans les mêmes circonstances une année auparavant et d'autres années auparavant d'ailleurs. Nous avons limité le témoignage sur un seul cas d'attaque mais dans le dossier nous avons pu relever un nombre incroyable d'attaques dont les navires de commerce de cette nature sont l'objet de la part des autorités guinéennes. Donc, c'est pour expliquer la nature de ces messages que j'y fais simplement allusion. [*Ce message*] est dans le dossier qui concerne le *Saiga* et a été saisi [...] par les autorités guinéennes. Il a été exploité dans le procès-verbal de douane. Je veux expliquer simplement à la Cour les raisons pour lesquelles ce message a été envoyé, et très brièvement d'ailleurs, je n'ai aucune demande particulière relativement au navire *Alfa 1*. Je voudrais simplement expliquer si la Cour veut bien me permettre de continuer à procéder là-dessus parce qu'il y en a à peine pour 30 secondes.

The President:

Thank you very much. You may proceed.

M. Thiam :

Merci, Monsieur le Président. Donc, pouvez-vous expliquer comment l'attaque s'est déroulée contre l'*Alfa 1* ?

M. Vervaeet :

Le navire a été simplement attaqué pendant une demi-heure. Quand l'attaque s'est terminée, l'équipage est monté pour constater que tout le bâtiment était en feu. Ils ont eu trois à quatre heures de travail pour éteindre le feu. Dans le cas d'un pétrolier c'est donc très dangereux. Heureusement que la cargaison n'a pas pris feu. Quand l'équipage est monté pour constater le feu, ils n'ont plus vu les vedettes qui les ont attaqués. Ils les ont vues à grande distance, s'éloignant. Donc, ils avaient abandonné le bateau quand il était en feu.

M. Thiam :

Est-ce qu'il y a eu par la suite des poursuites judiciaires des autorités guinéennes contre le capitaine ou l'armateur ou l'affréteur du *Alfa 1* ?

M. Vervaeet :

Il n'y a eu aucune poursuite des deux côtés. Nous avons essayé de nous renseigner auprès des autorités guinéennes. Eux disaient qu'il n'y avait pas de bateau là-bas, qu'ils n'étaient pas impliqués dans cette attaque. Donc ni les autorités guinéennes n'ont pu faire une plainte, nous non plus, parce qu'on n'avait que des bateaux non identifiés.

M. Thiam :

Je vous remercie. Nous allons donc revenir au *Saiga* maintenant. Est-ce que vous pouvez nous dire ce que fait exactement le *Saiga* ?

M. Vervaeet :

Le *Saiga* est un bateau que nous avons depuis avril environ et qui avait les mêmes activités qu'*Alfa*, ravitailler les bateaux de pêche et autres bateaux en haute mer, surtout dans les régions de la Mauritanie et du Maroc. Il a fait deux voyages de Dakar jusqu'à Pointe-Noire au Congo avec une cargaison et au retour il a ramené du fioul lourd du Nigéria vers Dakar. Il a donc passé deux fois la Guinée. On a fait ce dernier voyage en Guinée pour livrer du fioul à des bateaux de pêche et nous avons évité les eaux guinéennes, vu notre expérience de l'année passée, et nous avons averti le bateau de bien s'éloigner pour éviter des conflits.

M. Thiam :

Très bien. Vous vous êtes rendu ensuite à Conakry après l'attaque du navire ?

M. Vervaeet :

Oui. Notre bureau à Genève m'a demandé d'y aller pour voir quel était le problème et ce que nous avons fait de mal. Pendant deux semaines j'ai été à Conakry. Pendant ces deux semaines j'étais avec notre avocat local, M. Richard Bangoura. Nous n'avons pas pu obtenir d'abord l'accès au navire, ni de contact avec le commandant, ni obtenir des informations sur l'infraction que nous avons commise. Au contraire, les seules informations que nous avons obtenues c'était d'abord lors d'une réunion au Ministère de la justice avec Son Excellence le

Ministre de la justice lui-même et, pendant cette réunion, avec les autorités de la marine nationale et la douane qui nous ont accusés tout simplement sans détail que nous sommes des contrebandiers, qu'ils avaient toutes les preuves mais qu'ils ne voulaient rien donner. Depuis rien. Nous avons encore essayé de contacter la direction de la douane et le ministère. Rien à faire. Nous avons finalement dû partir. Nous avons parlé avec beaucoup de gens là-bas qui ont eu des expériences similaires et qui nous ont fait comprendre que c'était une question personnelle, que cela pouvait se régler mais, comme nous sommes une société établie tenant à maintenir notre réputation, nous avons décidé de faire une requête au Tribunal.

M. Thiam :

Qu'entendez-vous par une question personnelle ?

M. Vervaeet :

Normalement cela se règle entre deux personnes dans une pièce fermée.

M. Thiam :

Pouvez-vous être plus clair, s'il vous plaît ?

M. Vervaeet :

Maître, cela veut dire que l'on doit payer, cash.

M. Thiam :

A qui ?

M. Vervaeet :

A quelqu'un de la douane.

M. Thiam :

J'en ai terminé Monsieur le Président.

The President:

Thank you. May I ask again whether the representative of Guinea wishes to pose any questions to this witness at this stage?

CONTRE-INTERROGATOIRE DE M. VERVAET PAR M. BARRY (GUINÉE)

M. Barry :

Oui. Vous venez de dire que vous résidez, je crois, à Dakar et vous êtes venu à Conakry pour chercher des informations. Donc, vous n'étiez pas présent au moment des faits ? Est-ce exact ?

M. Vervaeet :
C'est exact Monsieur.

M. Barry :
Merci Monsieur. Merci Monsieur le Président, cela me suffit comme réponse.

The President:
Thank you very much. Mr. Thiam, do you want to re-examine the witness in the light of that question?

M. Thiam :
Non, je vous remercie Monsieur le Président.

The President:
The witness is excused. I take it then, Mr. Howe, you will continue your submission?

Argument of Saint Vincent and the Grenadines**STATEMENT OF MR. HOWE (CONTINUED)
AGENT OF SAINT VINCENT AND THE GRENADINES**

Mr. Howe:

If I can very quickly take the Tribunal through the subsequent developments after the vessel's arrival in Conakry. As Mr. Vervaet has testified, efforts were made to discuss with the relevant officials in Conakry the terms of the release of the vessel. Those discussions were not in any way fruitful. At tab 9 of the bundle the Tribunal will have documents showing and evidencing the discharge of the cargo of the remaining gasoil on board the vessel. Although the vessel had bunkered half a dozen or so fishing vessels, it was not a large quantity of gasoil, so that the vessel was nearly full, and the quantity of cargo that the Guineans ordered to be discharged would have been worth – and is worth – approximately US\$ 1 million. Details of the discharge are contained behind tab 9 in the bundle, and discharge commenced on 10 November and concluded in the early morning of 12 November.

In the light of this conduct obviously all parties concerned were very keen to explore other avenues of recourse to secure the release of the vessel and the crew. Communications took place between the owners, the charterers, and the representatives of Saint Vincent and the Grenadines. I understand that the Ambassador of Saint Vincent and the Grenadines in Geneva met with a representative of Guinea in Geneva shortly before 11 November and days before that. That meeting proved again wholly unfruitful, and in the light of these developments and the fact that it seemed there was nothing else that could be done, with no disrespect to the Tribunal, the only avenue of recourse appeared to be through this honourable Tribunal with the Application by the flag State to secure the release of the vessel and crew pursuant to article 292, which the flag State was very happy to endorse and has endorsed, the rights of one of the vessels flying her flag she believed having been very seriously infringed.

Consequently notice of this Application was given to the Government of Guinea on 11 November. A copy of that notice appears at tab 10 in the bundle. It now being 27 November, the Government of Guinea have had over two weeks in which they have known this Application has been pending and to be brought, a factor which I believe is relevant in the light of the discussions over the last week or so concerning delays, adjournments, problems in producing evidence, by Guinea.

Against this background, on 13 November in Guinea the Customs authorities finally revealed their hand and gave some indication as to the charges, the circumstances leading up to the detention of the *Saiga* and the charges they maintained they were entitled to bring against her. This document is contained in a document called the "Procès-Verbal". It is a French expression which I have conveniently used as I do not think there is an English equivalent.

The Procès-Verbal appears in full at tab 11 of the bundle, together with translations of both the French version and also the handwritten statement of the Master which is in Ukrainian, the PV having purported to have been based on the handwritten statement of the Master, and, tracking the statements given in the Master's handwritten statement, although the circumstances in which the vessel was detained and caught, the Tribunal has already heard evidence about members of the crew being forced to provide food to people at gunpoint, one has to question how voluntary the statement given by the Master could have been in these circumstances. But even in these circumstances the translation of the Master's statement does reveal certain discrepancies between what the Master said and what the Guinean Customs authorities chose to write into the PV. One particular example which we have already touched upon is the flag State of the three bunkering vessels that are admitted to have been bunkered in the northern territory of the exclusive economic zone. The PV states that these were all Guinean flag vessels. There is no statement to that effect in the handwritten statement of the Master.

In the outline submissions I have highlighted a number of other striking features of the PV by reference to the Jane's reference to the gunboats in the world. I have obtained details of the two gunboats that were used on this occasion according to the PV itself. These details are included at tab 12 of the bundle. One of the vessels has a capacity to reach speeds of up to 26 knots, a second vessel a capacity to reach speeds of up to 35 knots, and according to the PV – and as subsequently developed in the defence submissions that the Guineans submitted yesterday – it would appear the Guineans' case is that the customs vessels and the *Saiga* were engaged in a 4-hour chase from the exclusive economic zone of Guinea into the exclusive economic zone of Sierra Leone; it is submitted that in the circumstances with vessels of this kind it is simply not feasible, and that the reference to the *Saiga* having attempted to do damage to the customs vessel is again submitted to be completely unrealistic.

The submissions are developed in further detail in the document; I do not propose to take the Tribunal through the particular detail now.

The one aspect of the PV, though, that I think is very important and crucial to this Application is the notification of alleged offences that the Guineans rely upon in the action against the *Saiga*. The PV at page 8 sets these out. There are four provisions which are in French. I speak appalling French so I will not embarrass myself by trying to read them in French. Roughly the English translations are article 40 of the Maritime Code, articles 1 and 8 of the Law of 1994, articles 217 to 316 of the Customs Code and article 361 and 363 of the Penal Code in Guinea.

The documents behind tabs 15, 16, 17 and 18 of the bundle are copies of the relevant provisions of those enactments that we have been able to obtain. In most cases we have the whole document. Unfortunately, particularly with regard to the Penal Code, we have not been able to obtain the whole document. We have only been able to obtain the provisions relied on by the Respondents, but they appear.

In the outline submissions we then quote the relevant provisions from each of those enactments, including the provisions relied upon in the PV but also

including provisions which we would rely upon as being relevant to the Application of those enactments to the circumstances of this particular case. We submit, and will develop the submissions in this regard in due course, that the second, third and fourth enactment the Guineans purport to rely upon are in fact enactments of Guinean law which apply solely and exclusively to the area of its sovereign State, that is its territory and its sovereign twelve mile zone water. It is vehemently maintained by the Applicant that there can be no application of general provisions of Guinean law at large to the entire area or indeed any area of the exclusive economic zone. The principles on which a coastal State may exercise jurisdiction within its exclusive economic zone are set out in the Convention and any attempt by the Guineans to exceed or to extend the jurisdiction of its territory for its normal penal codes to within the exclusive economic zone we submit is simply untenable.

I would, if I may, take some time discussing the first provision relied upon by the Guineans which is article 40 of the Maritime Code which is a law enacted on 30 November 1995 and is therefore a law enacted after Guinea acceded to the Convention and would appear to be a law enacted to take into account the provisions of the Convention and to increase the scope of the sovereignty of Guinea into its exclusive economic zone in the light of the powers available to it under the Convention.

The enactment starts under article 4 that the sovereignty of Guinean State extends into its territorial sea. Article 5 sets out the territorial sea of Guinea, bearing in mind that this is a law to set out the maritime and river navigation, territorial sea and public maritime domain of Guinea.

Article 40 of this code then goes on to develop and extend the sovereign rights of Guinea so far as permitted under the Convention into the two hundred mile area of its exclusive economic zone. The Respondents rely upon article 40 in their PV. We also rely very heavily on article 40 in our submissions that section 292 is applicable to this particular matter, and it being a short provision I will read it in full:

“The Republic of Guinea exercises, within the exclusive economic zone which extends from the limit of the territorial sea to 188 nautical miles beyond that limit, sovereign rights concerning the exploration and exploitation, conservation and management of the natural resources, biological or non-biological, of the sea-beds and their sub-soils, of the waters lying underneath as well as the rights concerning other activities bearing on the exploration and exploitation of the zone for economic purposes.”

The Tribunal will be fully aware, although I not quoting verbatim, that the formulation of the wording of article 40 mirrors wording appearing within the Convention. In particular, article 73 of the Convention refers to the exploration and exploitation, conservation and management of the natural resources but the provision also appears to go on and incorporate as well provisions from article 76 of the Convention, being the seabeds and sub-soils which form part of the

continental shelf. For present purposes it is submitted that the provisions regarding the continental shelf have absolutely no bearing on the present matter and article 40 is relevant, therefore, only insofar as it attracts the provisions of article 73 of the Convention.

In the PV, the Guineans do not specifically allege any specific breach of article 40 by M/V *Saiga*; they simply quote the provision. It appears to the Applicants that by quoting the provision the primary aim is probably to say that because under article 40 they can extend their sovereign rights to areas within the exclusive economic zone, because they are able to do so, the subsequent provisions of the subsequent three enactments of the laws of Guinea which they quote should equally apply within the exclusive economic zone of Guinea. It is submitted that it would be contrary to the Convention for that to happen. It is not actually the intention, even of article 40 of the Guinean law, and there would be no substance for an allegation by the Guineans to that effect.

However, for the purposes of M/V *Saiga*, article 40 is equally relevant because it does provide that the Republic of Guinea may exercise sovereign rights concerning, amongst other things, the exploration and management of natural resources. Ordinarily these rights are assumed to be rights connected with fishing and fishing vessels, the fish obviously being the natural resources. But it is submitted, and there is authority to which I will come in a moment, that these rights need not necessarily be confined simply to fishing vessels and can extend to other activities connected within the fishing industry.

To put that submission in context, I would postulate a circumstance where a small fishing vessel may only be able to travel to limited areas within the exclusive economic zone with the full tank of fuel loaded at a port in the coastal State which would therefore limit the fish that that vessel could catch were it obliged to bunker in that port. However, given the opportunity to bunker at high seas as well, the small fishing vessel could multiply its potential catch by a number of times because it would be able to travel further distances within the exclusive economic zone and stay within the exclusive economic zone for longer without having to return back to the port of the coastal State for bunkers.

That being the case, it is not difficult to imagine that the fishing stocks of coastal States could be depleted over time by smaller fishing vessels taking the opportunity to bunker in the exclusive economic zone and thereby increasing their catches, such that it is submitted that a coastal State would be entitled to exercise sovereign rights over such activities pursuant to article 73, that being rights concerning the exploitation and management of the natural resources.

This is not a new approach. The bundle which I indicated had been prepared very shortly before the Tribunal convened this afternoon, copies of which we will endeavour to get to the Tribunal as quickly as possible, includes a number of documents relevant in this regard. In particular – and I am afraid I only have a French copy – legislation from Guinea Bissau, which is the sovereign State slightly to the north of Guinea. Under article 3 of this legislation the government have determined that operations connected with fishing will be subject to the Minister of Fisheries. Against this background I understand that ABS have been

obliged to enter into an agreement with relevant authorities in Guinea Bissau in order to continue their bunkering activities within the exclusive economic zone of that State.

That is the only instance we can find so far of a sovereign State purporting to exercise its rights within the exclusive economic zone in relation to bunkering of fishing vessels. Many States have already enacted provisions which take into account the fact that fishing vessels may bunker in the exclusive economic zone of their territory, and rather than put prohibitions on the bunkering vessel, they put prohibitions on the fishing vessel and oblige the fishing vessel to obtain a licence to bunker in the exclusive economic zone of that State. We have documents from Sierra Leone and Mauritania which are two such countries wherein they have purported to exercise their jurisdiction within the exclusive economic zone over bunkering activities by requiring fishing vessels to obtain licences to so bunker.

Consequently, we submit that the activities of M/V *Saiga* in bunkering within the exclusive economic zone of Guinea is an activity which could potentially come within article 40 of Guinean law, the Maritime Code, and as such it is a provision that clearly comes within, we submit, article 73 of the Convention. This being a matter coming within article 73 of the Convention, it is therefore subject to article 292 and the jurisdiction of this Tribunal.

In fact, so far as we are aware, despite extensive researches and the Guineans now having presented their case in an outline of their case before the Tribunal today, it would appear that the Guinean Government have not yet themselves enacted any specific legislation concerning the rights of bunkering vessels within its exclusive economic zone and consequently there is no legislation which it could be said M/V *Saiga* was infringing or in breach of, and consequently it is not within the potential but as yet unexercised rights of the Government of Guinea to exercise powers over bunkering vessels in their exclusive economic zone to actually impose any penalty on M/V *Saiga*. If and when the Guineans do enact such legislation, obviously Saint Vincent and the Grenadines, the owners, the charterers and everybody else connected with vessels like M/V *Saiga*, will pay very close attention to it and make sure that they comply with it insofar as it is a legitimate exercise of their sovereignty of Guinea.

The second relevant factor in relation to the application of article 73: we simply make the point that the Guineans themselves have relied upon article 40, which reflects article 73, in their PV as a fact which we submit endorses the fact that this comes within the provisions of article 73 and therefore article 292.

The submission document continues to discuss the other three provisions of Guinean law relied upon: a decree from 1994 concerning the fight against fraud covering the import, purchase and sale of fuel in the Republic of Guinea. The Respondents rely upon articles 1 and 8, but even a cursory view of article 1 which says:

“The legislation provides and applies to ... the import, transport, storage and distribution of fuel by any national person or corporate body not legally authorized are prohibited in the Republic of Guinea.”

Clearly the Republic of Guinea includes its land and its territorial waters. We submit it does not include its exclusive economic zone, and nor is there is any reason why it should be applied to its exclusive economic zone.

Further submissions are developed in relation to the 1994 Decree in the submission paper. In particular, we would like to draw the attention of the Tribunal to the penalties which were set out in article 8 of the 1994 Decree which say that when a misdemeanour under this article has been committed by more than six people, sentences of imprisonment are possible and a fine equal to four times the value of the confiscated items in addition to the additional penalties provided for under article 6 of this law.

It would appear that what the Guineans have done in this instance is to have said: "We think you are in breach of this article. We are therefore going to take your vessel into Conakry. Your vessel is worth approximately" – I believe the figure they use is \$800,000, although that is not accepted – "and your cargo is worth approximately \$1.5 million" – although again that figure is not accepted – "and we are going to multiply that by 4 and we want you to pay us \$ x million." At one stage the figure of \$15 million was postulated in Guinea.

We say that that clearly is a wrongful evocation of the article upon which the Guineans purport to rely. We also say that this is relevant to the duties of good faith set out in article 300 of the Convention, of which I am sure the Tribunal are fully aware, that States Parties should fulfil in good faith obligations assumed under the Convention and will not act in a manner which would constitute an abuse of right. Arguably it is not something that comes within the Convention anyway. It is a simple illegal act by the Government of Guinea, but insofar as the Guineans are subject to the Convention and we are here to discuss application under article 292, we would suggest that this is a bad faith application of the article by the Guineans.

Equally the Customs Code Section 1 provides that the customs territory extends to the coastline of Guinea and its territorial waters. Consequently this has no bearing in the exclusive economic zone of the Guineans, and the Penal Code, of which we have only been able to obtain two dictations of the provisions relied upon, does not take the matter any further. In fact, one provision defends the Guinean authorities allegedly for shooting at people; the other provision sets out punishment for fraudulent import of money, so that has no bearing on the situation whatsoever.

The outline submission was prepared substantially before the Guineans indicated they would be present, and certainly before we had their defence document. I think it may be appropriate to leave further submissions and comments on the defence of the Respondents until after the Guineans have presented their defence. But I would like to make two final comments at this stage with regard to the applicability of article 292. We will see exactly how the Guineans develop this argument in their submissions, but there is an allegation that the vessel was doing something wrong because she was failing to fly the flag of her flag State. We will see how that is developed, but it may be that that comes within article 226 of the Convention.

Secondly – and it is very unfortunate that we have not been able to get a copy of this supplemental submission to the Tribunal before this hearing – we have located a comment in a learned journal, “The International Journal of Marine and Coastal Law” by Professor Tullio Treves, which discusses the applicability of article 292 in cases of detention of vessels. The obvious point to be made, and I do not want to try to put words into what the Professor said, I will just rely upon a quote of his in a moment – but it is accepted under the Convention that there are several cases in which a coastal State may detain a vessel. Some of those one could possibly characterize as more serious offences or alleged offences – piracy is stated, transportation of slaves, illegal broadcasting – and it is clear that under the Convention there is no right under article 292 to make an application to this Tribunal in respect of that sort of allegation.

The wording of Section 292 and the use of the words “prompt release of the vessel upon providing a bond or other security” mirror and track the wording of the Convention in respect of other matters over which it is accepted that a coastal State may exercise its sovereignty in the exclusive economic zone – the articles 73, 220 and 226 as referred to previously.

As a matter of construction it may be said that in order to evoke the jurisdiction of the Tribunal under article 292, the applicant State must bring itself within the provisions of either article 73, 220 and 226 and not the other way round, i.e. must not be matters that are covered by the more serious offences of piracy and transportation of slaves and the like. However, in Mr. Treves’ paper which is set out in the submission – and I will endeavour to get copies of the submission to the Tribunal later today – he says:

“Even though the above-mentioned three articles of the Convention are the only ones in which the Convention sets out an obligation of prompt release upon the posting of a reasonable bond or other financial security, it would seem possible to resort to the prompt release procedure in other cases also. These are cases in which the Convention prohibits detention of ships and crews. If a vessel or its crew has been detained in contravention of a provision of the Convention which prohibits detention, it seems reasonable to hold that the most expeditious procedure available should be resorted to in order to ensure the release of the vessel or crew, independently of the question of international responsibility for the violation of the Convention. It would seem absurd to me that the prompt release procedure should be available in cases in which detention is permitted by the Convention, such as those of articles 73, 220 and 226, and not the cases in which it is not permitted by it.”

In effect he is saying that if the flag State has done something wrong and it contravenes articles 73, 220 or 226, it may yet be able to rely on the jurisdiction of the Tribunal to ensure the prompt release of the vessel. However, if the flag State has done absolutely nothing wrong, as we submit is the case here with M/V *Saiga*, and it is purely that the coastal State of their own volition decide to come into the exclusive economic zone of another State – in this case Sierra Leone – with guns

and force the vessel back into its port at gunpoint, clearly there is a very strong case to be made out that the provisions of the Convention for ordering the prompt release of a vessel should be more applicable to that situation than the situation in which the vessel had actually done something wrong.

Mr. President, that concludes my submissions. I would now like to hand over again to my colleague, Mr. Thiam, for the final twenty-five minutes of our time and invite him to develop further comments before the Tribunal.

The President:

Thank you. Mr. Thiam, you may proceed now.

EXPOSÉ DE M. THIAM CONSEIL DE SAINT-VINCENT-ET-LES-GRENADINES

M. Thiam :

Monsieur le Président, Honorables juges, mon excellent confrère, Maître Howe, a déjà dit, je crois, l'essentiel et je ne vois pas ce que je pourrais apporter de nouveau, sauf, peut-être, vous faire une relation un peu plus colorée des faits en expliquant que la République de Guinée nous reproche en fait, je crois, un prétendu acte de contrebande. Tous leurs documents sont clairs. Ce qu'ils nous reprochent c'est un prétendu acte de contrebande. Bien sûr, il n'est pas demandé à votre juridiction de statuer sur cette prétention de la République de Guinée. Sur ce point, il est exact que les actions auront lieu devant d'autres juridictions qui se prononceront, soit en Guinée soit ailleurs. Mais je crois que, comme vous l'a expliqué l'orateur précédent, il est évident que votre juridiction doit apprécier le procès-verbal de la douane guinéenne, non pas pour en apprécier la force probante donc, mais en tout cas comme élément de fait dans la cause qui vous est soumise aujourd'hui.

Or, si vous examinez ce document, fondamentalement, vous constaterez que, dans une très large partie, il est fondé sur des faits qui sont quelquefois vrais mais alors totalement déformés et faussement interprétés. Il est quelquefois encore fondé sur des faits qui sont totalement faux et, enfin, il contient des lacunes assez extraordinaires pour un procès-verbal dressé par des agents du niveau de ceux qui sont intervenus.

Au niveau des faits faux, on vous a dit que l'on a signalé la présence clandestine du navire *Saiga* dans les eaux guinéennes. C'est totalement faux. Rien ne le prouve. Nous n'étions pas dans les eaux guinéennes. Il est vrai qu'à un moment le navire – et nous vous l'avons expliqué tout à l'heure – est passé dans la zone économique exclusive de la Guinée, mais en quoi ce passage peut être assimilé à un passage clandestin ? Qu'y a-t-il de clandestin dans le fait de traverser la zone économique exclusive de la Guinée ?

Vous lirez également dans le procès-verbal, à la page 2, que les agents des douanes disent que le *Saiga* semblait filer plus vite que leur navire. Vous avez dans le dossier qu'on vous a fourni les indications sur les navires en cause et vous pouvez voir que les navires de l'armée guinéenne atteignent des vitesses assez extraordinaires pendant que le nôtre ne peut pas dépasser les huit noeuds. Alors, à supposer même que le témoin, puisque j'ai entendu l'autre partie dire que l'un des témoins apparemment avait expliqué des choses qui étaient fausses, à supposer donc qu'il y ait effectivement eu une poursuite, je vois très mal comment des agents qualifiés pourraient écrire que les vedettes militaires allaient beaucoup moins vite qu'un pétrolier.

Ensuite, ils disent que nous avons tenté de renverser leurs vedettes. Mais, un peu plus loin dans le procès-verbal, ils indiquent que les moteurs, que notre navire, le *Saiga*, était en pilotage automatique. Alors, votre haute juridiction se demandera comment est-ce qu'il est possible qu'un navire qui est en pilotage

automatique puisse manoeuvrer au point de rechercher un contact avec des vedettes encore plus rapides que lui. Enfin, je veux passer sur d'autres détails comme, par exemple, quand ils expliquent qu'il a fallu couper les tuyauteries alors qu'en fait ils ont tiré dessus, qu'il n'y a que deux blessés légers, alors qu'il y avait deux blessés graves et vous voyez l'état du Sénégalais. A cet égard je voudrais dire que l'Ukrainien a été remis à son ambassade, dans un hôpital russe, et recevait régulièrement la visite de son ambassadeur pendant que le Sénégalais qui, jusqu'au jour d'aujourd'hui, n'est pas sorti de l'hôpital et qui a reçu des traumatismes extrêmement graves et nous pensons qu'il ne pourra jamais s'en remettre, que le Sénégalais, lui, n'a pu obtenir aucune espèce de faveur de même nature et qu'il a fallu que je me rende moi-même à Conakry pour obtenir de Monsieur le Ministre de la justice qu'il donne des instructions afin que ce Sénégalais soit libéré. Mais, n'eût été cette démarche, les hautes autorités guinéennes n'auraient pas constaté la gravité de l'état du Sénégalais. Ils ont même indiqué dans leur procès-verbal qu'il n'était blessé que légèrement.

Enfin, pour les faits faux – je prends comme cela un peu au hasard – on vous a expliqué que dans le procès-verbal il est écrit que tous les navires qui ont été ravitaillés par le *Saiga* étaient des navires battant pavillon guinéen; nous vous avons apporté la preuve que c'est totalement faux, que c'est indiscutablement faux. Il y a les faits qui sont déformés. J'en cite un seul. C'est l'interrogatoire du capitaine du navire qui est fait sans l'assistance d'aucun interprète et vous ne trouverez dans le procès-verbal aucune indication à ce propos. Alors je m'attends de l'autre côté de la barre à ce que dans quelques minutes on vienne vous donner des explications sur ce point et nous répondrons.

Ensuite il y a les inconnus dans le procès-verbal. On vous dit par exemple que, le rédacteur du procès-verbal vous explique qu'à un moment ils ont pu reconnaître le navire *Saiga* sur les radars selon les paramètres donnés mais, si vous lisez bien le procès-verbal, vous verrez qu'à aucun moment ils n'indiquent quels sont les paramètres au moment où ils ont retrouvé le *Saiga*. C'est un fait exprès. Ce n'est pas par hasard qu'ils ne l'indiquent pas. C'est parce qu'un peu plus loin – et je vais en parler – ils ont invoqué le droit de poursuite. Mais ils invoquent le droit de poursuite en disant : « Il était dans les eaux guinéennes », sans aucune précision sur l'endroit précis où se trouvait le *Saiga* au moment où « ils l'ont repéré », entre guillemets.

Ils disent également : « Sommaton a été faite au commandant de s'arrêter ». Vous avez entendu ici le jeune officier en second qui a expliqué qu'il n'y a eu aucune sommation mais dans le procès-verbal dressé par des hommes qui, en principe, doivent manier la plume avec une certaine précision, eh bien dans le procès-verbal on ne trouve aucune indication sur la nature des sommations qui ont été faites. La nature de ces sommations a été subitement invoquée dans les conclusions que la République de Guinée nous a communiquées hier. Il dit : « Il y a eu des signaux sonores, il y a eu ceci, il y a eu cela », mais dans le procès-verbal il n'y a aucune indication précise sur la manière dont la sommation a été faite sauf qu'on a posé quelques questions au capitaine auxquelles on a donné des réponses sans l'assistance d'un interprète.

Je voudrais donc dire que, à côté de ces faits faux, déformés ou imprécis, l'Etat de Guinée invoque un certain nombre d'arguments en droit sur lesquels, je crois, on a largement débattu. C'est l'article 40 du code de la marine marchande guinéenne qui n'est rien d'autre que quelque addition de deux articles de la Convention, qui n'apporte donc rien de spécial et de nouveau. Ce sont les articles 1 et 8 de la loi de 1994 qui ne peut pas s'étendre à la zone économique exclusive de Guinée pour les raisons que vous et nous savons. Peut-être la Guinée nous dira tout à l'heure ce qu'elle en sait. Et, de toute façon, on a pu vous faire remarquer tout à l'heure que ce texte prévoit déjà des peines de prison et qu'ici elles sont applicables dans la zone économique exclusive; c'est déjà une violation de l'article 73 de la Convention sur le droit de la mer. Les articles 316 et 317 du code des douanes qui sont invoqués, ce sont des définitions classiques du délit mais, évidemment, cela ne peut s'appliquer que sur le territoire douanier, et nous n'étions pas sur le territoire douanier.

Les articles 361 et 363, par contre, du Code pénal qui sont invoqués, c'est assez extraordinaire de le noter, les agents qui poursuivent de soi-disant délinquants, des trafiquants, des contrebandiers, invoquent un texte qui les protège eux et non pas les contrebandiers et qui ne poursuit pas les contrebandiers, car ce texte explique qu'on ne peut pas poursuivre des agents officiels comme les agents des douanes, comme les agents de police, lorsqu'ils provoquent des blessures dans le cadre de leur mission.

Alors c'est assez extraordinaire que des agents qui ne se savent pas encore accusés de quoi que ce soit invoquent eux-mêmes, dans un procès-verbal de douane, des textes qui les couvrent. Je crois que la démarche intellectuelle sera remarquée par votre haute juridiction et qu'elle comprendra d'autant mieux la valeur du procès-verbal de douane qui est produit.

Sur les textes qui sont invoqués dans les conclusions de la République de Guinée, j'ai noté tout d'abord que la République de Guinée invoque le fait que le navire se trouvait dans les eaux guinéennes. Mais, puisque vous avez lu ce texte, vous verrez qu'il n'y a aucun article, aucun argument juridique qui explique en quoi nous étions dans les eaux guinéennes. Si nous étions dans la zone économique guinéenne, si nous sommes passés dans la zone économique guinéenne, c'est un fait. Mais est-ce que c'est être dans les eaux guinéennes que de passer dans la zone économique exclusive guinéenne ?

Alors, évidemment, quand on reste imprécis comme cela dans ses conclusions cela permet de faire des glissements et des raccourcis assez extraordinaires dans les raisonnements juridiques et de dire : « mais nous avons une extension de notre souveraineté territoriale ». Alors on glisse comme cela de la terre ferme à la mer territoriale, puis ensuite on glisse de la mer territoriale à la zone contiguë. D'ailleurs on n'en parle même pas. Apparemment cela n'existe même pas. Et puis, il y a ensuite la zone économique exclusive qui fait partie de la République de Guinée. « Ce sont nos eaux »; vous verrez quelquefois dans le procès-verbal, ils ne disent même pas guinéennes, c'est tellement naturel, ils disent : « ce sont nos eaux, c'est à nous ». Alors, c'est vrai que les conventions internationales, celle que vous êtes chargés aujourd'hui d'appliquer, quand même distinguent un

certain nombre de choses qu'il serait temps que tous les Etats du monde commencent à comprendre et qu'ils cessent d'adopter des textes comme ceux qu'on peut voir dans le code guinéen qui n'est même pas invoqué d'ailleurs dans les conclusions de la Guinée. C'est assez remarquable. Ils ne l'invoquent pas, mais il est quand même vrai que dans le code guinéen des douanes on explique que le rayon douanier s'étend à 250 kilomètres au-delà des côtes, le rayon douanier maritime. C'est assez extraordinaire quand on sait que la Guinée a participé à l'élaboration de cette Convention, qu'elle l'a signée, qu'elle l'a adoptée. C'est extraordinaire de voir cela. Bon, grâce à Dieu, ils n'ont pas invoqué ce texte dans leurs conclusions. Mais enfin je voulais faire remarquer qu'il n'est absolument aucun argument juridique qui explique, même de fait, qui pourraient expliquer à la Cour ce qu'ils entendaient par « nos eaux » ou « les eaux guinéennes ».

Ensuite, ils disent dans leurs conclusions que l'Etat guinéen était fondé à confisquer les biens saisis car il est vrai que la marchandise est d'ores et déjà sur les quais. Le bateau est arrivé. Ils ont refusé de procéder à la rédaction du procès-verbal parce que, disent-ils dans le procès-verbal, ils suspendaient la rédaction du procès-verbal au dépotage du navire. Il y a donc pour 1 million de dollars de cargaison qui se trouvent dans les cuves du port de Guinée et les informations que nous avons eues, nous savons que les agents des douanes ont donné ordre aux pétroliers locaux d'acheter ce pétrole. Et c'est pour cela que dans ces conclusions nous disons que d'ores et déjà l'Etat guinéen est fondé à confisquer les biens. Or, c'est contraire à l'article 291 du code des douanes et c'est d'ailleurs contraire à tout ce que nous savons. Comment peut-on nous condamner ? Comment peut-on prendre nos biens, alors même que nous n'avons pas été condamnés, même en Guinée ? Mais ils l'écrivent quand même dans leurs conclusions.

Enfin, ils invoquent dans leurs conclusions un droit de poursuite et ils invoquent expressément l'article 111, alinéa 1, de la Convention. Seulement j'ai déjà dit ce qu'il fallait en penser tout à l'heure. Le droit de poursuite dans l'article 111, alinéa 1, est détaillé; ses conditions sont absolument détaillées. Il y a le point de départ; il y a le point où il faut s'arrêter et il y a surtout la manière dont le droit de poursuite doit être exercé. Vous ne trouverez aucune de ces conditions réunies dans les explications des officiers guinéens telles qu'ils les ont données dans le procès-verbal.

Alors sur notre demande, je ne vais pas m'étendre de manière excessive. D'abord parce que tout a été dit, je crois. Sur la compétence de la Cour je crois qu'il n'y a aucun problème. Sur la forme de la requête il n'y a aucun problème, mais cela n'a pas été soulevé par la partie adverse. Sur la qualité des parties, il n'y a également aucune contestation de la partie adverse. Sur les conditions de la recevabilité, nous n'avons noté aucune contestation de la partie adverse, puisque la demande serait recevable. Et mon confrère, Maître Howe, a pu dire toute la jurisprudence sur la recevabilité de notre demande dans un cas semblable.

Je me réserve éventuellement le droit d'apporter quelques réponses si on devait avoir des surprises qui ne sont pas écrites dans les conclusions de la partie guinéenne.

Enfin, la partie guinéenne nous dit : « L'équipage, dans sa grande partie, a été libéré ». C'est vrai que quelques matelots ont pu partir mais il est vrai qu'ils reconnaissent que le capitaine est retenu. Donc, par conséquent, si le navire est retenu, si sa cargaison est retenue, si les membres de l'équipage, même si c'est un seul, sont retenus, nous entrons dans le cadre de l'article 292 et la demande est donc recevable.

Sur la caution que nous demandons à la Cour de fixer, il me paraît évident – et je voudrais terminer là-dessus – que la Cour a un droit d'appréciation qui ne peut être soumis évidemment à aucun contrôle, mais je crois que dans l'appréciation que vous ferez du montant de la caution qui doit être payée par l'Etat que je représente aujourd'hui, vous tiendrez compte du fait que la marchandise déjà est débarquée.

Ou alors l'Etat de Guinée nous restitue et le navire et sa cargaison et vous tiendrez compte de la restitution de la cargaison pour le montant de la caution, ou alors l'Etat de Guinée a d'ores et déjà confisqué la cargaison et je pense que, dans ce cas-là, la caution ne pourrait être qu'extrêmement symbolique. Et même, – et même –, si la cargaison était restituée, que le navire était restitué, contre caution évidemment, je pense que la caution ne devrait être que symbolique car de toute évidence, je crois que sans procéder à un examen au fond de l'affaire, un examen superficiel nous montre que la Guinée nous reproche ce que l'on appelle un délit impossible : une contrebande à un endroit où elle n'a aucun pouvoir de police, – aucun pouvoir de police –, où on ne pouvait pas commettre une infraction à l'encontre de la République de Guinée. Donc, c'est un délit manifestement impossible.

Je pense que, en ce sens, cette appréciation, même sommaire, est fondée simplement sur les déclarations de la République de Guinée qui reconnaît que tout s'est passé dans la zone exclusive de la Guinée, sauf l'arraisonnement où ils reconnaissent que cela s'est passé en Sierra Leone, mais tout le reste, il n'est à aucun moment question d'acte qui serait commis dans la mer territoriale ou dans la zone contiguë. Par conséquent, je pense que, ne serait-ce que pour ce motif également, la caution doit être limitée.

Comme je ne parle pas très bien l'anglais, je n'ai peut-être pas tout suivi de ce que mon confrère Howe a pu dire car il restait un argument de la Guinée qui dit que nous n'avons pas offert de caution. Evidemment, nous répondrons sur ce point si c'est nécessaire lorsque nous exercerons notre droit de réponse mais il est évident que l'Etat de Guinée ne peut pas nous reprocher de ne pas avoir offert une caution alors que d'abord dans les faits nous nous sommes rendus à plusieurs reprises pour essayer de discuter avec les autorités et que cela a été en grande partie un échec, à l'exception de ce dont j'ai parlé tout à l'heure. Et puis, ensuite, ils n'ont pas fait les notifications qui sont indiquées dans les textes que nous invoquons à l'appui de notre requête. Alors il est quand même assez extraordinaire que la Guinée puisse nous dire : Nous, nous n'avons pas à respecter

l'article 73. Nous, nous considérons que nos eaux vont jusqu'à 250 kilomètres et puis vous, vous n'avez pas le droit d'invoquer ne serait-ce que le petit alinéa d'un article qui dit que Eh bien, nous avons quand même le droit si un navire battant pavillon de notre pays est saisi, de recevoir une notification. Même cela ! Eh bien, il semblerait que dans leurs conclusions, l'Etat guinéen veuille nous le contester. Je pense que la Cour sur ce point-là ramènera les choses dans l'ordre.

Je vous remercie de votre attention en espérant n'avoir pas abusé de votre temps.

The President:

Thank you very much, Mr. Thiam.

As I indicated at the beginning of the presentation by Guinea, we will now break for half an hour. When we return, the representative for Guinea will be given the opportunity to make submissions along the same lines and under the same conditions.

The meeting is now adjourned until that time.

The Tribunal adjourned from 5.50 p.m. to 6.10 p.m.

The President:

The Tribunal is now in session. I will invite the Agent of Guinea to make his submission.

Argument of Guinea

STATEMENT OF MR. VON BREVERN AGENT OF GUINEA

Mr. von Brevern:

Mr. President, Members of the Tribunal, I am happy to be presenting before you the first case ever of this Tribunal.

I will not be the only person to talk from this side. I have a great number of colleagues in my delegation. I will ask my colleagues to present the points they have dealt with.

I would like just to make two preliminary points which may not be too important but we at least mention them. The first one refers to the authorization of my esteemed colleague from Stephenson Harwood. I refer to article 110 of the Rules of the Tribunal.

In our understanding, only the person who has the authorization to authorize someone could have authorized Stephenson Harwood; the Attorney General of Saint Vincent and the Grenadines has authorized the Commissioner for Maritime Affairs of Saint Vincent and the Grenadines to apply to the Tribunal. Therefore we thought that it should be a direct authorization from the Attorney General to Stephenson Harwood.

The second preliminary remark refers to the question: who is the owner of the M/V *Saiga*? I think we all have a right to know this. In my colleague's paper it is said that the owner is a company named Tabona Shipping Company Limited. I have gone into Lloyd's Maritime Information Services. There it states that the owner of M/V *Saiga* is SeaScot Ship Management Company and in Lloyd's Confidential there is no vessel mentioned under the ownership of Tabona. This was the second preliminary remark.

Now, as to the merits of the case: you all know what has happened. M/V *Saiga* has supplied gasoil to some fishing vessels under the Guinean flag in the waters of Guinea and there has been, according to the Guinean laws, a violation of these laws, and therefore the Government of Guinea has pursued the M/V *Saiga* and has taken it into the Port of Conakry. This was all in conformity with national Guinean law.

Now we come to the question of the applicability of article 292. Our opponents have explained why they think that they have a right to apply to you (referring to article 292 of the Convention). We are not of the opinion that this is correct. I am very sorry to say that in our opinion in the first case presented to you we have great doubts about your competence to decide the case.

There are two points that are of importance in this connection. The Applicant has, to our understanding, not alleged that the Government of Guinea has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security. It is our understanding that article 292 only applies, if for and on behalf

of the State Party whose vessel has been detained, or on behalf of the owner of the vessel, a reasonable bond or other financial security has been posted, or at least has been offered to the detaining State Party. No security or bond has been offered on behalf of *M/V Saiga*. That is the first point in connection with article 292.

Article 292 of the Convention, in our view, furthermore, is not applicable because the reference of our opponents to article 73 of the Convention, which the detaining State allegedly has not complied with, is not an allegation in conformity with article 292. Article 73, para. 2, in accordance with article 292, para. 1, orders the prompt release of an arrested vessel and its crew only upon the posting of reasonable bond or other security. None has been posted by or on behalf of *M/V Saiga*.

In my colleague's statement today I had the feeling that he has seen this problem and therefore he has referred to two other articles of the Convention: namely to articles 220 and 226. I will not develop at length on these articles but I think they really do not apply and, in particular, do not apply in connection with article 292. Both articles are in connection with pollution. We do not speak here, as you all know, about pollution. We speak about contraband, about smuggling.

Therefore, to conclude this first item of our submission, we think that our opponents do not have a right to call you as a Tribunal.

In case you do not follow us, we have to deal with the merits and we think that if you answer your competence in the affirmative, the first thing then in your decision would be that you determine that the allegation made by the Applicant is not well founded.

When arresting *M/V Saiga* outside Guinean waters – this is undisputed – the Government of Guinea made use of the right under article 111 of the Convention, namely the right of hot pursuit. The pursuit of *M/V Saiga* has been commenced when the *Saiga* was still within the territorial waters of the Republic of Guinea.

Now I would like to present to you Mr. Khalil Camara, who will explain to you and give evidence by referring to the annexes which are in your possession, explaining the exact position of *M/V Saiga* when in contact with Guinean fishing vessels.

EXPOSÉ DE M. I. K. CAMARA CONSEILLER DE LA GUINÉE

M. I. K. Camara :

Monsieur le Président, je voudrais tout simplement vous exposer la position dans laquelle le navire *Saiga* a été vu dans – je ne dirai même pas la zone économique exclusive – mais c’était dans la zone contiguë; parce qu’ici, au cours de l’intervention, il s’agit des espaces qui sont définis par la Convention à savoir les eaux intérieures, les eaux territoriales, la zone contiguë, au-delà c’est la zone économique exclusive, la haute mer.

Nous savons très bien que la juridiction internationale et les Nations Unies accordent à chaque Etat dans ces différentes bandes de l’espace maritime des droits différents. Plus vous venez de la haute mer vers la côte, les droits de la communauté internationale diminuent petit à petit jusqu’aux eaux territoriales où les droits de l’Etat sont les plus élevés.

La Guinée connaît très bien ses droits dans ces différentes bandes et il n’est pas dans ses intentions de violer la Convention des Nations Unies en la matière. Le navire *Saiga* a traversé la ligne frontalière, notre frontière nord, c’est-à-dire avec la République de Guinée Bissau, le 27 octobre 1997 à 1 heure 20, heure légale en Guinée, c’est-à-dire heure GMT. Le même jour, à la position de latitude 10°25’03 Nord et longitude 15°42’06 Ouest, le *Saiga* a vendu du carburant, du fioul à trois bateaux de pêche dénommés *Giuseppe Primo*, *Kriti* et *Eleni G*.

Le commandant du bateau lors de son interrogatoire a fait état que ces bateaux battaient pavillon guinéen. En fait, ils ne battent pas pavillon guinéen. Le premier bateau est un bateau grec, le deuxième est un bateau italien et *Giuseppe Primo* aussi est un bateau italien aligné dans le cadre de la coopération entre la CEE et la République de Guinée dans le secteur de la pêche. Nous bénéficions d’une assistance de la CEE et annuellement la CEE aligne certains bateaux dans le cadre de l’application de cette coopération.

Ces bateaux, je dis bien, ne battent pas pavillon guinéen. Ils sont ce que nous appelons « guinéisés ». Ils sont ce que nous appelons des bateaux qui bénéficient de privilèges parce qu’ils sont là, en Guinée, dans le cadre de rapports bilatéraux ou bien multilatéraux avec la République de Guinée.

La poursuite a été amorcée lorsque le bateau était au voisinage de la première bouée du port de la cité minière de Kamsar à moins de 24 milles, c’est-à-dire dans les limites de la zone contiguë de l’île d’Alcatraz. On a pris soin de vous communiquer la carte de la zone. Je ne sais pas si chaque membre du jury en dispose mais je ne suis pas ici pour vous apprendre comment cela se fait. Vous apprécierez vous-mêmes.

Initiée, la poursuite n’a pas été interrompue. Elle a été poursuivie de cette position quand le bateau s’y trouvait jusqu’à la limite des eaux territoriales et de la frontière de la République de Sierra Leone.

La partie adverse a donné des coordonnées ici. Nous avons été plus honnêtes parce qu’ils ont dit 9° et quelque et nous avons reconnu que nous avons arraisonné

le bateau à 8°58', c'est-à-dire dans une position qui est censée être celle de la Sierra Leone. C'est l'argument principal ou plutôt l'un des arguments principaux, à savoir que nous avons arraisonné en territoire léonien. Mais je m'en vais vous dire; imaginez-vous lorsque vous voyez un bateau en infraction dans les conditions qui vous sont décrites dans le mémoire déposé par la République de Guinée, qui refuse d'obtempérer à toutes les sommations qui lui ont été faites, c'est-à-dire premièrement de communication. Nous nous sommes identifiés et il est très facile de nous identifier parce que nous battons le pavillon de l'Etat, nos navires sont marqués, ont un marquage de bord et nous avons communiqué sur le canal international, le canal CS en nous identifiant et en ordonnant au navire de stopper. Il ne l'a pas fait. Nous avons, par des signaux acoustiques, même les sonneries, les simples cloches à bord des bateaux ont été sonnées. Il n'a pas obtempéré. Par des signaux visuels, il n'a pas obtempéré. Il a traversé la frontière avec la République de Sierra Leone. Pourquoi ? Parce que, actuellement, historiquement, ce pays a quelques problèmes et on voudrait bien alléguer les frontières léoniennes, les eaux léoniennes pour justifier que nous ne devrions pas y aller mais qu'on lise très bien l'article 111. Je demande au plaignant de bien vouloir relire l'article 111 sur le droit de poursuite, les conditions du droit de poursuite. S'il l'avait relu cela certainement il ne serait pas là.

Ensuite, il y a un fait. Vous n'êtes pas sans savoir, parce que vous relevez de l'institution internationale, ce que je dis c'est un argument subsidiaire, ce n'est pas à cause de cela que nous l'avons arraisonné. Tout simplement parce que, sachant que la Sierra Leone est ce qu'elle est aujourd'hui, ils ont cru aller là-bas. Il y a une résolution en date du 7 octobre 1997 des Nations Unies qui fonde certaines obligations des Etats voisins de la Sierra Leone à entreprendre certaines actions et contre des unités qui sont susceptibles de violer l'embargo institué par l'Organisation des Nations Unies. Or, ce bateau qui avait ravitaillé trois premiers dans nos eaux, qui avait rendez-vous avec sept autres dans nos eaux mais qui, sachant qu'il est identifié et qu'il est l'objet de poursuite, se cache en Sierra Leone, ne peut pas alléguer les eaux léoniennes pour faire stopper la poursuite.

J'ai entendu dire beaucoup de choses ici auxquelles je ne voudrais pas répondre mais je voudrais demander à la Cour de bien vouloir consulter certains documents du bateau *Saiga*. Ce ne sont pas des références issues du journal de navigation des vedettes de la Guinée. C'est le journal de navigation du *Saiga*, il y a la carte de navigation, vous y trouverez le tracé de route. Vous y trouverez aussi certains messages traduits ici où on leur demande de se tenir à 100 milles marins minimum des côtes guinéennes parce qu'il s'y organise une chasse contre le coulage pétrolier.

Pourquoi ils n'ont pas dit une chasse contre l'exploitation illégale des ressources halieutiques ? Parce que le coulage pétrolier est précisément leur activité dans notre zone. C'est un sabotage économique qui ne sera toléré au nom d'aucune référence.

Voilà ce que j'avais à dire. Vous avez aussi le carnet où il est récapitulé tous les messages reçus concernant l'approvisionnement des bateaux dans nos zones, vous saurez bien quelle activité est celle du *Saiga*.

Je voudrais finalement rappeler ceci : un mille marin c'est 1,852 kilomètres et que 200 milles marins, c'est-à-dire la largeur de la zone économique exclusive qui est reconnue par la Convention à chaque Etat, est nettement supérieure à 250 kilomètres qui semblent scandaliser l'avocat, c'est 300 et quelques kilomètres.

Je vous remercie Monsieur le Président.

INTERVENTION BY MR. HOWE
AGENT OF SAINT VINCENT AND THE GRENADINES

Mr. Howe:

Mr. President, I have to interrupt, but are we to understand that members of the Guinean delegation will be adding factual evidence in the course of their submissions and if so, can we have the opportunity to cross-examine them on that factual evidence?

The President:

Yes, you will have the opportunity in your response to comment on anything that has been said. It would perhaps have been better if reference to the information given had been in the written pleadings; and I would suggest that any documentary evidence they have on the matter should be made available to you.

Mr. Howe:

We will have the opportunity to question these gentlemen on the issues they were discussing.

The President:

Do you mean the representative of Guinea?

Mr. Howe:

I believe it would be helpful to question the gentleman who has just spoken on the factual matters he has raised, yes.

The President:

But he is not a witness.

Mr. Howe:

I appreciate that, Mr. President, but he has given factual evidence as to what the vessel was doing.

The President:

That is part of the submission of Guinea. So you can obviously comment on it in your response.

Mr. Howe:

I have a right. Thank you.

Mr. von Brevern:

Mr. President, I think that all the documents Mr. Khalil Camara referred to have been presented to you in the annexes otherwise we would hand over another document to you.

May I now come to the question of why is it forbidden under Guinean law to refuel fishing boats with gasoil offshore? This will be explained to you by Maître Alpha Oumar Barry.

EXPOSÉ DE M. BARRY CONSEIL DE LA GUINÉE

M. Barry :

Monsieur le Président, tout d'abord, je voudrais m'excuser de n'avoir pas porté ma robe. Je suis avocat assermenté inscrit au barreau de Guinée. Je suis arrivé aujourd'hui. Ma valise n'est pas arrivée. Donc, je présente des excuses à Monsieur le Président et à tous les juges. Je porte mon badge. Permettez-moi de parler en tant qu'avocat.

Ceci dit, Monsieur le Président, je voudrais vous parler de la législation guinéenne en matière de pêche, de fraude, d'importation, de l'achat de carburant en République de Guinée.

Ce texte a été longuement commenté par mon confrère de l'autre bord tout à l'heure. On a appelé ce texte un décret. D'abord, je voudrais profiter de cela pour lever la confusion tout de suite : il ne s'agit pas d'un décret, il s'agit d'une loi. C'est écrit bel et bien. Cela figure dans le dossier. Le Président a reçu le dossier. L'avocat adverse a reçu le dossier. Il s'agit d'une loi, la loi 94/007/CTRN du 15 mars 1994 réprimant la fraude sur l'importation, l'achat et la vente du carburant en Guinée, et non d'un décret. Nous ne faisons pas la confusion entre un décret qui est un acte administratif et une loi qui est votée par l'Assemblée nationale.

Ceci dit, Monsieur le Président, la législation guinéenne est très précise en matière de protection de ses droits sur la mer, les eaux sur lesquelles il doit exercer ses droits. L'article premier du texte que vous avez est suffisamment éloquent. L'article 2 également. L'article 4 également. L'article 6 également. L'article 8 également. Je ne vais pas vous imposer ici de vous lire tous ces textes puisqu'ils figurent dans le dossier. Cependant, je voudrais profiter pour apporter quelques précisions sur, par exemple, l'article 2.

L'article 2 parle de navires de pêche qui sont servis au port, à terre. Autrement dit, notre législation interdit aux navires de pêche de prendre du carburant en mer et les oblige à prendre le carburant sur le sol et cela pour des raisons bien évidentes, parce que notre pays a constaté que chaque fois qu'il y a des bateaux de contrebandiers un peu comme le *Saiga* qui vend du carburant aux chalutiers dans l'eau, l'Etat perd toute la recette correspondant à ce carburant parce que nous perdons la fiscalité relative au carburant qui a été frauduleusement vendu à d'autres. D'autres membres de la délégation vous développeront cet aspect de la question.

A l'heure où les institutions internationales, le Fonds monétaire et la Banque mondiale, exigent de tous les pays en développement d'accroître leurs ressources en fonds propres, faire de telles pratiques correspond à un crime.

S'agissant de l'article 6, Monsieur le Président, il est également dit que quiconque aura importé frauduleusement, vendu du carburant dans les eaux sans payer les taxes, également fait perdre à notre Etat des revenus substantiels. Or, s'agissant du *Saiga*, il est établi que, sur les eaux territoriales, sur les eaux

guinéennes, il a vendu du carburant à des navires, à trois chalutiers. Cela résulte des documents du navire même, du journal de navigation et du carnet de bord. Et puisqu'il paraît que dans le carnet de bord il est interdit – les spécialistes sont là – on ne peut rien gommer, on ne peut rien effacer, les écritures doivent rester intactes, l'original de ce document est sur notre table, vous pouvez consulter l'original lui-même, inscrit de la main du capitaine du navire. Cela est incontestable.

S'agissant du décret 336/PRG/80 auquel mes confrères ont fait allusion, en parlant de l'article 5. Il est dit à l'alinéa 2 du même article que dans les 24 heures qui suivent le débarquement ils doivent remettre aux fonctionnaires chargés de la marine marchande et au gouverneur de la région administrative considérée leurs rapports, procès-verbaux et toutes pièces constatant l'infraction. Ce texte concerne essentiellement la pêche.

Or, dans le cas que nous sommes en train d'examiner actuellement, il s'agit de la vente du carburant à des bateaux sur nos eaux et non de la pêche. Donc, le procès-verbal en pareille circonstance chez nous est adressé à Monsieur le Procureur de la République. Cela a été fait parce que c'est Monsieur le Procureur de la République qui est chargé de réprimer les délits.

Or, ici, il s'agit bien de délit parce que si vous relisez les articles 3, 2, 4, 6 et 8 de la loi que je viens de vous citer, vous saurez bien que cela est du ressort de Monsieur le Procureur de la République. C'est dire, en d'autres termes, que l'on ne peut pas nous reprocher de n'avoir pas envoyé ce procès-verbal au Gouverneur comme il est dit dans ce texte en ce qui concerne la pêche mais bien à Monsieur le Procureur de la République.

Je dois ajouter à cela, Monsieur le Président, que la République de Guinée en ce qui la concerne est fermement décidée à protéger ses droits dans ses eaux en vertu de textes légaux internes appuyés sur les textes internationaux.

Je vous remercie Monsieur le Président.

The President:

Thank you.

Mr. von Brevern:

Mr. Askia Camara will explain to you the situation of the Guinean customs economically and legally.

EXPOSÉ DE M. M. A. CAMARA CONSEILLER DE LA GUINÉE

M. M. A. Camara :

Je vous remercie, Monsieur le Président.

Après les membres de ma délégation, je voudrais seulement, Monsieur le Président, vous apporter certaines précisions sur les aspects douaniers de la question qui nous réunit ici.

On a parlé tout à l'heure de contrebande. J'ai entendu le demandeur dire que le navire *Saiga* n'avait pas du tout commis de contrebande, qu'il avait plutôt bel et bien acheté le produit pétrolier au Sénégal. Or, le procès-verbal de douane qui vous a été communiqué dans le dossier fait état de délit de contrebande. Je voudrais vous faire remarquer que la définition de la contrebande n'est pas nécessaire d'être rappelée ici. Je dirais simplement qu'il s'agit de se rapporter à l'article 317 du code des douanes qui dit ce que c'est qu'une contrebande. Ce n'est pas parce qu'on a acheté à l'étranger un produit de façon officielle qu'on ne peut pas commettre de contrebande dans le pays de consommation de ce produit. On a également parlé d'amende égale à quatre fois. Cela aussi, je voudrais vous faire remarquer que c'est absolument conforme aux dispositions de notre code des douanes, à l'article 316. Pourquoi avons-nous fait état de cette disposition ? C'est simplement dans le corps du procès-verbal. Il faut toujours rappeler les textes qui ont été transgressés, les textes qui prévoient les infractions, ainsi que les textes qui les répriment. C'est pour cette raison que dans le corps du procès-verbal, pour aider les magistrats, pour aider le Tribunal qui jugent les infractions douanières, nous mentionnons dans le corps de nos procès-verbaux les articles de notre code qui prévoient de réprimer les infractions que nous avons constatées à l'encontre des usagers de nos frontières.

On a parlé de caution dans le corps du procès-verbal des douanes. On dit que la douane n'a pas offert de mainlevée. Mais je voudrais faire remarquer que dans notre législation, l'administration des douanes n'est pas obligée d'offrir de mainlevée à la suite de toutes les saisies. Ce n'est que quand l'infraction porte sur des marchandises non prohibées ou non fortement taxées ou sur des infractions bénignes que l'administration des douanes peut accepter de transiger avec le contrevenant. En matière de règlement du contentieux douanier il y a deux voies : il y a la voie transactionnelle et la voie judiciaire. Mais si toutes les affaires de douane devaient passer devant les tribunaux, il est évident que les tribunaux n'auraient à faire qu'à juger des affaires douanières.

C'est pourquoi il est reconnu aux administrations fiscales comme la douane, le droit de transiger pour certaines infractions qui n'atteignent pas une certaine importance du point de vue des conséquences sur l'économie nationale.

C'est pourquoi en matière de produits pétroliers, sachant l'importance des prélèvements douaniers que nous faisons sur lesdits produits au profit de notre Trésor public, notre administration des douanes n'accepte pas d'une façon systématique de transiger avec les contrevenants. Donc, quand nous saisissons le

contrevenant, nous dressons un procès-verbal de saisie, nous saisissons les tribunaux et les confiscations sont prononcées au profit de notre administration. C'est ce qui m'amène à essayer de vous relater un peu l'importance de ces produits pétroliers dans notre économie. Je voudrais vous signaler que dans la structure des recettes douanières de la Guinée, 37% des recettes proviennent des perceptions douanières effectuées sur les produits pétroliers. C'est dire l'importance des produits pétroliers dans la structure de nos recettes douanières dans notre budget national, les recettes douanières représentent 53%. C'est la raison pour laquelle le Gouvernement et le Parlement ont pris des décisions, pour réglementer rigoureusement l'importation et la distribution de ce produit dans notre pays. Quand on sait que ces produits rapportent 37% de nos recettes, il est difficile de tolérer que le coulage ou les fraudes se perpétuent sur ces produits. C'est pourquoi, en application des textes que mes prédécesseurs vous ont signalés, nos brigades de surveillance vont en mer et même sur les frontières terrestres pour appréhender les contrebandiers. Chaque fois que nous le faisons, nous constatons que les recettes douanières augmentent. Car la consommation des carburants par les circuits légaux augmente.

A titre d'exemple, depuis que nous avons commencé à sévir contre les contrebandiers de produits pétroliers, nous avons constaté que les consommations des bateaux de pêche se sont accrues. Ils ont beaucoup plus acheté à quai.

Ainsi, en octobre 1997, les bateaux de pêche avaient consommé 1 083 935 litres contre 1 234 495 litres pour les 22 premiers jours du mois de novembre 1997, soit 14% d'augmentation. Donc, vous voyez que dès que nous commençons à sévir, à appréhender les bateaux de contrebande, les fraudeurs non-arraisonnés s'éloignent. Automatiquement nos recettes douanières augmentent.

Je voudrais vous faire remarquer qu'en Guinée les produits pétroliers s'importent sous le régime douanier suspensif, les entrepôts spéciaux, c'est-à-dire que l'on importe sans payer automatiquement les droits et taxes. C'est au fur et à mesure que le carburant est vendu que les droits et taxes sont calculés et perçus par dizaine de jours ou décade. Du fait que nous avons réussi, dans une certaine mesure, à maîtriser le coulage des produits pétroliers, c'est-à-dire la fraude sur les produits pétroliers, nous avons constaté une certaine augmentation de nos recettes.

Par exemple, durant les mois d'août et septembre 97, alors que, par décade, les perceptions atteignaient à peine les 2 milliards de FG, elles atteignent actuellement les 3 milliards FG. C'est pour cette raison que l'autorité a décidé de ne pas souvent transiger avec les fraudeurs de produits pétroliers. L'importance de ces produits dans notre économie nationale est très grande. La diminution de la fraude sur les produits pétroliers fait augmenter les achats de carburant selon les circuits légaux. Par exemple, il a été vendu dans les stations services durant les 31 jours du mois d'octobre près de 5 529 537,26 litres contre 4 925 000 litres pour les 22 jours seulement du mois de novembre 1997.

Nous sommes certain que du fait de l'arrestation à Conakry depuis fin octobre du navire *Saiga*, un des plus grands contrebandiers dans nos eaux, les ventes taxables de carburants pour novembre et décembre 1997 seront considérables.

Voilà, M. le Président, Messieurs les juges, l'importance de la taxation concrète des produits pétroliers dans le système économique guinéen.

S'agissant du délit de contrebande commis par *Saiga*, nous estimons qu'il doit être jugé par notre tribunal à Conakry. Je vous remercie.

The President:

Thank you.

STATEMENT OF MR. VON BREVERN
AGENT OF GUINEA

Mr. von Brevern:

Mr. President, Members of the Tribunal, this was the presentation of the Guinean Government. It was not necessary for us to have two hours. What we have presented to you was in addition to what has been presented in written form. We think that it was convincing or at least it gives you the possibility to take a decision.

There is no question that the Government of Guinea are sorry about the injuries of the crew members but M/V *Saiga* has violated the national laws of Guinea, and Guinea is a sovereign country and has to defend itself against contraband. It has made use of the right of hot pursuit.

I repeat what I have said in the beginning: we question whether the Tribunal is competent and we would like you at least to reject the Application as unfounded.

Thank you very much.

The President:

Thank you, Mr. von Brevern. That, as you said, concludes the presentation of Guinea. That was the purpose of the resumed oral proceedings.

I would like, first of all, before we adjourn, to thank sincerely on behalf of the Tribunal the two Agents and their collaborators for having acceded to the request of the Tribunal to confine their presentation to within the two and a half hours agreed: none of them exceeded it. And secondly, I have been impressed, as I am sure all the judges have been, by the fact that the presentations have been very professional and have addressed the main issues which have been raised either in the Application or in the Response. I am pleased that we have not, if I may use the expression in this case, "gone fishing" far afield.

We are going to adjourn today in accordance with the decision of the Tribunal taken in consultation with the parties. Another session will be held tomorrow. The representatives will have the opportunity to address the Tribunal in response to the submissions made today by the Applicant and by the Respondent.

The oral hearing for tomorrow will commence in this room at two thirty in the afternoon. I would like to be able to meet the Agents of the parties tomorrow at twelve o'clock in the offices of the Tribunal at Wexstrasse.

May I now declare the oral proceedings adjourned until tomorrow, Friday 28 November at 2:30 p.m.

The Tribunal rose at 7.00 p.m.

Public sitting held on 28 November 1997 **Audience publique du 28 novembre 1997**

Introduction

The Registrar:

The Tribunal will now continue its hearings in the *M/V "Saiga" Case*, case no. 1 in the List of cases, Saint Vincent and the Grenadines, Applicant, and the Republic of Guinea, Respondent. The Tribunal first met to hear the case on 21 November 1997. By order of the same date proceedings were postponed at the request of Guinea. Yesterday the Tribunal heard the first round of oral arguments by Saint Vincent and the Grenadines and the Republic of Guinea. Today both parties will present their second round of oral arguments.

The President:

I now call upon the distinguished Agent of Saint Vincent and the Grenadines, Mr. Nicholas Howe, to address the Tribunal.

Reply of Saint Vincent and the Grenadines

STATEMENT OF MR. HOWE AGENT OF SAINT VINCENT AND THE GRENADINES

Mr. Howe:

Thank you, Mr. President. I propose to make my submissions very brief this afternoon and I will then defer upon my learned colleague, Mr. Thiam, to conclude the submissions on behalf of Saint Vincent and the Grenadines.

The first small matters I wish to address are the submissions made on behalf of Guinea at the opening of their presentation yesterday concerning the authorization of Stephenson Harwood to act on behalf of the Government of Saint Vincent and the Grenadines and pursuant to article 110 of the Rules.

In our submission there is simply no ground for question that Stephenson Harwood are fully authorized to act. The internal arrangements with the Government of Saint Vincent and the Grenadines would require the Attorney General to give the order for proceedings to be taken in their name, but it would be normal to expect that he would defer to somebody like the Commissioner for Maritime Affairs, who deals with shipping matters, in relation to the overseeing of those proceedings. That is what has happened here and due notice of all relevant factors have been given in the memorial and supporting documents.

In this regard I would also mention the meeting that I touched upon briefly during the course of my submissions yesterday, between representatives of Saint Vincent and the Grenadines and Guinea which took place on 4 November. At that meeting it was discussed over a lunch between Miss Dabinovic, whose father is the Commissioner for Maritime Affairs of Saint Vincent and the Grenadines, who was lunching with a gentleman whose name I believe is Mr. Monsch, the Honorary Consul of Guinea in Switzerland.

The second preliminary point to address that was raised by Guinea yesterday concerns the ownership of the vessel, M/V *Saiga*. From the information that we have it is very clear that the owners, Tabona Shipping Company Limited, are indeed the owners. We have been able to obtain this morning a provisional certificate of registration from Saint Vincent and the Grenadines, which unfortunately, although dated 14 April 1997, is dated to expire on 12 September 1997. Efforts are being made to obtain the no longer provisional but full certificate of registration on behalf of the owners. We hope that we will be able to get this to the Tribunal at the latest during the adjournment.

During the course of a meeting with the honourable President earlier today we received informal notes concerning matters on which we understand the Tribunal would like further information concerning our submissions of yesterday. At this stage I have to apologize very profusely to the Tribunal. We have a full navigational map which we shall put on the screen behind. We have also arranged for over twenty copies of the map, which is in some detail, to be given to each of

the judges in order that they could follow the tracking of the *Saiga* and the gunboat from Guinea.

In view of the way in which my colleague is wishing to make his submissions I feel I have to answer some of the questions raised by the President today before he can make his submissions, but I propose to do that very briefly, simply by reference to this document and then provide the full copy to everybody later on, as soon as it is with the Tribunal. I appreciate this is by no means satisfactory. I think possibly it is best if I just answer specific questions and then amplify this by relation to the documents later on.

The *Saiga* first entered Guinean waters approximately 85 miles from the coast of Guinea at a point at the northern area of the exclusive economic zone as declared by Guinea, the area of the exclusive economic zone being marked on the map: the entry of the *Saiga* here. At that stage the vessel was approximately sixty-six miles from the coast of Alcatraz Island. Alcatraz Island is understood to be a rock. We are not aware of any habitation or anything living on that island.

The location of the bunkering of the fishing vessels was closer to the coast of Guinea, approximately forty-eight miles from the nearest point of Guinea, approximately twenty-four miles from the island of Alcatraz, and very clearly more than twelve miles from any relevant location in Guinea.

The *Saiga* then continued with her voyage. We have now, as a result of Guinea having provided copies of the vessel's logs yesterday, been able to obtain more precise details of her movements, and these are included in the map. The vessel proceeded down the coast of Guinea, approximately one hundred miles off the coast in a south easterly direction until the point where she was attacked in the exclusive economic zone of Sierra Leone.

Equally, from the submissions of Guinea, we have been able to see that the location in which they allege they first heard news of the *Saiga* was at a point approximately sixteen miles from the coast of Conakry, at that stage in excess of one hundred miles from the position where the *Saiga* had bunkered the fishing vessels.

It is then said that the Guinean gunboat in hot pursuit pursued the *Saiga*. The Tribunal will be able to see more clearly when the documents are before it that the *Saiga* was coming in a very westerly direction. I understand the meeting point in Sierra Leone's exclusive economic zone is a frequent meeting point for bunkering vessels, so it is submitted that the Guinean patrol boats would know that that was the probable destination of the *Saiga*. At the same time the *Saiga* followed her path down and the two vessels met at this point some way approximately fifty or sixty miles, I believe, from the coast of Guinea. I apologize again, but this will be made much more clear when the maps are before the Tribunal.

We have been asked to make submissions of our understanding concerning Guinean waters. Our understanding in accordance with the Convention is that strictly speaking Guinea can exercise its territorial sovereignty within its territorial sea of twelve miles. The map does actually show a rough line of the approximate twelve-mile zone. It is not definite but it gives a good indication of the position of the gunboat itself being outside the territorial sea, all the activities

of the *Saiga* being well outside the territorial sea. We understand that nothing in relation to this matter took place within the area of the territorial sea.

The Guineans have also made reference, particularly with regard to the Island of Alcatraz, to a contiguous zone. My understanding of the contiguous zone is that in circumstances as here, where the Government of Guinea have exercised their right to allege an exclusive economic zone, that they have no greater rights in the contiguous zone than they have in the remainder of the exclusive economic zone. We are therefore of the view and submit that the contiguous zone is of no application in this particular matter.

It is clear that the fundamental difference between the parties in relation to this matter is in relation to the exclusive economic zone of Guinea. We submit, in accordance with the articles of the Convention, that this is in no way Guinean waters. The Guineans have no general rights to exercise sovereignty within that area. The sovereign laws they have are not applicable within that area. They have limited rights to exercise sovereignty in relation to specific matters outlined in the Convention, but that is all. We have submitted that article 40 of Guinean legislation, the Maritime Code, is of potential relevance here because the Guineans have exercised their right to claim an exclusive economic zone; that the activities of the *Saiga* come within the scope of article 40 and thereby come within article 73 of the Convention and thus within article 292. But beyond that we submit that the Guinean legislation upon which they rely in relation to the detention of the *Saiga* has absolutely no bearing in the exclusive economic zone of Guinea and as such we would not accept, and we would argue to the contrary, that the exclusive economic zone of Guinea cannot rightly be called Guinean waters.

Before leaving the map, I would finally make the submission that in circumstances where a vessel somehow hears news of another vessel being over a hundred miles away at a point in the exclusive economic zone and that vessel moves towards the vessel and moves towards the point where it hopes the vessel will be at some stage in the future, it cannot conceivably come within the provisions giving the State the right of hot pursuit pursuant to article 111 of the Convention. It is equally disputed that the pursuit, being so called, could have commenced, any signal could have been given to the *Saiga* who was proceeding in a perfectly innocent fashion, as evidenced by the fact that she had stopped her engines and was drifting, waiting for fishing vessels, the second officer having given evidence that nobody was aware that the patrol boats were looking for them. The provisions of article 111 are simply inapplicable.

In this regard it remains slightly unclear to us – but we do understand that certain members of the Guinean delegation were on board the patrol boats that came to meet the *Saiga* – it remains unclear whether any of the gentlemen who made submissions yesterday were on board the *Saiga*. If so, we would like – and we have asked for – the opportunity to cross-examine that gentleman on factual matters. If not, we would merely make the point that the Guineans have chosen not to produce any factual witnesses concerning what actually happened on the

patrol boat on the approach to the *Saiga*, and invite the Tribunal to draw its own conclusions.

The President has also asked for further information concerning discussions between representatives of the *Saiga* and the Guinean authorities in Dakar and in Geneva. I have already made reference to the representations between the representatives of the Government of Saint Vincent and the Grenadines and the Guinean Honorary Consul in Switzerland. I will leave Mr. Thiam to elaborate on any further discussions between owners and Agents of the *Saiga* in Dakar and in Geneva.

The President has asked for submissions in relation to the appropriate bond offered by the Applicant or demanded by the Respondent. As I understand the situation, and again I believe this will be developed by Mr. Thiam, the position of the bond or appropriate payment was discussed in Conakry during the meetings which took place there. However, as Mr. Vervaeet has already explained in his evidence, there was a problem in relation to these questions. He said, and I quote from page 15 of the transcript:

“... Nor did we get any information about any offence we might have committed. The only information we got was simply that we were smugglers. We tried to get in touch with the Customs and other Ministries, without success. In the end we had to leave. We talked with many people down there who had had similar experiences, and they said essentially this was a personal matter.”

When pressed on the meaning of “personal matter” Mr. Vervaeet said that individuals were asking for payment, and, as we understand the situation, the individuals were asking for payment before they would give information as to what offence was supposed to have been committed, and at that stage presumably a second payment would be asked for in order to release the cargo or the vessel.

Consequently we have not been in a position at any stage to offer a bond. It is still quite unclear what crime, if any, we are alleged to have committed, and no suggestion of posting of a bond I understand has been raised by the Guinean side.

We would respectfully submit that in the circumstances of this case, where the *Saiga* has done absolutely nothing wrong, she has proceeded in a perfectly lawful manner under the flag of Saint Vincent and the Grenadines, rights under the Convention in which she was entitled to proceed in such manner, those rights having been infringed by Guinea in the exclusive economic zone of another country, the vessel having been taken at gunpoint into Conakry, the Master having been forced to discharge the cargo at a loss of \$1 million, the daily detention costs of the vessel this size being held in Conakry – and I have not done a calculation but at a conservative demurrage rate of something of the order of \$10,000 per day we must be talking several hundred thousand dollars’ demurrage losses already – in these circumstances the appropriate course, we believe, would be for the Tribunal not to seek that any financial bond be posted or, if the Tribunal were minded to order that a bond be posted, that that bond should be posted to the

Tribunal pending further investigations and clarification of what offences are said to have been committed such that there is an opportunity to question that again before any financial sums are actually paid into the State of Guinea.

In this regard, the question of the state of the ABS's cargo is to me slightly unclear. The provisions of article 292 of the Convention talk specifically about prompt release of vessels and crews, they do not talk about cargoes. However, I would submit that the intention of the provisions of the Convention were to ensure fair dealings between States, that Guinea have wrongfully taken the cargo off the vessel, and that it would be within the jurisdiction of this honourable Tribunal to determine that it is appropriate that the cargo be returned to the vessel and forthwith be promptly released. Alternatively, if the Tribunal were of the opinion that that was not within its jurisdiction, I would very respectfully submit that the fact that the charterers are already out of pocket to the tune of the value of the cargo should be another factor which should weigh very, very heavily in the Tribunal's mind with regard to requiring any further sums to be posted by way of a bond.

My final comment: In the course of my submissions yesterday I referred to Judge Treves incorrectly, and I apologize to the honourable judge for giving an incorrect title and, I believe, pronunciation of his name.

I thank the Tribunal for listening to me, and I hand over to my colleague, Mr. Thiam.

EXPOSÉ DE M. THIAM CONSEIL DE SAINT-VINCENT-ET-LES-GRENADINES

M. Thiam :

Monsieur le Président, Honorables juges, je tâcherai aussi brièvement que possible, et je crois que de toute façon je serais bref, de répondre aux arguments qui ont été développés par la partie guinéenne de manière très brève aussi.

J'ai d'abord noté, comme vous l'avez fait sans doute, une contradiction assez importante entre les déclarations du premier intervenant pour la Guinée et du second intervenant pour la Guinée. Le premier a affirmé sans ambages, il s'agissait de l'agent de la Guinée, que les navires que nous avons ravitaillés en mer étaient des navires guinéens. Le second a reconnu qu'aucun de ces navires n'étaient guinéens. Cela n'a bien sûr aucune espèce d'importance pour l'arrêt que vous êtes appelés à rendre, mais c'est important de noter de quelle manière et comment du côté de la partie guinéenne on examine les questions qui ont des conséquences considérables pour les justiciables de ce pays, et même pour nous qui ne sommes pas de ce pays. Ensuite, la Guinée a invoqué un certain nombre de lois qui sont les siennes. Nous sommes ici pour nous préoccuper de l'ordre public international et non pas pour nous préoccuper de l'ordre public interne à la Guinée. J'ai été extrêmement surpris de voir que, dans pratiquement la totalité de l'argumentation de la partie guinéenne, on n'a cessé d'invoquer et de brandir des lois guinéennes que vous ne pouvez examiner ici que comme des éléments de fait. Ce qui nous préoccupe ce sont les lois internationales et c'est en vertu d'une loi internationale que nous sommes ici et que nous demandons la mainlevée de la saisie du navire. Cependant puisqu'ils ont parlé de leurs lois, je voudrais dire que la loi n° 94/007 parle d'un certain nombre de délits qui ne sont pas applicables. Je vois à peu près pratiquement tous les articles. Sauf si évidemment on voit l'article n° 2 : tout individu, dit cet article, qui aura vendu du carburant en dehors des stations services ou des dépositaires agréés sera puni d'un emprisonnement, etc. Voilà un texte extrêmement large et qui ferait que, même ici à Hambourg, si nous vendons du carburant, nous pourrions être, en passant au large de la Guinée, happés par les autorités guinéennes, qui nous diraient, mais enfin vous avez vendu du carburant à Hambourg. Alors, nous ne pouvons pas être responsables de la rédaction aussi large d'un texte. Enfin, à propos de ce texte, l'article 6 parle d'importations sur le territoire guinéen. Or, jusqu'à présent, on n'a à aucun moment invoqué le fait que nous ayons été dans le territoire guinéen. Tout juste a-t-on évoqué vers la fin – et ça c'était nouveau, je reviendrai la dessus tout à l'heure – que le navire est venu dans la zone contiguë. La zone contiguë, c'est vrai qu'il y a certains droits dans la zone contiguë qui sont reconnus à tous les Etats côtiers mais il n'est certainement pas un droit qui leur permette de considérer que la zone contiguë fait partie du territoire guinéen et d'ailleurs elle est exclue par l'article 1 du code des douanes guinéens.

La partie guinéenne a également dit qu'elle avait l'obligation de notifier le procès-verbal de douane au Procureur de la République, point à la ligne. Et pour

le dire, elle s'est fondée sur les dispositions de sa loi interne. C'est très bien. Je suis heureux de constater que l'on regarde de près en Guinée les textes qui existent et qu'on notifie un procès-verbal au Procureur de la République. Mais, enfin, est-ce que cela dispense la Guinée de respecter ses autres obligations telles qu'elles résultent de la Convention internationale ? C'est de cela dont on parle. Nous ne parlons pas de ce que les Guinéens sont tenus de faire en vertu de leurs lois internes. Nous parlons, nous, de la Convention internationale, et dans la Convention internationale il est écrit clairement qu'ils ont l'obligation de notifier à l'Etat du pavillon la saisie du navire, les délits pour lesquels le navire aurait été saisi, ainsi que les peines qui seraient encourues. C'est clair, c'est écrit dans la Convention. Alors, est-ce que parce que la loi guinéenne dit qu'il faut que le procès-verbal soit notifié au Procureur de la République cela veut dire que la partie guinéenne n'est pas tenue de respecter cette disposition de la Convention que nous avons évoquée. Manifestement non.

L'intervenant qui a parlé beaucoup du Code des douanes, nous a expliqué quel bien cela faisait pour la Guinée de poursuivre les contrebandiers. Même s'il ne l'avait pas dit, je crois que nous l'aurions su car c'est pour cela qu'un code des douanes est fait dans tous les pays. S'il ne nous avait pas dit que la saisie des navires contrebandiers permet de vendre plus de carburant en Guinée, il est évident que de toute façon nous l'aurions su. Et, de la même manière, lorsqu'il dit : nous allons garder le navire parce que plus nous le gardons longtemps, plus nous sommes sûrs que les ventes de carburant dans notre pays vont augmenter, il est certain qu'à partir du moment où ils ont notre cargaison – ils l'ont confisquée comme ils l'ont dit et ils ont commencé à la vendre – il est certain qu'ils vont avoir un profit extraordinaire encore. Alors, nous sommes persuadés, nous vous donnons raison, Monsieur, qu'effectivement, plus vous garderez notre navire, plus vous aurez notre cargaison, plus vous la vendrez et, effectivement, plus vous aurez de recettes. Cela me paraît évident.

J'ai noté surtout une certaine menace voilée, je suis désolé d'avoir à le dire, car on nous a dit, nous n'acceptons pas de transaction. Mais nous n'avons pas demandé de transaction. Est-ce que quelqu'un dans cette salle a entendu notre partie dire à un moment quelconque que nous avons demandé à la Guinée une transaction ? Nous avons parlé de caution, mais de transaction douanière il n'en a jamais été question. Nous ne demandons pas une transaction, et c'est bien parce que nous n'avons pas demandé une transaction que nous sommes là devant vous, à vous demander de prendre cette décision de relâcher le navire. Mais nous n'avons à aucun moment parlé de transaction. Par contre, j'ai senti cette menace voilée car on nous a dit de manière très claire que, de toute façon, le navire serait maintenu dans le port guinéen et confisqué quoi qu'il arrive, c'est-à-dire même si vous prenez aujourd'hui ou dans les jours à venir une décision conforme à notre requête. J'ai perçu cela, peut-être qu'on voudra bien me rectifier, j'en serais heureux, mais c'est comme cela que j'ai perçu cela, comme une sorte de menace voilée. Nous sommes un Etat souverain et nous ferons ce qu'il nous plaît de faire, quel que soit ce qui est écrit dans la Convention. J'espère que tout à l'heure je serai rectifié.

Enfin, on a beaucoup parlé de l'article 111 du côté guinéen, l'article 111 de la Convention et du droit de poursuite. Mon distingué confrère, M. Howe, vous a expliqué, carte à l'appui, quel a été le déplacement du navire. L'article 111, notamment dans son paragraphe 4, explique comment la poursuite peut commencer. Je suis placé dans une position extrêmement difficile. Hier, je n'ai pas voulu entrer dans un débat tout à fait juridique parce que je sais que vous êtes tous d'éminents professeurs et je ne me sens pas autorisé devant vous à donner quelques précisions de droit à la Guinée. Je pense que votre arrêt le fera. Cependant, force m'est aujourd'hui de dire que le droit de poursuite ne peut commencer que conformément aux dispositions de ce paragraphe 4 de l'article 111. Or, la Guinée, dans le procès-verbal de douane, à aucun moment, vous l'avez noté, n'a évoqué le fait que le navire ait été dans la zone contiguë. A aucun moment. Ça, c'est nouveau. C'est hier que nous l'avons appris. Mais à aucun moment on n'évoque le fait dans le procès-verbal que le navire ait été dans la zone contiguë. Bon. Ensuite, le procès-verbal explique que le navire de guerre de la marine guinéenne est parti du port de Conakry le 26 octobre 1997 à 16 h 25. Ce n'est qu'à 4 heures du matin – j'ai mentionné hier la rapidité de ces navires – qu'ils ont un contact radar, un simple contact radar. Ils ne disent pas après dans le procès-verbal à quel moment ils ont envoyé les prétendues sommations. Je dis bien prétendues sommations. Mais à supposer même qu'elles aient été faites, le navire avait déjà dépassé les eaux territoriales, les eaux contiguës. Evidemment, nous ne parlons pas de la mer intérieure, on l'a évoqué hier, ça c'était dépassé depuis bien longtemps. C'est à ce moment seulement que peut-être les sommations ont été faites. Alors, si l'on regarde les textes de manière assez précise, qu'on veuille faire cet effort simplement, on se rend compte qu'il n'est pas possible d'invoquer aujourd'hui un quelconque droit de poursuite qui pourrait justifier la saisie du navire dans les eaux de la zone économique exclusive de la Sierra Leone. Ce n'est pas possible. Il suffit simplement de lire ce procès-verbal. Alors, évidemment, on peut ajouter des choses maintenant sur ce procès-verbal. On peut ajouter que nous étions dans la zone contiguë. Cela serait tout à fait nouveau mais on peut le faire. Sûrement pas devant votre juridiction. On peut dire que les sommations ont été envoyées alors que le navire de guerre de la marine nationale guinéenne a envoyé des sommations à un navire qui ne l'avait pas encore vu et avec lequel il n'avait pas encore de contact radar. Il était encore dans le port de Conakry, nous étions déjà dans la zone de la Sierra Leone et il avait déjà envoyé les sommations, ce qui pouvait justifier son droit de poursuite. On peut dire ce qu'on veut. Mais votre juridiction, et c'est pour ça que nous sommes là, votre juridiction, je pense, expliquera aux deux parties ce qui est vraiment le droit.

Je voudrais invoquer, pour finir, puisque mon confrère Maître Howe m'a invité à le faire, les discussions que nous avons eues en Guinée à propos de la caution. En réalité, il y a eu plusieurs types de contacts en Guinée. Il y a les contacts dont parlait M. Vervaeet hier, qui sont des contacts non officiels, parce qu'on lui a expliqué, a-t-il dit lui-même, que c'est comme ça qu'il fallait faire. Nous n'avons pas voulu y donner suite parce que nous nous sentions forts de notre bon droit. Il y

a ensuite les contacts que j'ai eus personnellement avec Monsieur le Ministre de la justice de Guinée qui m'a reçu, je dois le dire, avec beaucoup de compréhension et qui a ordonné immédiatement la libération des matelots qui avaient été blessés. C'est avec lui et uniquement avec lui, que très très brièvement, nous avons évoqué la question du cautionnement. Lui et moi, mais très brièvement. Les discussions sur ce point ne pouvaient pas continuer pour plusieurs raisons évidentes. D'abord, c'est que jusqu'à ce moment-là nous n'avions pas reçu la notification du procès-verbal de douane. La notification du procès-verbal de douane a été faite non pas à l'Etat que je représente aujourd'hui mais au capitaine bien après le dépôt de notre requête devant votre juridiction. Comment peut-on discuter d'un cautionnement lorsqu'on ne sait même pas ce qu'on nous reproche. Ensuite, Monsieur le Ministre de la justice, Garde des sceaux de la Guinée, m'a expliqué la volonté des services de son pays de faire décharger la cargaison et il m'a dit, à l'époque : nous sommes obligés de le faire parce que nous craignons que l'équipage qui reste à bord du navire mette le feu à la cargaison. Je lui ai dit, Monsieur le Ministre, comment voulez-vous, alors que nous demandons la libération du navire et de sa cargaison, ça va sans dire, que nous mettions le feu à plus d'un million de dollars de marchandise, sans compter la valeur du navire lui-même ? Comment voulez vous que nous mettions le feu ? Non, il est à craindre que vous mettiez le feu à la cargaison, alors nous sommes obligés de la décharger. Maintenant que la cargaison est déchargée, et que l'équipage reste à bord du navire, toujours consigné à bord, personne ne pense que nous allons peut-être mettre le feu au navire. On ne justifie pas le fait que pour débarquer l'équipage et lui permettre d'aller à l'hôtel, on ne dit pas : « bon, c'est vrai après tout il vaudrait mieux qu'ils partent parce que ce navire nous l'avons confisqué, il est à nous et l'équipage risque d'y mettre le feu ». Non. C'était beaucoup plus intéressant pour la cargaison parce que la cargaison, il fallait la vendre tout de suite, elle est liquide. Il faut la vendre. Et donc, à partir du moment où ils ont manifesté cette intention de décharger le navire, pourquoi voulez-vous que nous parlions d'une caution avec eux ? Sur quelle base ? Nous avons compris en réalité qu'ils n'avaient pas besoin de caution, que ce qu'ils voulaient c'était prendre la cargaison, confisquer le navire et nous avons constaté que nous étions dans les conditions des dispositions de l'article 292, qu'il n'y avait pas d'accord sur le cautionnement, ce qui nous a permis de vous saisir.

Je voudrais maintenant conclure, parce que j'ai été trop long, en vous disant que cela a été pour moi un honneur de plaider, d'être parmi les premiers avocats à prendre la parole devant votre juridiction, pour la première affaire. Je suis ressortissant d'un pays d'Afrique noire, d'Afrique francophone de l'Ouest, et je peux vous parler des problèmes que nous vivons du point de vue de la sécurité judiciaire. La Guinée elle-même connaît un certain nombre de problèmes et j'ai été récemment dans une conférence internationale au Caire avec le représentant de la Guinée qui était, si je ne m'abuse, Monsieur le premier Président de la cour d'appel de Kankan, et qui a pris la parole sur un seul point dans cette conférence. Il demandait qu'on puisse assurer dans nos pays une plus grande sécurité judiciaire en permettant et en vérifiant, surtout cela, une certaine indépendance de

la magistrature. Ca, c'était le représentant de la Guinée qui le disait. Alors, il est certain que nous ne pouvons que saluer la création d'institutions comme la vôtre. Vous êtes notre bouée de sauvetage et nous espérons que d'autres institutions comme celle-ci nous permettront d'avoir des bouées de sauvetage de ce genre. Et nous pensons que vous ne pouvez pas interpréter, vous ne devriez pas, - vous pouvez tout évidemment, - mais vous ne devriez pas interpréter les règles de votre Tribunal, les règles de la Convention du droit de la mer, de manière restrictive, en limitant vos compétences. Aujourd'hui, ce que nous souhaitons, c'est que le navire soit libéré, que vous constatiez qu'on nous reproche un délit qui est manifestement impossible, que le navire soit libéré avec sa cargaison, son équipage et qu'enfin, à propos de la caution, on constate, comme je vous l'ai dit hier, soit si vous prenez une décision qui ne concerne pas la cargaison, eh bien, vous constaterez que ce que nous avons laissé en Guinée est d'une valeur qui est nettement supérieure à ce que nous avons pu livrer à des navires prétendument guinéens et que cela suffit. Mais en tout cas, cette caution ne peut être, comme je le disais hier encore une fois, qu'extrêmement symbolique. Je vous remercie.

The President:

Thank you. Mr. Howe, is that the end of your presentation?

Mr. Howe:

Yes, Mr. President. That concludes our presentation.

The President:

Thank you very much indeed. In accordance with the agreement reached with the Agents, the Tribunal will rise for an interval of half an hour, after which we shall have Guinea's submission.

The Tribunal adjourned at 3.21 p.m.

The President:

I now call upon the Agent of Guinea, Mr. von Brevern, to address the Tribunal.

Reply of Guinea

STATEMENT OF MR. VON BREVERN AGENT OF GUINEA

Mr. von Brevern:

Mr. President, Members of the Tribunal, you have a serious case before you and, in particular, it is serious for the Republic of Guinea. Smuggling contraband brings direct damage to the economy of Guinea. A country must have income. This is regulated in laws, and so in the Republic of Guinea. Now efforts start to avoid taxes. Here we have such a case.

There are licensees in Guinea for fishing. They charter fishing boats and these fishing boats are underlying and have to obey the laws of Guinea: that is, petroleum or gasoil can only be bought in Guinea and it is forbidden, under Guinean law, for it to be supplied offshore, thereby avoiding customs and taxes. This is a most serious problem for the Republic of Guinea. Guinea had to react and defend itself in the interests of its sovereignty and in the interests of its population. My colleague, in his submission yesterday, said that there might always be a problem between a coastal State and a flag State. Normally there is none: not such a problem, but if there are vessels that do not conform to the applicable laws, problems arise.

With the M/V *Saiga*, which is registered under the flag of Saint Vincent and the Grenadines, a so-called "FOC flag", it is not simple to know who is the owner of this vessel, who are the economic interests behind such a vessel. Saint Vincent and the Grenadines Government: does it show up here? No. But for the Republic of Guinea that is a serious problem and therefore you see here most prominent members in the delegation: the Minister of Justice himself. He has come to defend the case and he personally will later on present the conclusion in our submission.

We had very limited time to prepare ourselves. I did not have time to read or to go through the whole submission of my colleague which we heard yesterday evening, but I do not complain about that. I would only like to explain why there might have been one point at which my colleague, Mr. Thiam, said that this was not clear and correct. It is correct that I said in my submission yesterday that the fishing boats were under the flag of Guinea. In fact, they have not been, but why did I say so? Because the Russian Captain of M/V *Saiga* in the procès-verbal, which is before you, on page four referred to these three vessels which he supplied and then he said, himself: "Battant tout pavillon guinéen." Sorry for this incorrectness but the time problem caused this.

But the fact that these vessels were not under the flag of the Republic of Guinea did not make any difference. Also these fishing boats trading in the economic zone and in the territorial waters of the Republic of Guinea were under the internal and national laws of the Republic of the Guinea.

I will present some facts of the case and then explain the legal situation as we see it, then Mr. Alpha Oumar Barry will continue with some points that you have

mentioned, Mr. President, in your paper that you handed over today. And finally the Minister of Justice will present the conclusion. I am sorry, there was a misunderstanding. The conclusions will also be presented, not by the Minister of Justice, but by Mr. Alpha Oumar Barry.

First of all, with regard to the facts, I would like to refer to the procès-verbal which is before you, and in which the Russian Captain of M/V *Saiga* has reported and explained the whole story. There he gave very clear positions and we have also the log book in which the positions of the vessel are mentioned. Please understand that I now will not repeat these positions. I refer to these two annexes.

We all know that M/V *Saiga* supplied these fishing boats and had the intention to supply more. The captain, in his procès-verbal, explained that this was the task of M/V *Saiga*, to have gasoil, a lot of gasoil on board, and in the West African waters to see other vessels and refuel them. Where was the location where the M/V *Saiga* supplied the three fishing boats? I think this is undisputed. We have a map received from our opponents and more or less seem to be the position number five correct, that there the fishing vessels have been supplied. I will come back to that later but I will now continue.

The vessel then has been pursued by the vessels of the Republic of Guinea. The captain was aware of that. He took the direction to the waters of Sierra Leone. He crossed finally the border, but here is a very important point: I have seen in the submission of our delegation of yesterday that one of my colleagues has told you that the M/V *Saiga* crossed the border into the territorial sea of Sierra Leone. This was not correct. The crossing of the border was into the exclusive economic zone, so the M/V *Saiga* never, during the pursuit, touched upon the territorial waters of Sierra Leone. This is an important point and I will come back to that later.

Finally, after several warnings, the vessel was entered. When the M/V *Saiga* was entered by the officers of the Republic of Guinea, nobody was on the bridge on the M/V *Saiga* and, that is a very important point, the M/V *Saiga* did not fly any flag. This you can read, and this has been confirmed by the Russian Captain on page four of the procès-verbal in which he expressly said, in French, "Why did you not have any flag on your tanker?" Answer: "I only fly the flag when I am in the territorial waters of a State or when I go into port." A vessel not flying any flag, not having any person on the bridge. And therefore I think that we cannot speak of an arrest of the vessel. This vessel was free for everybody and therefore this vessel has then been brought into the Port of Conakry, as you all know. Here, in Conakry and in the Republic of Guinea, now the national laws of the Republic of Guinea came into operation: that means that because the M/V *Saiga* has violated the national laws of Guinea, as we have heard yesterday at length, there will be proceedings started against the captain and these proceedings have not yet been terminated. They are still on their way. In this connection I would mention that in this situation it is not a possibility for the Republic of Guinea to ask for a security to let the vessel free. There is the Guinean law that says if someone violates the customs laws then there may be proceedings, and before these proceedings have been terminated, there is no possibility for other peoples of the Republic to ask for securities and, in any case, it is normal that in case a vessel is

arrested it is for the arrested party to go into touch with the arresting party and ask, "How much security do you need in order to get the vessel free?" I am astonished that the P & I Club obviously did not show up, but I just wanted to make clear that it could not be expected from the Republic of Guinea to discuss the question of a security.

When the vessel was brought into Conakry, the crew was absolutely free to move wherever it wanted. It is only the captain, because against him the proceedings have been instituted, whose presence is still wanted in Guinea.

I will now come to the legal point. We have already touched upon article 292. That is the most important article and opponents allege that the conditions are fulfilled. We have already told you that we have great problems with that view. Also, after having heard the submissions yesterday and today, we are still of the opinion that article 292 is not fulfilled and that – let me formulate it not too strictly – we question your jurisdiction. The first condition in article 292, as you all know, is that a bond or financial security has been submitted. This is not the case. No bond has been offered, so one condition is not fulfilled. Therefore, you do not find any other article in the Convention which might have been violated by the Republic of Guinea because these articles must always be connected to a bond having been offered. The second one is that the Applicant must allege another violation of another article, and I cannot find another article which might be violated. We have already spoken about articles 73 and 220 and 226. All of these are articles which are connected to measures avoiding pollution or violation of pollution rules. We do not speak about pollution rules here. We speak about smuggling, we speak about violating of national customs rules. Therefore we see great problem in the question of jurisdiction.

If, in the end, you would not follow us under this point of view, we then have to ask ourselves which article could be violated, perhaps the freedom of the sea. But here we come to the right of pursuit, which we have already mentioned. This is the right which the Republic of Guinea has made use of, and now I come back to the question of the position where the fishing vessels, contrary to Guinean law, have been supplied, that is the position number five in the chart which has been presented and which is not more than twenty miles away from the Island of Alcatraz. The position you will find in the *procès-verbal*, the exact position numbering, and in the *mémoire en défense*, but it is about twenty miles. This means that it was in the contiguous zone of the Republic of Guinea.

The chart which we have received from the opponents, with respect to No. 5 may be correct, but what is not correct is the red line in which the opponents seem to say this demonstrates the border of the territorial sea of the Republic of Guinea. That is not correct. The territorial sea is always twelve miles from each little piece of country. This is not a clear borderline – it has rivers and so on – and therefore the red line is not the correct one. An important point is that this red line would go directly through the island of Alcatraz. Of course, that is impossible. The border of the territorial sea makes its way around Alcatraz, twelve miles around, and again the contiguous zone is twelve miles after the first twelve miles, so that as the

supply of the vessels was twenty miles away from Alcatraz and well within the contiguous zone of the Republic of Guinea.

With respect to the regulation of the contiguous zone, my colleague Mr. Thiam asked what the contiguous zone means. May I refer him to article 33 of the Convention in which it is expressly stated that in this zone the coastal State may exercise the control necessary to prevent infringement to its customs. That is exactly what we are talking about – fiscal, immigration and so on.

With the refuelling of these vessels, it was the duty of the Government of the Republic of Guinea to pursue the M/V *Saiga*, which they did. M/V *Saiga* made her way into the waters of Sierra Leone but not into the territorial waters. The vessel was in the economic exclusive zone, and I think that is undisputed because, if you look at the chart we received from our opponents, it is in position No. 9 which, of course, is not in the territorial sea but it is in the economic exclusive zone.

The right of hot pursuit therefore has not come to an end. I agree that if M/V *Saiga* had entered the territorial waters of Sierra Leone, then, according to article 112, the right of hot pursuit might have come to an end, but this is not the case; the vessel entered the exclusive economic zone and it is absolutely clear that the right of hot pursuit in this case was not interrupted.

Therefore, the vessel was legally taken. I have already mentioned the other points: there was no flag and no people on board. Therefore we think that there is no article which was violated by the Republic of Guinea.

This is all I have to say. I would now like to give the floor to Mr. Alpha Oumar Barry to continue our submission.

EXPOSÉ DE M. BARRY CONSEIL DE LA GUINÉE

M. Barry :

Monsieur le Président, je voudrais intervenir sur quatre points avant de présenter la conclusion de la République de Guinée. Monsieur le Président, contrairement à ce que mon confrère a affirmé devant vous tout à l'heure, il est venu à Conakry, c'est vrai, mais il a rencontré Monsieur le Ministre de la justice en tant qu'ami de la société Oryx du Sénégal, et ce sur la recommandation de Monsieur le Ministre de la justice du Sénégal. Pourquoi ? Simplement pour venir s'informer sur les conditions d'arraisonnement du navire. Donc, les contacts qu'il a eus sont des contacts informels. Il n'est pas venu officiellement en tant qu'avocat. Il ne peut donc pas se prévaloir des conversations qu'il a eues au cours de cette rencontre. Il n'est pas venu en tant qu'avocat. Il ne peut pas se prévaloir des interventions qu'il y a eues à ce moment-là. Cela, c'est ma première remarque.

La deuxième remarque porte sur ce que nous avons entendu hier à propos des deux témoins. Monsieur le Président, j'ai posé hier une question à l'un des témoins et j'ai été très heureux d'entendre sa réponse en me disant tout simplement qu'il réside au Sénégal et qu'il est venu en Guinée pour s'informer, pour savoir ce qu'il se passe et il se présente à la barre pour témoigner. Monsieur le Président, ce n'est pas à vous que l'on va apprendre ce que c'est qu'un témoin. Un témoin, ce n'est pas la personne qui est partie s'informer mais quelqu'un qui était présent au moment des faits et qui les a vus et qui peut les rapporter fidèlement.

Nous en venons à quoi, Monsieur le Président, c'est tout simplement pour dire que la partie guinéenne récuse ce témoin qui s'est déclaré être à Dakar et qui est venu à Conakry chercher des informations pour venir témoigner. Nous pensons, nous estimons que son témoignage n'est pas valable. Vous pouvez l'écouter pour recueillir des informations mais pas en tant que témoin.

Le deuxième intervenant, le Sénégalais. Là aussi, nous disons que ce Monsieur est lié au navire. Il travaille dans le navire. Il gagne son pain là. Et les intérêts économiques étant là, il ne vous dira jamais devant cette juridiction la vérité. Il cherchera à dire ce qui convient à son employeur. Là aussi nous sollicitons la récusation de ce témoin et qu'il soit entendu pour simple information.

La troisième observation, Monsieur le Président, mon éminent confrère, Maître Thiam, a dit devant cette auguste assemblée que les lois guinéennes ne peuvent être considérées que comme de simples faits. Je respecte son éminence et, pour ma modeste personne, je pense qu'il y a là une interprétation erronée des textes. J'en veux pour preuve l'alinéa 3 de l'article 292 de la Convention des Nations Unies sur le droit de la mer qui reconnaît expressément – vous allez peut-être me dispenser de la lecture – mais qui dit que votre juridiction est saisie d'une question de procédure et que le fond doit être examiné par les juridictions nationales. N'est-ce pas là un moyen pertinent pour reconnaître la validité et la justesse des législations internes ? Je pose la question.

Le quatrième point, Monsieur le Président, sur lequel je veux intervenir, c'est pour répondre à la question que vous avez posée aujourd'hui sur le point 7, à savoir les rencontres qu'il y a eu entre les parties à Dakar ou en Suisse, etc. Sur le point 7 de ce document, je dirai que le demandeur a produit devant le Tribunal le code des douanes de la Guinée. Cela fait partie des pièces qui ont été envoyées, et au Tribunal et à la partie guinéenne. Donc, la partie adverse connaît parfaitement que l'autorité compétente est selon l'article 251 du code des douanes la Direction nationale des douanes – article 251 :

« L'administration des douanes est autorisée à transiger avec les personnes poursuivies pour infraction douanière. La transaction peut intervenir avant ou après jugement définitif. Dans le second cas, la transaction laisse subsister des peines corporelles ».

Donc, l'organisme compétent en la matière est bien connu. La partie adverse, au lieu de s'adresser à l'autorité compétente légalement d'après l'article 251 du code des douanes, a eu d'autres contacts. Malheureusement, elle s'est adressée à des organismes incompétents et à des niveaux supérieurs administrativement et politiquement. Pour obtenir quoi ? Peut-être pour tenter de faire un trafic d'influence pour obtenir la libération du navire, parce que si c'était pour une transaction, quand on vient pour négocier, on s'adresse à la douane qui est compétente, on ne va pas ailleurs. Ils n'ont cité personne à Conakry. Moi aussi, je m'abstiens de citer – et ils savent les personnes qu'ils ont rencontrées à Conakry – ils ne les ont pas citées, je ne les cite pas non plus, mais ils ont frappé à la mauvaise porte et non à la porte officielle qui est la porte légale, qui est la Direction nationale des douanes.

Nous concluons à partir de ces faits pour dire qu'il n'y a eu de la part de l'autre partie aucune volonté manifeste de transiger dans cette affaire. Cela c'est pour répondre au point 7 de la question que vous avez posée aujourd'hui.

INTERVENTION BY MR. VON BREVERN
AGENT OF GUINEA

Mr. von Brevern:

Mr. President, I have forgotten one important point before Mr. Alpha Oumar Barry presents the conclusions. The important point which we referred to yesterday is the decision of the Security Council of the United Nations of 7 October 1997. I have before me the French version of that decision which should be in your hands as part of our annexes.

I think this decision of the Security Council could be important if you, contrary to our opinion, do not follow our view and say that the right of hot pursuit is perhaps terminated. Then we would refer you to this decision and we think that under this decision of the Security Council of the United Nations, the Navy and Customs of the Republic of Guinea had the right to follow M/V *Saiga* and bring it back away from the economic zone of Sierra Leone, because in this –

The President:

Mr. von Brevern, I think you included a document on the decision of the Security Council in your written pleadings.

Mr. von Brevern:

That is correct.

The President:

But there was no reference in your submissions yesterday to that decision as one of the reasons for the arrest of the vessel. I think it would not be fair for you to introduce it as a reason now, after the Applicant has already completed its response. As we agreed, the presentations today are to deal with matters which have already been introduced in the submissions of the parties. I do not think that the mere mention of the decision of the Security Council in the written pleadings can constitute such an introduction to justify your offering it, at this late stage in the proceedings, as one of the reasons for the action of Guinea.

Mr. von Brevern:

Mr. President, if I may repeat: I really was of the opinion that yesterday in the presentation of one of my colleagues, it was mentioned. I have to take what you have said. In any case please do not forget this decision. May I now ask Mr. Alpha Oumar Barry to present our conclusion?

EXPOSÉ DE M. BARRY (SUITE) CONSEIL DE LA GUINÉE

M. Barry :

Monsieur le Président, eu égard à tout ce qu'il y a eu jusqu'à maintenant au débat, la République de Guinée, membre de l'ONU, a ratifié la Convention des Nations Unies sur le droit de la mer dont est issue la haute juridiction devant laquelle elle se trouve. Par respect de ses engagements internationaux, elle comparaît. En vertu des accords internationaux auxquels elle a souscrit et de sa législation interne, la Guinée a agi pour défendre ses intérêts économiques. Le *Saiga*, ayant commis l'infraction de coulage du pétrole dans les eaux guinéennes, dans le cadre de la réglementation du litige, les autorités compétentes nationales n'ont été saisies d'aucune proposition de règlement amiable. Le *Saiga* qui a produit devant le Tribunal le code des douanes guinéen sait pertinemment que l'autorité compétente en la matière est la Direction nationale des douanes. Aucune saisine officielle de cette administration n'a été apportée. Le *Saiga*, en s'adressant à des niveaux supérieurs, administrativement et politiquement – comme j'ai eu à le dire tout à l'heure – a voulu user d'un trafic d'influence pour obtenir la mainlevée. Ainsi, au regard des faits reprochés au navire *Saiga* et à l'exercice par elle de son droit de poursuite, la Guinée conclut au rejet de la requête du demandeur qu'elle considère comme non fondée.

Je suis opposé à mon confrère, Maître Thiam, il y a un désaccord total sur tous les points sauf un seul. Il y a un seul point sur lequel je serai d'accord avec M. Thiam. C'est de dire, c'est de nous féliciter d'avoir été les premiers à rencontrer votre auguste juridiction. Nous sommes convaincus que les décisions que vous allez prendre vont créer la jurisprudence en la matière qui servira de référence pour tous les utilisateurs du droit de la mer.

Ceci étant dit, Monsieur le Président, je souhaite plein succès à votre auguste juridiction. Merci.

The President:

Thank you.

INTERVENTION BY MR. VON BREVERN (CONTINUED)
AGENT OF GUINEA

Mr. von Brevern:

Mr. President, with all due respect, in connection with the decision of the Security Council, may I refer you the transcript in French, page 38, and in the English version, page 49. I will read what my colleague said:

“ ... it is not the reason why we arrest the vessel. Sierra Leone being what it is, they chose to go there. There is a United Nations Security Council resolution of 7 October 1997 which justified certain obligations on Sierra Leone's neighbours to undertake certain activities ...”.

I think this is the reference which gives me the right to refer you again to this decision.

The President:

Thank you, Mr. von Brevern. I do recall that this was said but it was not said in the context of justifying the action of Guinea. The reference was made about the resolution requiring Sierra Leone to take certain actions. The impression I got from your intervention was that you were using the decision of the Security Council as an additional reason for the arrest of the vessel, but that point has not previously been mentioned at all. I am still of the opinion that it would not be right to permit you to introduce an additional reason for the arrest of the vessel, at a time when it is not possible for the Applicant to respond to such a claim.

Mr. von Brevern:

Mr. President, please allow me, with respect to that point, one last remark. I think, as long as we have mentioned this decision and presented it in yesterday's submission, we should have a right to refer to that and mention it perhaps in the right context, and this was the only purpose of my intervention: to explain that this indeed gave another right to intervene. Thank you very much.

The President:

I have given the ruling and that ruling will stand. The Tribunal cannot consider at this stage another reason for the arrest of the vessel which was not envisaged or suggested, even indirectly, in the original submission by Guinea. I do not, therefore, think that reason can be taken into account now. However, the record will show the submission you have made on the point.

Mr. von Brevern, you did mention that the Minister of Justice might be addressing the Tribunal. Is that going to happen?

Mr. von Brevern:

No, Mr. President.

Closure of the Oral Proceedings

The President:

I take it then that this is the end of your presentation. Thank you very much indeed.

This is the end of the presentations and this brings us to the end of the oral proceedings in this case. I would like to repeat what I said yesterday: to thank the Agents, Counsel and Advisers of both parties for the presentations they have given to the Tribunal yesterday and today. We have also had the great experience of noting that these presentations were made in a spirit of courtesy, not only to each other but to the Tribunal.

In accordance with the usual practice, I ask the two Agents to remain at the disposal of the Tribunal to provide any further assistance and information that the Tribunal may need prior to the delivery of the judgment.

Subject to that, I repeat that the oral proceedings in the *M/V "Saiga" Case* are closed.

In conformity with article 86, paragraph 4, of the Rules of the Tribunal, the parties have the right to correct the transcripts of the presentations and statements made by them in the oral proceedings. Any such corrections should be submitted to the Registrar as soon as possible, but in any case not later than the end of Monday, 1 December.

In addition, the parties are requested to certify that all the documents that they have submitted are true and accurate copies of the originals of those documents. For that purpose, the Registrar will provide them with a tentative list of the documents concerned.

The Tribunal will now withdraw to deliberate on its decision. The Agents of the parties will be notified of the exact date and time that the Tribunal will give its judgment. The delivery of the judgment must take place pursuant to article 112, paragraph 4, of the Rules of the Tribunal not later than ten days after the close of these proceedings; that is to say, not later than 8 December. However, the Tribunal has tentatively set a date for delivery of the judgment for 4 December. The Agents will be informed reasonably in advance if there is any change in this schedule.

The sitting is now closed.

The Tribunal rose at 4.43 p.m.