

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



2010

Public sitting

held on Saturday, 11 December 2010, at 7.00 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President José Luís Jesus presiding

THE M/V “LOUISA” CASE

(Request for provisional measures)

(Saint Vincent and the Grenadines v. Spain)

Verbatim Record

<i>Present:</i>	President	José Luíz Jesus
	Vice-President	Helmut Tuerk
	Judges	Hugo Caminos
		Vicente Marotta Rangel
		Alexander Yankov
		L. Dolliver M. Nelson
		P. Chandrasekhara Rao
		Joseph Akl
		Rüdiger Wolfrum
		Tullio Treves
		Tafsir Malick Ndiaye
		Jean-Pierre Cot
		Anthony Amos Lucky
		Stanislaw Pawlak
		Shunji Yanai
		James L. Kateka
		Albert J. Hoffmann
		Zhiguo Gao
		Boualem Bouguetaia
		Vladimir Golitsyn
		Jin-Hyun Paik
	Registrar	Philippe Gautier



Saint Vincent and the Grenadines is represented by:

Mr S. Cass Weiland, Esq.

as Co-Agent and Advocate;

Mr William H. Weiland, Esq.

as Advocate;

Mr Christoph Hasche

as Counsel.

Spain is represented by:

Ms Concepción Escobar Hernández, Professor, Legal Adviser, Ministry of Foreign Affairs and Cooperation, Spain,

as Agent, Counsel and Advocate;

Mr Mariano J. Aznar Gómez, Professor, International Law Department, Universitat Jaume I (Castellón), Spain,

as Counsel and Advocate;

Mr Esteban Molina Martín, Desk Officer for Regulatory Matters, Directorate General for Maritime Affairs, Ministry of Public Works, Spain,

as Adviser;

Mr José Lorenzo Outón, Assistant Legal Adviser, Ministry of Foreign Affairs and Cooperation, Spain,

as Technical Adviser.

1 *The sitting was called to order at 7.03 p.m.*

2

3 **MR PRESIDENT:** I give the floor to the Agent of Spain.

4

5 **Professor ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, Mr
6 President.

7

8 Having listened to the presentation by the Co-Agent for Saint Vincent, all I can do is
9 reassert one of the comments that I made this morning; namely, the Applicant is
10 continuing with its own strategy of confounding and conflating everything with a view
11 to producing confusion. I am sorry, Mr President and distinguished Members of the
12 Tribunal, to have to mention this again.

13

14 In its presentation this afternoon, Saint Vincent raised a number of questions which
15 are not negligible. Several of the questions that they raised simply repeated
16 arguments that the Applicant had already made yesterday. Let me give you an
17 example: the permits for the so-called scientific research in the field of hydrocarbons
18 or the nature and value of Spain's *note verbale* of 2010. Other comments were just
19 rhetoric whose purpose was to lead the Tribunal into anecdotes – anecdotes, I have
20 to say, which have absolutely nothing to do with the *Louisa* but which have a strong
21 publicity impact, such as the reference to the *Odyssey Case* or references to piracy.
22 All of these are situations which arose subsequent to the *Louisa's* detention. Other
23 questions and other commentaries were rehearsed as part of Saint Vincent's
24 strategy of criticising and belittling the behaviour of the Spanish authorities. I even
25 heard the Co-Agent from Saint Vincent say that he could understand since the
26 delegation of Spain did not have sufficient time to prepare the defence and that was
27 why our defence contained errors. I would like to thank the Applicant, of course, for
28 its kind understanding of our work, but it is for the judges alone to assess the value
29 of the defence fielded by Spain.

30

31 To summarize: it is late in the day that has been long, and it is not my intention to
32 reply to each and every one of the comments made by Saint Vincent – on the one
33 hand because a number of these observations relate to the merits of the case, and,
34 of course, the Tribunal at this stage of the proceedings is not seized with the merits,
35 and, on the other hand, because some of these comments do not have any
36 relationship to international law in general or to the law of the sea, on which this
37 Tribunal will be ruling, in particular. Therefore, perhaps you will allow me, Mr
38 President, to choose just a few observations made by Saint Vincent's Co-Agent that
39 are more directly linked to the subject of provisional measures *per se*. After that, I
40 will give a brief response to the question that the Tribunal asked both delegations at
41 the end of this morning's session before, of course, reading Spain's final
42 submissions.

43

44 Let us start with the question of international law relative to provisional measures
45 and let me address two issues: the exhaustion of local remedies and urgency.

46

47 1. The exhaustion of local remedies. Contrary to what the Applicant has said,
48 the exhaustion of local remedies is not just a matter of common sense. Instead, the
49 exhaustion of local remedies is a well-established category under international law
50 whereby it is not sufficient to have conversations or send letters or visit judges. It is

1 not enough to go see the prosecutor and consult him. The exhaustion of local
2 remedies requires, on the part of the party in question, the active exercise of all
3 remedies available under the law of the State which may have caused the harm.
4 And neither is it sufficient to make additional visits, additional contacts, to send
5 additional letters or even to undertake additional activities directed towards
6 diplomatic agents for the sole purpose of obtaining, via indirect means, satisfaction
7 before the law. It has even less value if these informal, non-legal actions are
8 directed towards diplomatic agents who, because of their accreditation, have nothing
9 whatsoever to do with the case. Let me remind you, Mr President, that the
10 accreditation of diplomatic agents is not a political question; it is a question relating
11 to international law and lies at the heart, the very heart, of international law.
12

13 Concerning the exhaustion of local remedies, the Applicant has just presented us
14 with a new document: a letter written to the judge by the legal representative of
15 Mr Foster and Sage on 21 February 2008 – two years after the detention of the
16 *Louisa*, it must be said. In that document, the owners of the vessel are directly
17 asking the judge for one of three options:
18

19 (i) to obtain all information available regarding the situation of the *Louisa* and
20 the *Gemini III*;

21
22 (ii) to allow the prompt release of the boat; or
23

24 (iii) to take any other measure to ensure the maintenance of the vessels.
25

26 I stress that these are alternatives; they are not cumulative measures. I do not really
27 see anywhere where clear release of the boats or the vessels is requested – only the
28 raising of quarantine.
29

30 The Applicant also presented a new document which is relevant but has not been
31 translated and was given to us only in Spanish. Fortunately, it is my mother tongue,
32 but for you distinguished Members of the Tribunal, that is not necessarily the case.
33 This was a document from the *Guardia Civil*, responding to the judge, saying that in
34 cases like that of the *Louisa*, the owners of the vessel appoint a seaman to ensure
35 the maintenance of the vessels.
36

37 And that's what the judge ordered via an order of 22 July 2008. But let me tell you,
38 distinguished Members of the Tribunal: it is surprising that the Co-Agent of Saint
39 Vincent does not acknowledge the existence of this document of 22 July 2008 or at
40 least recognize that he has heard of it.
41

42 2. Let me move on to urgency. I think that everything has been said about
43 urgency that needs to be said. However, let me draw your kind attention to one
44 single fact; the fact that Saint Vincent and the Grenadines, who are here before the
45 Tribunal as the big defender of serious problems requiring extensive interpretation of
46 your institution's rules and regulations, state that nonetheless urgency should not be
47 taken into consideration. I find this absolutely dumbfounding because in all legal
48 systems, in domestic systems and international systems, provisional measures are
49 indissolubly linked, always predicated on irreparable damage and urgency,

1 irreparable damage that might take place if the provisional measures are not
2 adopted prior to the main proceedings on the merits. Urgency is key.

3
4 Let me now move to the question that was asked this morning by the Tribunal,
5 namely: what is the relationship between the declaration of the Applicant and the
6 question of *prima facie* jurisdiction?
7

8 Spain itself raised this question in its declaration in reply, which you have had the
9 opportunity to read and study; indeed, I mentioned it this morning at the end of my
10 *exposé*.

11
12 Let me rehearse clearly Spain's opinion with respect to this question addressed to
13 us.

- 14
15 - First, our concern with respect to the declaration of the recognition of
16 jurisdiction is essentially how this was formulated procedurally. I am not going
17 to repeat the dates and everything else because it is not worthwhile doing that
18 at this juncture, but look at the contents! The scope of the declaration
19 transforms it into a declaration that is almost *ad hoc*, a declaration that is
20 clearly aimed at enabling the *Louisa* affair to be filed against Spain. That is
21 what it was aimed at, even though the *Louisa* case was opened in Spain in
22 2006 and there are many implications that we could discuss when we come to
23 the proceedings on the merits.
24
- 25 - Second, let me say now that it is not our intention to infringe on the right of a
26 State to make a declaration accepting the jurisdiction of an international
27 tribunal when it wants: it is the right of States so to do, and to file applications
28 for proceedings when they see fit. Spain, Mr President, distinguished
29 Members of the Court, knows full well the case law of the International Court
30 of Justice in a number of cases where these sorts of questions raised their
31 heads, so let me just talk about the Nigeria/Cameroon case. In that case the
32 International Court of Justice said that the validity of the declaration is not
33 subject to any temporal conditions. We accept their declaration, without any
34 problems or reserves whatsoever.
35
- 36 - This notwithstanding, it does not mean that the temporal conditions and other
37 conditions that frame a concrete declaration are in themselves without any
38 legal significance. In this instant case, I believe that the legal significance is
39 absolutely clear. Both, the timing and the content of the declaration have
40 important consequences that are difficult to assess right now with respect to
41 Spain's rights in the proceedings and its right to exercise the defence of its
42 legitimate rights guaranteed by the Convention.
43
- 44 - It is from this point of view that Spain considers that the contents of the
45 declaration and how it was formulated might have a certain influence, if you
46 will, on the *prima facie* determination of jurisdiction. It is for this Tribunal to
47 consider whether these time elements have any impact on the necessity of
48 prior consultation and the application of procedural good faith to which I
49 referred this morning.
50

1 Mr President, with this declaration, which I believe is a comprehensive response to
2 what we were asked this morning, that brings to an end my oral *exposé*. If you will
3 allow me, I will now read Spain's submissions.
4

5 Pursuant to Article 75 (2) of the Rules of the International Tribunal for the Law of the
6 Sea, Spain presents the following final submissions with respect to the request for
7 the prescription of provisional measures.
8

9 The Kingdom of Spain requests the Tribunal:

10
11 (a) to reject the request for the prescription of provisional measures
12 submitted by Saint Vincent and the Grenadines;

13
14 (b) to reject the prescription of all the provisional measures requested by
15 the Applicant;

16
17 (c) to order Saint Vincent and the Grenadines to pay the fees of the Agent
18 and the rest of the Spanish delegation within reasonable limits and the costs
19 arising from this application, as fixed by the Tribunal.
20

21 That brings me to the end of my final submissions, Mr President, distinguished
22 Members of the Court. Let me once again assure you of the full cooperation of
23 Spain with this case and any other case that might bring Spain before your august
24 Tribunal. Thank you very much, Mr President.
25

26 **THE PRESIDENT:** Thank you, Ms Escobar Hernández.
27

28 This brings us to the end of the oral proceedings.
29

30 On behalf of the Tribunal, I would like to take this opportunity to express our
31 appreciation for the high quality of the presentations of the Agents and counsel of
32 both Saint Vincent and the Grenadines and Spain. I would also like to take this
33 opportunity to thank both Agents for their exemplary spirit of cooperation.
34

35 The Registrar will now address questions in relation to documentation.
36

37 **THE REGISTRAR** (*Interpretation from French*): Thank you, Mr President. Pursuant
38 to Article 86(4) of the Rules of the Tribunal, the parties, under the supervision of the
39 Tribunal, may correct the transcripts of speeches and statements made on their
40 behalf, but in no case may such corrections affect the meaning and scope thereof.
41

42 These corrections should be submitted to the Registry as soon as possible and by
43 Tuesday 14 December midday, Hamburg time, at the latest.
44

45 In addition, the parties are requested to certify that all the documents that have been
46 submitted and which are not originals are true and accurate copies of the originals of
47 those documents. For that purpose, they will be provided by the Registry with a list
48 of the documents concerned. In accordance with the Guidelines concerning the
49 preparation and presentation of cases before the Tribunal, they will also be

1 requested to furnish the Registry with additional copies of documents that have not
2 been supplied in sufficient numbers. Thank you, Mr President.

3

4 **THE PRESIDENT:** The Tribunal will now withdraw to deliberate on the result. The
5 Order will be read on a date to be notified to the Agents. The Tribunal has
6 tentatively set a date for the delivery of the Order. That date is 23 December 2010.
7 The Agents will be informed reasonably in advance if there is any change in this
8 schedule.

9

10 In accordance with the usual practice, I request the Agents kindly to remain at the
11 disposal of the Tribunal in order to provide any further assistance and information
12 that it may need in its deliberations prior to the delivery of the Order.

13

14 The sitting is now closed.

15

16 *(The proceedings concluded)*