

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2012

Public sitting

held on Wednesday, 10 October 2012, at 10 a.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President Shunji Yanai presiding

THE M/V “LOUISA” CASE

(Saint Vincent and the Grenadines v. Kingdom of Spain)

Verbatim Record

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

Saint Vincent and the Grenadines is represented by:

Mr S. Cass Weiland, Esq., Patton Boggs LLP, Dallas, Texas, USA,
as Co-Agent, Counsel and Advocate;

and

Mr Robert A. Hawkins, Esq., Patton Boggs LLP, Dallas, Texas, USA,
Mr William H. Weiland, Esq., Houston, Texas, USA,

as Counsel and Advocates;

Mr Myron H. Nordquist, Esq., Center for Oceans Law and Policy, University of Virginia, School of Law, Charlottesville, Virginia, USA,

as Advocate;

Ms Dharshini Bandara, Esq., Fleet Hamburg LLP, Hamburg, Germany,

as Counsel.

The Kingdom of Spain is represented by:

Ms Concepción Escobar Hernández, Professor, International Law Department, Universidad Nacional de Educación a Distancia (UNED), Spain,

as Agent, Counsel and Advocate;

and

Mr José Martín y Pérez de Nanclares, Professor, Head of the International Law Division, Ministry of Foreign Affairs and Cooperation, International Law Department, Universidad de Salamanca, Spain,

Mr Mariano J. Aznar Gómez, Professor, International Law Department, University "Jaume I", Castellón, Spain,

Mr Carlos Jiménez Piernas, Professor, International Law Department, Universidad de Alcalá de Henares, Spain,

as Counsel and Advocates;

Ms María del Rosario Ojinaga Ruiz, Associate Professor, International Law Department, Universidad de Cantabria, Spain,

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

as Counsel;

Mr Diego Vázquez Teijeira, Technical Counsel at the Directorate-General of Energy and Mining Policy, Ministry of Industry, Energy and Tourism,

as Adviser.

1 **THE PRESIDENT** (*Interpretation from French*): Good morning, ladies and
2 gentlemen. This morning we will continue to hear the pleadings of Spain. Yesterday
3 we broke off the examination of the expert, Mr Martín Pallín. We will continue
4 hearing him now. I would remind you, Mr Martín Pallín, that you continue to be
5 covered by the solemn declaration you made yesterday.

6
7 Before we proceed I would like to remind everyone that an examination like this is a
8 very demanding task for the interpreters and the stenographers particularly since we
9 are using three languages: English, French and Spanish. I would therefore once
10 again ask if the Parties' representatives and you yourself, Mr Martín Pallín, would be
11 so kind as to speak slowly and to leave a sufficient gap after each person has
12 spoken so that the interpreters can fully interpret. Thank you very much for co-
13 operating on this.

14
15 I now give the floor to the Agent for Spain, Ms Escobar Hernández. Please continue
16 examining our expert.

17
18 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Good morning, Mr
19 President; good morning, Judges. With your permission, I would like to continue
20 where we left off yesterday in examining the expert.

21
22 (*Interpretation from Spanish*): Good morning, Mr Martín Pallín. We are going to
23 continue your interrogation at the point where we left off yesterday. My next question
24 refers to Mr Avella. Mr Avella testified before this Tribunal last week. He was
25 arrested in Portugal and handed over to the Spanish authorities by the Portuguese
26 authorities after having been arrested at Lisbon airport. This was by virtue of a
27 European arrest warrant. Does this conform to Spanish law?

28
29 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Yes, this is absolutely in
30 accordance with Spanish law. It is the usual procedure within the European Union,
31 and I want to point out simply that the country receiving the order and carrying it out
32 needs to make sure that it meets the formal requirements established under the law.

33
34 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): From the arrest of
35 Mr Avella in Portugal, from when he was brought before the Spanish authorities,
36 which Mr Avella said happened ten days after he was arrested, a time during which
37 he was not under the custody of the Spanish authorities but the Portuguese
38 authorities – but from when he was brought before Spanish legal authorities, Mr
39 Avella under a provisional arrest warrant and he was kept in custody, a period of
40 between eight and nine months passed, depending on how this is calculated. During
41 this period, that is to say from the time he was brought before the competent
42 Spanish judge, Mr Avella lodged various appeals with the Spanish courts, asking to
43 be released, asking then for his bail to be reduced, for the bail that had been
44 determined by the judge to be reduced and so on. Does this seem to you to be a
45 reasonable period in light of the investigation that was underway?

46
47 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I have explained yesterday that
48 the period of time depends on the circumstances of the case and on the
49 investigations that the judge considers to be essential. The Spanish system, as I
50 have said, has mechanisms for appeal so that cases can be reconsidered in the

1 case that someone is deprived of their liberty and without any need to use legal
2 counsel – or if someone does not have legal counsel they can make a request to the
3 judge for them to be released. The period is considered by the judge based on the
4 needs of the investigation.

5
6 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): During this time that he
7 was in provisional custody can this be considered a violation of the rights to due
8 process of the arrested individual?

9
10 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Not at all. This is a normal
11 procedure in any proceedings, but I will say it once again: his right of defence is
12 guaranteed - the possibility of using all of the evidence that he considers to be
13 necessary in his defence.

14
15 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): During the entry and
16 search of the *Louisa*, the Guardia Civil found different objects that have already been
17 referred to here, in this Tribunal, over the last two weeks. Among the objects found
18 by the Guardia Civil were some computers. In accordance with Spanish law, what
19 does the seizure of this property, of these computers, involve?

20
21 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Computers could be
22 instruments or effective means for committing an offence. The Spanish judge can
23 order that these computers be seized and sealed always in the presence of the court
24 clerk, who provides accreditation that this seal has been placed, as is logical. In
25 order to decrypt the content of the computer, there is a technical procedure and the
26 judge requests the assistance of technicians so that they can then examine the
27 contents of the computer. Spanish law clearly establishes that the judge has the
28 obligation to hand over any content that has no reference or direct relationship with
29 the crime being investigated. There could be confidential information, private
30 information, commercial information. All of this information the judge needs to
31 eliminate because that is of no interest to the investigation, and the judge collects
32 and maintains under his custody everything that could be of interest to the
33 investigation.

34
35 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Can the interested
36 parties at some time ask for a copy of the contents of the hard drive, of the data that
37 is on these computers?

38
39 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Of course, unless, in an
40 exceptional case, and for a limited period of time which cannot be any longer than
41 three months, but which can be extended another three months, the judge declared
42 that this case was a secret investigation; but if not, then the information can be
43 requested from the judge and they can be shown the evidence that the judge has
44 and they can also ask for a technician designated by them to read this information to
45 make sure, to show that the technique used to decode, if you will, the information
46 has been correctly done. This is part of the right of defence of the accused under our
47 law.

48
49 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Regarding the question
50 that I have just put to Mr Martín Pallín I would now, if I may, draw the Tribunal's

1 attention with all respect to the fact that the first time that the Sage representative
2 and Mr Foster asked for a copy of the disk on which the data in the computers was
3 stored - and with regard to which the Applicant took the view that there was very
4 important commercial information of interest to it - once it asked for this within the
5 time limits set out by law, copies of the hard disk, and the databases, were handed
6 over to Mr Foster and to the representatives of Mr Foster and Sage.

7
8 **MR WEILAND:** Mr President, I would like to lodge an objection to the statement of
9 the Agent of Spain. She has just referred to records that are not in the record of this
10 case. She has referred to documents that they have not submitted to this Tribunal;
11 and so we object.

12
13 **THE PRESIDENT:** Thank you, Mr Weiland. Let us check if the document is included
14 in the file or not.

15
16 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Mr President, would you
17 allow me to continue examining the expert while my colleagues look for the
18 document in order to answer the question?

19
20 **THE PRESIDENT** (*Interpretation from French*): Yes, Ms Escobar, please go ahead.

21
22 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): How would you view
23 the participation of the *Louisa* in committing the alleged criminal acts against Spain's
24 sub-aquatic cultural heritage, which is under consideration here? That is to say, what
25 is your opinion regarding the participation? To what extent did the *Louisa* participate
26 in committing these alleged offences?

27
28 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): My opinion is that it was an
29 essential instrument, a necessary instrument for the committing of these offences
30 against Spain's sub-aquatic cultural heritage. The ship is the instrument for the
31 committing of this crime and therefore the judge, if he considers it necessary, can
32 take measures regarding this instrument used for committing the offence.

33
34 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): You said that the ship,
35 the *Louisa*, is a necessary instrument for the committing of the crime. Taking this into
36 account, what measures could a judge take regarding the instruments for the
37 committing of a crime?

38
39 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Our procedural law establishes
40 the judge's authority to order. I do not know if the expression can be correctly
41 translated – the confiscation, if you will, of the instrument for the committing of the
42 crime. It may be kept under custody for two reasons: (1) so that it can be evidence in
43 the event that there is a hearing; also so that it can be destroyed if it is an asset that
44 comes from illicit trafficking, for example drugs; or it could be sold or used in the
45 service of the State. It becomes the property of the State as long as – I repeat, as
46 long as it is considered an instrument for committing the crime. If not, it is considered
47 an economic asset and it could be used to defray the possible economic
48 responsibilities or liabilities that are established in the case.

1 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): So this asset, this
2 instrument for committing the crime is currently under the custody of the Spanish
3 authorities.

4
5 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): That is right because, as I said
6 – I repeat – it is a piece of evidence that in the event that a trial is held needs to be
7 managed as evidence. In the event that the judge considers that there is no offence
8 and that the case needs to be dismissed, then the judge is compelled to return these
9 assets to their owners.

10
11 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): You said to us that
12 what the judge does, using a word that is somewhat difficult to translate from
13 Spanish – it is a specific word in legal terms – what is called a *decomiso*, which
14 could be considered a seizure. What do you mean by this? Is the judge authorized to
15 retain this asset when there is a *decomiso* or seizure?

16
17 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Yes, the purpose for this is laid
18 down within our procedural law and within the Criminal Code. Basically its purpose is
19 for cases involving drug trafficking but it is also for any other kind of offence, also in
20 the case of smuggling of works of art.

21
22 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): According to Spanish
23 practice, if I am not mistaken, when judges detain goods of this kind – a ship, an
24 automobile – usually what they do is seal it. They put a physical seal on the object. Is
25 that the case? Is it usual that the object is physically sealed, a seal is placed on the
26 object?

27
28 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): It depends on the nature of the
29 object. If it is, for example, drugs, they are destroyed and a sample is kept. If they
30 are objects which, because of their nature, could be considered perishable, then they
31 are sold and in the case of something like a ship it is ordered that they be sealed,
32 and also the administration, that is, the measures necessary for its maintenance until
33 such time as the definitive hearing is held.

34
35 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Regarding the
36 maintenance you have just referred to, if I am not mistaken, the general practice is
37 for the judge to ask the owner to designate a person whom he trusts, so that this
38 trusted individual, whether it is a seaman, a member of the crew, a representative –
39 the person who is best situated to be able to know about this asset and protect the
40 rights of the owner of the ship. Is that correct?

41
42 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Indeed, that is the case. If the
43 owner of a ship does not designate anyone, then the judge should choose a person
44 who has some knowledge of the maintenance of ships.

45
46 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Let us suppose that the
47 owners of the ship, once it has been sealed, now it is detained because it is
48 considered to be an instrument of committing the crime – let us say that this
49 detention is not in accordance with the law, that is to say it goes against some rule of

1 the law applicable in the specific case, could the owners make a written request to
2 the judge for the ship be returned to them?

3
4 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Of course. At any time, in the
5 same way that, as we have said before, one can ask to be released, one can ask for
6 the seal to be broken or for the conditions under which the maintenance and
7 conservation of the ship are carried out to be altered.

8
9 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): We have already talked
10 about the situation of the ship, what kind of a ship it is, how it was sealed. What
11 could happen to the ship, the *Louisa*, once the criminal proceedings in Spain are
12 concluded? Could you explain that for everyone so that everyone can understand
13 this?

14
15 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): If the investigation process does
16 not move forward because the judge considers that he has not been able to obtain
17 sufficient evidence to present to the court hearing the case and then seeks to
18 dismiss the case, then the ship must be returned. Of course, the owners can
19 reasonably consider that some damage had been caused and that they could ask for
20 the corresponding damages; but if the investigation continues to move forward and a
21 trial is held, if the accused is acquitted then, again, the ship has to be returned again
22 with the same consequences. If the accused is convicted, then the ship becomes the
23 property of the State.

24
25 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Just to get this clear in
26 my mind, because I am not a specialist in Spanish domestic law but in international
27 law, only when there is a conviction, when the competent judge is of the reasoned
28 opinion that there has been an offence, only under these circumstances may the
29 ship not be returned?

30
31 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): That is the case.

32
33 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): At present, there is still
34 no verdict, as you well know and as the Applicant has constantly been telling us over
35 the course of these hearings. On various occasions over the past six years, the
36 judge has asked the legal representatives of both Sage and the proprietor,
37 Mr Foster, above all after they had already become parties in the case, parties in the
38 proceedings – they have been asked to take the necessary measures for the ship's
39 maintenance. The judge has authorized a visit to the ship by the legal
40 representatives in Spain of Sage and of Mr Foster. It has also allowed them to be
41 accompanied by lawyers who are not parties to the case but who were sent by
42 Mr Foster and by private individuals or Mr Cass Weiland, so that they could visit the
43 ship. They could see the ship, witness its current condition, and they were allowed to
44 take photographs which have been displayed openly as evidence here in this
45 Tribunal. They have been asked on more than one occasion to appoint a seaman to
46 look after the ship's maintenance, as I said before. This seems to be customary and
47 it is well known to all of the lawyers who deal with these issues in Spain.

48
49 Furthermore, on one occasion there was an entry in the ship without authorization by
50 persons related to Sage and related to Mr Foster in spite of the fact that the ship was

1 under seal and, as I said, they were asked by the judge on various occasions to
2 appoint a seaman to take care of maintaining the ship because it is someone that
3 they trusted, someone in whom could be placed the trust of the owner, and it would
4 be understood that this person would best protect the interests of the owners.
5 However, the interested parties did not respond to the request. The judge of criminal
6 court No. 4 of Cádiz, at the request of the Spanish port authorities, and also after
7 consulting with the parties in the proceedings, gave an order on 27 July 2010 in
8 which he asked all the interested parties, that is to say, the parties involved in the
9 case, those who were suspected of having participated in this process, also the
10 owner of the ship, who is also suspected of having taken part in the offence, to give
11 their views on the different options for maintaining the ship. After this, in the
12 indictment that you know, because it was presented to this Tribunal, it was formally
13 requested in accordance with the Provisional Measures, and after consulting with the
14 authorities, to send a copy which was made available to this Tribunal, in this
15 indictment once again the issue was raised of maintaining the ship, of what was to
16 be done with the ship.

17
18 Only at this time, that is to say, only in early 2011, did the legal representatives of the
19 owners of the ship in Spain – at this time it was Mrs García Coronil, who acted as the
20 lawyer, as the formal representative who receives the documents, sends the
21 documents of the persons involved in the case – only then did they say that they
22 were not going to appoint a seaman to look after the ship's maintenance and this
23 was not Sage's responsibility. This response led the judge to appoint a custodian for
24 the ship and that person was to be put in charge of the ship.

25
26 Taking into account what I just said, Mr Pallín, what is your opinion of the actions of
27 the judge, asking that a seaman be appointed on more than one occasion, asking
28 that a seaman be appointed as the person designated to take care of the ship, and
29 finally that some kind of custodian be appointed to take care of the ship?

30
31 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): If everything that you have just
32 said is what is reflected in the documents in the case, I consider that the judge has
33 acted correctly, that he has tried to exhaust all of the possibilities that he has at his
34 disposal to conserve the ship, to maintain the ship, and in what you have just told me
35 there was inactivity on the part of the owners of the ship, and finally the legal solution
36 is to appoint a custodian, that is to say, a person who is responsible for the custody
37 and maintenance of the ship. This is simply an administrator, an administrator who is
38 delegated by the judge with the sole function of maintaining the ship.

39
40 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): So then, by appointing
41 a custodian for the ship, the judge has not in any way transferred the ownership of
42 the ship? Has the judge granted ownership of the ship to the custodian or does the
43 ship *Louisa* continue to be the property of Sage and Mr Foster?

44
45 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): In no case can the concept of
46 depositing the ship be considered to change its ownership unless there is some legal
47 sanction. In this case the proceedings are still *sub judice*. It needs to be determined
48 to whom the ship will legitimately belong, whether or not there is a conviction or an
49 acquittal.

50

1 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Could you explain the
2 custodian's role to us?
3

4 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Any administrator of a ship,
5 whether it is – any expert would know what the work involved is in maintaining a
6 ship.
7

8 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Can the judge at any
9 time demand that ... what can the judge do?
10

11 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): The judge in reality, what he
12 can do is change the person who is the administrator of the vessel. If the judge trusts
13 that person, he keeps the vessel under these conditions until the end of the
14 investigation, if there is a case, even because the custodian himself renounces this
15 function because it is difficult or it is a problem for him personally, he can request
16 that the judge take away this duty and the judge can appoint someone else but
17 usually it is the same person from the beginning to the end.
18

19 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): So the depositary has
20 the function of taking care of the ship.
21

22 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): So if this ship, as I just said, is
23 then returned, then obviously the custodian no longer has a job.
24

25 **THE PRESIDENT** (*Interpretation from French*): I apologise for interrupting you,
26 Mr Martín Pallín, but would you wait a little for the question to be translated into
27 French or English? Thank you.
28

29 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, Mr President.
30 I know, but it is always complicated.
31

32 (*Continues in Spanish*) To finish off, I would like to ask you some questions about an
33 issue which has been raised insistently by the Applicant with regard to the informing
34 of this Court about the indictment of 2010. As you know, because it is here in our
35 record and it is an issue that has been brought up both by the Applicant and by the
36 Defendant in the different pleadings, the judge informed us when he had issued the
37 order of 27 October 2010, when in my function as agent of Spain I requested
38 information to be able to prepare the case and the legitimate defence of Spain -
39 since without information it would be impossible to exercise the legitimate right to
40 defence of the State - when he was asked for information, the judge said to me that
41 on 27 October 2010 he had sent a request, and Spain referred to the fact that this
42 request insisted on the need to continue this custody through 2010, and we have this
43 in different documents in the proceedings. In public hearings that were held before
44 this Tribunal, if I am not mistaken, Mr President, on 10 December 2010 the President
45 of the Tribunal asked the Spanish delegation if it could provide a copy of the
46 indictment, as it was of interest to the Tribunal to know the contents of the
47 indictment.
48

49 I informed the Tribunal at the time that I did not have a copy of the indictment. I knew
50 that it existed but at that time, in the strictest sense, I did not have a copy, so I got in

1 touch with the competent authorities and I asked them about the possibility that they
2 send to the Spanish delegation a copy of the indictment so that the Tribunal could
3 then examine this document of interest. The copy was sent by the judge in charge of
4 the court at that time, it was urgently translated into English, because, naturally, the
5 document was in Spanish, and on 11 December 2010, in my position as the Agent of
6 Spain, I then submitted a copy, you will remember, of this indictment, with a letter
7 indicating that the indictment was placed at the disposal of the Tribunal at the
8 request of the Applicant, and for the sole effect that this document be placed in
9 evidence. I am reminding you of the intention – I am reminding you – this does not
10 have anything directly to do with Mr Martín Pallín’s testimony.

11
12 The Applicant, Saint Vincent and the Grenadines, has alleged subsequently, and you
13 can see this in various documents and communiqués, that the defendants received
14 no previous notification of this indictment, a circumstance which the Agent of Spain
15 did not know and could not know, given the fact that, as the Agent of Spain, I am not
16 personally involved in the case, I am not a party to the case in Cádiz. So based on
17 this, alleging that the notification was produced before the notification of the
18 document to the interested parties, the Applicant, Saint Vincent and the Grenadines,
19 has repeatedly stated that there has been a violation of Spanish law and has even
20 insinuated, and even said literally, that there has been collusion between the Agent
21 of Spain and the competent Investigating Judge No.4, who issued the indictment,
22 that there has been collusion on their part, and he said that the judge would have
23 issued this indictment following instructions – we have not been told from whom but
24 it is presumed logically it is from Spain’s legal counsel before this Tribunal – and that
25 also the judge had predated this indictment.

26
27 I say this again: that the judge had predated this indictment, that is to say, that he
28 had issued the indictment when the hearing for provisional measures was carried
29 out, and that afterwards, on 27 October, this was done for the purpose of prejudicing
30 the interests of those who are accused in this indictment in the criminal case in
31 Cádiz, and at the same time to benefit the interests of the defence of Spain in the
32 present proceedings.

33
34 Since this is, I think, of a considerable importance, because it refers to the idea of
35 good faith and of good practice in proceedings, I must call to the attention of the
36 Tribunal the circumstance, and I would like, with your permission, to ask several
37 questions of the expert.

38
39 **THE PRESIDENT:** Yes.

40
41 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Thank you.

42
43 Mr Martín Pallín, could you tell us about the nature of the notification of an
44 indictment? What is an indictment, and why is one notified of an indictment?

45
46 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): According to Spanish
47 procedural law, the judge, the investigating judge, when he considers that he is
48 further enough along in the investigation and that he has proof – of course, this is
49 evidence that an act has been committed that could be characterized as an offence
50 – and that then the person appears who is the possible author or authors of the

1 crime, he then issues, because that is what the law determines, an indictment. The
2 indictment needs to include all the facts which, according to law, are what he
3 considers to be the evidence, and he has to designate this, he has to indicate this to
4 someone, these need to be indicated, and it is a guarantee that it meets the
5 provisions of the European Convention and the International Covenant on Civil
6 Rights. If someone is accused of a crime, they have the right to know what are the
7 accusations being made against them, and so this indictment is notified to the
8 interested parties, of course to those who are accused, to the prosecutor's office, to
9 the lawyers of the State if they are parties in the case.

10
11 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): When is a notification of
12 an indictment made?

13
14 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): It depends on a lot of factors. If
15 the accused is being detained, notification is immediate. If the accused is free, he
16 needs to be traced, because this person is free and they need to find him and he
17 needs to be notified. If he is outside of Spain, that makes it even more complicated
18 to serve notification. So then there are international mechanisms that need to be put
19 into place for the legal papers to be served, but I stress that this is notification of the
20 content of the indictment, and the accused person needs to know what the facts are,
21 what he is being accused of, in order to establish his defence. He could appeal the
22 indictment or could prepare for the hearings. This indictment, as I explained
23 yesterday, in our system, is attested by the court clerk, and there is a statement that
24 says, "This is sent and ordered by the judge before me, the court clerk, and I attest
25 to this". So the date and content cannot be changed, because to say the contrary
26 would be to accuse someone of a very serious crime, of forgery, and that, in my
27 opinion, has not occurred and it is absolutely impossible for me to imagine that it
28 could occur.

29
30 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Here is a question
31 regarding the time limits. The indictment was delivered on 27 October 2010 and the
32 parties received notification of it between 10 and 13 December 2010. Mr President,
33 I found this out later, when I was asked to be informed about how the notification
34 occurred. On the 10th there had already been a notification to the prosecutor's office
35 and they had already begun to send the communication, but those are minor details
36 and I am not going to go into whether the communication period began one day
37 before or one day after. So the indictment was delivered on 27 October. The parties
38 were notified between 10 and 13 December. It is true that there is a month and a half
39 between the time that an indictment was delivered and the time when all of the
40 parties were notified, all of the accused were notified. As you explained, Mr Martín
41 Pallín, what elements are in play here when determining how people can be
42 informed or notified more quickly, less quickly?

43
44 I am not going to go into that. What I want to ask you about is, you referred to the
45 fact that the notification of the indictment has the purpose of letting the accused
46 person know about the charges against him on the one hand, and on the other hand
47 that the accused can present the appeals that he considers appropriate or
48 opportune. Based on the information that I am going to provide for you now – these
49 are facts, pure facts, and, if I am not mistaken, they are included in the last piece of
50 written evidence presented by Spain – the prosecutor's office and some of the

1 accused have lodged appeals. This was recognized immediately after they received
2 notification, within the time limits established by law, and these appeals are still in
3 progress. There has been a first response to the first appeal and we are still waiting
4 for a ruling on the next appeal.

5
6 I would like to point out here, because some of the accused, either because they are
7 not in Spain or have not been in Spain for a very long time, or because, in keeping
8 with an obstructionist tactic that we have seen here in practice, they appointed their
9 lawyers but they have not appointed their new lawyers, and so they are not legally
10 represented and therefore the proceedings cannot continue, but it is true that there
11 has been a first response and we are still waiting for the response to the final appeal
12 on this issue. So as soon as the interested parties were notified, that is to say, the
13 prosecutor's office, how, as the representative of public interest – because we seem
14 to be forgetting here that in Spain, in the criminal proceedings, the prosecutor's office
15 is also one of the parties, and it represents the public interest and the defence of
16 constitutional values, and the defence of due process. So taking into account the fact
17 that the public prosecutor's office lodged an appeal, and that there have been other
18 people who have been accused who have also lodged appeals, could you say that
19 this delay in the notification of the indictment which occurred, did this delay cause
20 any kind of prejudice or damage to the right to defence of the accused?

21
22 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): No, not at all. From the time that
23 they have had knowledge of this, from that moment on, from that moment on is when
24 we begin calculating the deadline for lodging an appeal, not before, so of course they
25 have been able to formalise anything in the allegations that may have been made in
26 order to impugn the indictment. You can examine them. You have them, and
27 therefore I do not think that in any way that their right to defence has been infringed,
28 nor has there been any lack of defence on their part, nor have they been left
29 defenceless.

30
31 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): One last thing about
32 this issue here. In this specific case, in the notification which is late but which has
33 enabled them to exercise their right to defence, has this generated any kind of
34 infringement or violation of the fundamental rights or the human rights of the
35 accused?

36
37 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Not at all. I believe, as I just
38 said, the arguments that they consider necessary in order to impugn the indictment,
39 they are available to them. They can make these allegations before a higher court,
40 that is to say, according to our terminology, the Provisional High Court of Cádiz and
41 the Provisional Court of Cádiz would then decide whether to uphold the indictment
42 or, on the contrary, if they consider that it is unfounded and therefore it is dismissed
43 and rendered null and void. Moreover, within our system this section of the court that
44 is formed by three judges cannot then take part in the hearings because it would be
45 within the concept of the judge who has been "contaminated", so it would be an
46 abusive appeal and you would not be able to take part in the appeal because that is
47 a guarantee for the accused to see that his case is being shown to a court that has
48 no other involvement in the actions that are going to be tried.

1 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): I have one last
2 question, Mr President. I am referring here to your extensive professional
3 experience. I am asking you, as a person who was a prosecutor for 20 years, you
4 were a member of the public prosecutor's office for 20 years, you were then a judge
5 for 22 years, as you told us yesterday – and not just any judge; you were a judge of
6 the Supreme Court of the country, the highest level in the country, where all of the
7 criminal appeals wind up, and you were in the second court, which is within the
8 Supreme Court the chamber that is devoted to criminal proceedings. So, given your
9 experience - and you can please remind me here, because this is relevant to the
10 question that I am going to ask you now - do you think that it is possible for a
11 Spanish judge to deliver an indictment on instructions from a body that is not part of
12 the proceedings?
13

14 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I think I have already said that it
15 is impossible and, moreover, if somebody of the executive branch or any other State
16 authority were to interfere or request a judge to deliver this or that indictment, that is
17 a crime, and that is included in the criminal code. It is called attacking the
18 independence of a judge. It is a model in which there is maintenance of the
19 independence of the judge and therefore I consider it absolutely impossible that a
20 representative of the executive branch could make a request of a judge and ask him
21 to deliver this or that sentence or indictment.
22

23 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Thank you very much,
24 Mr Martín Pallín.
25

26 (*Interpretation from French*) Thank you very much. That brings me to the end of the
27 part of the examination.
28

29 **THE PRESIDENT**: Before I ask the Co-Agent of Saint Vincent and the Grenadines
30 whether he wishes to cross-examine, I would like to raise one question. One of our
31 judges would like to ask a question of Mr Martín Pallín. It is about the role of the
32 court clerk, to which you made reference on several occasions. I would like to ask
33 Judge Lucky to ask a short question, to which I hope Mr Martín Pallín will give a
34 short answer.
35

36 **JUDGE LUCKY**: Mr Pallín, good morning. It is very good to have a fellow judge from
37 a national court here. The question is very short. Yesterday you said that in this case
38 we have a special circumstance, that the arrest actually takes place before the court
39 clerk, so, in summary, there is already a judicial control or judicial knowledge of the
40 arrest because the court clerk was present. The question simply is this: does the
41 court clerk in these circumstances have the powers of a judge, and in the absence of
42 the judge, is the judicial authority of the judge conferred on the court clerk in all
43 circumstances?
44

45 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Not exactly. The court clerk has
46 a special mission, which is the form in which the entry and search is carried out. He
47 goes with the judicial commission and he describes the place and the objects found.
48 It is almost like a literary story, a description of the place. I will give an example. It is
49 like a movie: there is the pistol over *here*, bodies over *here*, so that is the specific
50 mission of the court clerk. As to personal arrest, he has no authority. He simply

1 attests to the fact that this has happened, and the judge is the only one who has the
2 authority to agree to whether or not the accused should be kept under detention. He
3 attests to the fact that everything that happened there has actually happened, that he
4 saw it. Now, with the new technologies, sometimes the court clerk even uses
5 recording technology so that the whole scene that has been searched can be seen
6 perfectly, and this kind of recording has the same authority as a document that has
7 been attested to by a notary.

8
9 **THE PRESIDENT:** Thank you for your explanation. Pursuant to article 80 of the
10 Rules of the Tribunal, an expert called by one Party may also be examined by the
11 other Party. Therefore, I ask the Co-Agent of Saint Vincent and the Grenadines
12 whether the Applicant wishes to cross-examine the expert.

13
14 **MR WEILAND:** Thank you, Mr President. I have some questions.

15
16 **THE PRESIDENT:** You have the floor.

17
18 ***Cross-examined by MR WEILAND***

19
20 **MR WEILAND:** I want to ask you first of all a follow up question to your last bit of
21 testimony. In this case did the court clerk make a record of everything that was taken
22 off the ship? You said that that is one of his primary duties.

23
24 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): The court clerk, according to all
25 procedural law, draws up a succinct certified record of the events. Originally it was
26 written by hand. As I said before, we now have new technologies, and this allows us
27 to reflect otherwise what has actually happened. It is very much up to the court clerk
28 what technology he uses, and obviously it also depends on the technical means
29 available at that time. This written certified record must exist and it will be more or
30 less complete. It is something that our law allows.

31
32 **MR WEILAND:** My question, sir, is: have you seen the record?

33
34 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): No, I have not seen the written
35 record.

36
37 **MR WEILAND:** I want to go back and try to separate your testimony from the
38 testimony of the Agent of Spain, but I think that a good place to start is with article
39 561 of your Criminal Code. May we see that? It is Annex 27 to the Applicant's
40 Memorial. This article was also produced for the Tribunal during the Provisional
41 Measures hearing. Your nation observes the rule of law. Would you agree with me
42 on that simple proposition?

43
44 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Absolutely, of course.

45
46 **MR WEILAND:** Your rule of law includes article 561 and it also includes a
47 recognition by Spain of basic human rights. Would you agree with me on that?

48
49 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Of course.

1 **MR WEILAND:** Your law also recognizes the presumption of innocence?
2
3 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): In effect.
4
5 **MR WEILAND:** Your law recognizes that justice cannot be denied to citizens and
6 even non-citizens of Spain. Is that correct?
7
8 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): More than that.
9
10 **MR WEILAND:** In your law is there a sense of proportionality when it comes to a
11 criminal enforcement? By this I mean, to use an extreme example, that your law
12 would not punish someone with ten years in jail for stealing a loaf of bread. There is
13 a sense of proportionality, that the punishment should fit the crime alleged. Is that
14 the case?
15
16 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I am not sure that I have
17 understood correctly. You talk of stealing a bank or stealing a boat? I did not quite
18 understand. Oh, you meant a loaf of bread. In effect, the principle of proportionality is
19 very much a basic principle of the civil law. We also look to Italian law, with Beccaria,
20 who set out this principle.
21
22 **MR WEILAND:** Now let me focus on article 561 for a moment, because I was
23 somewhat confused by your testimony yesterday. I believe you said that article 561
24 was in effect on 1 February 2006 and that this is still the law in Spain, at least that
25 this particular provision has not been revoked?
26
27 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Yes, in effect the article is in
28 force and has not been repealed.
29
30 **MR WEILAND:** I would like to explore with you for just a couple of minutes this
31 morning the exception or exceptions to the law, because Saint Vincent and the
32 Grenadines has produced an eminent authority from Spain – I think you know him –
33 Javier Moscoso, who has testified in the earlier proceeding that the Spanish judge
34 violated this provision and that that rendered the search illegal. Your testimony
35 seems to be that you can violate 561, that that is okay under some circumstances,
36 and I would like to clarify those circumstances. First, you testified that if it is a
37 cocaine dealer, at least in some instances apparently, 561 does not apply. Is that
38 what you testified to yesterday?
39
40 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I think I have not understood
41 your question. Cocaine traffic is not covered by 561? No. What I said was that 561 is
42 not applicable if an offence detected *in flagrante delicto* was involved, or that what
43 was involved was the possible loss of evidence of a crime. That is what I said. I
44 never spoke of the fact that 561 was not applicable to cocaine dealers.
45
46 **MR WEILAND:** Why do you say that? Article 561 does not include any language
47 which says, “This article does not apply if the judge or magistrate believes that
48 evidence might be removed from the ship”. It does not say that. Where does this
49 idea come from?
50

1 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): This idea comes from the
2 general rules that authorizes a judge to adopt all those measures directed at
3 ensuring that the effects, elements, tools or instruments of a crime are not lost. But
4 I want to clarify that in the case of an entry and search there are several exceptions,
5 some deriving from anti-terrorist legislation, which obviously is not the case here,
6 and other exceptions that derive from the existence of entry for humanitarian
7 reasons – for example, when entry to a ship is necessary for humanitarian reasons –
8 or in the case of criminal offences, for example, when entry to a ship is necessary in
9 order to ensure that certain measures adopted in administrative or business
10 procedures are applied. There are many exceptions to this article. I do not want to
11 linger on and explain in detail, as though it were a university lecture, all the variants
12 of and exceptions to this article, but in this specific case we are facing requirements
13 or provisions that are not essential requirements of the procedure.
14

15 Our constitution of 1978 obliges us to interpret this article in the light of the
16 constitution of 1978, and our judicial system obliges judges to interpret this article in
17 the light of the European Convention of Human Rights, which, as we all know,
18 contains a provision that all those measures which are necessary in an accredited
19 society are accepted in order to prevent the commission of crimes. What would be
20 the consequence of entering a ship without the authorization of the captain?
21 Obviously the captain is there. If the captain is not there or even outside Spain, or
22 without the authorization of the consulate, if it is available as well, of course, the
23 consequence would be that the judge is authorizing a search and, the court clerk
24 being present, no essential formality of the procedure has been violated. It is a
25 habitual procedure in a democratic society in order to prosecute crimes.
26

27 **MR WEILAND**: Is there an exception for ships that fly flags of convenience? As you
28 know, that is the excuse the judge gave. His explanation was that you do not need to
29 consult with Saint Vincent and the Grenadines because the ship flies a flag of
30 convenience, and we have a proliferation of flags of convenience. Is that something
31 that is a new exception to article 561?
32

33 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Not necessarily. I am not an
34 expert in the law of the sea, but I believe that there is an article in the Convention –
35 I think article 91 – which mentions the fact that there has to be a genuine link
36 between the flag country and the ship itself. There has to be a genuine link, not an
37 artificial link, a sort of uncontrolled connection. I think it is the last paragraph of article
38 91. I read it yesterday and that is why I seem to remember it. Perhaps a judge
39 considered, as was the case in the case of Prado Bugallo set out yesterday, that
40 really the link, the connection, was not sufficiently genuine and true between the flag
41 country and the ship. Perhaps the judge interpreted it this way. I do not know, but
42 that is a possibility.
43

44 **MR WEILAND**: You do not know whether the judge had that in his mind. Is he a
45 student of the law of the sea?
46

47 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I really do not know what judges
48 have in mind, Spanish judges generally.
49

1 **MR WEILAND:** There was also testimony to the fact that Saint Vincent and the
2 Grenadines does not have a consulate in Spain. Can you tell us whether Spain has a
3 consulate in Saint Vincent and the Grenadines?
4

5 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I do not know this. I do not work
6 in a foreign office. I do not know.
7

8 **MR WEILAND:** I can tell you that they do not have an embassy there either, but I do
9 not think that would excuse my country from contacting the Spanish Embassy in
10 Trinidad if there was an issue about searching a ship, but that is another question.
11 You are not suggesting to this Tribunal that the absence of a consulate relieves the
12 judge of the necessity to contact the flag country, are you?
13

14 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): No, I am not suggesting that at
15 all. What I am forming is that if a judge is suspicious or has reasonable doubts that
16 there was evidence and possibly even persons related to the offence on board a
17 ship, he surely could not wait for three months for the ship to wait at the dock in
18 order to obtain authorization. Judges in criminal investigations have to act in line with
19 the nature of the criminal offence that is being investigated; and, of course, as I said
20 before, I do think that he acted correctly. Mr President, if I am allowed an example, if
21 a criminal offence is committed in the form of a fight, a brawl, between sailors,
22 should the judge then wait for months for the authorization to come up if the captain
23 is not present or the consulate is not available? I think the answer is quite sincerely
24 "no".
25

26 **MR WEILAND:** Have you considered whether the judge could just post a policeman
27 at the dock and take the time to contact the consulate of Saint Vincent and the
28 Grenadines? That would ensure that nothing was removed from the ship. It is a
29 typical thing in some countries all over the world.
30

31 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): All the countries that I know of
32 allow the possibility for police presence to be established around a ship for people
33 and things to be removed from the ship, but it also depends on the circumstances
34 and the characteristics of the place. In this case it was a ship, not a building, and
35 perhaps the evidence can be destroyed through other means. Unfortunately, there is
36 no mathematical rule. The judge has to act in line with the circumstances of the case
37 and the place where things are happening.
38

39 **MR WEILAND:** Did you know that the judge had begun investigating the matter in
40 2005 and that the ship had been tied up in the dock for over a year?
41

42 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Yes, I am aware of this.
43

44 **MR WEILAND:** Did you know that the tender to the *Louisa*, which is called the
45 *Gemini III*, was completely out of the water and in storage?
46

47 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Do you refer to the time that the
48 entry and search was carried out or do you refer to the time you are mentioning?
49

50 **MR WEILAND:** The time of the search.

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MR MARTÍN PALLÍN (*Interpretation from Spanish*): I think so.

MR WEILAND: I want to ask you about the issue of human rights. Are you the former president of the Human Rights Association of Spain?

MR MARTÍN PALLÍN (*Interpretation from Spanish*): Yes, I am.

MR WEILAND: You have come here to condone, to express your approval of, the manner in which the persons associated with the *Louisa* were treated by the Spanish judge and by the Spanish federal police?

MR MARTÍN PALLÍN (*Interpretation from Spanish*): I think the question is captious. I am not here to approve anything. I am here to give my opinion.

MR WEILAND: You are here to give your opinion, which expresses approval of the manner in which these people were treated. Is that correct?

MR MARTÍN PALLÍN (*Interpretation from Spanish*): That is a criterion that the judge will have to decide.

MR WEILAND: No, sir. I am trying to determine exactly the purpose for which you appear here in terms of the human rights allegations that Saint Vincent and the Grenadines has lodged. You are obviously an important scholar, an authority on human rights. I listened very intently while you were asked questions about the treatment of these people and it was my inference that you were expressing your approval of their treatment, that you do not believe that their human rights were violated. Can you confirm that, or would you indicate that that was not your intention?

MR MARTÍN PALLÍN (*Interpretation from Spanish*): If you were more specific, in what cases, in which circumstances, which persons were involved and at what time, I could reply, but you are asking such a generalized question of approval that I am not here to approve anything but to give my opinion on things.

MR WEILAND: We will take it up after the break in more detail, if that is all right, Mr President, but I just have one final question so that we can consider this during the break. I believe that you answered some questions in general terms about this issue, but I want to know whether you have read the transcripts that are produced every day. Have you read the transcripts of the testimony of Ms Avella and Mr Avella?

MR MARTÍN PALLÍN (*Interpretation from Spanish*): No, not fully. I have not read them fully.

MR WEILAND: Perhaps you could take a look at those during the break. I have no more questions at this time until we come back.

THE PRESIDENT: Thank you, Mr Weiland. We have reached 11.30. The Tribunal will withdraw for a break of 30 minutes. We will continue the hearing at noon.

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(Break)

THE PRESIDENT: Mr Weiland, you may continue with the examination of the expert. You have the floor.

MR WEILAND: Thank you, Mr President.

Judge, I had started to talk a little bit about human rights before we broke and I would like to go back to article 561 for one moment, if you will. We have had some documents presented to the Tribunal relating to an important case in Spain. The treasure-hunter *Odyssey Explorer* with \$500 million worth of treasure was forced ashore in Algeciras. Various things happened after that. The captain was charged. Are you familiar with the matter in general?

MR MARTÍN PALLÍN (*Interpretation from Spanish*): I think I am familiar with general aspects of that case.

MR WEILAND: The decision of the judge in that case was that the authorities had failed to obtain the permission of the captain and they had failed to notify the flag State, which was the Bahamas, and therefore they found that the captain of the ship could not be convicted of grave disobedience for refusing to allow entry. The court cited 561 as good law. By the way the case also indicated that the Bahamas has no consulate in Spain. That did not seem to matter to the judge. So my question to you, before we go on to other things is: should the Tribunal rely on the language of 561, on the testimony of Javier Moscoso, and on the decision in the *Odyssey* case in order to determine what the law is; or should they rely on this opinion from the European Human Rights Tribunal in Strasbourg that you talked about yesterday? Which should they do?

MR MARTÍN PALLÍN (*Interpretation from Spanish*): As is well known, under the continental system – the continental system is not based on precedent, contrary to the Anglo-Saxon system or the common-law system. Under the continental system law must be interpreted by the judge on a case-by-case basis. I am familiar with – and I know this because I have been a member of the Supreme Court – that what is ideal is to unify, have a uniform interpretation of the law, but reality has much more in the way of nuance. In the *Odyssey* case I believe that the question – I did not understand it fully in all of its true meaning – I think the question refers to whether the captain committed or not the offence of disobedience. Indeed, I think he did not commit the offence of disobedience but I do not really know. If you would be so kind as to be more specific regarding the relationship between the *Odyssey* and the *Louisa*, could you clarify that so I can answer you more precisely.

MR WEILAND: We referred to the *Odyssey* decision because it is recent, because it involves a ship which was allegedly involved in taking Spanish patrimony and because Saint Vincent and the Grenadines has contended that the Spanish authorities violated Spanish law and international law by boarding the ship and seizing the ship in the manner in which they did. So if you compare the situation with the *Odyssey* you see that the judge, in a very important case, agreed that the Spanish authorities must obtain the approval of the flag State before boarding a

1 vessel if the captain is either unavailable or unwilling to allow it. So in the context of
2 this case we consider that relevant. Would you not?
3

4 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Again, it is not exactly the same
5 situation. In the case of the ship the *Louisa*, it was docked; it is not a ship that was
6 navigating in territorial waters. Secondly, article 561 was involved, I believe, if I
7 remember correctly, for the purpose – I repeat – to rule that the captain was not
8 guilty of the offence of disobedience. As far as these references – well, I am aware
9 of them because of reading them in the newspapers – I believe that the US courts
10 intervened in everything regarding the activities, the occupation, the ownership, the
11 title-holders, regarding – as far as Spain and the treasure on board the ship was
12 concerned. But I still cannot – I fail to see the relationship here. If you are referring –
13 do not think I am trying to avoid your question. If you are referring to application of
14 article 561, indeed under criminal procedural law, not the criminal code but the
15 criminal procedures law, really the circumstances, in my opinion, are different.
16

17 **MR WEILAND**: Okay. Well, we will let the Tribunal consider how different they might
18 be. Let us turn our attention to human rights. I had asked if you would be so kind as
19 to take a look at the transcripts of some witnesses during the break and I realize that
20 it was a very short break and that was probably not particularly possible, but before
21 we start I will ask you if you have read the transcripts of the Avellas now.
22

23 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): No, no I have not read them.
24

25 **MR WEILAND**: So let me help you with the facts, and if I mistake any fact I
26 apologize. I am sure the Tribunal will recall the facts better than I, but I am going to
27 summarize some facts for you and ask you your opinion as an expert in human
28 rights as to whether the actions of the authorities were appropriate – not from a legal
29 sense, because you have already testified it was acceptable to put Ms Avella in jail
30 and Mr Avella in jail. I believe you indicated that it was acceptable to take passports,
31 et cetera. Now I want to ask you from the human rights perspective what you think of
32 this.
33

34 This young woman, Alba Avella, appeared and testified that she was 21 years old in
35 February 2006. She arrived in Spain approximately three days earlier and the
36 Spanish picked her up off the street where she had been studying Spanish and took
37 her back to the vessel. When she arrived at the vessel it was being searched, so her
38 freedom was limited at the time the authorities picked her up off the street. I think
39 any jurisdiction would agree with that. She was effectively under arrest by that time.
40 She was told to stay on the ship the entire day, after which eventually she was
41 formally put under arrest, handcuffed, put in the back of a police car. There were no
42 female officers. We have yet to hear whether Guardia Civil even has any female
43 officers. She was driven to a jail in Cádiz. She was not instructed as to what the
44 charges were. There were no charges. There was no order from the court relating to
45 her whatsoever. She was put in a jail cell by herself, with a camera watching her.
46 She was given no chair, no cot, no blanket. She spent the night on the concrete with
47 her coat. There were no female officers. If she had to relieve herself there was a nice
48 camera watching. I ask you, as an expert in human rights, do you think at that point
49 in time, on February 1, in the evening when she was trying to fall asleep – say at ten

1 o'clock at night – do you think at that point in time her human rights had been
2 violated by the Spanish authorities?

3
4 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I would ask you once again to
5 please not make abstract references to human rights. I think the question that you
6 want to ask me is whether or not her right to physical integrity, moral integrity, to
7 personal dignity, to the right to not receive cruel, inhuman or degrading punishment –
8 if these were infringed on, because these are human rights that are used a lot in the
9 dialectics of confrontation, political confrontation. They are quite volatile and I would
10 like to focus on specific rights. Trying to follow your very long story here, first of all
11 why did she have to be on the ship? It was a guarantee for her because thus she
12 was ensured that the legal commission was not going to alter anything on the ship or
13 create false evidence against her; so that was for her own sake, her own guarantee.
14 Then she was taken off in handcuffs. Well, in my personal opinion handcuffs should
15 be used as little as possible, but not only in Spain, in any country of the world. I am
16 not in favour of handcuffing people violently. That she was taken off in a police van?
17 Well, I think that is the usual way of taking persons to detention centres. That there
18 were no female Guardia Civil officers, I can assure you that there are very many. I do
19 not know what the percentage is but there are many female officers of the Guardia
20 Civil in Spain.

21
22 As to having cameras inside what we call the cell or the detention centre, well, this is
23 a demand – excuse me this is a recommendation from the Council of Europe to
24 avoid people being mistreated, and that is why cameras are kept in cells as long as
25 they respect their privacy and that these are not recordings that infringe on their
26 privacy. It is another guarantee. Unfortunately, I think that in Spain there are many
27 detention centres that do not have cameras. I do not know if the one in Cádiz has
28 cameras or not. As to the right to be informed of the charges against her, well at this
29 time the police were going through the ritual that you in the United States have
30 exported through your films: “You have the right to remain silent; you have the right
31 to not say anything that could be used against you; you have the right to a lawyer;
32 anything you say may be used against you” – all that sort of thing that we have all
33 accepted because we consider that to be a guarantee. As to the detention
34 unquestionably producing a situation of nervousness and so on – well, of course,
35 I agree fully with you. If that is as far as your question goes, well, I think if I have left
36 something unanswered go ahead and ask me, but I think that is as far as I go.

37
38 **MR WEILAND**: You mention there are various aspects of the general term “human
39 rights”. You are much more aware of those sub-categories than I with your
40 background, but my question really is for you to express an opinion which would
41 encompass all the various sub-categories such as cruel punishment, physical
42 integrity, invasion of privacy. Do you believe up to that point of time, on the night of
43 February 1, any of those rights had been violated, based on the story I have told
44 you?

45
46 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): To answer as to physical
47 integrity from what you have just told me, no, I do not think so. Regarding her right to
48 privacy – well, I really cannot give you a specific answer. I would have to see the
49 circumstances under which all of this occurred, but in any case this lady had the
50 opportunity to put any allegations in writing before a Spanish judge. If she is not

1 convinced by the decision of the Spanish judge she can appeal to the hierarchical
2 superior, the Spanish judge. She can make allegations during the hearing, a public
3 hearing, where any Spanish citizen can be present and watching the trial. Even if
4 someone – if there is enough interest it can be put on television. She has the right to
5 allege this before the Supreme Court, and she can even have a case of nullification if
6 the evidence against her can show this. She could ask for redress. I think the system
7 even enables her to get as far as Strasbourg where she can make these allegations,
8 and I think there are many decisions here in Strasbourg to this effect, and it could
9 affect any country.

10
11 **MR WEILAND:** Sir, we are on television and we are not going to Strasbourg. We are
12 not going to pass the buck, as they say in the United States, to another court for
13 some other group to decide about this woman's rights. I am asking you whether you
14 believe, whether you are willing to condone what happened to her, just as of the
15 night of February 1 in terms of violation of her civil rights, because I have a lot more
16 things that happened to her after February 1 that we have not even got to yet. My
17 question is: would you approve of the actions of the authorities as they related to
18 Ms Avella as of ten o'clock at night on 1 February 2006?

19
20 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I think I have already answered
21 your question, but if you insist on asking me again I can only tell you that I would
22 have to have been there to see what happened. I would need to see what conditions
23 were in the police van and how she was brought. I have already told you what I think
24 about handcuffs. It is not that I approve or disapprove; I just do not think it is a
25 method that should be generalized as you see on television around the world.
26 Regarding the conditions under which she was detained, I do not know. I do not
27 know what the conditions of the cell were. Specifically the Human Rights Association
28 – we visit detention centres in order to make sure that they have adequate
29 conditions. Now, if according to your version – if your version does in fact precisely
30 and exactly reflect reality, then I think that the conditions of detention could have
31 been better. They could have been improved.

32
33 **MR WEILAND:** Let us talk about what happened to her the next day. The evidence
34 here, which is uncontroverted evidence so far – my description of the jail cell was
35 uncontroverted by the Spanish delegation. Her description of the jail cell was
36 uncontroverted. Let us talk about the next day. She wakes up in the morning on the
37 concrete floor with her coat. She realizes that her menstrual period is beginning. She
38 is in extreme misery. She has not been allowed to call her parents. She is loaded up
39 in the police car and taken back to the ship. She is now becoming extremely agitated
40 and worried. There is still no female police officer. At the end of the day she is taken
41 back to the same jail cell. She is not charged with any crime. Do you think her
42 human rights are being violated at that point?

43
44 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): You are referring to a personal
45 situation, a very specific personal situation. Again, what are the human rights of a
46 detained person? According to the international text, international protocols and
47 international law the right not to be physically or psychologically mistreated – if she
48 suffered psychologically that is an issue which could be reported and the courts
49 could assess whether, pursuant to international standards, this could be considered
50 mistreatment because of psychological intimidation. Spanish law has the offence of

1 torture, that is to say receiving cruel, inhuman and degrading treatment. Any Spanish
2 citizen, any foreign citizen, can report this to the Spanish courts. I think this is very
3 clear. I would imagine that Ms Avella has had lawyers and has had opportunities to
4 present these kinds of reports or allegations.

5
6 **MR WEILAND:** Let me suggest to you, Ms Avella at the time of this incident was 21
7 years old and she was a yoga instructor in Denver, Colorado. It is quite difficult to
8 retain a lawyer in Spain with her money. You mentioned psychological issues. Let
9 me add another feature of what happened to her as she was taken back to jail on the
10 second night, because now she knew what was ahead. Her testimony is – and we
11 have heard nothing from the Civil Guard or the judge or anyone. We heard her
12 testimony, which is uncontroverted, that she became hysterical knowing what was
13 ahead and the police took her to the hospital and the judge sedated her. At that point
14 do you think her human rights had been violated by the Spanish authorities?

15
16 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Regarding the lawyer, I remind
17 you that the Spanish system has free State lawyers – those are public defenders
18 who are available to persons who want to report these kinds of events. Now, as to
19 defending illegality, the ombudsman for illegality can do so. Perhaps you are not fully
20 aware of this but there is the Institute of the Ombudsman, the Defensor del Pueblo.
21 She could have made a report to the police about it. So you are asking me about the
22 attitude of the judge and the Guardia Civil? I do not know if I have really understood
23 your question very well.

24
25 **MR WEILAND:** I was describing her personal circumstances and now you are telling
26 me about ombudsmen. Sir, at this point in her experience with the authorities they
27 had not even told her the charge, much less “you can call an ombudsman if you feel
28 like we are mistreating you”. Would you approve that from a standpoint of human
29 rights as the way the woman was treated over these first two days? Would you think
30 it was appropriate?

31
32 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Sir, as far as the interpreter has
33 translated for me, if she was treated this way for two years – excuse me, two days.
34 Yes, I will repeat once again that once she was out she could talk to her family; she
35 could talk to lawyers. I do not know if she talked to you, if she had the opportunity to
36 talk to you. Any person in any system knows what are the mechanisms that they
37 have to report these kinds of treatment, and therefore she had the opportunity to do
38 so. I repeat. We have always maintained, from my position as President of the
39 Human Rights Association and of course in my position as a prosecutor and as a
40 judge that the conditions under which people are detained need to respect the rights
41 of any detained person. That is included in all of the universal jurisprudence, and any
42 deviation from this – well, of course, I do not approve.

43
44 **MR WEILAND:** Do you have any daughters?

45
46 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Mr President, I have two
47 marvellous granddaughters, but I only have two sons.

48
49 **MR WEILAND:** I have a daughter who is 20 years old, and I do not think she would
50 know if she was treated this way to call the Ombudsman, especially if she was not

1 allowed a phone call. So let me ask you about another aspect of Ms Avella's
2 treatment. I heard you say two days of this treatment is probably OK. I think that is
3 what you said. How many days of similar treatment have to elapse before, in your
4 opinion, it would be a violation of her rights and it would just be inappropriate under
5 Spanish law and under human rights law? How many days? Two days is OK, but
6 after that, three days, four days?
7

8 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I do not know, Mr Attorney, if
9 there is a problem with the interpretation. Are you insinuating that I measure the
10 violation of human rights in days, in minutes, in hours? I think that is an affirmation
11 that I would not make, that I have not made, and that I would not admit be made
12 before any court of justice. Human rights are not measured in hours or even in
13 minutes. If they are violated, you could torture someone in five minutes. So I really
14 do not understand the question. That is badly done and there is no duration that is
15 admissible.
16

17 **MR WEILAND**: I apologize profusely. I agree completely that violation of human
18 rights cannot be measured in hours or days. I thought you said – and again, I
19 apologize, because I must have misunderstood – that the situation that Ms Avella
20 faced after the first two days was somehow understandable and acceptable. Was I
21 mistaken?
22

23 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): You are deeply mistaken.
24

25 **MR WEILAND**: So the situation she faced after two days was not acceptable, in your
26 opinion as an expert in this area?
27

28 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): What are you referring to when
29 you say “acceptable”?
30

31 **MR WEILAND**: In terms of her rights, in terms of her human rights.
32

33 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I repeat again, to which rights
34 are you referring?
35

36 **MR WEILAND**: I thought I had made that clear: all categories of human rights, cruel
37 punishment, physical integrity, right to privacy, communication with the outside
38 world, anything that you would like to include in the category would be OK with me.
39

40 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I have said before and I will
41 repeat again, physical integrity and what you have said, if we understand physical
42 integrity to be being beaten or any other sign of physical violence, you have not
43 described anything that I have heard of that nature. We already know what the
44 conditions are of any person who is detained in a detention centre, psychologically
45 speaking. No-one is calm. I think Kafka defined it better than anyone in *The Trial*,
46 when he said no-one can be calm under these circumstances, and everything you
47 are talking about later about personal conditions of Ms Avella are unfortunate and I
48 have responded with what I thought was appropriate.
49

1 **MR WEILAND:** I will advise you that Ms Avella spent several more days in jail,
2 without charge, and then when she was released her passport was taken. You
3 testified earlier today that taking one's passport was acceptable practice in Spain –
4 correct?

5
6 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): In Spain and in many other
7 countries.

8
9 **MR WEILAND:** I believe you also testified that the investigation was ongoing and
10 that that legitimized the judge's decision. Do you recall that testimony?

11
12 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Excuse me. I need the
13 translation. I cannot hear the interpreters. Can the question be repeated?

14
15 **MR WEILAND:** Yes. I was thinking that you testified earlier today that it was your
16 understanding that the investigation by the judge in court No. 4 was ongoing and that
17 that made it acceptable to take Ms Avella's passport away. Is that correct?

18
19 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): As an element to avoid that
20 evidence could be destroyed or to place obstacles in the way of an investigation,
21 yes, but I think the measure of retaining the passport was not eternal. It was
22 returned, as happens in most cases. The passport is retained during the time that
23 the judge considers, rightly or wrongly, according to the different opinions,
24 necessary, but I do not think the passport was confiscated. It was returned. Am
25 I right?

26
27 **MR WEILAND:** Yes, it was. Do you know when it was returned, how many days,
28 weeks or months later?

29
30 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): No, I do not know exactly but
31 what makes me feel better about this is that it was returned.

32
33 **MR WEILAND:** I will represent to you that it was returned about eight or nine months
34 later and that the court provided no mechanism for her to live in Spain. Is that
35 appropriate, in your mind, as an expert in human rights?

36
37 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): You are asking me whether the
38 Spanish, French, Italian, German, Belgian court has the responsibility to offer a
39 *modus vivendi* to all detained persons. Is that your question?

40
41 **MR WEILAND:** I am asking you to look at the overall situation here. Her passport
42 indicated that at the time of her detention she had been in the country for three days.
43 I am assuming that all of your Guardia Civil are intelligent and excellent readers. Is it
44 reasonable to detain a young woman who has been in the country for three days
45 studying Spanish for nine months in the country? How could that be reasonable,
46 under any scenario that you can think of?

47
48 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): The Guardia Civil officers do not
49 detain anyone for nine months. It is the judge who does so. It was the judge who

1 considered that this was reasonable, and undoubtedly that could be considered
2 excessive, and one would have to evaluate that on a case-by-case basis.

3
4 **MR WEILAND:** What would you look to to evaluate the reasonableness of that
5 detention ordered by the judge? What would you look to, as a human rights expert,
6 to determine the reasonableness of the judge's order?
7

8 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): According to the circumstances
9 of the case, pre-trial custody, as its very name indicates, is conditional, it is a
10 cautionary measure within our system, and it is the concept of *favor libertatis*, which
11 means that we need to be in favour of freedom, of having someone enjoy their
12 freedom while they are waiting for their trial. The exception is prison. Those are the
13 norms that we have set forth and pursuant to the jurisprudence and case law of the
14 Supreme Court and the Constitutional Court, these are carried out.
15

16 What is a reasonable time? Since you are asking me such a generic question,
17 I would say perhaps a serial killer or a mass murderer, like the one from that
18 Norwegian island last year, I think it is best for them to be in prison until the trial is
19 over and then to serve their sentence but if you are asking me such an abstract
20 question, I would have to say that I cannot give you an example. There is a
21 reasonable period of time according to the specific case where this measure is being
22 applied, and it can be argued instead of eight months it should have been five
23 months or four or three. If you want, we can enter into a debate of this kind, and
24 I could recognize that this could in fact be debated. It is debatable.
25

26 **THE PRESIDENT:** I am sorry to interrupt you, Mr Weiland. The Registry has
27 calculated the time you have spent so far and according to that calculation, the time
28 allocated to your cross-examination will be exhausted by 12.53, so you still have
29 around 15 minutes. I wanted you to know that in advance.
30

31 **MR WEILAND:** Thank you very much, Mr President. I was aware that I had some
32 time constraints here, and I have a lot of things to cover, so I will certainly move on.
33 Thank you very much for reminding me of that.
34

35 We heard some speeches this morning from the lawyer for Spain. I just want to ask
36 you about your knowledge of these things. She represented many things, such as
37 that there was an order from July of 2010 that gave the ship owner some alternatives
38 of what to do with the ship. Do you recall her mentioning that?
39

40 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Yes, I do recall it.
41

42 **MR WEILAND:** Do you know that there was also an order that John Foster – by the
43 way, did you know that order that I just mentioned from July was also not notified to
44 the parties, similarly to the order of October of 2010? Were you aware of that?
45

46 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Which order are you referring
47 to? To the order ordering the ship to be seized?
48

49 **MR WEILAND:** No, sir. There was an order that you testified about extensively this
50 morning, the indictment from October.

1
2 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Yes.

3
4 **MR WEILAND**: Now I am asking you about an earlier order of July 2010. Did you
5 know that order was also not notified to the parties?
6

7 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I did not know, but it is going to
8 be reflected in the written record of the proceedings if they were notified or not, and
9 in any case, the reason why this order was not notified is going to appear in the
10 written record of the proceedings and it is going to be found there.
11

12 **MR WEILAND**: It was notified about six months later. I am sorry to move quickly but
13 I really must. Are your judges in Spain supposed to be knowledgeable about
14 international treaties?
15

16 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Of course.
17

18 **MR WEILAND**: Did you know that the Judge de Diego in Cádiz twice – twice –
19 ordered the beneficial owner of the *Louisa* to travel from Texas to Cádiz to give a
20 statement in this case, in violation of the Treaty of Mutual Assistance between the
21 United States and Spain?
22

23 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): The judge can demand, order
24 any person abroad to appear in Spain to be questioned, and this person can also do
25 that voluntarily; nothing stops a person from taking a plane, appearing before a court
26 and making a statement. However, you are right, there are treaties, bilateral treaties,
27 of judicial assistance with the United States in particular, which do make it possible,
28 via voluntary commissions or any other instrument of international judicial
29 assistance, to obtain statements in the place of origin, where the person is.
30 I understand there were difficulties there, and after a certain period of time that
31 questioning did take place by video conference. Please correct me if I am wrong. So
32 that proves that the system did work, the video conference did take place, but
33 perhaps in any other system there would be no problem in appearing before a court
34 voluntarily, before a national court, whether Spanish, French or Belgian, in order to
35 give a statement, but no rights were violated because in fact, at the end of the day
36 the video conference was held and the treaty was respected.
37

38 **MR WEILAND**: I am going to ask you, sir, to please refrain from giving a speech with
39 your answer. We need short answers at this point. I would much appreciate that.
40 Yes, a video conference occurred, and that is because Mr John Foster had been
41 urging the court to allow that for several years. Are you aware of that?
42

43 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Yes. Let me repeat it. The video
44 conference did take place. The reason why it was delayed must be reflected in the
45 written record of the proceedings.
46

47 **MR WEILAND**: Yes, because the judge in Cádiz continually issued orders requiring
48 his physical presence in Spain, in violation of the treaty, and two times the courts of
49 appeal had to reverse the judge in Cádiz. You are aware of that, are you not?
50

1 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I repeat yet again, the judge is
2 absolutely entitled to demand the presence of a person before him. If a treaty is in
3 place, obviously, he is obliged to use it, so that if at the end he does use it, the
4 ultimate consequence, what is really important for the case – I know there is a
5 debate around it – is that the treaty was scrupulously respected.
6

7 **MR WEILAND**: Counsel for Spain alleged, much to our amazement, that the
8 representatives of Sage had made some illegal or unauthorized entry on the *Louisa*.
9 Do you know what the counsel was referring to?
10

11 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I do not know exactly. Normally
12 in this case authorization is asked from the judge and the judge usually gives leave
13 to withdraw, to recover personal effects, but I am not quite sure what happened here.
14

15 **MR WEILAND**: Are you familiar with article 151 of the law of criminal procedure in
16 Spain?
17

18 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Yes.
19

20 **MR WEILAND**: Does that require these court orders to be notified to the parties
21 within three days?
22

23 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Yes, notification to the parties is
24 obviously compulsory, because the party must know what decision is going to be
25 taken against that party. Obviously, the notifying period, as I have explained,
26 depends on many circumstances, and on some occasions – I have no reservations
27 in recognizing this – it can happen due to the not too correct functioning of the office
28 of the judge, but obviously notices were served scrupulously.
29

30 **MR WEILAND**: You justify that there was no prejudice to the parties because the
31 investigation, whatever it was, would go on for a long time – correct?
32

33 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): Not exactly. I am not quite sure
34 whether the translation has been correct but obviously there is damage for the
35 parties if the procedure goes on, drags on, and our constitution establishes quite
36 clearly that everybody is entitled to a procedure without undue delay, and also the
37 European Convention confirms this. If you forgive the information, at the Supreme
38 Court we have considered that an undue delay in a case where somebody is found
39 guilty does confer on the person found guilty a special treatment, i.e. that the penalty
40 can be reduced because the procedure has been delayed unduly.
41

42 **MR WEILAND**: One last question really: prejudice to the parties by this late
43 notification can be dealt with in certain ways. I think I understand that, but I represent
44 to you that when we were last here in December 2010 the lawyer from Madrid for
45 Sage was present in the courtroom. He was astounded ---
46

47 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I am sorry. I was not here in
48 2010. The interpreter said that I was here in 2010 and I was not here in 2010. Is that
49 correct?
50

1 **MR WEILAND:** The lawyer for Sage was present. Some of the judges [of the
2 Tribunal] were not even present however. He was astounded that the lawyer for
3 Spain would produce two orders that had not been notified to the parties. You have
4 said that was not particularly prejudicial. Do you think it was prejudicial to Saint
5 Vincent and the Grenadines to have non-public orders brought into court that had
6 been supposedly issued by this judge weeks, if not months before?
7

8 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I do not quite understand the
9 scope of the question. The facts are the facts, and this decree of 27 October 2010 is
10 still valid on 27 October 2011 or 27 October 2012. It is a decree which, by virtue of a
11 principle which we have in all democratic systems, which is called cooperation
12 between the arms of government, and the fact that a decree which already has been
13 adopted in the procedure and that is not prejudicial to any party unless, I repeat
14 again, it is gravely prejudicial to the right to defence, but I must say our present
15 procedural system, some very recent decisions, of the last 24 hours or 48 hours,
16 available to any Spanish citizen on the Internet, say this.
17

18 **MR WEILAND:** Did you know that that order you referred to in October 2010 is dated
19 one day after the diplomats from Saint Vincent and the Grenadines sent a formal
20 notice to Spain of its dissatisfaction with the state of the Louisa and its intention to
21 file this case? Did you know that? That is my question. I am not asking you to read
22 the order.
23

24 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): If you are hinting that a Spanish
25 judge took an unfair decision, that is a very strong accusation and, again, you are
26 saying that on 6 October 2010 the authorities of Saint Vincent and the Grenadines
27 addressed the Spanish authorities. I think to say these things before an international
28 court of law is very risky, and I strongly reject the possibility of a Spanish judge, as
29 you are hinting, may have altered the proceedings or may have altered a resolution
30 in view of this.
31

32 **MR WEILAND:** One last question. The Spanish judge we have heard so much
33 about, the author of that document from October, has he been removed in Cádiz or
34 has he been promoted?
35

36 **MR MARTÍN PALLÍN** (*Interpretation from Spanish*): I understand it is very difficult for
37 somebody from a North American legal system to understand our system of
38 promotion of judges but, Mr President, if I am allowed a minute, I could explain it,
39 because the question asks for this. Spanish judges join the service by a public
40 examination at judicial school. They then request a post in any part of Spain which is
41 available, and after that they are promoted according to a system, and they can
42 move from one court to the other, and can be promoted not just because of seniority
43 but also for family reasons, for example, because their boyfriend or girlfriend
44 happens to live otherwise, and they may want to go and live where his or her
45 boyfriend or girlfriend lives. This mobility of judges is reflected in the statutes of
46 judges and they are entitled to move from one court to another.
47

48 **MR WEILAND:** Thank you.
49

50 **THE PRESIDENT:** Thank you very much, Mr Weiland, for having kept to the time.

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(Interpretation from French) The experts who have been cross-examined by the other Party may be re-questioned by the Party who called them, and accordingly I would ask the Agent of Spain if it is her wish to undertake further questioning, perhaps this afternoon?

MS ESCOBAR HERNÁNDEZ *(Interpretation from French)*: Yes, Mr President, with your authorization I shall proceed with a new and extremely short questioning session at the very beginning of the afternoon sitting.

THE PRESIDENT: Thank you very much. So we have arrived at almost one o'clock, so we will resume our hearing at three o'clock. The sitting is closed now.

(Luncheon adjournment)