

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



1997

Public hearing

held on Friday 28 November 1997, at 2.30 p.m.,
at the City Hall of the Free and Hanseatic City of Hamburg,

President Thomas A. Mensah presiding

in the M/V “SAIGA” case

(Saint Vincent and the Grenadines v. Guinea)

Verbatim Record

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

Saint Vincent and the Grenadines is represented by:

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

as Agent;

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

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

as Counsel.

Guinea is represented by:

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

as Agent;

Mr. Barry Alpha Oumar, 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.

(The hearing commenced at 14:35 hrs)

THE CLERK TO THE TRIBUNAL: The International Tribunal for the Law of the Sea is now in session.

THE REGISTRAR: The Tribunal will now continue its hearings in the M/V *SAIGA* case, Case No. 1 on the list of cases, St 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 St 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 St Vincent and the Grenadines, Mr Nicholas Howe, to address the Tribunal.

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 St 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 St 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 St 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 St 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 St 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 St 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 Marine 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 of 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 St. 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 Vervaet 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 Vervaet 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 St. Vincent and 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.

MR. THIAM (Translation): Mr President, Members of the Tribunal, I will take up as little of your time as I can in responding to the arguments presented by the Guinean side, which were also very brief.

I noticed, as no doubt you did, a fairly significant contradiction between the statement of the first person to speak on behalf of Guinea and the second. The first said, quite clearly, that the boats that we supplied at sea were Guinean. The second acknowledged that neither of them was Guinean. That would not be significant for your decision, but it is important to note just how the Guinean side addresses issues which have considerable implications for the course of justice in that country and also for us, who are not of that country.

The Guineans invoked a number of laws, which are their laws. We are here to deal with a matter of international public order and not to consider Guinea's internal public order. I was very surprised to see that in more or less all of the Guinean side's argument Guinean laws were constantly invoked that we cannot take as any more than elements of fact here. It is international law that we are concerned with here, and pursuant to international law that we are requesting prompt release of the arrested boat.

Nevertheless, since they spoke about their law, I would like to say first that Law 94 007 addresses a number of offences which are not applicable. I do not want to go through all of the articles, but if you look at article 2 it says that any individual who has sold fuel outside filling stations or agreed traders will be subject to a penalty of imprisonment, and so on. A very wide ranging clause then which would mean that even if you sell fuel here in Hamburg, if we then go anywhere near Guinea they may arrest us and say, "Hey, watch out, you sold fuel in Hamburg." Now, we cannot really accept the drafting of a text with such a wide a scope.

Article 6 talks about imports into Guinean territory, and up until now at no point has it been claimed we were in fact in Guinean territory.

At the end of the argument, and this is a new point, I shall come back to it, it was claimed that the vessel did enter the contiguous zone. Now, it is true that there are certain rights in the contiguous zone which are recognized in favour of all coastal States but there is no right for a State to consider the contiguous zone as part of the

State territory of Guinea, and that is in fact ruled out by article 1 of the Guinean Customs Code.

The Guinean side also said that it was a requirement that the report of the Customs be sent to the Public Prosecutor for further treatment, and they called upon their internal law to support that point. Very good. I am happy to see that in Guinea they pay close attention to the legal texts which exist and that customs reports are in fact notified to the Public Prosecutor. But does that exempt Guinea from respecting its other obligations, such as those under international conventions? That is what we are talking about. We are not talking about what Guineans are obliged to do under their domestic law but about the international convention. There it states clearly that they are obliged to notify the flag state of the arrest of a vessel and of the offences for which the vessel has been arrested and the penalties involved. That is clear. It is stated in the Convention. Because Guinean law says that the report has to go to the Public Prosecutor, does it mean that they are not obliged to accept the provisions of the Convention that I have just quoted? Clearly not.

The speaker who set great store by the Customs Code told us that for Guinea it was very important to prosecute smugglers. Even if he had not said that, I think we would have known it. This is why people have customs codes in all countries. If he had not told us that the arrest of smugglers' boats meant that more fuel was sold in Guinea, we would have known it.

Similarly when he said that they would keep the boat because the longer it was kept the more fuel would be sold in the country, it is clear that after the seizure of our boat, when they confiscated and started selling this fuel, they would indeed make an incredible profit. Quite clearly, I say to them, the longer you keep our boat, the more you have our cargo the more you sell, the more profit you make out of that and the higher your income is going to be. That is quite clear.

I can see a certain veiled threat -- I am sorry to have to say this -- and it was said there was no possibility of a settlement but we did not ask for a settlement. Has anyone in this room heard our side say at any time that we had asked for any kind of deal with

Guinea? We talked about a bond but there was no question of a settlement with customs. It is because we were not prepared to ask for anything of that nature that we are here before you asking you to take the decision to order the prompt release of the vessel. We never talked about a settlement but there was a veiled threat there when they said quite clearly that, whatever happens, the vessel will be kept in the Guinean port and confiscated, even if today or in the days to come you take a decision in conformity with our Application. Please correct me if I am wrong but that is how I understand the matter. There is a sort of veiled threat here: "We are a sovereign state and we shall do as we please, never mind what is in the Convention." I hope I am wrong and will be corrected in a minute.

Finally, great store was set by the Guinean side on article 111 on the right of hot pursuit. My distinguished colleague, Mr Howe, has explained, with the help of the map, exactly what the movements of the boat were. Article 111, in particular paragraph 4, states how hot pursuit may begin. I am in a very difficult position. Yesterday I did not want to initiate a legal debate because I know you are all eminent scholars and I do not feel equipped in front of you to interpret the law to Guinea. I am sure your decision will do that. However, I am obliged today to argue that hot pursuit can only begin in accordance with paragraph 4 of article 111. In the Guinean Customs report, the PV, you will have seen that there is no claim at any point that the vessel is in the contiguous zone. At no time. That is a new point. We heard about that yesterday for the first time. It is not in the PV at any time; nowhere is it claimed that the vessel was in the contiguous zone.

Then the PV explains that the gunboat from the Guinean Navy left Conakry at 4.25 in the afternoon, not at 4 o'clock in the morning. I mentioned yesterday how swiftly this boat can move. They had simple radar contact only at 4 o'clock in the morning.

They do not say in the report at what point they made the alleged warning. I say "alleged" warning because it is not clear that there was one. Even if a warning was given the boat had already left the contiguous zone. We are not talking about national waters. As we said yesterday, they had been left far behind. It was only then that perhaps any warning or instructions were given.

If you quite simply look at what is written there and make that small effort, you will see that there is no way could thereby any right of hot pursuit which would justify the arrest of a vessel in the exclusive economic zone of Sierra Leone. It is impossible. All you have to do is read the PV. There are many things which might be added to the PV now. It might be added that we were in the contiguous zone. That would be a new point, but it could be done. It certainly cannot be done before the Tribunal.

It might also be said that the claim that the Guinean boats sent a warning to a vessel that they had not yet seen and had no radar contact with. They were in port in Conakry, we were already in Sierra Leone waters and they sent warnings to justify their right of pursuit. Anything can be said. The Tribunal will be in a position to explain to both sides - and this is why we are here - what the legal position in fact is.

I am going to finish -- my colleague has invited me to do so -- on the discussions we had with Guinea about a bond. There have been many different kinds of contacts in Guinea. There was a contact that Mr Vervaet was talking about yesterday, unofficial contacts. He said himself that he had been told that that was the way things had to be done. We did not want to continue down that route because we were relying on our own good faith.

Then there was the contact with the Minister for Justice of Guinea. I was received with much understanding, I would say. Immediately he called for the release of the wounded seamen. It was only with him, very briefly, that we raised the issue of a bond. He and I addressed that point very briefly. It was not possible to continue the discussion on this point for several clear reasons. Firstly, up until then we had not received the Customs report;. It was notified not to the State I represent but to the Captain, some time after we filed an Application with the Tribunal. How can we offer a bond if we do not know what we are accused of?

Then the Minister for Justice, the Attorney General or Guardian of the Seals for Guinea, told me about the intention of his country to unload the cargo. He said at the time that they had to do it because they were afraid that the crew still on board the

vessel would set fire to the cargo. I said, “Minister, we are asking for the boat and its cargo to be released, do you expect us to set fire to more than \$1 million worth of goods, not counting the value of the boat itself? How can you believe we are going to do that? You think that we are going to set fire to the cargo, so you have to unload it?” Now, the boat has been unloaded; the crew is still on board and no-one apparently thinks we are perhaps going to set fire to the boat.

As an argument for letting the crew go to a hotel, they did not say, “Well, we had better do that because maybe they will set fire to the boat”. No. It was much more interesting to use that argument with respect to the cargo because they wanted to sell it fairly quickly, it was liquid.

From the point that they made it clear that they wanted to unload the cargo of the boat, how could we then be expected to start talking about a bond? On what basis would we do that? We saw that there was really no need for a bond. What they were interested in was taking the cargo, confiscating the boat and saying that we were in the ambit of article 292 and there was no agreement about a bond. We saw ourselves in a position to bring the matter before the Tribunal.

I will wind up now because I have spoken for too long. I would like to end by saying that for me it has been an honour to be among the first lawyers to speak before this Court. I come from a West African, French-speaking country and I can talk about the problems we have in matters of security for the judicial system. Guinea itself has a certain number of problems, I was recently at an international conference in Cairo with a representative from Guinea. I think he was the President of the Court of Appeal in Cancún. He spoke at only one point at that conference. He asked for that our countries provide more for security for justice by allowing and above all by verifying a certain degree of independence of the judiciary. The representative of Guinea said that. We can only welcome the creation of an institution such as yours. You are our lifebelt and we hope that other institutions such as this one will enable us never to be left without such lifebelts.

You should not interpret the rules of your Tribunal and the rules of the Convention on the Law of the Sea in a restrictive fashion, setting limits to your jurisdiction. What we wish for today is that the boat be freed -- we are accused of a crime that is clearly impossible -- the boat with its cargo and its crew and, as far as a bond is concerned, that you follow the line of argument I presented yesterday. If you take a decision which does not concern the cargo, well you will note, we have left in Guinea the value far in excess of what we could have sold to allegedly Guinean boats, and that is enough. As I said, yesterday if there is a bond, then it should be extremely symbolic. Thank you.

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 15:21 hrs)

THE CLERK TO THE TRIBUNAL: The International Tribunal for the Law of the Sea is now in session.

THE PRESIDENT: I now call upon the agent of Guinea, Mr von Brevern, to address the Tribunal.

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 St Vincent and 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. St Vincent and 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 tous 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 Republic of Guinea.

I will present some facts of the case and then explain the legal situation as we see it, then Mr Bao 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 Bao.

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 *memoire en defense*, 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 Bao to continue our submission.

MR BARRY ALPHA OUMAR (Translation): Mr President, I would like to speak on four points before presenting the conclusions of the Republic of Guinea.

In contrast to what my colleague affirmed to you earlier, he came to Conakry, it is true. He met the Minister of Justice as a friend, a friend of the Oryx Society of Senegal. This was on the recommendation of the Minister of Justice of Senegal. Why

was this? It was to come and glean information about the conditions of the arrest of the vessel. The contacts that he had were of an informal nature. He did not come officially as an advocate; therefore, he cannot say anything about the discussions that took place during this meeting. This is my first remark.

My second remark relates to what we heard yesterday concerning the two witnesses. Mr President, yesterday I put a question to one of the witnesses and I was very pleased to hear his response. He said merely that he lives in Senegal, that he came to Guinea to glean information and to see what was happening, and that he was appearing as a witness.

Mr President, it is not you we need to tell what a witness is. A witness is not somebody who goes to glean information but somebody who has experienced the facts, who was there, and who can give a true account of what happened. This means that Guinea does not agree with this witness. We do not accept this witness who said that he was in Dakar and who came to Conakry to glean information in order to be a witness here. We feel that the evidence that he has given is not valid. The Tribunal could hear him as an informant but not as a witness.

As for the second witness, the Senegalese witness, here, too, we say that this person is linked to the vessel. He works on the vessel. He earns his bread working on the vessel. Economic interests being where they are, this person would never tell the truth before this Tribunal. He will try to say what suits his employer. Here, too, we request that he be rejected as a witness and heard merely as an informant.

My third point is to say that my colleague, Mr Camara, said to this august body that the Guinean laws should be considered only as facts. I respect my colleague and in all modesty believe that this is an incorrect interpretation of the text. I would like to point to paragraph 3 of article 292 of the United Nations Convention on the Law of the Sea. I will not read it but it states that your jurisdiction is a procedural one and that the merits of the case must be judged by local courts. I think that this shows the validity and appropriateness, does it not, of national laws?

The fourth point that I would like to address, Mr President, is to answer the question you raised under point 7: that is, the meetings that took place between the parties in Dakar and in Switzerland. Here I would like to say that we produced the Customs Code of Guinea. It is part of the documents that were sent to the Tribunal and to the Applicant.

I would like to read article 251 of the Customs Code to you. This was supplied by the opposite party, so they have read this document and they are familiar with it. “The Customs authority shall be authorized to negotiate settlements with the persons proceeded against for customs offences. Settlement may be made before or after the final judgment. In the second case, settlement leaves the sentence intact.” Therefore the competent authority is known. It is not the other party who is teaching us this, but they have provided us with this document. The other party, instead of legally approaching the competent authority under article 252 of this Code, had other contacts. Unfortunately, they had contacts with authorities which are not competent, at a higher administrative and political level. They did this in order to obtain what? Maybe it was to try use influence to obtain liberation of the vessel. If it is for a settlement, you go to the competent authorities, the Customs in this case. They did not name anyone in Conakry. Nor do I. They know who they met in Conakry. They did not name the contacts, so I will not do that either, but they knocked on the wrong door, not the official and correct door, which is the national Customs authority.

We conclude, on the basis of these facts, by saying that there was no manifest wish by the other party to find a solution to this affair. This is in answer to point 7 of the question that you, Mr President, raised.

MR VON BREVERN: Mr President, I have forgotten one important point before Mr Bao 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 Bao to present our conclusion?

MR BARRY ALPHA OUMAR (Translation): Mr President, in view of all the arguments that we have heard up to now, the Republic of Guinea, a member of the United Nations, has ratified the United Nations Convention on the Law of the Sea, under which your distinguished Tribunal was set up. Respecting its international commitments, it has appeared before the Tribunal. Pursuant to the international agreements which Guinea has signed and its domestic legislation, Guinea acted to defend its economic interests, having SAIGA illegally bunkered fuel in Guinean waters.

The competent national authorities have not received any proposals for an amicable settlement. The SAIGA which has produced the Customs Code before the Tribunal, knows full well that the competent authority is the Customs Service. No official approach to this administrative authority has been recorded. In approaching higher authorities, at high administrative and political levels, the SAIGA wanted to use undue influence in order to achieve prompt release.

Thus, in view of the charges against the vessel SAIGA, and the exercise by Guinea of its right of hot pursuit, Guinea concludes that the Applicant's claim be rejected.

There is a complete disagreement between myself and Mr Thiam on all points, except one. There is only one point where I would agree with Mr Thiam, and that is when he congratulated us on being the first to appear in front of your distinguished Tribunal. We are sure that the decision you are going to take will set a precedent which will become a reference for all users of the law.

Having said this, I wish the distinguished Tribunal the best of success.

THE PRESIDENT: Thank you.

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.

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 16:43)