

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2012

Public sitting

held on Friday, 5 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

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and

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Mr William H. Weiland, Esq., Houston, Texas, USA,

as Counsel and Advocates;

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Mr Carlos Jiménez Piernas, Professor, International Law Department,
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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:** Good morning. We will continue today with the hearing of the
2 *M/V Louisa* case. The witness Mr Avella will be examined further.

3
4 **THE PRESIDENT:** Mr Avella, you are still covered by the declaration that you made
5 yesterday.

6
7 **MR AVELLA:** I understand.

8
9 **THE PRESIDENT:** Please be seated. Mr Avella, may I ask you to make the work of
10 the interpreters and the verbatim reporters easier by speaking slowly and allow a
11 sufficient interval after the questions from Mr Weiland before giving your responses?
12 I made the same request yesterday of Mr Weiland and your daughter. I appreciated
13 their full cooperation, and I thank you in advance.

14
15 Please continue the examination, Mr Weiland.

16
17 **MR WEILAND:** Thank you, Mr President. I have already expressed my apologies to
18 your court personnel this morning for our failure to adhere to the guidelines. I am
19 sure that we will do better today.

20
21 **MR MARIO AVELLA**
22 *Examination by MR WEILAND continued*

23
24 **MR WEILAND:** Mr Avella, yesterday we talked about your background. We talked
25 about your decision to participate in the expedition, if you will, to Spain with the
26 *Louisa*. We covered the years 2004 and 2005 and you testified that the *Louisa* was
27 docked for the winter, certainly by January of 2006. Is that correct?

28
29 **MR AVELLA:** The first time she went to the dock was in October 2004.

30
31 **MR WEILAND:** I am talking about the winter of 2005/2006 and I am going to direct
32 your attention to January 2006. At that time the ship was docked. Is that correct?

33
34 **MR AVELLA:** Yes.

35
36 **MR WEILAND:** That was my mistake, but I just want to set the background for you
37 so that we can catch up with where we were yesterday. In January 2006 the *Louisa*
38 was docked in Puerto de Santa Maria and you invited your daughter to come to visit.
39 Is that correct?

40
41 **MR AVELLA:** Yes, I did.

42
43 **MR WEILAND:** Would you tell the Tribunal briefly about the circumstances under
44 which you thought that it would be a good idea for her to come to Spain?

45
46 **MR AVELLA:** I asked her to come to Spain to visit me because my duties were not
47 so busy that I could not spend some time with her, and I had not seen her for a good
48 period of two years, so I wanted to have her come and see the country, learn some
49 of the language, take her around, show her some of the history and enjoy some
50 downtime with my daughter.

1 **MR WEILAND:** When did she take you up on your offer? Do you recall
2 approximately when she arrived?
3

4 **MR AVELLA:** She arrived in the latter part of January. I do not recall the exact date
5 – maybe in the week of the 24th or 25th.
6

7 **MR WEILAND:** What were your duties in terms of the *Louisa* or the *Gemini III* at that
8 time?
9

10 **MR AVELLA:** The *Gemini* was in dry dock at the time, so there was not much that
11 required my attention. The *Louisa* was in the process of getting into shape so that it
12 could get under way. There were two engineers on board who were performing
13 some of the tasks, but we were on standby a little bit because we had to arrange for
14 the ship's management company to have a crew and take on fuel and all the
15 different things that you need.
16

17 **MR WEILAND:** The engineers at the time were Mr Sandor and Mr Zsolt?
18

19 **MR AVELLA:** That is correct.
20

21 **MR WEILAND:** Had you become well acquainted with those two gentlemen by then?
22

23 **MR AVELLA:** Yes. I had worked with them over the course of the two years, so I
24 knew them quite well.
25

26 **MR WEILAND:** Were they actually involved with the *Louisa* from the time that you
27 were in Jacksonville?
28

29 **MR AVELLA:** Yes, that is correct. They came on board in Jacksonville in the initial
30 preparations of the ship.
31

32 **MR WEILAND:** You felt like you knew them well and trusted them?
33

34 **MR AVELLA:** Yes. I actually had a bond with Alex, or Sandor, because he was such
35 a nice gentleman, and actually my mother was Hungarian. She was an immigrant to
36 the United States, so we had some things in common.
37

38 **MR WEILAND:** Your mother was Hungarian and he is a somewhat elderly guy or
39 older gentleman?
40

41 **MR AVELLA:** Yes.
42

43 **MR WEILAND:** That became important because we understand that shortly after
44 your daughter's arrival you were called back to the United States. Is that right?
45

46 **MR AVELLA:** Yes, that is correct.
47

48 **MR WEILAND:** By that time you had her enrolled in Spanish classes?
49

1 **MR AVELLA:** Yes. I wanted her to get right into the language as soon as she got
2 there, so I took her and enrolled her in a nice course in Puerto de Santa Maria.
3

4 **MR WEILAND:** What occasioned the necessity for you to return to the United States
5 shortly after her arrival?
6

7 **MR AVELLA:** It was necessary for me to go back to the United States on short
8 notice because I got information from my family that my mother was quite ill and
9 there was nobody who could help to attend to what she needed at the time, so I was
10 the designated person in the family to get back and assist her.
11

12 **MR WEILAND:** We have heard that there were some other things that you could
13 attend to if you were in the States on a short-term basis. Is that also correct?
14

15 **MR AVELLA:** Yes, there were other duties that I could take care of quickly before
16 returning to Spain.
17

18 **MR WEILAND:** Some of those related to the return of the *Louisa*, for example?
19

20 **MR AVELLA:** That is correct.
21

22 **MR WEILAND:** I would imagine that you had some hesitancy about leaving your
23 daughter in Spain right after she had arrived. Is that correct?
24

25 **MR AVELLA:** It was not a planned trip at all. In fact, I was not really happy about
26 leaving because she had just arrived and we had all these plans to see the country
27 and travel around and have some quality time together, and it took me very much by
28 surprise. Consequently, it was very difficult, but it was pressing that I needed to get
29 back, and I knew that she was going to be okay because she had a good person on
30 board to take care of her, to cook for her and to drive her around where she needed
31 to go, and I knew that she would be occupied with her school. I also introduced her
32 to another young lady who spoke very good English and Spanish, so I felt like she
33 would be okay.
34

35 **MR WEILAND:** That other young lady was the Polish girl who was just a few years
36 older than your daughter?
37

38 **MR AVELLA:** Yes, that is correct.
39

40 **MR WEILAND:** Your daughter was living on the *Louisa* when you left?
41

42 **MR AVELLA:** Yes, she was.
43

44 **MR WEILAND:** She had all her gear stowed in one of the cabins?
45

46 **MR AVELLA:** Yes.
47

48 **MR WEILAND:** On 1 February did you get a call from your daughter?
49

50 **MR AVELLA:** Yes, I did.

1 **MR WEILAND:** Tell us about the phone call.
2
3 **MR AVELLA:** She called me on my cell phone and asked me if she could have the
4 combination to a safe on board the ship, and of course immediately that struck me
5 as “What is going on here?” because there would be no reason for her to ask me for
6 something like that, and in fact I wondered why she even knew that there was a safe
7 on board the ship.
8
9 **MR WEILAND:** You were not aware that she even knew there was a safe?
10
11 **MR AVELLA:** That is correct. She would not know that there was a safe on board.
12 Immediately I was confused, but I knew that something had to be very wrong.
13
14 **MR WEILAND:** Did you end up speaking to the federal police on the same phone
15 call?
16
17 **MR AVELLA:** Yes, because I started to ask her some questions – to please tell me
18 what she needed this for and what was going on, and she was not able to answer
19 me because I understand that she was under the guard of the Guardia Civil, and in
20 fact somebody had taken the phone away from her and had got on the phone to me
21 and identified himself as a Guardia Civil.
22
23 **MR WEILAND:** Do you remember what he asked you and what you told him?
24
25 **MR AVELLA:** I do. I remember that he asked me for the combination for the safe. Of
26 course, I told him “I do not have a combination for the safe” and that I did not know
27 the combination for the safe, but that I could possibly call the office of the owner of
28 the ship and try to find out if that information was available.
29
30 **MR WEILAND:** You say to the Tribunal that of course you did not have the
31 combination to the safe. Why do you say that?
32
33 **MR AVELLA:** It was told to us that nobody would have the combination for that safe
34 because nobody should have access to what was in the safe. Only the master on
35 board the ship would be allowed to have access there.
36
37 **MR WEILAND:** The safe that we are talking about is a safe that stored these rifles
38 that we have seen. Is that correct?
39
40 **MR AVELLA:** Yes, that is correct.
41
42 **MR WEILAND:** And the shotgun?
43
44 **MR AVELLA:** Yes.
45
46 **MR WEILAND:** What did you do after this strange call from your daughter?
47
48 **MR AVELLA:** Immediately I was distressed, for one. I waited a little while and tried
49 to call her back on her cell phone and, of course, got no answer, so I attempted to
50 call the engineers on board and in fact could not get an answer there either. I had

1 called Anna, because of course I had everybody's contact numbers, and she told me
2 that the Guardia Civil was on board and had seized the ship and detained
3 everybody.

4
5 **MR WEILAND:** After those phone calls, what did you do?
6

7 **MR AVELLA:** Immediately I packed a bag and went to the airport to get on a plane.
8

9 **MR WEILAND:** What happened when you got on the plane? You were flying to
10 Spain?

11
12 **MR AVELLA:** Correct.
13

14 **MR WEILAND:** You were flying to Spain to help your daughter?
15

16 **MR AVELLA:** I was flying to Spain to immediately try to take charge of the situation,
17 because my daughter was there, the two engineers were there, the ship had been
18 boarded and arrested, so naturally, and especially in the case of my daughter, I was
19 making my way there as fast as possible.
20

21 **MR WEILAND:** Is it therefore fair to say that you left for the airport before you knew
22 that your daughter had even been arrested, or did Anna convey that information to
23 you?
24

25 **MR AVELLA:** Anna conveyed the information to me. By the time I was able to get a
26 flight and make arrangements, I learned that they had taken Alba to jail.
27

28 **MR WEILAND:** What about a lawyer? There was some possible confusion
29 yesterday. Do you know whether a lawyer was appointed by the court, or did you
30 become involved in trying to obtain the services of a lawyer for your daughter?
31

32 **MR AVELLA:** Immediately I knew that we would have to have a lawyer, so I
33 contacted the office of Sage and got information from them of a lawyer to contact as
34 soon as I arrived to Spain.
35

36 **MR WEILAND:** Did Sage have a lawyer ready to go or did Sage have to make its
37 own enquiries?
38

39 **MR AVELLA:** We did not have a lawyer on standby. They had to make enquiries.
40

41 **MR WEILAND:** By the time you boarded a flight to Spain, did you have the name or
42 the contact information of some lawyer who you thought was going to be doing the
43 representation?
44

45 **MR AVELLA:** I do not believe so. I did not get that information until I arrived in
46 Spain.
47

48 **MR WEILAND:** Until you landed?
49

50 **MR AVELLA:** Yes.

1 **MR WEILAND:** Then what did you do?
2
3 **MR AVELLA:** I immediately went to Puerto de Santa Maria to meet the lawyer and
4 try to understand what was going on and try to get my daughter released.
5
6 **MR WEILAND:** What did the lawyer tell you?
7
8 **MR AVELLA:** By then I think it was Thursday afternoon or evening, and the lawyer
9 told me that ---
10
11 **MR WEILAND:** Let me interrupt you, sir. The record indicates that she was arrested
12 on Wednesday, 1 February. You were already in Spain by Thursday night, as best
13 you recall?
14
15 **MR AVELLA:** Yes, that is what I recall, because I literally dropped everything and
16 went to the airport.
17
18 **MR WEILAND:** Please proceed.
19
20 **MR AVELLA:** I made contact with the lawyer and he told me that the next day he
21 would be appearing on behalf of my daughter, and this was after we had to do a few
22 formalities in retaining him, and that he would appear the next day and have my
23 daughter released.
24
25 **MR WEILAND:** Formalities such as money?
26
27 **MR AVELLA:** Correct.
28
29 **MR WEILAND:** Lawyers sometimes appreciate that! You got this lawyer some funds
30 and he told you that he would appear in court the next day, Friday 3 February. Did
31 he give you a prediction of what would happen?
32
33 **MR AVELLA:** After talking to him, he knew that my daughter had nothing to do with
34 any kind of allegations that would be brought on behalf of the ship. I explained to him
35 that she had just arrived. I explained the whole situation that we have talked about.
36 He understood and said, "Yes, of course. I will appear on her behalf tomorrow and
37 we will have her out".
38
39 **MR WEILAND:** "We will have her out"?
40
41 **MR AVELLA:** Yes.
42
43 **MR WEILAND:** What did he say about your situation and the jeopardy that you might
44 face?
45
46 **MR AVELLA:** He instructed me to wait, to just stand by and wait for him to get my
47 daughter out, and he would start to clear up all this, because I explained to him as
48 briefly and as completely as I could what I knew of the situation, which was not very
49 much. I did not know why the Guardia had boarded the ship. It was important that he

1 understood that, whatever was going on, we were not involved with anything
2 criminal.

3
4 **MR WEILAND:** On Friday did he go to the courthouse, as far as you know, and
5 come back and give you a report?
6

7 **MR AVELLA:** Yes, he went to the courthouse. I waited around most of the day and
8 he contacted me and said that the judge would not see her and that she would have
9 to spend the weekend.

10
11 **MR WEILAND:** She would have to stay in jail for the weekend, and what did you do?
12 Did that upset you?
13

14 **MR AVELLA:** The first thing I did was argue a lot and scream a lot. I could not
15 understand what he was talking about, why he could not get my daughter released
16 on such an issue like this, which was ridiculous. Of course, I was extremely upset up
17 to that point because I knew that she was in jail, and even more so after I found out
18 that she was not getting out. I was extremely upset.

19
20 **MR WEILAND:** What happened after this report from the lawyer that your daughter
21 was going to be in jail? Did he give you any more information about what he thought
22 the case involved or what these people were interested in?
23

24 **MR AVELLA:** The only information that he could give me at the time was that he
25 said that they had found guns on board the ship, so this is a very big deal, but I do
26 not have any more information. He used the term "justice secret".
27

28 **MR WEILAND:** "Justice secret"?

29
30 **MR AVELLA:** Yes, he used that term and I asked him to explain that. He said, "That
31 means that the case is secret" and that we could not find anything out about it.
32 Actually I was flabbergasted. I never knew of anything like that. I am not a lawyer
33 and I do not know anything about the system so much in the United States or Spain,
34 but it seemed odd to me, coming from America, that you would not be able to find
35 out what the allegations were or what the reasons were or what was going on.
36

37 **MR WEILAND:** What did he tell you about the importance of the fact that there were
38 rifles on board the ship?
39

40 **MR AVELLA:** I think he expressed that it was an extreme situation, but also he did
41 not know any particulars about ships and maritime law and things like that, so he
42 expressed to me that it was a grave situation that there would be any kinds of
43 weapon on board, and I tried to explain to him that from what I knew of it, they were
44 on board but were locked up securely, as they should have been.
45

46 **MR WEILAND:** What happened then? What did you do? Did he give you any
47 advice?
48

49 **MR AVELLA:** He did. I wanted to go to the Guardia Civil station and talk to them and
50 make a declaration, to say "What is going on? What are you doing holding my

1 daughter? This is crazy and ridiculous. She obviously had nothing to do with
2 anything here, so can we not just clear this up?" The attorney adamantly told me,
3 "No, do not go there, because this is a grave situation with these weapons and they
4 are just going to throw you in jail and leave you there for 15 years. You need to just
5 wait and go away and I will have all this cleared up".
6
7 **MR WEILAND:** You said to him, "I am going to the police station and take care of
8 this. I am going to explain my daughter's situation"?"
9
10 **MR AVELLA:** Absolutely.
11
12 **MR WEILAND:** You had no fear for your own situation at that time, because you had
13 not been involved in any criminal activity?
14
15 **MR AVELLA:** Absolutely not, but certainly I was afraid. I did not know what was
16 going on in a foreign country like that and the fact that they could throw a young girl
17 in jail for doing absolutely nothing, so there was some fear involved.
18
19 **MR WEILAND:** When he told you that they would throw you in jail for 15 years and
20 he was adamant about you not going to the police station, did you take his advice?
21
22 **MR AVELLA:** I did, reluctantly.
23
24 **MR WEILAND:** At the same time he was assuring you, "Do not worry. On Monday I
25 will have her out." Is that what you said?
26
27 **MR AVELLA:** Yes, that is correct.
28
29 **MR WEILAND:** Did he predict at all that once she was released this judge might take
30 her passport and keep her marooned in Spain for months?
31
32 **MR AVELLA:** The subject never came up. I never imagined that that would happen.
33
34 **MR WEILAND:** Your thinking was, "If I follow the lawyer's advice and return to the
35 United States, my daughter will be right behind me"?"
36
37 **MR AVELLA:** Yes. I put my faith in that.
38
39 **MR WEILAND:** What happened?
40
41 **MR AVELLA:** It turns out that she did get out on that Monday, but they held her
42 passport, and actually I did not know how long ... There was not really a time frame.
43 They just said, "You have to stay in Spain while this is being investigated and you
44 have to appear and check in every 1st and 15th or whenever we call you".
45
46 **MR WEILAND:** After you returned to the United States were you getting reports from
47 the lawyer in Cádiz that the matter would be cleared up in a relatively short time?
48

1 **MR AVELLA:** Yes, especially initially, the lawyer said that he needed to work on it,
2 that it would take a few weeks maximum, that he would get her passport back, and
3 just to try to be relaxed, which was impossible, and wait.
4
5 **MR WEILAND:** And send more money?
6
7 **MR AVELLA:** Correct.
8
9 **MR WEILAND:** After your daughter was released but not allowed to leave, give the
10 court some sense of what you and the lawyer were doing, what Sage personnel
11 were doing, so that they can appreciate that.
12
13 **MR AVELLA:** It was a very stressful time, because she was released and the two
14 engineers were released but not allowed to go back on ship, so they had no place to
15 live, they had no way to get to their personal belongings, they had no identification
16 and they had no money, so I had to try to support and organize them as much as
17 possible. When I say “support” I mean that I had to try to figure out how they were
18 going to get an apartment, how they were going to live, how they were going to
19 survive.
20
21 **MR WEILAND:** So you had been in Spain off and on by then for about 18 months.
22 You had friends and contacts we have heard about – Anna – and a friend who met
23 her at the lawyer’s office, helped get her into a hotel when she was released from
24 jail. Were all those things that you were working on when you were back in the
25 States?
26
27 **MR AVELLA:** Yes. I did everything possible, called as many people as I could to try
28 and help to secure an apartment.
29
30 **MR WEILAND:** Did you arrange for her family to come and visit her?
31
32 **MR AVELLA:** I did. I arranged for Alba’s sister to come visit her. She has a half-
33 brother that also came down to visit her and to help give her support, to help in
34 organizing all the things that she needed to live.
35
36 **MR WEILAND:** What happened then after weeks go by and the lawyer’s prediction
37 about the short-term nature of this did not come true?
38
39 **MR AVELLA:** Well, weeks go by and you are very anxious and stressed, and
40 another couple of weeks go by and you are getting even more, and finally two
41 months go by and still nothing has happened, nothing has moved. The lawyer is still
42 telling me that he is working on it but it is still a secret.
43
44 **MR WEILAND:** Even after two months?
45
46 **MR AVELLA:** Yes, which is just, again, very hard for me to comprehend. And so I
47 finally had enough and I said I have to meet the lawyer and have to go to the
48 embassy in Spain; I have to make a declaration; I have to do something to get my
49 daughter released.
50

1 **MR WEILAND:** So what did you do?
2
3 **MR AVELLA:** I flew to Lisbon, Portugal, and rented a car to drive and to meet them,
4 to meet my daughter and to meet the attorney with the intention to go to the
5 embassy because I felt that phone calls weren't enough. You can't – you just don't
6 seem to get the response from phone calls. I felt I had to go there personally and
7 really, you know, push to get something resolved.
8
9 **MR WEILAND:** What happened after you got to the Cádiz area generally with the
10 rental car?
11
12 **MR AVELLA:** I was in contact with my daughter on her cell phone and we arranged
13 to meet and I called the lawyer to make arrangements to meet him. At the same time
14 we were trying to all get together. I wanted to meet actually in Jerez and we could go
15 to Seville to the embassy and try and petition some help there.
16
17 **MR WEILAND:** To the consulate you mean?
18
19 **MR AVELLA:** Yes, the US Consulate. My daughter called me and said, you know:
20 "Dad, they are following me. There are plain-clothes Guardia Civil people following
21 me, so please don't come and see me because they are going to arrest you."
22
23 **MR WEILAND:** So what happened?
24
25 **MR AVELLA:** Well, again reluctantly I turned around and I went back. I said: How
26 are we going to ...” We talked about it on the phone and we reasoned how am I
27 going to be able to continue to support and help them keep the flow of information
28 coming as much as possible and keep putting pressure on the lawyers and so forth if
29 I am incarcerated. Again, I left – very difficult.
30
31 **MR WEILAND:** She tells you: “If you come and meet me, there are people following
32 us and you will be arrested and you will not be able to help me if you are in jail.” Is
33 that basically what she was telling you?
34
35 **MR AVELLA:** Yes.
36
37 **MR WEILAND:** And that is what she knew to be a fact.
38
39 **MR AVELLA:** That is what I assumed.
40
41 **MR WEILAND:** That is what happened in the end, isn't it?
42
43 **MR AVELLA:** Yes.
44
45 **MR WEILAND:** So you decide you cannot be much help to her if you are
46 incarcerated so you reluctantly leave the area in your rental car and go back to
47 Lisbon.
48
49 **MR AVELLA:** Yes.
50

1 **MR WEILAND:** What happened in Lisbon?
2
3 **MR AVELLA:** I went through passport control and apparently my passport was
4 flagged and they detained me at the airport.
5
6 **MR WEILAND:** I want you to tell the Tribunal first, when they arrested you in Lisbon,
7 what did they tell you you were charged with?
8
9 **MR AVELLA:** All the information I had in Lisbon was that there was a European
10 arrest warrant for me and I asked them on what charges and they said they can't tell
11 me.
12
13 **MR WEILAND:** They could not tell you what you were charged with.
14
15 **MR AVELLA:** No.
16
17 **MR WEILAND:** Did they put you in jail in Lisbon?
18
19 **MR AVELLA:** Yes, they did.
20
21 **MR WEILAND:** What jail did they put you in?
22
23 **MR AVELLA:** They took me to a facility in the city that was a very old prison.
24
25 **MR WEILAND:** A prison?
26
27 **MR AVELLA:** Yes.
28
29 **MR WEILAND:** What happened to you there?
30
31 **MR AVELLA:** Well, they took me there and I was checked in and put in a cell, and
32 waited.
33
34 **MR WEILAND:** Were there other people in the cell?
35
36 **MR AVELLA:** Yes, one other.
37
38 **MR WEILAND:** What was he charged with?
39
40 **MR AVELLA:** I believe it was drug-trafficking or something like that.
41
42 **MR WEILAND:** So what happened when you were in jail in Lisbon? How long did
43 you stay in jail?
44
45 **MR AVELLA:** Well, they put me in front of a judge in Lisbon, as I imagine they would
46 have to do. They asked me if I wanted to resist extradition to Spain. I said: "Why
47 would I want to do that? I want to get back there. I want to go to Spain right now
48 because this has to get cleared up. What am I going to do sitting there in Portugal
49 when it is not going to matter – you guys can't do anything for me so I have got to

1 get back to Spain.” Of course, they told me that as long as I was agreeing with that
2 and signed a paper they would put the wheels in motion to extradite me to Spain.
3
4 **MR WEILAND:** How many days did that take?
5
6 **MR AVELLA:** I think it was ten days.
7
8 **MR WEILAND:** After ten days they transported you to Spain?
9
10 **MR AVELLA:** Yes.
11
12 **MR WEILAND:** They took you out to the airport and flew you over to Jerez?
13
14 **MR AVELLA:** No, they transported me within Portugal to the border, to another
15 facility, and I spent the night there. The next morning they took me across the border
16 to Spain and handed me over to the officials there.
17
18 **MR WEILAND:** Did the Portuguese police restrain you in some way on the trip to the
19 border?
20
21 **MR AVELLA:** Yes, I was always handcuffed of course.
22
23 **MR WEILAND:** Did they tell you they handcuffed you because you were charged
24 with a violent crime?
25
26 **MR AVELLA:** Well, they didn’t really explain to me any – either way or the other.
27 They just handcuffed me and took me away.
28
29 **MR WEILAND:** So then you were turned over to the Spanish police?
30
31 **MR AVELLA:** Yes.
32
33 **MR WEILAND:** How did that transfer occur?
34
35 **MR AVELLA:** Yes, they took me across the border and we met some Spanish
36 officials and they asked me to identify myself and they said: “Do you know why you
37 are here?” I said: “No, not really”, and they just kind of chuckled.
38
39 **MR WEILAND:** Chuckled?
40
41 **MR AVELLA:** Yes.
42
43 **MR WEILAND:** Did they produce a document that said, “This is the charge,
44 Mr Avella; we are taking you to jail”?
45
46 **MR AVELLA:** No, not that I can recall.
47
48 **MR WEILAND:** The Spanish police transported you to Cádiz or to where?
49

1 **MR AVELLA:** After going to another facility somewhere across the border and
2 waiting a few hours – I don't remember exactly but it was the same day, I believe,
3 where two officers took me in a van to Cádiz.
4
5 **MR WEILAND:** They took you in a van to Cádiz. Did they handcuff you?
6
7 **MR AVELLA:** Yes, they did.
8
9 **MR WEILAND:** What were the conditions in the van?
10
11 **MR AVELLA:** Well, just a bare, small van, with nothing in the back basically –
12 empty.
13
14 **MR WEILAND:** No seat or anything?
15
16 **MR AVELLA:** No, just the floor.
17
18 **MR WEILAND:** How long did it take to drive over there, if you recall?
19
20 **MR AVELLA:** It took a long time. I can't be sure if it was six or eight hours,
21 something along those lines, but it was a long ride, yes.
22
23 **MR WEILAND:** Did they take care of any of your personal needs on the trip?
24
25 **MR AVELLA:** No, they didn't really pay attention much. They just put me in the back
26 and got on the road and stopped for lunch and kept going, and all the time I just was
27 handcuffed in the back.
28
29 **MR WEILAND:** They stopped for lunch and left you handcuffed in the back of the
30 van?
31
32 **MR AVELLA:** Yes.
33
34 **MR WEILAND:** Did they take you out and take you into the men's room or anything?
35
36 **MR AVELLA:** No.
37
38 **MR WEILAND:** The entire six to eight hours?
39
40 **MR AVELLA:** The entire time.
41
42 **MR WEILAND:** Where did they actually take you first – to see the judge immediately
43 so that you could understand what the charges were?
44
45 **MR AVELLA:** It was my understanding that they were taking me directly to the
46 judge, and of course I didn't know – really disorientated and not knowing anything. I
47 went to a holding cell in a building, which I assumed was the courthouse.
48
49 **MR WEILAND:** At some point you did see some kind of judicial authority – is that
50 right?

1
2 **MR AVELLA:** First, I was interviewed by my lawyer and then we went to see the
3 judge.
4
5 **MR WEILAND:** So a lawyer came to see you.
6
7 **MR AVELLA:** Yes.
8
9 **MR WEILAND:** Was that the same lawyer your daughter had been using?
10
11 **MR AVELLA:** No. This was a lawyer from Madrid.
12
13 **MR WEILAND:** When you were in the custody of the Portuguese did they allow you
14 to make any calls?
15
16 **MR AVELLA:** No.
17
18 **MR WEILAND:** How did this lawyer from Madrid appear?
19
20 **MR AVELLA:** Once I was in the prison in Portugal I was able to use a phone. There
21 was some sort of phone there that – I don't remember exactly how it worked, how
22 you had to put money in it or something like that, and I could make a call.
23
24 **MR WEILAND:** Did the ship-owner arrange for you to have a lawyer?
25
26 **MR AVELLA:** Yes.
27
28 **MR WEILAND:** And the lawyer came from Madrid?
29
30 **MR AVELLA:** Yes.
31
32 **MR WEILAND:** And the lawyer accompanied you to see the judge?
33
34 **MR AVELLA:** Yes.
35
36 **MR WEILAND:** Was this the same Judge de Diego Alegre who had done such a fine
37 job with your daughter?
38
39 **MR AVELLA:** Yes.
40
41 **MR WEILAND:** What did he say to you? What was the first thing that this judge in
42 Cádiz said to you?
43
44 **MR AVELLA:** I remember going up to the chambers of the judge expecting to finally
45 tell my story and say that, you know, what was going on here and trying to explain
46 that it was – they had everything wrong. Before we actually sat down to be official, so
47 to speak, the judge asked me – because he spoke pretty good English and he said:
48 “So do you hunt alligators in Texas with those guns?” Actually, he said “in Florida” –
49 “Do you hunt alligators in Florida?”
50

1 **MR WEILAND:** So he was mocking you.
2
3 **MR AVELLA:** I don't even – I didn't even make a response because it was so out of
4 the blue and off the wall.
5
6 **MR WEILAND:** Did he set bail then and explain to you in some detail what the
7 charges were and that sort of thing?
8
9 **MR AVELLA:** Well, at that time they finally told me that I was charged with all these
10 crazy trumped-up charges of trafficking weapons of war and – you know, trafficking
11 patrimony of Spain – you know, like I was some international drug-trafficker or
12 something like that, you know. That is what they described. We had a short
13 interview. He asked me a few questions – do I know who this is, do I know who that
14 is and things like that. He said: "Okay, that's enough" and they took me back to the
15 holding cell. Then the lawyer came down and said: "Well, it could be worse, but you
16 are going to have to go to prison, but don't worry because we will get this cleared up.
17 We will get it cleared up. I will have you out in two weeks."
18
19 **MR WEILAND:** "I will have you out in two weeks" – is that what the lawyer told you?
20
21 **MR AVELLA:** Yes.
22
23 **MR WEILAND:** He was confident.
24
25 **MR AVELLA:** I wasn't really confident in anybody, but he was confident.
26
27 **MR WEILAND:** You mean that the lawyer was confident, or it seemed like he was?
28
29 **MR AVELLA:** Yes.
30
31 **MR WEILAND:** At that time, when you hear about trafficking in the patrimony of
32 Spain have you any idea what he was even talking about?
33
34 **MR AVELLA:** Well – to the judge?
35
36 **MR WEILAND:** Yes. Had you seen any of that kind of activity or been involved in it?
37
38 **MR AVELLA:** Well, certainly not, and there was questions directed in that, but I don't
39 remember my exact testimony, you know, it was so long ago. But I am sure he asked
40 some questions of shipwreck or patrimony or, you know, taking things from the sea
41 or ...
42
43 **MR WEILAND:** Did the lawyer's prediction about two weeks in jail come true?
44
45 **MR AVELLA:** No.
46
47 **MR WEILAND:** How long did you stay in jail?
48
49 **MR AVELLA:** I was incarcerated in prison for nine months.
50

1 **MR WEILAND:** For nine months. At the end of nine months did you get a trial?
2
3 **MR AVELLA:** Oh, no.
4
5 **MR WEILAND:** So this arrest occurred in May 2006 – is that correct?
6
7 **MR AVELLA:** Yes.
8
9 **MR WEILAND:** Now we are in October of 2012. Have you had a trial yet?
10
11 **MR AVELLA:** No, there has been no trial.
12
13 **MR WEILAND:** Are you familiar with the rather complex criminal procedural rules in
14 Spain?
15
16 **MR AVELLA:** Well, I have gotten somewhat familiar over the years because it is still
17 something that is hanging over me.
18
19 **MR WEILAND:** The court was presented, much to our surprise, with something
20 called an indictment in December 2010, when we were last here. The lawyers in the
21 case certainly had never seen that document. When that document was shown to
22 you had you ever seen that document, that they called an indictment?
23
24 **MR AVELLA:** No.
25
26 **MR WEILAND:** We came to understand that that was some kind of a charge at the
27 investigatory court, but that the case still needed to be referred to a higher court, to a
28 trial court. Is that your understanding?
29
30 **MR AVELLA:** Yes, I believe it has to go up different levels in the court system.
31
32 **MR WEILAND:** Has your case been referred to the trial court yet, after these many
33 years?
34
35 **MR AVELLA:** Not that I have ever been informed of.
36
37 **MR WEILAND:** Tell the members of the Tribunal, not in graphic terms but in a few
38 words what it was like in the Spanish prison for nine months.
39
40 **MR AVELLA:** It was an older facility that was run-down and needing repair,
41 overcrowded, where you have people in cells that are designed for two that there
42 was four people in - basically pretty poor conditions, no real programmes for
43 exercise or no activity, no use of the library.
44
45 **MR WEILAND:** Did you learn from your lawyer while you were incarcerated just what
46 the Spanish claimed to have taken off the *Louisa* during their two-day search in
47 February 2006? For example, do you know if the Spanish ever provided your lawyer
48 with an inventory of the search?
49
50 **MR AVELLA:** Not that I have ever seen.

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MR WEILAND: Perhaps we will see that.

MR AVELLA: Did the judge set bail for you so that perhaps the ship-owner could provide funds to release you from prison?

MR AVELLA: After nine months, I guess with repeated requests and work from the attorneys, I was released on a bond, a very substantial bond of €30,000.

MR WEILAND: Was there a bond set in May of 2006, when you were first sent to prison?

MR AVELLA: Well, no; it was only after nine months in prison that they set a bond.

MR WEILAND: So the ship-owner sent funds to secure your release?

MR AVELLA: Yes, he did.

MR WEILAND: The ship-owner now, despite the lack of any obligation on its part, had been supporting your daughter – is that right?

MR AVELLA: That is correct. That was the only way she could – I mean, once I was in jail I had no way of getting an income to her or anything, so the ship-owner was paying for her apartment and giving her subsistence money and sending me a little money in prison so I could buy a cup of coffee.

MR WEILAND: Just so it is clear, the irony here is rather striking. You had resisted the urge to go to the authorities in an effort to secure the release of your daughter initially.

MR AVELLA: Yes.

MR WEILAND: The lawyers in Spain said: “Don’t do that because they will arrest you and your daughter will still be here.” Correct?

MR AVELLA: That is correct.

MR WEILAND: But you could not resist the urge; you go to Spain again and you end up getting arrested and your daughter is still in Spain for months. Is that what happened?

MR AVELLA: It is exactly what happened. I couldn’t just stand by and allow them to do that to my daughter. I mean it was killing me.

MR WEILAND: So we now have the rather bizarre situation of your daughter, whose passport has been taken by the police, by the court, coming to visit you in prison in Spain: is that what happened?

MR AVELLA: Yes.

1 **MR WEILAND:** How often did she come and see you – we have a little reunion of
2 the Avella family every once in a while?
3
4 **MR AVELLA:** I think she was allowed to come – I think it was a weekend, on a
5 Sunday, once every couple of weeks for an hour or two.
6
7 **MR WEILAND:** By the way, what was the name of the prison?
8
9 **MR AVELLA:** Puerto Dos. That's how I knew it.
10
11 **MR WEILAND:** After these nine months or so you got some kind of a passport. Tell
12 the Judges how you finally – excuse me, after nine months or so you got out of jail
13 first. Let's talk about that. What did you do when you got out of jail?
14
15 **MR AVELLA:** Yes, after nine months I was released on bond and instructed to
16 appear every 1st and 15th, check in, so to speak, and have a document stamped; and
17 that would be my obligation, so there I was.
18
19 **MR WEILAND:** The court had made the decision to keep your passport – is that
20 right?
21
22 **MR AVELLA:** Yes, they had my passport.
23
24 **MR WEILAND:** So now you will enter into the same situation that your daughter
25 faced.
26
27 **MR AVELLA:** The same situation: no passport, no money, no place to live.
28
29 **MR WEILAND:** Did you receive funds from the ship-owner?
30
31 **MR AVELLA:** Yes, I did.
32
33 **MR WEILAND:** What month were you released from jail?
34
35 **MR AVELLA:** February. It was February.
36
37 **MR WEILAND:** 2007?
38
39 **MR AVELLA:** Yes.
40
41 **MR WEILAND:** By this time your daughter has been allowed to depart the country.
42
43 **MR AVELLA:** Thankfully, yes, she had left prior to that. She had left the year before,
44 at the end of the year before. I had been there over the Christmas time and so forth,
45 and she was back in the United States by then.
46
47 **MR WEILAND:** Did your lawyer from Madrid make efforts to obtain the passport from
48 the court so that you could leave the country?
49

1 **MR AVELLA:** Well, we – I am sure that he petitioned the court on numerous
2 occasions, because I asked and I pleaded with him, the US Embassy and Consulate
3 office and so forth, not as much to leave the country because I was obligated to
4 check in every 1st and 15th, but I couldn't – I had no identification and I couldn't do
5 anything. I couldn't even go to a bank and withdraw money if somebody had put
6 funds in for me. I couldn't open an account. I was stuck. I tried to find work but
7 without identification it is very difficult. So I asked for the relief because I needed
8 something that would allow me to survive while I was there waiting for them to
9 resolve these issues.

10
11 **MR WEILAND:** Are you still under some restrictions from the court in Cádiz in 2012?
12

13 **MR AVELLA:** Yes, as far as I understand it I have to appear whenever called.
14

15 **MR WEILAND:** Were you called to appear in 2011, five years after you had been
16 arrested?
17

18 **MR AVELLA:** Yes, there was an order for me to appear in 2011 to be interviewed or
19 answer questions in Cádiz by another judge.
20

21 **MR WEILAND:** By that time you had a passport?
22

23 **MR AVELLA:** Yes, I did.
24

25 **MR WEILAND:** And by that time you had a job?
26

27 **MR AVELLA:** Yes, I did.
28

29 **MR WEILAND:** How did you get a passport?
30

31 **MR AVELLA:** I got a passport back in August 2008. I received a new passport from
32 the US Consulate's office in Barcelona after ---
33

34 **MR WEILAND:** Excuse me. So that is clear, the passport you received did not come
35 from the court; it came from the US Consulate? They issued you a new one?
36

37 **MR AVELLA:** They finally did, yes.
38

39 **MR WEILAND:** Did they do that with the knowledge of the court?
40

41 **MR AVELLA:** They did, because we spent many months trying to pressure them to
42 understand that how can you leave this person without a passport, which is the main
43 document you need to travel around and to be able to find work and to be a normal
44 citizen. So US attorneys were very strong in convincing the Consulate's office to
45 issue me a passport but they still were reluctant until they had an order from the
46 judge.
47

48 **MR WEILAND:** So the judge actually issued an order allowing the US Government
49 to issue you some kind of a temporary passport. Is that right?
50

1 **MR AVELLA:** Yes, the judge finally issued an order that it would be OK for them to
2 give me a passport but it should only be a temporary passport.
3

4 **MR WEILAND:** There is no such thing in the US government passport world, is
5 there?
6

7 **MR AVELLA:** That is what they told me. They said, "There is no such thing so we
8 are just going to give you a passport."
9

10 **MR WEILAND:** Since then you have still been subject to the call of the court in Cádiz
11 – correct?
12

13 **MR AVELLA:** That is correct. I still have to appear whenever called, and in fact I still
14 live in Europe, partly because of that. I got a passport back in 2008 and nothing is
15 cleared up. I found work and I have stayed around to try and get this thing resolved
16 finally.
17

18 **MR WEILAND:** By the way, you actually married a French lady – is that right – since
19 you have been living in Europe all this time?
20

21 **MR AVELLA:** Yes, I got married two years ago to a French woman.
22

23 **MR WEILAND:** When you were summoned to Cádiz in March of 2011, years after
24 this search of the vessel, what happened on that occasion? Do you remember?
25

26 **MR AVELLA:** I travelled to Cádiz to appear.
27

28 **MR WEILAND:** Do you remember where you were, how far you had to travel?
29

30 **MR AVELLA:** Yes, I had to come from – I do not remember if I was in the south of
31 France or Italy. I move around a lot, working shipyard to shipyard around the
32 Mediterranean, so I had to leave work and travel to Cádiz to appear.
33

34 **MR WEILAND:** What was the purpose of the court appearance in March of 2011, as
35 far as you understood?
36

37 **MR AVELLA:** I thought the purpose was to finally clear up these matters. I went
38 there with the intention and with the hope that this new judge – because it was a
39 different judge than I saw five years prior – in the same court though – would listen to
40 the arguments that these charges that are so grave have nothing to do with me, and
41 we produced documents and made arguments and she asked me a few questions
42 more and nothing came of it.
43

44 **MR WEILAND:** Did the lawyers for the ship owner travel to Cádiz on that occasion in
45 expectation of meeting with the judge?
46

47 **MR AVELLA:** Yes, there was a lawyer from Jerez, a lawyer from Madrid, and
48 lawyers from the United States that travelled there.
49

1 **MR WEILAND:** Were the lawyers from the United States allowed to attend the
2 Spanish proceedings?
3

4 **MR AVELLA:** What I recall is that they were not allowed to go into the proceedings
5 at that time, at my questioning. They allowed the Spanish lawyers in but not the
6 American lawyers but expressed that the American lawyers could meet with the
7 judge after we were done with my testimony.
8

9 **MR WEILAND:** After you had this proceeding with the Spanish judge did the clerk of
10 the court come out and inform the American lawyers that the judge had received a
11 call from Madrid and that she would not be able to meet with them?
12

13 **MR AVELLA:** Yes, that is exactly what the clerk said.
14

15 **MR WEILAND:** You had your liberty restrained from March 2006, really until today,
16 but certainly until you received your passport some 27 months later. Do you think
17 your rights have been violated by the Spanish Government?
18

19 **MR AVELLA:** In my opinion, clearly I have been abused and my rights have been
20 violated.
21

22 **MR WEILAND:** Do you feel you have been denied justice by the Spanish system?
23

24 **MR AVELLA:** Absolutely.
25

26 **MR WEILAND:** What do you think this proceeding, if you can call it that, in Spain has
27 cost you personally? Let us talk first about the more mundane things. What sort of
28 tools and personal possessions did you have on the *Louisa*?
29

30 **MR AVELLA:** As I have stated, I am an engineer, a technician, a mechanic, that
31 fixes systems in ships and things like that, and I have tools of my trade, expensive
32 tools, that were on board the *Louisa*.
33

34 **MR WEILAND:** Do you have a great quantity of them?
35

36 **MR AVELLA:** Yes. There was a large amount.
37

38 **MR WEILAND:** It was easy to transport them because you put them on the ship in
39 Jacksonville.
40

41 **MR AVELLA:** That is correct.
42

43 **MR WEILAND:** How much do you think all those tools were worth?
44

45 **MR AVELLA:** They were tools that I had accumulated over many years of my career
46 but clearly they amounted to – and I looked it over carefully – in the neighbourhood
47 of 60,000 euros.
48

1 **MR WEILAND:** What about your ability to work as a technical guy in the shipyards of
2 Europe without your tools? Do you think that inhibits your income or your ability to
3 get work?
4

5 **MR AVELLA:** Fortunately, my ability to get work in some capacity is because of
6 these [hands], but if I had the tools, it certainly commands a much higher daily rate. If
7 an engineer shows up in the kind of work that I do, that is well equipped, you get a
8 much better wage per day.
9

10 **MR WEILAND:** Some of the work you do, I think it is fair to say, is highly technical. Is
11 that correct?
12

13 **MR AVELLA:** It is.
14

15 **MR WEILAND:** You work on stabilizers of very expensive yachts and things like
16 that?
17

18 **MR AVELLA:** I do.
19

20 **MR WEILAND:** What sort of a daily rate do you think you could have commanded
21 during all of the time that you were, first, in jail, and then released without a
22 passport?
23

24 **MR AVELLA:** I can only tell you today what it is. I do not know. It has not changed
25 much since the time I was in prison but today in this industry, because I work it every
26 day, an engineer that shows up with the tools necessary to perform the job, the rate
27 is about 1,000 euros a day, 100 an hour.
28

29 **MR WEILAND:** I just want to ask you a couple of additional questions because it
30 occurred to me that you actually were allowed on the *Louisa* at one point in about
31 2009. Is that correct?
32

33 **MR AVELLA:** Yes, that is correct. I was in Puerto de Santa Maria in 2009 to board
34 the ship.
35

36 **MR WEILAND:** A judge issued an order allowing you and some lawyers to go on the
37 ship. Is that right?
38

39 **MR AVELLA:** Yes, that is correct.
40

41 **MR WEILAND:** Could we have those pictures of the interior of the *Louisa* from 2009,
42 please? Did you take some pictures while you were there?
43

44 **MR AVELLA:** Yes, I did.
45

46 **MR WEILAND:** We have several pictures of what the interior of the ship looked like
47 and I believe at least one or two of the exterior of the ship. How would you describe
48 the condition of the ship when you went on in 2009, some three years ago?
49

1 **MR AVELLA:** First of all, it broke my heart to see the condition of the ship because
2 she was a beautiful old ship, but in any case, it was completely ransacked
3 throughout, everywhere, and many things were gone and ripped off the wall, and
4 critical pieces on the bridge were gone. She was basically just left to rust, not
5 moored properly, beating against the quay, a lot of damage to the side of the hull.
6 She was listing to port, there was water in the bilge. It was a mess.
7
8 **MR WEILAND:** This picture that is on the screen now indicates some apparent
9 damage to the side of the vessel on the dockside. Did you notice that?
10
11 **MR AVELLA:** This shows some but not nearly the extent of the damage that the
12 stern of the ship had on that port side. That was because there was no proper
13 cushioning ever maintained against the quay, and the mooring lines were not
14 working properly, so she was beating up against the quay for ever.
15
16 **MR WEILAND:** As far as you know, assuming the *Louisa* has not sunk at the dock,
17 is it still there, after all these years?
18
19 **MR AVELLA:** It was there when I was there in 2009 but I could not tell you today. As
20 far as I know, I imagine it must be.
21
22 **MR WEILAND:** Did you go in the hold of the ship in 2009?
23
24 **MR AVELLA:** I am sorry?
25
26 **MR WEILAND:** Did you go down below in 2009?
27
28 **MR AVELLA:** Yes, I did.
29
30 **MR WEILAND:** You had some flashlights and things. There was no power on the
31 ship, was there?
32
33 **MR AVELLA:** It is a dead ship. There is no power.
34
35 **MR WEILAND:** Did you notice that all the equipment, expensive equipment, that had
36 been put on the ship had been removed?
37
38 **MR AVELLA:** She had been stripped of all the equipment.
39
40 **MR WEILAND:** Did you ever see the order from the Spanish court allowing the
41 Guardia Civil to start to use the equipment that had been taken off the ship itself?
42
43 **MR AVELLA:** Yes, I was shown that order that said that they could appropriate and
44 use all the equipment that they had taken from the ship.
45
46 **MR WEILAND:** May I have a moment, Mr President? *(Pause)* We have no further
47 questions, Mr President.
48
49 **THE PRESIDENT:** Thank you very much, Mr Weiland. Pursuant to article 80 of the
50 Rules of the Tribunal, a witness called by one Party may also be examined by the

1 other Party. Therefore, I ask the Agent of Spain whether the Respondent wishes to
2 cross-examine the witness.

3

4 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, Mr President.
5 I would like permission from you for my colleague, Mr Aznar Gómez, to cross-
6 examine the witness.

7

8 **Cross-examination by MR AZNAR GOMEZ**

9

10 **MR AZNAR GOMEZ**: Thank you, Mr President. Let me first say, Mr President,
11 distinguished Judges, that it is a privilege and an honour to appear again before this
12 Tribunal. Good morning, Mr Avella.

13

14 **MR AVELLA**: Hello.

15

16 **MR AZNAR GÓMEZ**: Mr Avella, yesterday you expressly said that the *Louisa* sailed
17 to Spain unclassified. Do you know that this is a breach of international law and
18 International Maritime Organization standards, particularly the Paris Memorandum of
19 Understanding, in force for St Vincent and the Grenadines since 1984?

20

21 **MR AVELLA**: I do not understand what you are asking, sir.

22

23 **MR AZNAR GÓMEZ**: You said that you were sailing across the Atlantic Ocean with
24 a vessel unclassified.

25

26 **MR AVELLA**: No, that is not correct.

27

28 **MR AZNAR GÓMEZ**: You said this yesterday, as far as I remember.

29

30 **MR AVELLA**: I think you misunderstood. I said it was “under class”, not “unclassified”.
31 The term is “under class” which means that it is under a class society, with full
32 compliance.

33

34 **MR AZNAR GÓMEZ**: In 2004?

35

36 **MR AVELLA**: That is correct.

37

38 **MR AZNAR GÓMEZ**: You are sure about this, the MARPOL and the SOLAS
39 certification?

40

41 **MR AVELLA**: Absolutely. Every regulation was up to standard and audited by
42 Germanischer Lloyd, and we have the class certificate before we even can clear port
43 state control and sail.

44

45 **MR AZNAR GÓMEZ**: The last port control was not done in 2000?

46

47 **MR AVELLA**: Excuse me?

48

49 **MR AZNAR GÓMEZ**: The last port control was done in 2000, as I remember, and
50 you must do the port control every two years.

1
2 **MR AVELLA:** Actually, you do not do port control every two years. You do the audits
3 of the class society every five years.
4
5 **MR AZNAR GÓMEZ:** Are you sure of that?
6
7 **MR AVELLA:** Yes.
8
9 **MR AZNAR GÓMEZ:** Anyway, did you or your company report any problems, if any,
10 with the classification to the flag state, to St Vincent and the Grenadines?
11
12 **MR AVELLA:** Did I report any problems?
13
14 **MR AZNAR GÓMEZ:** Yes.
15
16 **MR AVELLA:** What type of problems?
17
18 **MR AZNAR GÓMEZ:** Classification.
19
20 **MR AVELLA:** First of all, it was not my responsibility to report any problems to any
21 authority. It was my responsibility to take the audits that were generated by the
22 inspectors of Germanischer Lloyd and bring up to standard any deficiencies that they
23 may find during the inspection of the ship, whereas then they re-inspect, see that
24 those deficiencies are brought up to standard, and issue their class certificate.
25
26 **MR AZNAR GÓMEZ:** During all this process, did the flag State connect with the
27 owner of the vessel to be sure that every single certificate and classification stamps
28 were correctly done?
29
30 **MR AVELLA:** I am having a little difficult time understanding with your accent.
31
32 **MR AZNAR GÓMEZ:** Excuse me.
33
34 **MR AVELLA:** I am sorry. It is not you, it is me; I am a little hard of hearing
35 sometimes. I am sorry.
36
37 **MR AZNAR GÓMEZ:** I will try to speak a little bit louder.
38
39 **MR AVELLA:** You are asking what, again?
40
41 **MR AZNAR GÓMEZ:** If the flag State contacted at any time with the owner of the
42 vessel in order to check that all the classification documents are OK, are correct.
43
44 **MR AVELLA:** It is my understanding that that would be normal. The Master of the
45 vessel is responsible to make sure that all its certificates are in order and current.
46
47 **MR AZNAR GÓMEZ:** But you are not sure about this?
48
49 **MR AVELLA:** I am sure that all the certificates were in order and current, yes.
50

1 **MR AZNAR GÓMEZ:** No, no. I am just questioning you if there is this surveillance by
2 the flag State about the correctness of all this.
3
4 **MR AVELLA:** I believe that there is always a relationship between the class society,
5 the flag, all of the requirements necessary to be in order.
6
7 **MR AZNAR GÓMEZ:** Did you have any contact with the flag State of your vessel?
8
9 **MR AVELLA:** Did I personally?
10
11 **MR AZNAR GÓMEZ:** Yes.
12
13 **MR AVELLA:** No.
14
15 **MR AZNAR GÓMEZ:** Mr Avella, you also said yesterday that, before sailing to
16 Spain, some fittings were made to the *Louisa*, particularly, if I am not wrong, the
17 installation of diving equipment and sonar, navigation sonar. Is that right?
18
19 **MR AVELLA:** Yes.
20
21 **MR AZNAR GÓMEZ:** Navigation sonar. It is an old vessel.
22
23 **MR AVELLA:** Navigation sonar?
24
25 **MR AZNAR GÓMEZ:** Yes, sonar that usually vessels have in order to be aware of
26 the depth.
27
28 **MR AVELLA:** I believe that, at least on a ship such as that, there is no such thing as
29 navigation sonar. That is radar. Sonar is something else.
30
31 **MR AZNAR GÓMEZ:** It is newer. It is for new vessels, is it not?
32
33 **MR AVELLA:** I imagine.
34
35 **MR AZNAR GÓMEZ:** Yes, not for such old vessels. Mr Avella, apparently you were
36 in charge of all operations of Sage in Spain, and particularly of all operations of the
37 *Louisa* and the *Gemini III*. In your declaration under penalty of perjury made on 2
38 February 2012 and included in Applicant's Memorial and Reply as annex 43, you
39 only say that you worked for Sage primarily as an engineer on the *Louisa*. Yesterday
40 and today you said that among a lot of things you have done, you are a marine
41 technician. The problem with this is that Sage apparently sent you and the *Louisa* to
42 Spanish waters to make marine oil and gas prospects. Are you a specialist in marine
43 oil and gas prospects too?
44
45 **MR AVELLA:** No.
46
47 **MR AZNAR GÓMEZ:** Yesterday you also talked about some working experience in
48 South America related to oil and gas. How long did it last? You yesterday said that
49 you worked in South America with Sage.
50

1 **MR AVELLA:** Yes.
2
3 **MR AZNAR GÓMEZ:** Oil and gas prospecting. Is that correct?
4
5 **MR AVELLA:** Yes.
6
7 **MR AZNAR GÓMEZ:** How long did it last, your experience in South America, how
8 many years?
9
10 **MR AVELLA:** I said it had to do with methane gas recovery, and I was there for only
11 a few months.
12
13 **MR AZNAR GÓMEZ:** Only a few months. OK. Just out of curiosity, because you just
14 said in one of your last answers, did Sage not provide you with the necessary tools
15 to perform your duties aboard? You said that you have lost, I heard, 60,000 euros
16 worth of tools aboard the *Louisa* which belonged to you.
17
18 **MR AVELLA:** That is correct.
19
20 **MR AZNAR GÓMEZ:** So the owner of the ship did not provide you with the tools to
21 perform your duties aboard?
22
23 **MR AVELLA:** What I said was that in my capacity as an engineer and as a person
24 that fixes systems on board and repairs and is in charge of maintenance and
25 upkeep, and in my case, as in many cases, an engineer like that can arrive with his
26 own tools to perform those tasks, because a ship generally does not have enough on
27 board. They have specific tools for the main engines and generators and so forth,
28 but other types of tools are not necessarily around, so that is why in my career I
29 show up with the tools, and in fact it commands a better price per day for my
30 services.
31
32 **MR AZNAR GÓMEZ:** Perhaps this is more useful in North America but, as far as I
33 know, not in the rest of the world, at least here in Europe. That was just curiosity. In
34 Annex 36 of the Applicant's Memorial and Reply several letters and a telefax are
35 reproduced informing about part of the relationship between Sage, ASP SeaScot
36 and Mertramar. It becomes apparently clear that Mertramar only served as Sage's
37 ship agent in Spain from the arrival of the *Louisa* to Spanish port in October 2004
38 until 23 August 2005. Which company, if any, substituted Mertramar in that
39 responsibility from 23 August 2005 up to the immobilization of the vessel on
40 1 February 2006?
41
42 **MR AVELLA:** I have no idea.
43
44 **MR AZNAR GÓMEZ:** Which company was then in charge of the control and
45 maintenance of the war weapons aboard the *Louisa*?
46
47 **MR AVELLA:** I am sorry? Which company was in charge of?
48
49 **MR AZNAR GÓMEZ:** The control and maintenance. It has been said in a lot of
50 documents that Sage was not responsible, that it is ASP SeaScot or Mertramar, the

1 companies responsible for managing all the questions about the entry of weapons
2 and the control of these weapons when in Spanish territory. Once Mertramar ends its
3 contract with Sage, which company substituted for this task in August?
4

5 **MR AVELLA:** I do not know. It was not my job to be in the administrative,
6 paperwork. That seems like more of a job for the Master.
7

8 **MR AZNAR GÓMEZ:** When the Master was not on board the vessel, for example,
9 when the vessel was immobilized, the captain was not aboard – actually it looks like
10 he left Spain some weeks earlier – who was then in charge of war weapons?
11

12 **MR AVELLA:** In charge of what?
13

14 **MR AZNAR GÓMEZ:** In charge of the weapons?
15

16 **MR AVELLA:** Nobody.
17

18 **MR AZNAR GÓMEZ:** Nobody? Let me pose another question. Do you really think
19 that a research vessel, planning to sail in European waters, particularly in waters
20 under strict surveillance, being so close to the Straits of Gibraltar, actually needs war
21 weapons aboard? Let me tell you that I was born in Cádiz and the last time we saw
22 Sir Francis Drake was in 1596.
23

24 **MR AVELLA:** I do not know what you are asking me.
25

26 **MR AZNAR GÓMEZ:** Do you still consider that the weapons were necessary aboard
27 because of this threat of pirates?
28

29 **MR AVELLA:** Again, that was not my decision or my responsibility or duties. Those
30 were of other people. I cannot speculate on why they were needed or any of that.
31

32 **MR AZNAR GÓMEZ:** Mr Avella, in the personal affidavit of Ms Linda Thomas, your
33 boss in Sage, included as Annex 41 to St Vincent and the Grenadines Memorial and
34 Reply, it is implied that Sage developed an alleged project involving oil and gas in
35 the Bay of Cádiz from 2003 to 2005. It is actually said that the survey was satisfied in
36 May of 2005. Hence, what were you doing in Spanish territory aboard the *Louisa* and
37 the *Gemini* from May 2005 up to the immobilization of the vessel on 1 February
38 2006?
39

40 **MR AVELLA:** What ...?
41

42 **MR AZNAR GÓMEZ:** What were you doing aboard the vessel?
43

44 **MR AVELLA:** During what dates?
45

46 **MR AZNAR GÓMEZ:** Once allegedly the prospects were finished in May 2005 up to
47 the immobilization of the vessel.
48

49 **MR AVELLA:** From May 2005 up till the arrest of the vessel, you are saying? You
50 said “immobilization of the vessel”. Do you mean the arrest?

1
2 **MR AZNAR GÓMEZ:** Yes, the immobilization. It is a legal term.
3
4 **MR AVELLA:** What was the vessel doing?
5
6 **MR AZNAR GÓMEZ:** The vessel and the crew.
7
8 **MR AVELLA:** Maintenance and upkeep, waiting for the next destination, waiting for
9 instructions, various duties and chores.
10
11 **MR AZNAR GÓMEZ:** Waiting? Interesting.
12
13 **THE PRESIDENT:** Mr Aznar Gomez, I am sorry to interrupt you but we have
14 reached 11.30 and the Tribunal will withdraw for 30 minutes. We will continue the
15 hearing at noon.
16
17 *(Break from 11.30 to 12.00)*
18
19 **THE PRESIDENT:** Mr Aznar Gómez, you may continue the examination of the
20 witness.
21
22 **MR AZNAR GÓMEZ:** Mr Avella, it has been said that there is a little problem with
23 the translation into French. This is probably because of my awful English. Could you
24 please wait for a moment before you answer my questions in order to facilitate the
25 translation?
26
27 **MR AVELLA:** I am sorry.
28
29 **MR AZNAR GÓMEZ:** No, it is perhaps my accent. Mr Avella, yesterday you said that
30 you had no relation with treasure hunters. Is this okay?
31
32 **MR AVELLA:** I believe I said that I am not a treasure hunter, and I have never been
33 one.
34
35 **MR ANZAR GÓMEZ:** It is completely clear for me that yesterday you said that you
36 are not a treasure hunter, but you also said that you have no relation with treasure
37 hunters?
38
39 **MR AVELLA:** Me personally, no.
40
41 **MR ANZAR GÓMEZ:** Mr Avella, what was your relationship with Mr Valero and
42 Mr Bonifacio?
43
44 **MR AVELLA:** My relationship with them was that they were part of a project where I
45 was on board the ship to perform my duties, and that was it. I had no real
46 relationship with them.
47
48 **MR ANZAR GÓMEZ:** Did you know, Mr Avella, that these persons, Mr Valero and
49 Mr Bonifacio, were well known people to be closely linked with treasure hunting in
50 Spanish waters?

1
2 **MR AVELLA:** I heard that they were, yes.
3
4 **MR ANZAR GÓMEZ:** You heard this?
5
6 **MR AVELLA:** Yes.
7
8 **MR ANZAR GÓMEZ:** Mr Avella, do you know that Sage, your company, had
9 concluded an agreement with Mr Valero and that shipwrecks were discussed?
10
11 **MR AVELLA:** I was aware of a relationship with Sage and a company called Tupet,
12 but Sage is not my company. I was employed by Sage.
13
14 **MR ANZAR GÓMEZ:** Another curiosity. If you were looking for oil and gas in
15 Spanish waters, why did you need the co-operation of an alleged historian,
16 Mr Bonifacio?
17
18 **MR AVELLA:** Excuse me? Why did I need ...?
19
20 **MR ANZAR GÓMEZ:** Why did Sage need the co-operation of an alleged historian on
21 shipwrecks?
22
23 **MR AVELLA:** It is my understanding that we produce data. Sage as a company and
24 the project produces data that was to be shared with another Spanish company,
25 Tupet.
26
27 **MR ANZAR GÓMEZ:** So it was not a responsibility of Sage?
28
29 **MR AVELLA:** What was not a responsibility of Sage?
30
31 **MR ANZAR GÓMEZ:** The use of this data to be given to other companies.
32
33 **MR AVELLA:** I am sorry, the use of ...?
34
35 **MR ANZAR GÓMEZ:** This data, allegedly gathered by Sage, to be shared with other
36 companies.
37
38 **MR AVELLA:** It was the agreement to share the data, yes.
39
40 **MR ANZAR GÓMEZ:** But it was a contract signed with Mr Valero?
41
42 **MR AVELLA:** That was my understanding.
43
44 **MR ANZAR GÓMEZ:** Mr Avella, let me now return to the concrete stones – I think
45 that was the term used yesterday – found aboard the *Louisa*. Yesterday the
46 distinguished Co-Agent of Saint Vincent and the Grenadines said that they might be
47 stones used by fishermen in their nets as a possibility. Would you agree with me that
48 if fishermen used these stones, for example, 100 years ago, they would be anyway
49 under the Spanish legislation and the 2001 UNESCO Convention on the Protection
50 of the Underwater Cultural Heritage?

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MR AVELLA: I would not know.

MR ANZAR GÓMEZ: As a lawyer, I can confirm this to you. Yesterday you also said that the *Gemini III* was gathering previous geological data, also using divers, which at least is curious. You also said that others had previously done this work during 2003 up to 2005. Sage bought the *Gemini III* in February 2005. What geological data are we talking about?

MR AVELLA: It is my understanding that it is geological data that is required through mapping and electronic data.

MR ANZAR GÓMEZ: How did you get that previous geological data?

MR AVELLA: That was acquired by compiling sonar data and magnetometer data.

MR ANZAR GÓMEZ: Prior to the arrival of the *Louisa* and the *Gemini III* to Spanish waters?

MR AVELLA: That is correct.

MR ANZAR GÓMEZ: Under what permits?

MR AVELLA: I am assuming with the permits that were being used. I was not here then. I arrived with the *Louisa*.

MR ANZAR GÓMEZ: Permits used in 2003, you guess?

MR AVELLA: Our work only began in 2004, so I do not know what transpired in 2003.

MR ANZAR GÓMEZ: Mr Avella, Spain states on page 313 of its Counter-Memorial that you declared before the Spanish judge the following words: that you believed there was some confusion in the investigation as the situation was exactly the opposite. It was Luis Valero who about two years previously, that is 2003, had gone to the United States and had asked Sage to help explore the seabed in Spain as he had an administrative permit to do so; that Luis Valero had asked Sage to come to Spain to work; that there was probably an agreement between Luis Valero and the American company, that is Sage, and subsequently they hired you to work for them. Let me please clarify myself. It was Sage that decided to come to Spanish waters to look for oil and gas based on alleged previous technical researches or Sage was invited by Mr Valero to come to Spanish waters. Which was first, Mr Avella?

MR AVELLA: What I know, because I was not involved in all the administrative issues and contractual issues and so forth, is that Mr Valero came to the United States to make an agreement with Sage.

MR ANZAR GÓMEZ: So a well known treasure hunter went to the US to invite you to come to Spain?

1 **MR AVELLA:** Or to share data that was produced by a survey company.
2
3 **MR ANZAR GÓMEZ:** Mr Avella, let me go back again to the classification of the
4 vessel. I am talking about Annex 17 of the Spanish Counter-Memorial. It is an email
5 from Mertramar, talking about the classification of the vessel. Did you know that, as
6 reported by the Paris Memorandum of Understanding database, the International
7 Ship Security Certificate issued by Det Norske Veritas had expired on 29 January
8 2005; that the Cargo Ship Safety Construction Certificate issued by Germanischer
9 Lloyd had expired on 31 March 2005; that the Cargo Ship Safety Equipment
10 Certificate issued by Germanischer Lloyd had expired on 31 March 2005; that the
11 Cargo Ship Safety Radio Certificate issued by Germanischer Lloyd had expired on
12 the same date; that the Load Lines Certificates issued by Germanischer Lloyd had
13 also expired on that date; that the Oil Pollution Prevention Certificate issued by
14 Germanischer Lloyd had also expired on that date; and that the Safety Management
15 Certificate issued by Det Norske Veritas had expired on 29 January 2005? It is a
16 long list.
17
18 **MR AVELLA:** Are you asking me whether I am aware of that email?
19
20 **MR ANZAR GÓMEZ:** No- that all these classifications had expired.
21
22 **MR AVELLA:** No, I was not aware of that.
23
24 **MR ANZAR GÓMEZ:** Because you were a simple technician aboard?
25
26 **MR AVELLA:** I was an engineer on board.
27
28 **MR ANZAR GÓMEZ:** Does that mean that you were not, so to say, the
29 representative of Sage aboard the *Louisa*?
30
31 **MR AVELLA:** I was an employee of Sage.
32
33 **MR ANZAR GÓMEZ:** Just that?
34
35 **MR AVELLA:** Yes.
36
37 **MR ANZAR GÓMEZ:** Did you have any general or administrative responsibility
38 aboard the vessel?
39
40 **MR AVELLA:** To the point that if there was something that needed to be brought into
41 compliance, the defect would be brought to my attention and I would have to do what
42 was necessary to bring it into compliance.
43
44 **MR ANZAR GÓMEZ:** This perhaps gives an answer to my following queries. Who
45 paid the €3,000 port fees of the *Louisa* on 1 September 2005?
46
47 **MR AVELLA:** Sage would have paid.
48
49 **MR ANZAR GÓMEZ:** Not you?
50

1 **MR AVELLA:** Not me. It is the Sage company. I would not be paying the port fees.
2
3 **MR ANZAR GÓMEZ:** Do you remember if you signed the fees payment on behalf of
4 Sage?
5
6 **MR AVELLA:** I remember that I delivered the payment to the port, yes.
7
8 **MR ANZAR GÓMEZ:** It is more or less the same for my next question. It was you
9 who signed the official entry of the *Gemini III* to Port Sherry on 15 December 2005?
10
11 **MR AVELLA:** I was there to receive the ship, yes.
12
13 **MR ANZAR GÓMEZ:** You signed the entry, the administrative document?
14
15 **MR AVELLA:** Yes, I would imagine. I do not recall, but if you say that I signed that
16 document, I am sure I must have done.
17
18 **MR ANZAR GÓMEZ:** No, I am simply asking you. Anyway, would you agree with me
19 that those kinds of function were administrative functions aboard?
20
21 **MR AVELLA:** It has been my experience that any time you are complying with audits
22 and defects along the way and a certificate is issued for someone who has brought
23 things into compliance, you sign that document to say "Yes, I have brought this into
24 compliance". It would be your responsibility, so if you are calling that an
25 administrative duty, then ---
26
27 **MR ANZAR GÓMEZ:** You were the man of Sage for the *Louisa*, so to say?
28
29 **MR AVELLA:** For those responsibilities, yes.
30
31 **MR ANZAR GÓMEZ:** Mr President, I have a final question before asking you to give
32 the floor again to the Agent of Spain.
33
34 Mr Avella, did you inform the owner of the vessels about their immobilization, and
35 when?
36
37 **MR AVELLA:** I did inform the owner about the arrest of the vessel immediately when
38 I knew.
39
40 **MR ANZAR GÓMEZ:** When you knew that this occurred?
41
42 **MR AVELLA:** I am sure that it would have been the first day that ---
43
44 **MR ANZAR GÓMEZ:** Were you in Spain or in the United States?
45
46 **MR AVELLA:** I was in the United States.
47
48 **MR ANZAR GÓMEZ:** Thank you very much, Mr Avella. Mr President, could you
49 please give the floor to the Agent of Spain?
50

1 **THE PRESIDENT:** Thank you, Mr Aznar Gómez. Ms Escobar Hernández, you have
2 the floor.

3
4 **Cross-examination by MS ESCOBAR HERNÁNDEZ:**

5
6 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Mr Avella, I will try to
7 speak slowly for the interpreters and to make sure that you can understand my
8 questions fully. You referred, in response to certain questions this morning, to some
9 points on which I asked questions to your daughter Alba Jennifer Avella yesterday.
10 Now I do not want to repeat the examination of your daughter, of course, but
11 because you made the reference yourself, I hope you will permit me to read the first
12 paragraph included in your statement to Local Criminal Court No. 4 in Cádiz on
13 20 May 2006, that is to say at the time at which you had been brought before the
14 Spanish judicial authorities after you had been held in Lisbon and after the
15 Portuguese authorities had handed you over to the Spanish. Mr President, I would
16 now like to read the text in English to help the witness understand:

17
18 (*In English*)

19 That when the ship *Louisa* was registered he was in the United States and
20 that he came to Spain when his daughter was arrested; that he was in
21 Spain when his daughter was arrested and that he could have come to
22 make a statement but his solicitor advised him not to do so; that he was
23 advised by his solicitor that he could not do anything in Spain and that the
24 best thing to do would be to return to this country.

25
26 (*Interpretation from French*)

27 Is that correct, Mr Avella?

28
29 **MR AVELLA:** Yes.

30
31 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): When did you arrive in
32 Spain after you had heard that your daughter had been arrested – on what date?

33
34 **MR AVELLA:** I do not remember exactly the date. I believe that it would have been
35 3 February. I can remember the day of the week more than I can remember the date.

36
37 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): What airport did you use
38 to enter Spain?

39
40 **MR AVELLA:** I believe it was Madrid.

41
42 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): In any case, you came in
43 through a Spanish airport?

44
45 **MR AVELLA:** Yes, if I am not mistaken.

46
47 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You used the words
48 'justice secret'. Returning to the records of the case, this is a translation of a judicial
49 situation which is part of our criminal procedure. It is called "*secreto del sumario*".
50 You referred to this term and you were talking about your daughter's lawyer with
51 whom you had been in touch, continuously, who not told you what the "justice secret"

1 was which would have enabled you to understand the background to the criminal
2 proceedings and the situation faced by your daughter.

3

4 **MR AVELLA:** I was not aware of the specific charges.

5

6 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Could I ask you to repeat
7 your reply?

8

9 **MR AVELLA:** I said that I was not aware of the specific charges.

10

11 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): But the justice secret is
12 not a charge. It is a procedural situation, which is part of the criminal procedure
13 system. I understand, of course, that you are not a legal expert and even less an
14 expert in the Spanish legal system. I fully understand that, but your lawyer giving
15 your daughter legal representation, did that lawyer not explain to you what justice
16 secret meant?

17

18 **MR AVELLA:** Yes.

19

20 **MS ESCOBAR HERNÁNDEZ** (*Interpretation*): So he did not tell you what it meant?

21

22 **MR AVELLA:** What he explained to me was that it meant that the many areas of the
23 case, including information, were secret and not available.

24

25 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Did you attempt to visit
26 your daughter at the national police detention centre?

27

28 **MR AVELLA:** No.

29

30 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Did you attempt to go to
31 the police or to the courts in order to explain what had happened on the vessel, or, if
32 you prefer, in order to say what the boat was doing in Cádiz before 1 February 2006,
33 of course with the aim of helping your daughter and hoping to get your daughter out
34 of custody as quickly as possible?

35

36 **MR AVELLA:** No.

37

38 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Reading the record of
39 your statement today, I will just read out what you said before the Cádiz judge. You
40 said that ... I beg your pardon. I apologize, Mr President. I will come back to the
41 beginning of that question. I will start again. In your testimony today you said that
42 when you left the United States in order to come to the assistance of your daughter,
43 which of course is a completely normal, natural thing to do – everyone understands
44 that – you at that point did not yet know the lawyer. You had quite simply got a
45 contact and been told to get in touch with the lawyer and ask him to take care of your
46 daughter's case and, if I am not mistaken, also the case of the Hungarian nationals
47 in your crew, but certainly to look after your daughter. Is that correct?

48

49 **MR WEILAND:** Mr President, I am sorry for the interruption but I must interpose an
50 objection in that counsel is talking about a document that he does not have in front of

1 him, of course – which is acceptable – but it is not a verbatim transcript. This
2 interview of Mr Avella is simply a statement of notes that are written down by a clerk
3 in the judge’s office, as we understand it; and counsel is representing that he said
4 this and he said that. I just want the Tribunal to understand that there is no transcript
5 of what he actually said.

6
7 **THE PRESIDENT** (*Interpretation from French*): Ms Escobar Hernández, would you
8 continue, taking account of what has just been said by Mr Weiland?

9
10 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Yes, Mr President. I did
11 not fully understand what Mr Weiland said. I do not know whether he considers that
12 there was perhaps no record of the statement made in the presence of the Spanish
13 judge during which the witness said (*Continued in English*) that he was in Spain
14 when his daughter was arrested and that he would then come to make a statement
15 but his solicitors advised him not to go. (*Interpretation*) That document is in the
16 report, Mr Weiland. It is a document that was amongst those submitted to this
17 honourable Tribunal, Annex 1 of the Counter-Memorial, Mr Avella’s statement before
18 the judge. This is an official Spanish judicial document and it was presented at the
19 appropriate time in the proceedings before this Tribunal. I may have misunderstood
20 Mr Weiland’s question, but if this is the document he is referring to, I must call the
21 Tribunal’s attention to the fact that this is the second attempt to object to the use of
22 the document, which is in the official records of the written proceedings.

23
24 **THE PRESIDENT**: Would you clarify which document that you are referring to?

25
26 **MR WEILAND**: Mr President, to be clear I am not objecting to the document. The
27 document is Annex 1; I have it in front of me. My point is that it is not a transcript of
28 what Mr Avella said; it is someone’s notes, and counsel has referred to things that he
29 has said, but it is not a transcript of what he said; it is only notes. I wish for the
30 Tribunal to understand that, but I have no objection to Annex 1.

31
32 **THE PRESIDENT**: Thank you, Mr Weiland, for your clarification. Will you continue?

33
34 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you. I am aware
35 that Mr Weiland is not conversant with the Spanish judicial system – that is clear to
36 the Tribunal, I hope - but this is the normal manner in which witness statements
37 before the judge are recorded. It is a valid way of proceeding for the judge, for the
38 clerk of the court, for the judicial secretary, for the accused. The witness, incidentally,
39 signs the document and Mr Avella’s signature is to be found in the original document
40 in Spanish, on page 47; so I do not understand the objection, Mr President.

41
42 I should like to thank my colleague for pointing this out: I must also say that
43 Mr Avella’s witness statement was conducted with the assistance of Ana Maria
44 González Asencio as interpreter, who produced ID, which is also noted in the same
45 document. I may be mistaken and of course I do not know all of the documents
46 involved, but, at least to my knowledge, Mr President, I have no information that
47 any attempt was made to seek relief whereby the statement should be annulled. I
48 don’t believe that any such application was made.

1 Continuing then, you said this morning that when you arrived you didn't know your
2 lawyer. You telephoned to get the name of someone to assist your daughter. This is
3 perfectly understandable. So you don't know the lawyer, but at the same time you
4 showed great trust in him, to the extent that you did not feel it necessary to go to the
5 police or judicial authorities in Spain, and a few days later you accepted their
6 suggestion or recommendation to leave Spain and return to the US. So you must
7 have had a very convincing lawyer.

8
9 **MR AVELLA:** Again, as you said, I am not an expert in the Spanish legal system,
10 but when you retain a lawyer you put your trust in him to give you the correct
11 information and to advise you on the best procedures.

12
13 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): If your daughter had
14 been imprisoned in Denver, USA, would you have acted in the same manner? Would
15 you have sought a hearing with the police or the court to seek clarification or
16 permission to visit?

17
18 **MR AVELLA:** I think if I was in the same situation I would do the same thing, hire a
19 lawyer and go by their advice.

20
21 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): I understand that you
22 were deeply concerned with the position your daughter was in, and that was what
23 prompted this decision. However, your lawyer advised you to leave Spain for the US.
24 When did you make your first departure for the US after your return in early October?
25

26 **MR AVELLA:** I can't recall the date but it was soon during that period.

27
28 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Roughly how many
29 days, without necessarily citing the exact date? Roughly how many days?
30

31 **MR AVELLA:** Roughly two days.

32
33 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): What were your reasons
34 for leaving Spain, obviously on the advice of your lawyer, for leaving your daughter in
35 Spain in the situation to which you have referred, and of which I have no opinion to
36 offer? You left her when she could not speak or understand Spanish. She had little
37 or no money, and above all she had no valid ID, no passport. Was this all on the
38 advice of the lawyer?
39

40 **MR AVELLA:** As I said, the lawyer's advice was to allow him to do his job and get
41 my daughter released.

42
43 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Was it incompatible with
44 your presence in Spain? After all, your daughter was provisionally released on the
45 6th.
46

47 **MR AVELLA:** Would you repeat the question, please?
48

49 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Yes. You just said that
50 you took the advice of your lawyer, and I understand that, and that you wanted to let

1 him go ahead and do his job, but was it incompatible with your lawyer's job – your
2 daughter's lawyer's job, whose intention it was to secure the release of your
3 daughter from the prison centre?
4

5 **MR AVELLA:** No.
6

7 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You returned to Spain a
8 few months subsequently for the second time. What were the main reasons which
9 made you change your decision to return to the US? At one point you thought it was
10 best to go to the US, and then a few months down the road you felt that it was
11 important or helpful for your daughter to go back to Spain – but what were the
12 reasons for that?
13

14 **MR AVELLA:** The reason was to try and push the attorneys, the consulate, whoever
15 I could talk to, to get something done to release my daughter from her detention in
16 Spain.
17

18 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): This would not have
19 been possible in February when you left Spain.
20

21 **MR AVELLA:** Apparently not.
22

23 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You said that your
24 airport of arrival in Spain was Lisbon airport, where you hired a rental car to take you
25 straight to Spain, albeit across the border, but of course this is a Schengen border,
26 and therefore there is no inspection. So you flew into Lisbon airport and rented a car.
27 You said at first that the journey from the detention centre in Portugal to the
28 detention centre and the court in Spain was a very long journey. Why was it that you
29 decided to enter Europe via Lisbon and not directly through Madrid, for example, as
30 you did on your first trip, or Jerez, which was your daughter's normal airport of
31 arrival, and which is very close to Puerto de Santa María and Cádiz?
32

33 **MR AVELLA:** I am not sure what the deciding factor was to use the Portugal- or
34 Lisbon airport. It could have been any European city, obviously, but I think it was
35 based on availability of flights and what was going to get me there as quick as
36 possible.
37

38 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): That is a little surprising.
39 Whilst availability of flights from the USA to Spain is obviously an issue, the normal
40 place to arrive in Spain is Madrid – there are several flights, I can't say how many –
41 or, in any case, Barcelona. This morning you said that your daughter informed you
42 that – and I am sorry, Mr President, I can't think of the French word – you said that
43 your daughter had the feeling she was being followed around by the police or other
44 agents, and that she informed you of this and said: "Listen, dad, there is someone
45 behind me. It is someone in the police; I recognize him." Did you inform your lawyer
46 of this, or the lawyer who had been retained for your daughter?
47

48 **MR AVELLA:** Yes.
49

1 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Did you make a
2 complaint to the police or the courts to identify who was doing this, and why, and
3 was a warrant or other such document issued?
4

5 **MR AVELLA**: No.
6

7 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Your daughter indicated
8 that obviously she could not be sure but she had a strong feeling that you, too, were
9 likely to be arrested by the Spanish police, and if I am not mistaken – that’s what I
10 heard this morning but, Mr President, I defer to your authority – you said that your
11 daughter advised you to leave because you too were likely to be detained, and you
12 did that. Did you make this known to your lawyer and did he advise you to leave
13 Spain?
14

15 **MR AVELLA**: Yes.
16

17 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Your lawyer, the one
18 who was already retained? Was this the Madrid lawyer or the one who had been
19 retained for your daughter, the first lawyer?
20

21 **MR AVELLA**: My daughter’s.
22

23 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): So your daughter’s
24 lawyer. Thank you. You were held in Lisbon, and this was a European arrest
25 warrant. Are you familiar with the nature of such arrest warrants?
26

27 **MR AVELLA**: No.
28

29 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Did you have a lawyer
30 available to you in Lisbon at the time of your custody who could have explained that
31 warrant to you?
32

33 **MR AVELLA**: Yes.
34

35 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): What did he say to you?
36

37 **MR AVELLA**: About what?
38

39 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Concerning the
40 European arrest warrant and what you could expect?
41

42 **MR AVELLA**: Well, it was a woman actually, not “he”, who explained to me the
43 procedure that there are allegations against me in Spain, and that is why there was
44 the detention order, and that I have the choice to dispute extradition or choose
45 extradition to Spain to face the charges.
46

47 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): So you were aware that
48 there was an extradition procedure under way?
49

1 **MR AVELLA:** There was no extradition procedure under way. What I said was that I
2 was explained that before extradition procedures could be initiated, I would have to
3 agree to be extradited to Spain or disagree to that.

4
5 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): May I offer a comment in
6 lighter vein? One should not always heed what lawyers say because a European
7 warrant or detention order is not a detention procedure but a special system of co-
8 operation within the European Union. Anyway, you said that you were informed of
9 the charges on the basis of which the Spanish judge had issued the arrest warrant.
10 Is that correct?

11
12 **MR AVELLA:** No, it is not correct.

13
14 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): So, what were you told?
15 Did no-one inform you of the charges against you?

16
17 **MR AVELLA:** That is correct. They told me that they couldn't do that because of the
18 justice secret.

19
20 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): This was what your
21 lawyer said to you?

22
23 **MR AVELLA:** No, this was the judge in Portugal that was asking me whether I
24 wanted to be extradited to Spain or to remain in Portugal and challenge the
25 extradition.

26
27 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Did you appeal the order
28 for your arrest by the Portuguese judge? Because you had a lawyer available to you
29 – a woman, you said.

30
31 **MR AVELLA:** Yes, I immediately agreed to allow extradition to Spain so that I could
32 try and begin to clear up these issues. I didn't want to stay in Portugal and dispute
33 extradition because I felt that the prudent thing to do would be to go and face the
34 charges, which is what I have been trying to do from the beginning, to clarify
35 everything and to get them to release my daughter.

36
37 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): I understand your
38 answer. In any event, you could not have opposed an extradition procedure. Once
39 again, the European system is not an extradition system; it is a system of co-
40 operation and a judge who orders a person to be detained is under an obligation to
41 explain to the person the charges against him or her. How many days were you in
42 Portugal?

43
44 **MR AVELLA:** I was in Portugal ten days.

45
46 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): On what day were you
47 transferred and placed at the disposal of the Spanish judge?

48
49 **MR AVELLA:** I don't remember the date.

50

1 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Was it not 19 May? Does
2 that ring a bell?
3
4 **MR AVELLA**: 19 May sounds correct, when I appeared in front of a Spanish judge.
5
6 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): On what day were you
7 questioned by the judge in Cádiz?
8
9 **MR AVELLA**: I believe that day that you just said. That was the day that I was put in
10 front of the Spanish magistrate.
11
12 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): What day was it, if you
13 remember, that the judge in Cádiz ordered your remand in custody?
14
15 **MR AVELLA**: The same day that I saw him.
16
17 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): So no denial of justice,
18 no undue delay either? You say that your passport was taken and it was not until
19 2008 that you were able to get another passport, in other words some months after
20 your detention and some days after the judge's decision to take your passport. Is this
21 correct?
22
23 **MR AVELLA**: Yes, some time, about two years, yes.
24
25 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You said that being
26 deprived of your passport caused prejudice because you had no ID, and that
27 because of that you were not able to open a bank account or seek employment. Is
28 that correct?
29
30 **MR AVELLA**: That is correct.
31
32 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Can you confirm that
33 your lawyer, on the day when you were brought before the judge in Cádiz, that is, on
34 19 or 20 May 2006, suggested that the judge hold your passport rather than place
35 you in custody?
36
37 **MR AVELLA**: I don't remember exactly, but he may have asked the judge for that,
38 yes.
39
40 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, Mr Avella, for
41 your co-operation. Mr President, I have no further questions. Thank you.
42
43 **MR PRESIDENT**: A witness who is cross-examined by the other Party may be re-
44 examined by the Party who has called the witness. Therefore I ask the Co-Agent of
45 Saint Vincent and the Grenadines whether the Applicant wishes to re-examine the
46 witness.
47
48 **MR WEILAND**: Yes, Mr President, I have some re-examination.
49

1 **THE PRESIDENT:** We have reached almost one o'clock, so can you do that in the
2 afternoon?

3

4 **MR WEILAND:** Yes, sir.

5

6 **THE PRESIDENT:** The meeting will resume at three o'clock, so the morning's
7 meeting is adjourned. Thank you very much.

8

9 *(The sitting closed at 1 p.m.)*