

# INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2012

Public sitting

held on Saturday, 6 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)*

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**Verbatim Record**

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<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
		Markiyany Kulyk
	Registrar	Philippe Gautier

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Mr S. Cass Weiland, Esq., Patton Boggs LLP, Dallas, Texas, USA,

*as Co-Agents, Counsel and Advocates;*

*and*

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

*as Counsel and Advocates;*

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

*as Advocate;*

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

*as Counsel.*

*The Kingdom of Spain is represented by:*

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Department, Universidad Nacional de Educación a Distancia (UNED), Spain,

*as Agent, Counsel and Advocate;*

*and*

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

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University “Jaume I”, Castellón, Spain,

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Universidad de Alcalá de Henares, Spain,

*as Counsel and Advocates;*

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

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

*as Counsel;*

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

*as Adviser.*

1 **THE PRESIDENT:** Good morning. Today we will continue the hearing in the  
2 *MV Louisa* case. I understand that we are going to have two experts. May I ask  
3 Mr Weiland who will be the first expert?  
4  
5 **MR WEILAND:** The first expert, Mr President, will be Mark McAfee.  
6  
7 **THE PRESIDENT:** Thank you very much, Mr Weiland. The Tribunal then will  
8 proceed to hear the expert, Mr McAfee. Now he will be brought into the courtroom.  
9  
10 I now call upon the Registrar to administer the solemn declaration to be made by the  
11 expert.  
12  
13 **THE REGISTRAR:** Good morning, Mr McAfee. Pursuant to Article 79 of the rules of  
14 the Tribunal, before making any evidence every expert shall make a solemn  
15 declaration. You have been provided with the text of the solemn declaration. May  
16 I invite you, Mr McAfee, to make the solemn declaration.  
17  
18 ***The witness, MR WESLEY MARK MCAFEE, made the solemn declaration***  
19  
20 **THE REGISTRAR:** Thank you, Mr McAfee. Mr President.  
21  
22 **THE PRESIDENT:** I now give the floor to the Co-Agent of St Vincent and the  
23 Grenadines, Mr Weiland, to start the examination of the expert.  
24  
25 ***Examined by MR WEILAND***  
26  
27 **MR WEILAND:** Good morning Mr McAfee.  
28  
29 **MR MCAFEE:** Good morning.  
30  
31 **MR WEILAND:** Welcome to this beautiful day, Saturday, in Hamburg. Would you  
32 give us your full name, please, sir?  
33  
34 **MR MCAFEE:** My name is Wesley Mark McAfee.  
35  
36 **MR WEILAND:** What is your nationality?  
37  
38 **MR MCAFEE:** US.  
39  
40 **MR WEILAND:** Where do you live these days?  
41  
42 **MR MCAFEE:** I live in Montgomery, Texas.  
43  
44 **MR WEILAND:** Is that a community outside the city of Houston?  
45  
46 **MR MCAFEE:** Yes, it is.  
47  
48 **MR WEILAND:** Is Houston considered one of the primary energy centres in the  
49 world as far as you are concerned?  
50

1 **MR MCAFEE:** We claim it is.  
2  
3 **MR WEILAND:** How old are you these days?  
4  
5 **MR MCAFEE:** I am sorry?  
6  
7 **MR WEILAND:** How old are you, sir?  
8  
9 **MR MCAFEE:** I am 70 years old.  
10  
11 **MR WEILAND:** We have asked you to come here from Montgomery, Texas, to talk  
12 to us a little bit about the oil and gas business because we have an understanding  
13 that you have some background in that area and we understand that there is some  
14 possible confusion about the ship-owner's intention in connection with the ship, that  
15 is the focal point of this case. Let me ask you first to tell the Tribunal what your  
16 background in the oil and gas business is.  
17  
18 **MR MCAFEE:** I have drilled and owned oil and gas production. I have operated large  
19 oil companies. I currently consult and have consulted for major oil companies and  
20 major oil service companies like Halliburton, Cameron, National Oilwell, Baker  
21 Hughes, and Schlumberger.  
22  
23 **MR WEILAND:** Tell the Tribunal a little bit, or at least the highlights of your work  
24 experience in the petroleum industry.  
25  
26 **MR MCAFEE:** My background started off as electronics and I first worked – my first  
27 commercial job I worked at IBM in Huntsville, Alabama, during a moon push, and I  
28 worked on scientific computers, programming, that fired the rockets used on the  
29 Gemini and Apollo system for the moon shot. IBM then moved me to another  
30 location and I worked on the first start of teleprocessing equipment, which is, you  
31 know, a predecessor to the Internet many, many years ago.  
32  
33 **MR WEILAND:** Predecessor to the Internet?  
34  
35 **MR MCAFEE:** Yes, sir.  
36  
37 **MR WEILAND:** We had a Vice President of the United States who claimed he  
38 invented the Internet. Would you confirm that?  
39  
40 **MR MCAFEE:** I don't know. Anyway, I went to work for a company in Tulsa,  
41 Oklahoma, where I converted analogue seismic data to digital data so it could be  
42 processed digitally instead of just being printed out on a printer. At that company I  
43 was there for three years and I became interested in using computers for  
44 manufacturing, so I left and started a company selling and building machines that  
45 used computers for manufacturing.  
46  
47 **MR WEILAND:** Let me just interrupt you for a second. That Tulsa company you  
48 referred to became Telex – is that right?  
49  
50 **MR MCAFEE:** That is correct, yes.

1 **MR WEILAND:** What did you do after you started your own company?  
2  
3 **MR MCAFEE:** We built – it was early on manufacturing for tubular parts for the  
4 oilfield, so I purchased specially built machines in Japan for threading pipe. Then  
5 I became president of an American/Russian joint venture oil company in the Komi  
6 Republic.  
7  
8 **MR WEILAND:** In the Komi Republic of Russia?  
9  
10 **MR MCAFEE:** That is correct, in Russia.  
11  
12 **MR WEILAND:** Tell us a little bit about that.  
13  
14 **MR MCAFEE:** It was the early nineties and the Russians – they knew – they were  
15 very astute to the technology of oil and gas. They lacked the funding to complete the  
16 projects and so they sought a joint venture partner to help them with their projects.  
17 That is where I learned another way to make exploration for oil and gas while I was  
18 in Russia, using the Russian technology. Then, after I left Russia, because we lost  
19 pipeline use – we couldn't generate any cash – my partner – my lawyer became my  
20 partner in Russia and we drilled and produced oil wells in Texas. We had 150 wells  
21 that we produced. We also owned 10% of a rotary drill company. We had drill rigs  
22 out drilling in different types of formations. Since the mid-seventies we started  
23 consulting for different companies for different completions and for problem wells.  
24  
25 **MR WEILAND:** What do you mean by “completions”?  
26  
27 **MR MCAFEE:** After a well is drilled you have to complete the well so it will give up its  
28 hydrocarbons, and during this period of time fracking was invented during this period  
29 of time I was working. There are different ways to do fracking so we worked on  
30 different stages in the fracking business.  
31  
32 **MR WEILAND:** I think that we are not going to try to describe in much detail the  
33 state of the oil and gas industry these days, but you have hit on an important point  
34 there that I think deserves at least a little bit of elaboration because you used the  
35 term “fracking” and that is a critically important aspect of modern energy production,  
36 is it not?  
37  
38 **MR MCAFEE:** Yes, it is.  
39  
40 **MR WEILAND:** Would you explain what you mean by it, just very briefly?  
41  
42 **MR MCAFEE:** Basically, hydrocarbons are locked inside shale or rock and you can't  
43 get communication to the well, and if you break it up into little pieces you get  
44 communication and it allows the wells to breathe and give up their hydrocarbons.  
45  
46 **MR WEILAND:** So you explode the rock formations and that is called fracking.  
47  
48 **MR MCAFEE:** Yes, that is correct. Then we invented different tools to decommission  
49 offshore wells in the Gulf of Mexico that we have patents on. That is what we are

1 presently doing, and we are also presently consulting with major oil companies in the  
2 North Sea about how to shut their wells in.

3

4 **MR WEILAND:** So you have actually invented tools that are used in the oil  
5 business?

6

7 **MR MCAFEE:** That is correct.

8

9 **MR WEILAND:** Do you have fairly extensive experience in the Gulf of Mexico?

10

11 **MR MCAFEE:** That is correct.

12

13 **MR WEILAND:** There is a lot of hydrocarbon production in the Gulf of Mexico – is  
14 that correct?

15

16 **MR MCAFEE:** Yes.

17

18 **MR WEILAND:** Let us just talk for a couple of minutes about how someone who is  
19 interested in developing oil reserves decides where to go in the world to explore.

20

21 **MR MCAFEE:** Of course, the world is vast and wide and you have to find a place  
22 that you are allowed to produce the oil and gas, and then you look to see if there is  
23 oil and gas in that area. The first thing you do is you do remote sensing surveys. You  
24 use geo satellites. You use satellites to find oil seeps. You do air magnet surveys.  
25 You do gravity surveys. If those things come back positive, then you go and spend a  
26 lot more money to do more detailed surveys.

27

28 **MR WEILAND:** We have a description from a public source – I believe it is Shell oil  
29 company's website that we will put on the board, the 2007 pyramid. This is simply a  
30 two-page reference that might be useful. If we go to page 2, you are familiar with  
31 this, are you not, Mr McAfee?

32

33 **MR MCAFEE:** Yes, I am.

34

35 **MR WEILAND:** There is a description here of non-seismic methods. Can you  
36 elaborate on the importance of that in terms of initial decisions to look for oil and  
37 gas?

38

39 **MR MCAFEE:** It explains that they use remote sensing satellites and aircraft to map  
40 large areas quickly, which is a lot less expensive than doing it the other way, and  
41 they use radar and thermal energy. This particular one is talking about a brand-new  
42 system now that they are using, that Shell likes, that uses a system for conductivity.

43

44 **MR WEILAND:** Shell is one of the largest corporations in the world, not to mention  
45 largest oil producers, but what about if you are a smaller company with limited  
46 resources? How can a company like that control its costs and try to develop  
47 something that would be valuable?

48

49 **MR MCAFEE:** Almost all companies start off with looking for oil seeps. All the major  
50 oil finds in the world had been found originally with oil seeps, like in Pennsylvania, in



1 our country, Spindletop, and Iran was found that way, and Russia, Vietnam, with oil  
2 seeps. It shows the presence of oil. Almost all original oil development in the ocean  
3 was looking for oil seeps and so there are companies that specialize with radar oil  
4 seeps, looking for the oil on top of the ocean.

5  
6 **MR WEILAND:** I know that you have consulted with or consider somewhat  
7 authoritatively a gentleman by the name of Dale Bird, who has written extensively  
8 about interpreting magnetometer data, for example. Can you discuss that with us?  
9

10 **MR MCAFEE:** Yes. Magnetometers have always been used to find where the  
11 basement is located and if you have a basement it means you have a bowl, so there  
12 will be sedimentation that fills that basement, and without the sedimentation you  
13 have no trapping mechanicals that could trap the oil. Also because of computer  
14 systems today magnetic data is processed differently and you can see a lot about  
15 the formation, like if it has fractures, which is extremely important, whereas seismic  
16 will not show a fracture.  
17

18 **MR WEILAND:** I am reading a line from this article by Mr Bird which says that  
19 magnetic data are not just for the basement any more. In this case there have been  
20 some papers or memoranda submitted by the Respondent that criticize the utility of  
21 magnetic data at least for use in exploring in the Bay of Cádiz or the Gulf of Cádiz.  
22 What would you say about that?  
23

24 **MR MCAFEE:** Actually, the magnetic data is usually – if you don't have oil seeps  
25 and you want to make a survey – is always the next survey that you make. It's  
26 absolutely essentially as used in the oil business.  
27

28 **MR WEILAND:** I have heard about using seismic data to develop hydrocarbon  
29 research. Is it cheaper and more efficient to start with magnetic data and the side-  
30 scan sonar that we have heard about?  
31

32 **MR MCAFEE:** The least expensive way of course is to find the oil coming out the  
33 ground, then magnetic data; then you run gravity data with the magnetic data also.  
34 We use a complete suite of non-seismic information to find oil and gas. As a matter  
35 of fact, Russia, when I got to Russia – they had never used seismic at all in any way,  
36 and they were one of the world's largest producers of oil and gas. So seismic is a  
37 great tool – in fact I know the man who invented 3D seismic – he is a friend of mine –  
38 and there is a lot of drop holes that are drilled on seismic. Seismic tells you about the  
39 formation structure; it doesn't tell you if there is oil and gas there.  
40

41 **MR WEILAND:** You had another article that you recommended called *From Black*  
42 *Magic to Swarms: Hydrocarbon Exploration Using Non-Seismic Technologies*. What  
43 do you consider the lesson that this article imparts?  
44

45 **MR MCAFEE:** It is basically that you use magnetics, airborne magnetics, magnetics  
46 and gravity – different kinds of methodologies – before you spend the huge amounts  
47 of moneys that are required with - for seismic information.  
48

49 **MR WEILAND:** We have heard quite a bit about a company called Sage Scientific.  
50 We are aware that it is one of a series of companies, and one of the principal

1 shareholders is John Foster. Are you acquainted with Mr Foster and some of his  
2 companies?  
3  
4 **MR MCAFEE:** Yes, I have worked for different projects for Mr Foster for a number  
5 of years in the oil and gas business.  
6  
7 **MR WEILAND:** You have worked with him in connection with oil exploration and  
8 development?  
9  
10 **MR MCAFEE:** Yes, that is correct.  
11  
12 **MR WEILAND:** Where have you done that work?  
13  
14 **MR MCAFEE:** The company that I was president of in Russia was Mr Foster's  
15 company – for three years. I worked in Vietnam, in the South China Sea; I made 16  
16 trips to Colombia; Bulgaria; and of course we worked in Texas and other places in  
17 the United States.  
18  
19 **MR WEILAND:** So it is safe to say that you and Mr Foster are pretty close.  
20  
21 **MR MCAFEE:** Yes, we are.  
22  
23 **MR WEILAND:** You have had various projects over the years.  
24  
25 **MR MCAFEE:** That is correct.  
26  
27 **MR WEILAND:** Did there come a time when you talked to Mr Foster about the  
28 possibility of developing something in Spain?  
29  
30 **MR MCAFEE:** Yes, that is correct.  
31  
32 **MR WEILAND:** When approximately was that?  
33  
34 **MR MCAFEE:** I believe it was 2003, something like that.  
35  
36 **MR WEILAND:** 2003. Tell the Tribunal, if you will, about your initial conversations  
37 with Foster about the possibility of doing some work in Spain.  
38  
39 **MR MCAFEE:** He mentioned the possibility that he possibly could get a permit for  
40 searching, and of course the oil business is really a very small business and usually  
41 you know what is going on pretty much every place through the journals, if you read  
42 the journals all the time. So there had been lots of articles, many, many articles,  
43 about the outflow from Gibraltar and the Bay of Cádiz. There was a lot of articles  
44 about that, and there are some Texas oil companies, not all, had worked in that area  
45 on the other side of the Mediterranean; so we were familiar with that information. We  
46 knew that Chevron at one time had a lease in that area and that they let it go.  
47  
48 **MR WEILAND:** So when you started to talk to John about the possibility of doing  
49 work in Spain you had read all kinds of things about the potential over there.  
50

1 **MR MCAFEE:** I had just read in publications, yes.  
2  
3 **MR WEILAND:** There was lots of publicly available information about oil prospects  
4 all over the world.  
5  
6 **MR MCAFEE:** That is correct.  
7  
8 **MR WEILAND:** What did you do, if anything, in terms of following up on the idea?  
9  
10 **MR MCAFEE:** I secured radar satellite oil seep data from a company in England that  
11 we used to buy data from for oil seeps. What we were looking for is just – we look for  
12 oil and gas; we don't look for anything else; we just look for oil and gas. We don't  
13 really care about structure or anything else. We are oil people and we want oil and  
14 gas, so if there is oil and gas there that is what we look for. So it showed, with like  
15 five or six satellite passes that there were active oil seeps in that area.  
16  
17 **MR WEILAND:** Did you go out and acquire from a public source some information  
18 about oil seeps off the coast of Cádiz?  
19  
20 **MR MCAFEE:** Yes.  
21  
22 **MR WEILAND:** From a company called Infoterra?  
23  
24 **MR MCAFEE:** Yes.  
25  
26 **MR WEILAND:** That is publicly available.  
27  
28 **MR MCAFEE:** That is correct.  
29  
30 **MR WEILAND:** Let us look at the map on the screen from Infoterra. Tell us what we  
31 are looking at here, Mr McAfee.  
32  
33 **MR MCAFEE:** *There* is the Bay of Cádiz. You see all the little ships. That means that  
34 each satellite pass those ships – some ship was at anchor there. And then the blue  
35 is the fluorescent oil of active oil seeps. If it were a dead oil of course it would show  
36 as a black line. If you just look over to the left side you can see that right in that area  
37 there is a black line. That is from a ship – that's pollution from a ship. So it showed  
38 that there is active oil seeps in this area, which means that they are coming from  
39 some formation some place.  
40  
41 **MR WEILAND:** Mr Whittington, do you have the December 2003 letter that  
42 Mr McAfee sent to Mr Foster?  
43  
44 While he is looking for that, after you had seen this kind of activity did you go to  
45 Foster and suggest that there were ways that he could get into this or he could try to  
46 make something of his permit availability, that he could use that for developing  
47 something off Cádiz?  
48  
49 **MR MCAFEE:** Yes, I did.  
50

1 **MR WEILAND:** We have seen this letter in the last couple of days. Is this the letter  
2 that you wrote to Mr Foster on December 18, 2003?  
3

4 **MR MCAFEE:** That is correct.  
5

6 **MR WEILAND:** In the first paragraph you are making a proposal and you are talking  
7 about use of a magnetometer and the use of specifically a geometrics G-882. There  
8 is also a reference to a digital side-scan sonar. Are these methods that a smaller  
9 player in the industry might have used in the initial stages to see if he could develop  
10 some data that a larger company might be interested in buying?  
11

12 **MR MCAFEE:** This actually is what even a huge company would do on the front end.  
13

14 **MR WEILAND:** Even a huge company would use this.  
15

16 **MR MCAFEE:** Yes, that is correct.  
17

18 **MR WEILAND:** But a company with limited resources might start out, develop data  
19 and be in a position to either find a joint venture partner or sell the data – is that  
20 correct?  
21

22 **MR MCAFEE:** Yes, but if I might add, along with this I acquired gravity data also  
23 before I made this recommendation.  
24

25 **MR WEILAND:** Let us look at pages 3 and 4 of this exhibit. Is this some gravity  
26 information that you developed and attached when you provided this to Mr Foster  
27 back in 2003?  
28

29 **MR MCAFEE:** Yes, we actually had the gravity data itself. This is the track of  
30 acquiring the gravity data, and I had Mr Tom Austin of Austin Exploration in Houston,  
31 who is one of the premier explorers of oil and gas worldwide, interpret the gravity  
32 data. It showed structure.  
33

34 **MR WEILAND:** So you and Foster were beginning to make some investments in  
35 trying to capitalize on this opportunity he might have in Spain: is that a fair way to  
36 describe it?  
37

38 **MR MCAFEE:** That is correct.  
39

40 **MR WEILAND:** I want to talk to you about this G-882 magnetometer because I have  
41 seen a document, a memorandum of some kind, submitted by the Respondent with  
42 its papers – not, as I recall a sworn statement but some kind of a paper that criticizes  
43 the use of this magnetometer G-882. Do you have any comment about the utility of  
44 the G-882 when it comes to prospecting for oil as opposed to, perhaps, just looking  
45 for metal objects under the water?  
46

47 **MR MCAFEE:** The caesium mag is one of the first mags. It has a very, very high  
48 resolution, and the higher the resolution is, the better you can process the data, and  
49 the fact of the matter is that Austin Exploration also uses the exact same instrument  
50 for their major oil companies for looking for oil and gas, and all the streamers that are

1 pulled down, so acquiring 3D, they almost all have this magnetometer also on the  
2 fins.

3  
4 **MR WEILAND:** You consider Tom Austin and his company, Austin Exploration, to be  
5 extraordinarily relevant as an outstanding authority in the area?

6  
7 **MR MCAFEE:** They are one of the two largest companies that look for oil and gas.

8  
9 **MR WEILAND:** I think we have a picture of Mr Austin's home page that actually touts  
10 the utility of a G-882. Are you familiar with this public document that is on the screen  
11 now, Mr McAfee?

12  
13 **MR MCAFEE:** Yes, sir, I am.

14  
15 **MR WEILAND:** He seems to be recommending the G-882 right here on his website,  
16 and offering that. He is not in the shipwreck business, as far as you know, is he?

17  
18 **MR MCAFEE:** No, sir, he is not.

19  
20 **MR WEILAND:** There is evidence in this case that the expedition, if you will, from  
21 Sage included towing around the Bay of Cádiz a side scan sonar device. Can you  
22 describe the use of that in terms of prospecting for oil and gas?

23  
24 **MR MCAFEE:** The side scan sonar has a lot of work in the offshore business. The  
25 fact of the matter is there have been lots of side scan sonars towed in the Gulf of  
26 Cádiz to find the mud volcanoes. Often gas is spewing out of the area. The side scan  
27 sonar can be used to find leaks. It forms a cloud in the water. The escaping gas and  
28 oil forms a cloud in the water, and it is more opaque than the water, and you get a  
29 return off of a side scan sonar. You also can do -- this particular one not real good  
30 sub-bottom profiling -- but you can get sub-bottom profile, and of course, also it does  
31 pick up man-made objects on the sea floor, which, knowing where those man-made  
32 objects are, allows, when you post-process your magnetic data, to take those into  
33 account so they do not give you bad information. You remove those man-made  
34 objects from there.

35  
36 **MR WEILAND:** Would side scan sonar be something that has been used extensively  
37 offshore in various places in the world?

38  
39 **MR MCAFEE:** As a matter of fact, the BP fiasco in the Gulf of Louisiana of the big  
40 blow-out, the US Government came in with side scan sonars and they found a well a  
41 mile away that was leaking using side scan sonar, so it is kind of a normal thing that  
42 is used in the business.

43  
44 **MR WEILAND:** After you developed the magnetometer data and the sonar data,  
45 would it be unusual then for someone who is trying to develop data that he could sell  
46 or use to joint-venture with a larger company to have people dive some of these  
47 areas that have been shown to look promising, inspect them first-hand?

48  
49 **MR MCAFEE:** If you dive, it has to be at a depth where you can dive to, and most of  
50 the things that we do now are so deep that you have to use robotics to do it, but the

1 geochemistry and the microbial investigation can only be done with a sample, with a  
2 soil sample, and of course, on the surface we take soil samples before we ever drill  
3 to be sure that there is a presence of hydrocarbons, and I do not know what they did  
4 with this. I have no idea. I did not think it was necessary, you know, so I do not know  
5 what they did. I have no idea.

6  
7 **MR WEILAND:** You mentioned that when you are talking about a deep water  
8 situation you have to use robotics. Would that be what they call an ROV?

9  
10 **MR MCAFEE:** That is correct.

11  
12 **MR WEILAND:** Again, the paper submitted by the Respondent seems to be quite  
13 critical of the fact that the *Louisa* apparently had an ROV on board. Are you saying  
14 that ROVs are used extensively in the offshore oil and gas search business?

15  
16 **MR MCAFEE:** They are used in the offshore business for lots of reasons.  
17 Oceaneering in Houston have over 500 ROVs, and they use them for – it is easier to  
18 look than it is just to guess.

19  
20 **MR WEILAND:** Oceaneering is a large oil and gas company in Houston?

21  
22 **MR MCAFEE:** It is a robotic company.

23  
24 **MR WEILAND:** As far as you know, they have 500 or more of these ROVs that they  
25 deploy around the world?

26  
27 **MR MCAFEE:** That is correct.

28  
29 **MR WEILAND:** I want to talk to you about some maps that you have brought with  
30 you. We have first a map that accompanied an article relating to the integrated  
31 ocean drilling programme. I believe, one of the Respondent's experts was a  
32 co-author of this article. This page of the article that Mr Derek Stow is one of the  
33 authors of has an interesting map. I believe you were looking at this article and  
34 recommended that this map be something that the Tribunal be aware of. It is  
35 demonstrated on the board now. It is figure 4 from the article. Could you tell us what  
36 we are looking at, without getting too technical?

37  
38 **MR MCAFEE:** You see an area that has been well mowed with seismic information.

39  
40 **MR WEILAND:** Well mowed?

41  
42 **MR MCAFEE:** Yes, that is what it is called: mowing the yard. Even the US  
43 Government in 1992 took readings.

44  
45 **MR WEILAND:** Does this map show seismic data that was developed or does it also  
46 show some sonar and gravity data?

47  
48 **MR MCAFEE:** They show that they have taken some gravity core, and I suspect that  
49 when the US Government did their seismic and sonar, I think they did that for a  
50 military reason at that point in time. They also took gravity data, and the gravity data

1 we required was not in the area of our search area, so that is one of the reasons we  
2 went further north, to get more information. This information was held close by the oil  
3 companies, and it was not public information as far as the data itself, just that it had  
4 been run. Over in Portugal we could get any of that data we wanted, but here none  
5 of this data was available.

6  
7 **MR WEILAND:** We have another map. If you go to the fractal hydraulics files from  
8 the worldpress.com, which I think is something that we need to look at this morning,  
9 here we have a map of Spain with various regions mapped out. What do you  
10 consider to be the relevance of this, Mr McAfee?

11  
12 **MR MCAFEE:** Can you go down to the bay and increase the size, please?

13  
14 **MR WEILAND:** So now we have that portion of the map before us that is segmented  
15 out. Would you describe what we are looking at here? We have got some red and  
16 some green areas.

17  
18 **MR MCAFEE:** The red areas are actually in production now of oil and gas in that  
19 area, gas in the outside into the Gulf, and the area that I recommended Mr Foster to  
20 look at was the area between the Gulf and the land. As you see, the structures  
21 usually follow out into the ocean. That is how in 1947 Kerr-McGee, they followed an  
22 onshore oil field to offshore, and they drilled the first oil well. The green areas ---

23  
24 **MR WEILAND:** Excuse me. Let me interrupt. You are referring to a situation that  
25 occurred years ago in the Gulf of Mexico?

26  
27 **MR MCAFEE:** That is correct.

28  
29 **MR WEILAND:** In that instance the engineers followed the path of production on  
30 land out into the Gulf?

31  
32 **MR MCAFEE:** That is correct.

33  
34 **MR WEILAND:** That was one of the first offshore oil wells?

35  
36 **MR MCAFEE:** That was the first offshore well.

37  
38 **MR WEILAND:** On this map we are looking at a series of red, as I understand it,  
39 production permits, or what they call exploitation permits, that run in a pattern down  
40 to the coast, and then offshore we see Poseidon Norte. That is actually Repsol's  
41 production operation, is it not?

42  
43 **MR MCAFEE:** Yes, sir, it is.

44  
45 **MR WEILAND:** So you recommended to Foster that if he had a permit that  
46 overlapped any of this area, he ought to use it. Is that right?

47  
48 **MR MCAFEE:** That is correct.

1 **MR WEILAND:** If we look at the map which the Respondent submitted in its  
2 Provisional Measures material as Annex No. 1, this is a map of the two permit areas  
3 that were listed in the original Tupet permit. Is that your understanding?  
4

5 **MR MCAFEE:** Yes, sir, that is correct. It is interesting. If you go back to the previous  
6 picture, now someone thinks it is interesting. The green boxes there, over the bay,  
7 that someone has a search permit in that area now.  
8

9 **MR WEILAND:** So these green areas relate to search permits and the red areas  
10 relate to exploitation permits?  
11

12 **MR MCAFEE:** I think that is correct.  
13

14 **MR WEILAND:** I think we are going to hear some bitter criticism of us for even  
15 attempting to explore right offshore Cádiz. Would that surprise you?  
16

17 **MR MCAFEE:** I just do not think that people are familiar with how structures actually  
18 work in the oil and gas business.  
19

20 **MR WEILAND:** May I have a moment, Mr President?  
21

22 **THE PRESIDENT:** Yes.  
23

24 *(Pause)*  
25

26 **MR WEILAND:** Mr President, we have no further questions of Mr McAfee at this  
27 time.  
28

29 **THE PRESIDENT:** Thank you very much. Pursuant to article 80 of the Rules of the  
30 Tribunal, an expert called by one Party may also be examined by the other Party.  
31 Therefore I ask the Agent of Spain whether the Respondent wishes to  
32 Cross-examine the expert.  
33

34 **MS ESCOBAR HERNÁNDEZ** *(Interpretation from French):* Thank you, President.  
35 I would ask that Mr Aznar Gómez, who will be responsible for the cross-examination,  
36 be called.  
37

38 **THE PRESIDENT:** Mr Aznar Gómez, you have the floor.  
39

40 ***Cross-examined by MR AZNAR GÓMEZ***  
41

42 **MR AZNAR GÓMEZ:** Good morning, Mr President, distinguished Judges. Good  
43 morning, Mr McAfee.  
44

45 **MR MCAFEE:** Good morning.  
46

47 **MR AZNAR GÓMEZ:** From your testimony now, I think I have clear what was first.  
48 You were not here, but I was wondering what was first. You have said that when you  
49 met Mr Foster he told you that he had the possibility to use some permits in Spain,  
50 so now I think this is clear. Mr McAfee, you are here before this Tribunal as an expert



1 in marine hydrocarbon exploration, as stated in the letter of 10 August 2012 that the  
2 Co-Agent of St Vincent and the Grenadines sent to the Registrar of the Tribunal.  
3 Could you please remind us of your experience during the last five years in marine  
4 hydrocarbon exploration? How many projects have you directed or developed in the  
5 last five years, please?  
6

7 **MR MCAFEE:** I have directed none personally.  
8

9 **MR AZNAR GÓMEZ:** No project at all in the last five years?  
10

11 **MR MCAFEE:** No, sir, I did not say I did not do projects. What I directed, sir.  
12

13 **MR AZNAR GÓMEZ:** Are you a geologist or something similar?  
14

15 **MR MCAFEE:** No, sir.  
16

17 **MR AZNAR GÓMEZ:** Can we agree that most of your work is to manufacture or  
18 even invent the pieces for drilling and for oil prospects, and to advise about their  
19 use?  
20

21 **MR MCAFEE:** We do both, sir. We are an engineering company, and we use the  
22 latest state-of-the-art technology to find oil and gas. We have found three green  
23 fields ourselves.  
24

25 **MR AZNAR GÓMEZ:** What is your experience or your company experience in the  
26 scientific and commercial evaluation, the assessment, of geological data in oil and  
27 gas?  
28

29 **MR MCAFEE:** We look for oil. We do not look at geology, sir.  
30

31 **MR AZNAR GÓMEZ:** How can you manage to look for oil without a previous  
32 assessment of geological data?  
33

34 **MR MCAFEE:** We hire geologists and geophysicists to interpret data, but when we  
35 look for oil and gas, we really do not care what the geology is.  
36

37 **MR AZNAR GÓMEZ:** You simply go and drill?  
38

39 **MR MCAFEE:** No, sir. We do remote sensing.  
40

41 **MR AZNAR GÓMEZ:** Remote sensing?  
42

43 **MR MCAFEE:** That is correct.  
44

45 **MR AZNAR GÓMEZ:** Just remote sensing?  
46

47 **MR MCAFEE:** That is correct.  
48

49 **MR AZNAR GÓMEZ:** Why do you recommend this use of magnetometers and RÓV  
50 and handy metal detectors and so on?

1 **MR MCAFEE:** I recommend the use of a magnetometer and side scan sonar.

2

3 **MR AZNAR GÓMEZ:** Side scan sonar?

4

5 **MR MCAFEE:** Yes.

6

7 **MR AZNAR GÓMEZ:** Mr McAfee, in your affidavit of 19 September 2007,  
8 reproduced as annex 40 of the Applicant's Memorial and Reply, you say, and I  
9 quote:

10

11 "In 2004 and 2005, I reviewed data produced by Sage in the  
12 Bay of Cádiz..."

13

14 I repeat, the Bay of Cádiz, not the Gulf of Cádiz.

15

16 "...and determined that it demonstrated the absolute accuracy  
17 of my earlier conclusions about the presence of hydrocarbons  
18 in the area."

19

20 How was that data produced?

21

22 **MR MCAFEE:** I reviewed the information we had previous. We had the gravity data.  
23 I had Mr Austin look at the gravity data, and we had the course of the seeps, and  
24 then we had Landsat information, and it still made sense, just as a possibility. I saw  
25 no data from the survey itself.

26

27 **MR AZNAR GÓMEZ:** Thank you, Mr McAfee. Now let me go to your letter to  
28 Mr Foster of 18 September 2003 attached to your affidavit and also reproduced in  
29 annex 40. You talk about the Rio Vinalopo concession as a reference. Do you know  
30 where this concession is located?

31

32 **MR MCAFEE:** No, sir, I do not at this point. It is 2003.

33

34 **MR AZNAR GÓMEZ:** Have you ever been in Spain?

35

36 **MR MCAFEE:** No, sir.

37

38 **MR AZNAR GÓMEZ:** Do you know that this concession is in the other part of Spain,  
39 on the Mediterranean, and a ground concession in the province of Alicante, close to  
40 Benidorm, a very well known touristic city?

41

42 **MR MCAFEE:** No, sir.

43

44 **MR AZNAR GÓMEZ:** Not in the gulf, not in the Bay of Cádiz.

45

46 **MR MCAFEE:** No.

47

48 **MR AZNAR GÓMEZ:** In that letter of September 2003 you also referred to some  
49 hydrocarbon reports dated in 1980, but also in 1921, and referring to another quite

1 old report of 1929, and this perhaps explains why Sage needed a historian on its  
2 team. You say to Mr Foster that, and I quote:

3  
4 "This area of Spain..."

5  
6 The bay of Cádiz, it must be understood.

7  
8 "...reminds me of southern Louisiana. Like turning back the  
9 clock to 1929."

10  
11 These are your words, Mr McAfee, but I cannot understand you. Could you explain  
12 this to me, please?

13  
14 **MR MCAFEE:** What I was looking for was the area onshore, which we showed, the  
15 structure onshore also. We also showed structure going out into the bay, that it  
16 would be a possibility that there would be a tracking mechanism. The mud flow from  
17 the gulf environment area into the Gulf of Mexico filled up the Gulf with mud over  
18 millions and millions of years, and the same thing happened in this area.

19  
20 **MR AZNAR GÓMEZ:** So you were comparing the situation in a completely different  
21 part of the world, the southern part of Louisiana.

22  
23 **MR MCAFEE:** Yes, that is correct.

24  
25 **MR AZNAR GÓMEZ:** With the Bay of Cádiz.

26  
27 **MR MCAFEE:** That is correct.

28  
29 **MR AZNAR GÓMEZ:** As an expert in marine hydrocarbon exploration. Mr McAfee,  
30 yesterday the distinguished Professor Nordquist said that the divers Sage used were  
31 looking for gas bubbles. You have just said that you have never been in Spain, so  
32 you have never dived in the Bay of Cádiz, I guess.

33  
34 **MR MCAFEE:** No, sir.

35  
36 **MR AZNAR GÓMEZ:** Do you know that the average visibility is 5-7 metres?

37  
38 **MR MCAFEE:** No.

39  
40 **MR AZNAR GÓMEZ:** As an expert in marine hydrocarbon exploration, how could  
41 scuba divers be used in oil and gas prospects?

42  
43 **MR MCAFEE:** The only way I would think they would be used would be to take  
44 samples.

45  
46 **MR AZNAR GÓMEZ:** To take samples?

47  
48 **MR MCAFEE:** Yes.

1 **MR AZNAR GÓMEZ:** Mr McAfee, it has been repeatedly said here, and also in the  
2 written proceedings, that Sage is a great oil and gas holding with great experience in  
3 oil and gas prospects. Now, with this project, you said that you were, so to say,  
4 beginning; it was the first time that Sage got involved in marine hydrocarbons  
5 exploration, and therefore only used limited tools to gather or confirm these data in  
6 order to sell these data to other companies.

7  
8 **MR MCAFEE:** I do not know what they were going to do with the data. I had no idea  
9 what he would do with that.

10  
11 **MR AZNAR GÓMEZ:** In any case, you have said that you were using remote  
12 sensing, aero-magnetism and some other very fashionable techniques of gathering  
13 data and so on, in order to have more detailed surveys and so on. Would you agree  
14 with me that it is better to use accurate, free information for this?

15  
16 **MR MCAFEE:** What kind of information?

17  
18 **MR AZNAR GÓMEZ:** The information of geological data on the Bay of Cádiz.

19  
20 **MR MCAFEE:** If it were available, yes.

21  
22 **MR AZNAR GÓMEZ:** As an expert, do you know whether in Spain it does exist, a  
23 public database with all known geological data to be used for marine research?

24  
25 **MR MCAFEE:** No. I was told ... I used a company in England to get geological data  
26 and they said the information was not available.

27  
28 **MR AZNAR GÓMEZ:** But you, as a marine hydrocarbons specialist, do not search,  
29 do not look for the possibility of free, available data on geological records that could  
30 show Sage that perhaps there is commercially exploited oil and gas in the Bay of  
31 Cádiz?

32  
33 **MR MCAFEE:** I do not know of any geological data that is free anywhere in the  
34 world, to be honest with you. You usually have to purchase it at extreme expense.  
35 There are seismic exchanges where we buy data and, of course, our seismic  
36 exchange has nothing here, so we had to rely on a company in England that has  
37 seismic exchange, and they said this information was not available.

38  
39 **MR AZNAR GÓMEZ:** But, as an expert, do you ever try to see if in Spain or  
40 elsewhere this accurate, not simple, not even, so to say, for public consumption,  
41 published reports and so on, accurate data, is available?

42  
43 **MR MCAFEE:** Of course.

44  
45 **MR AZNAR GÓMEZ:** As an expert, you did not search for this possibility, given that  
46 Mr Foster and the company are so convinced to come to Spain to explore oil  
47 prospects?

48  
49 **MR MCAFEE:** I personally purchased seismic data but I was told it was not available  
50 here.

1 **MR AZNAR GÓMEZ:** You did not evaluate that possibility?  
2  
3 **MR MCAFEE:** Yes, I evaluated. I was told it was held closely and it was not  
4 possible. It was not public.  
5  
6 **MR AZNAR GÓMEZ:** It was not public?  
7  
8 **MR MCAFEE:** I was told that the data was held closely, which a lot of data is, and it  
9 was not public.  
10  
11 **MR AZNAR GÓMEZ:** Who told you this?  
12  
13 **MR MCAFEE:** This was the company in England that has the Portugal, right next to  
14 Spain. They have all the data available right next to this area. They have no data  
15 here available.  
16  
17 **MR AZNAR GÓMEZ:** So a company in England told you that these data were not  
18 available for Spain. Not even the Spanish people that got the permits and went to  
19 Mr Foster to invite him and his company to come to Spain suggested to you the  
20 possibility, as an expert in marine hydrocarbon exploration?  
21  
22 **MR MCAFEE:** I do not know what his people told him, but I talked with the people in  
23 England less than three weeks ago and asked the same, exact question, and I got  
24 the same, exact answer.  
25  
26 **MR AZNAR GÓMEZ:** That there is no free, available information in Spain about  
27 these geological data?  
28  
29 **MR MCAFEE:** They had nothing available.  
30  
31 **MR AZNAR GÓMEZ:** Nothing available?  
32  
33 **MR MCAFEE:** They had nothing available.  
34  
35 **MR AZNAR GÓMEZ:** Thank you, Mr McAfee. Thank you, Mr President.  
36  
37 **THE PRESIDENT:** Thank you very much, Mr Aznar Gómez. An expert who is  
38 Cross-examined by the other Party may be re-examined by the Party who has called  
39 the expert. Therefore I ask the Co-Agent of St Vincent and the Grenadines whether  
40 the Applicant wishes to re-examine the expert.  
41  
42 **MR WEILAND:** Thank you, Mr President. I just have a couple of questions.  
43  
44 ***Re-examined by MR WEILAND***  
45  
46 **MR WEILAND:** Mr McAfee, the people you are talking to in England are telling you  
47 that there is no seismic available. Is that right?  
48  
49 **MR MCAFEE:** Yes, I talked to the company in England, so there is none available.  
50 That is correct.

1 **MR WEILAND:** There is one other point that I just want to clarify about Sage. Is it fair  
2 to say that Sage has what are sometimes called affiliates or companies that are  
3 controlled by the same shareholders that go by different names?  
4

5 **MR MCAFEE:** Yes.  
6

7 **MR WEILAND:** For example, Sage had an affiliate that was involved in the Russia  
8 project. Is that right?  
9

10 **MR MCAFEE:** Yes.  
11

12 **MR WEILAND:** Do you remember the company that was used in that case?  
13

14 **MR MCAFEE:** Greenstone Europe.  
15

16 **MR WEILAND:** It is typical at least in the US for a businessman to incorporate a new  
17 entity for each project that he undertakes. Is that right?  
18

19 **MR MCAFEE:** That is normal  
20

21 **MR WEILAND:** Thank you, Mr President. Those are all the questions that I have for  
22 Mr McAfee. May he be excused?  
23

24 **THE PRESIDENT** (*Interpretation from French*): Thank you very much. Ms Escobar  
25 Hernández, you have the floor.  
26

27 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Mr President, I would  
28 simply like to object to the questions that we have just heard, because Mr Weiland  
29 introduced new questions that did not occur during the initial questioning or the  
30 cross-examination by Spain. Thank you.  
31

32 **THE PRESIDENT** (*Interpretation from French*): Thank you. We have noted your  
33 objection. I recognize that Judge Cot has a question to ask the expert.  
34

35 **JUDGE COT** (*Interpretation from French*): Mr McAfee, good morning and welcome  
36 to Hamburg. I want to ask you a question regarding divers. I do not know whether  
37 you will be able to reply or whether perhaps Mr Weiland will have to give us some  
38 additional information. You were giving us to understand that divers are a normal  
39 way of sampling an area to be explored as part of the framework of these very  
40 interesting exploration methods that you were telling us about. Could you tell us  
41 whether these divers were employed and paid by Sage, or were they also employed  
42 and paid by Tupet, or both? I do not know.  
43

44 **MR MCAFEE:** Neither do I, sir.  
45

46 **JUDGE COT** (*Interpretation from French*): Would you like me to repeat the  
47 question?  
48

49 **MR MCAFEE:** No, I don't know. I did not understand.  
50

1 **JUDGE COT** (*Interpretation from French*): Could you tell us whether the divers that  
2 were used in the framework of this search and taking samples in this case were  
3 employed by Sage or were they also employed by Tupet, or were they employed by  
4 both? That was my question.

5  
6 **MR MCAFEE**: No, sir, I have no idea who they were paid by. I do not know who they  
7 were employed by and I do not actually know what they did, sir.

8  
9 **JUDGE COT** (*Interpretation from French*): Thank you.

10  
11 **THE PRESIDENT** (*Interpretation from French*): Thank you, Judge Cot. (*Continued in*  
12 *English*) I understand that the examination of the expert ---

13  
14 **MR WEILAND**: Mr President, would you like me to respond to the objection?

15  
16 **THE PRESIDENT**: Yes, Mr Weiland, you have the floor.

17  
18 **MR WEILAND**: I would say that the questions on re-direct were not new material. He  
19 was asked whether the Sage company had only undertaken this project as its first  
20 project and we were clarifying that the beneficial owners used a different company  
21 for every project. I think that it was very related. He was then asked repeatedly about  
22 the availability of data, and I think that it was appropriate to clarify his enquiry to the  
23 British company, so I would say that I was not opening up any new area.

24  
25 In response to Judge Cot, I would say that we will have some information about the  
26 employment of the divers. In fact, our next witness, Mr Mesch, will be questioned by  
27 my colleague Ms Forde, and we are ready to proceed with Mr Mesch whenever you  
28 are ready, Mr President.

29  
30 **THE PRESIDENT**: Thank you, Mr Weiland. As to your response to the objection  
31 raised by the Spanish side, let us check the verbatim record later.

32  
33 I understand that now the examination of the expert has finished. I would like to  
34 thank you, Mr McAfee, for your testimony. Your examination is now finished and you  
35 may withdraw.

36  
37 **MR MCAFEE**: Thank you, sir.

38  
39 **THE PRESIDENT**: I understand that Saint Vincent and the Grenadines would like to  
40 call another expert. May Mr Mesch be brought to the courtroom?

41  
42 I call upon the Registrar to administer the solemn declaration to be made by the  
43 expert.

44  
45 **THE REGISTRAR**: Mr Mesch, good morning.

46  
47 **MR MESCH**: Good morning.

48  
49 **THE REGISTRAR**: Pursuant to article 79 of the rules, before giving any evidence to  
50 the Tribunal, every expert shall make a solemn declaration. You have been provided

1 with the text of the solemn declaration. May I invite you now, Mr Mesch, to make the  
2 solemn declaration?  
3

4 ***The witness, FREDERICK PALMER MESCH III, made the solemn declaration***  
5

6 **THE PRESIDENT:** I now give the floor to the Co-Agent of Saint Vincent and the  
7 Grenadines, Ms Forde, to start the examination of the expert. You have the floor.  
8

9 ***Examined by MS FORDE***  
10

11 **MS FORDE:** Good morning, Mr President, Members of the Tribunal.  
12

13 Mr Mesch, before we begin, I invite you to speak slowly for the benefit of the court  
14 reporters and the interpreters. I will also endeavour to speak slowly for the same  
15 purpose. After I have asked you a question, just give a little time before you respond  
16 so that the translation is effected.  
17

18 Mr President, I hope I have not overstepped on your territory.  
19

20 **THE PRESIDENT:** Thank you very much for your reminder of that important point.  
21

22 **MS FORDE:** Mr Mesch, could you please identify yourself for the Members of the  
23 Tribunal?  
24

25 **MR MESCH:** My full name is Frederick Palmer Mesch III, but I go by Derick, so you  
26 can please call me Derick.  
27

28 **MS FORDE:** Where do you reside?  
29

30 **MR MESCH:** I reside in Fort Worth, Texas in the United States.  
31

32 **MS FORDE:** What do you currently do for a living?  
33

34 **MR MESCH:** I practise public accountancy at a firm called Mesch, McBride and  
35 Cooper, but I also have a law degree as well – a licence to practise law in the State  
36 of Texas.  
37

38 **MS FORDE:** Could you outline for the Court some of your current responsibilities?  
39

40 **MR MESCH:** My current responsibilities are to provide tax and business and  
41 financial advice to my clients. We prepare their business and personal tax returns.  
42 We also audit the financial statements of some of our clients and provide opinions as  
43 to the legitimacy and accuracy of their financial statements to banks and other  
44 stakeholders.  
45

46 **MS FORDE:** Mr President, may I ask whether Mr Mesch's speed is okay for the  
47 Tribunal?  
48

49 **THE PRESIDENT:** It is all right. Thank you.  
50



1 **MS FORDE:** Mr Mesch, do you have experience in your work of clients involved in  
2 the oil and gas industry?  
3

4 **MR MESCH:** Yes. Being from the State of Texas, we have a lot of clients that are in  
5 the oil and gas business that touch on various aspects of it. We have clients that are  
6 independent oil and gas investors, clients that manufacture oil and gas equipment,  
7 and clients that service oil and gas wells and oil and gas activities.  
8

9 **MS FORDE:** In your professional capacity, what do you do for those clients?  
10

11 **MR MESCH:** I prepare their business tax returns, provide them with financial advice  
12 and assist in auditing their financial statements.  
13

14 **THE PRESIDENT:** I am sorry to interrupt, Mr Mesch. I thought that your speed was  
15 all right, but perhaps you can slow down a little, and that would be even more  
16 helpful.  
17

18 **MR MESCH:** Okay, I will slow down.  
19

20 **THE PRESIDENT:** Thank you very much.  
21

22 **MS FORDE:** We are going to slow you down a little bit. For the benefit of the  
23 Tribunal, I will repeat the last question. Could you indicate what you do for your  
24 clients in the oil and gas industry?  
25

26 **MR MESCH:** We prepare their business tax returns in the United States. We also  
27 provide them with financial advice and we audit their financial statements as well.  
28

29 **MS FORDE:** Mr President, is that better?  
30

31 **THE PRESIDENT:** Yes. Thank you.  
32

33 **MS FORDE:** Mr Mesch, will you describe your educational background?  
34

35 **MR MESCH:** I have a Bachelors in Accounting from Oklahoma State University in  
36 the United States; I have a degree in Law from the University of Tulsa in the United  
37 States; and an LL.M, or Master of Laws, in Taxation from the University of Florida in  
38 the United States.  
39

40 **MS FORDE:** You indicated that you are currently with the firm Mesch, McBride and  
41 Cooper?  
42

43 **MR MESCH:** Yes.  
44

45 **MS FORDE:** Please tell us about your professional experience prior to joining your  
46 current firm.  
47

48 **MR MESCH:** Immediately after graduating from the University of Florida, I worked for  
49 Ernst and Young in both their Dallas and New York City offices. Ernst and Young is  
50 one of the four largest public accounting firms in the world. In that capacity, primarily

1 I did tax due diligence and tax structuring in a division that they call their Transaction  
2 Advisory Services Group, which was Ernst and Young's umbrella brand for their  
3 merger and acquisition practice.

4  
5 **MS FORDE:** You would also have analysed and quantified financial and tax models  
6 for leveraged buy-outs?

7  
8 **MR MESCH:** That is right. Most of the companies that we worked with were large  
9 public companies as well as large private investment firms in the US, but they  
10 typically had a global presence.

11  
12 **MS FORDE:** Were some of those companies in the oil and gas industry?

13  
14 **MR MESCH:** Yes. During my tenure in their Dallas office, their Dallas and Houston  
15 offices worked very close together and they had a lot of large public oil and gas  
16 companies as well as private oil and gas companies. The oil and gas business has a  
17 lot of sectors that services touch upon, so we did work for exploration and production  
18 companies, mid-stream companies like pipeline companies, as well as companies  
19 that manufactured equipment that was used in the oil and gas business.

20  
21 **MS FORDE:** You would have done work for Exxon Mobil?

22  
23 **MR MESCH:** That was one client that we did work with, yes.

24  
25 **MS FORDE:** Also Gomez Gas?

26  
27 **MR MESCH:** That was also one client of the firm, yes.

28  
29 **MS FORDE:** When did you begin work with the current firm to which you are  
30 attached?

31  
32 **MR MESCH:** I began work in 2008.

33  
34 **MS FORDE:** Are Sage Maritime and/or John Foster clients of your firm?

35  
36 **MR MESCH:** Yes, Sage and/or John Foster have been clients of Mesch, McBride  
37 and Cooper for over three decades.

38  
39 **MS FORDE:** Do you know what work Sage and John Foster primarily engaged with?

40  
41 **MR MESCH:** Sage was primarily engaged in the exploration of oil and gas, and it is  
42 one of several companies that John Foster has established in the past to explore for  
43 oil and gas. John is also involved in real estate businesses, information technology  
44 companies and other industries.

45  
46 **MS FORDE:** You said that Mr Foster is a client of your firm. Is it also correct to say  
47 that your firm has served him both in domestic and international oil and gas ventures  
48 for the past 30 years – three decades or thereabouts?

49

1 **MR MESCH:** That is right. John Foster has explored for oil and gas in other parts of  
2 the world. In addition to this venture in Spain, he has explored for oil and gas in  
3 Russia, Colombia and I think French Guyana. There are a few other countries as  
4 well, but I cannot recall them.

5  
6 **MS FORDE:** So his exploration pursuits are not limited just to Spain. As you say, he  
7 has explored in Russia, Colombia and French Guyana?

8  
9 **MR MESCH:** That is right. He also has a lot of interest in oil and gas activities in the  
10 United States as well.

11  
12 **MS FORDE:** Can you please describe what you have been requested to do in  
13 connection with this dispute between Saint Vincent and the Grenadines and the  
14 Kingdom of Spain?

15  
16 **MR MESCH:** I have been asked to provide damages in three general areas, or assist  
17 in quantifying damages in three general areas. The first would be direct economic  
18 damages that have been suffered by the Applicant. Primarily, they would be  
19 out-of-pocket direct costs that have been paid with regard to this venture. The  
20 second would be to try to quantify the indirect economic damages or the lost  
21 opportunity costs associated with the loss of scientific data and what it could be used  
22 for or maybe sold for on the market. Finally, I have been asked to try to come up with  
23 some type of reasonable quantification for the damages that have been suffered by  
24 several people in respect of the violation of their human rights.

25  
26 **MS FORDE:** Let us be clear. You have been asked to quantify direct damages,  
27 damages associated with lost opportunity and to put a value on compensatory  
28 damages suffered as a result of human rights violations and the deprivation of  
29 property?

30  
31 **MR MESCH:** Yes.

32  
33 **MS FORDE:** We will talk in more detail in a moment about specific information that  
34 you have received, but could you please describe generally the type of information  
35 that you have received as part of your testimony here, or leading up to your  
36 testimony here?

37  
38 **MR MESCH:** I have looked at some of the documents that have been annexed for  
39 this Tribunal; I have reviewed some internal files at our firm for some of the financial  
40 affairs of Sage and/or John Foster with regards to this venture; I have looked at  
41 Sage's general books and records, its general ledgers, check registers, financial  
42 statements and tax returns. Also, Sage has a file in our firm because it was  
43 examined by the United States Internal Revenue Service for the years 2004 and  
44 2005. The Internal Revenue Service is the administrative agency that ---

45  
46 **MS FORDE:** We will come to that in a little while. You are talking the language of  
47 accountancy, which sometimes is a little difficult to digest for the ordinary man, or  
48 woman for that matter, so I am going to take it little by little. You said that you have  
49 read the annexes and have had an opportunity to review the accounts etcetera of

1 Sage. Would it be fair to say that you have also had an opportunity to look at the  
2 accounting and legal fees and expenses incurred in this matter?

3  
4 **MR MESCH:** Yes. I have looked at costs that were incurred for 2004 through to 2006  
5 that have been shown as an annex, as well as costs that have been incurred beyond  
6 that date.

7  
8 **MS FORDE:** Did you do anything else?

9  
10 **MR MESCH:** I have also talked to and interviewed Mario and Alba Avella, and I have  
11 read some of their statements as well.

12  
13 **MS FORDE:** You have said that your testimony involves three aspects of damages  
14 requested by Saint Vincent and the Grenadines in this matter. Let us deal with them  
15 one at a time, and remember your pace. You have mentioned direct economic  
16 damage. Can you speak a little about what types of cost are included?

17  
18 **MR MESCH:** Some of the costs that had been incurred in this venture are obviously  
19 the cost of the vessel, improvements that have been made to the vessel, contractor  
20 fees, labour fees, insurance and other types of equipment that were on the vessel,  
21 as well as professional fees that have been involved in this ongoing dispute.

22  
23 **MS FORDE:** You have talked about labour costs. Do you know whether divers were  
24 paid by Sage?

25  
26 **MR MESCH:** I believe there are records that show that people were paid.

27  
28 **MS FORDE:** Do you know or have you had any indication that the company Tupet  
29 also had divers on board the *Louisa*?

30  
31 **MR MESCH:** I believe so.

32  
33 **MS FORDE:** Let us talk now a little about total costs. Could you give us a little  
34 background? For the benefit of the Tribunal, we are still in the area of direct  
35 economic damages. Can you give us a little insight into the total costs?

36  
37 **MR MESCH:** When I went back and reviewed all the documents that I had available,  
38 I took the total costs that are enumerated in Annex 45 for the years 2004, 2005 and  
39 2006, and all the out-of-pocket cash expenditure for those years totals \$2,629,593.  
40 In addition, I looked at the depreciation schedule to look at the actual original  
41 purchase cost of the boat, which appeared to be outside of the costs incurred shown  
42 in Annex 45, and those costs totalled approximately \$438,000. Some improvements  
43 were made to the boat and they were captured within Annex 45, but not the original  
44 purchase. Beyond 2006 through to the present, Sage and/or John Foster have  
45 incurred approximately \$1.7 million in professional fees and other costs regarding  
46 this venture.

47  
48 **MS FORDE:** Can you assist us by giving a total?

49  
50 **MR MESCH:** The grand total for all those categories and costs is \$4,775,144.

1  
2 **MS FORDE:** Have you or your firm had occasion to analyse these expenses prior to  
3 this matter and provide an opinion on their legitimacy?  
4

5 **MR MESCH:** Yes. We prepared the business tax returns for Sage for 2004 through  
6 to 2006. It is posted in Annex 45. Some of those costs were within that return, and  
7 the Internal Revenue Service, which is the administrative agency in the United  
8 States that administers and enforces US tax law, also formed a field exam of Sage's  
9 tax returns for their 2004 and 2005 years.  
10

11 **MS FORDE:** With regard to that Internal Revenue Service exam, what exactly would  
12 that audit have involved?  
13

14 **MR MESCH:** There are two general types of exam that I would say the Internal  
15 Revenue Service conducts. One is a very simple, what we call a mailbox exam. It is  
16 correspondence through letter. You do not have a case that is assigned to a  
17 particular person and no one physically comes out and talks to you or examines  
18 anything other than what is provided through mail correspondence. The more  
19 rigorous exam, like the one that Sage went through, is what we call a field exam,  
20 where an actual agent is assigned to the case. The agent comes out either to Sage's  
21 office or our office and personally inspects all the company's books and records.  
22 They have broad investigatory powers, so they can request copies of bank  
23 statements, look at check registers and financial statements, interview company  
24 officers, interview vendors, and they have a lot of power to discover information that  
25 may assist them in their exam.  
26

27 **MS FORDE:** Is it correct to say that the US authorities were provided with every  
28 opportunity to challenge the legitimacy of Sage's operations and the expenses  
29 incurred?  
30

31 **MR MESCH:** That is right. When the field exam is conducted the agent has really  
32 two primary tasks. One is their ---  
33

34 **MS FORDE:** Can you slow down a little bit?  
35

36 **MR MESCH:** I am sorry. The agent will have two primary tasks. One is to assess  
37 whether or not the dollar amounts that were reported were actual, real cash  
38 transactions that came from a source of money, that are not fake. The second is just  
39 to ask whether or not the expenses claimed are in fact legitimate business expenses  
40 and not personal in nature, because if they are personal in nature they would deny  
41 the deductions and indirectly increase John Foster's tax liability to the US  
42 Government.  
43

44 **MS FORDE:** In terms of any penalties for misinformation to the US authorities when  
45 they are conducting such an investigation, do you have any knowledge of what the  
46 penalties might be?  
47

48 **MR MESCH:** I have never lied to the Internal Revenue Service, and if I did I would  
49 probably be fearful of going to jail. I basically treat any information that goes to the  
50 IRS as under the penalty of perjury.

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**MS FORDE:** You said that Sage was subjected to such an investigation by the IRS. How was the audit concerning Sage’s oil and gas expenditures concluded?

**MR MESCH:** In the original information request that the IRS provided, they specifically were looking for some of the records that I had reviewed. They also wanted documentation and verification of that Sage was in fact involved in an oil and gas exploration. In the end, the IRS concluded by issuing what we call a “no change” letter, which is the best result you could possibly get. The IRS come in, they examine your books and say, “We do not disagree with what you have found”, which is an indirect way of saying that they agree with what we have found.

**MS FORDE:** I will make no comment, but yes. What was the next category of damages that you looked at?

**MR MESCH:** The second category of damages that I looked at was lost opportunity damages that the Applicant suffered – lost opportunities in the way of lost scientific data, which if held, could be very valuable in either selling to another oil and gas company or using it as a means to partner into a well off the coast of Spain.

**MS FORDE:** What can make this data valuable?

**MR MESCH:** If you have geological and geographical information that took a lot of money to find and pay for, you could use that data to then team up with another oil and gas company to show them where the oil and gas is, and you contribute the intellectual property and your other partner or the other firm would contribute cash and drilling know-how, and you would split the production that comes out of the well.

**MS FORDE:** Is it therefore fair to say that it is expensive to compile the data?

**MR MESCH:** Yes, it is.

**MS FORDE:** Would it also be reasonable and fair to say that technical or scientific data is the lifeblood of oil and gas companies?

**MR MESCH:** Yes.

**MS FORDE:** Basically, without that, they cannot operate?

**MR MESCH:** That is right.

**MS FORDE:** We are still in the indirect damages stage. What is the amount, and could you explain to the Tribunal how you came to arrive at that amount?

**MR MESCH:** Lost opportunity damages can be difficult to quantify, so in my discussions with our other oil and gas expert, Mark McAfee, and with my general knowledge of dealing with oil and gas companies both at Ernst and Young and with my current employer, I have seen deals where you would take the scientific data, partner with another firm and then take a profit split from what is produced out of the well, and that can range anywhere between the lower end of the range, maybe 10

1 per cent of the production of the well, upwards to half or maybe more of the  
2 production of the well.  
3  
4 **MS FORDE:** We are looking at a split in a range between 10 and 50 per cent?  
5  
6 **MR MESCH:** Yes.  
7  
8 **MS FORDE:** In this particular case, could you give us actual dollar amounts for this  
9 range?  
10  
11 **MR MESCH:** It is difficult to value, but a simple way of thinking of it would be to take  
12 the costs of drilling a shallow water well off the coast of Spain, take that dollar  
13 amount and then apply the percentages of interest that you could potentially obtain,  
14 and that would be the dollar amount of lost opportunities that you ---  
15  
16 **THE PRESIDENT:** Ms Forde, may I interrupt you? We have reached 11.30, so at  
17 this stage the Tribunal will withdraw for a break of 30 minutes. We will continue the  
18 hearing at noon. Before adjourning, on behalf of the interpreters and the verbatim  
19 reporters, I would like to thank you very much for your co-operation, which has made  
20 their work much easier.  
21  
22 **MS FORDE:** I am obliged, Mr President.  
23  
24 *(Break from 11.30 – 12 noon)*  
25  
26 **THE PRESIDENT:** We will continue the hearing. Ms Forde, you have the floor.  
27  
28 **MS FORDE:** Without, again, trying to overstep on the President's domain I wish to  
29 remind you that you are still covered by the oath that you took earlier. Mr Mesch,  
30 before the break we had been discussing various categories of damages and you  
31 had started with the category, as you term it, of indirect damages of lost economic  
32 opportunities. I am going to ask you for consistency's sake – it is a relatively short  
33 category as I understand it – to start with that particular category, with the Tribunal's  
34 permission. Thank you, Mr President. You said that this category touched on  
35 concerns as related to data and data compilation.  
36  
37 **MR MESCH:** Yes.  
38  
39 **MS FORDE:** And the future use of such data.  
40  
41 **MR MESCH:** Yes.  
42  
43 **MS FORDE:** Including the possible sale of that data.  
44  
45 **MR MESCH:** Yes.  
46  
47 **MS FORDE:** This is where we would have just about left off. Can you give us the  
48 amounts in terms of dollar value perhaps, and indicate to the Tribunal how you would  
49 have arrived at these calculations as they relate to this specific case?  
50

1 **MR MESCH:** I would actually give a range of a value and not a specific dollar  
2 amount. The range I would give is anywhere between, I would say, US \$3.5 million  
3 upwards of maybe \$25 million; and how I arrived at that figure was as we discussed  
4 before, that in an oil and gas venture like this you could use scientific data to buy in  
5 to a producing well or a well to be produced and obtain a 10% to 50% interest in that  
6 well. My understanding of how much it costs to drill a shallow water well such as that  
7 off the coast of Spain could cost anywhere between US \$35 million and  
8 US \$50 million; so 10% of the 35 million would be at the lower end of the range, and  
9 then a \$50 million well would be perhaps at the high end of the range.

10  
11 **MS FORDE:** Could you repeat for me the actual range of figures, just for my benefit  
12 and for the benefit of the Tribunal and others here?  
13

14 **MR MESCH:** Sure. The actual range I would give would be between US \$3.5 million  
15 to US \$25 million.  
16

17 **MS FORDE:** Between US \$3.5 million and US \$25 million.  
18

19 **MR MESCH:** Yes.  
20

21 **MS FORDE:** I invite you to turn attention to the third category of damages. I believe  
22 that was more along the line of compensatory damages.  
23

24 **MR MESCH:** Yes.  
25

26 **MS FORDE:** For the purposes of restoration, it would be fair to say?  
27

28 **MR MESCH:** Yes. The third category of reparations or restitution type damages  
29 would be looking at the violation of human rights that had occurred for the Avellas  
30 and the two Hungarian crewmen. Human rights violations is a very difficult thing to  
31 try and put a dollar amount on. It is very difficult to put a dollar amount on someone's  
32 liberty or life or incarceration. During my interviews with Mario, he told me that the  
33 person ---  
34

35 **MS FORDE:** I am sorry, when you say "Mario" you mean Mario Avella?  
36

37 **MR MESCH:** Yes, excuse me. During my conversations with him he told me that a  
38 marine engineer of his skill set with his own tools and equipment could command a  
39 premium of €1,000 a day as a wage for doing his line of work. So in coming up with  
40 some type of compensatory damages for Mario, I used that as a starting point or a  
41 guide post for coming up with compensatory damages.  
42

43 **MS FORDE:** €1,000.  
44

45 **MR MESCH:** €1,000 per day. If you take that as the starting point and you look at the  
46 fact that he was incarcerated for nine months, unable to work and provide for  
47 himself, and then he was without a passport or the ability to work for an additional 18  
48 months, that is a total of 27 months without work; and if you take €1,000 a day and  
49 you assume 30 days in a month for those 27 months, that is 810 days times €1,000,  
50 which is €810,000.



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**MS FORDE:** In relation to Mario Avella we are thinking of compensatory damages in the sum of €810,000.

**MR MESCH:** Yes, to put him back in the position that he would have been had he not had his liberty restricted and had the ability to work and provide for himself.

**MS FORDE:** To put him in the position, as it were, prior to any human rights violations.

**MR MESCH:** Yes.

**MS FORDE:** Have you done any calculations as it relates to Alba Avella?

**MR MESCH:** For Alba it is again difficult to come up with a figure or a dollar amount for someone's freedom, so I would actually put a dollar figure for Alba Avella the same as her father. She described this experience to me as a very traumatic, very lonely experience, and then she had to drop out of school. If that had happened to me during my educational experience I would have had a very different outcome. So I think €1,000 for the restriction on her freedom is reasonable. It is my understanding from her that she was incarcerated for five days and she had her passport taken and the inability to work for approximately nine months; so again assuming an average of 30 days per month, that takes her to 275 days. Times €1,000 a day is €275,000.

**MS FORDE:** So for Alba Avella we are looking at compensation in the range of €275,000.

**MR MESCH:** Yes. I might also add that she told me that she had been deprived of – or it was taken or seized, her laptop and her Nikon camera. I just presume that perhaps maybe €1,500 could replace that property at today's retail price.

**MS FORDE:** So by way of a total, inclusive of the new camera and the laptop what would you say is the total compensatory damages for Alba?

**MR MESCH:** €276,500.

**MS FORDE:** If I can take you to the Hungarian crewmen, can you assist us?

**MR MESCH:** Again, just like Alba and Mario, it is very difficult to value someone's restriction on liberty or loss of liberty, so it is my understanding that the two Hungarian crewmen were also incarcerated and were deprived of their passports for the same amount of time as Alba. I would use the exact same guide post as we used for Mario, at €1,000 a day for them as well. So using that same line of reasoning, you would come out to 275 days of lost or restricted liberty, and at €1,000 that puts each Hungarian crewman at €275,000.

**MS FORDE:** Each Hungarian crewman at €275,000

**MR MESCH:** Yes.

1 **MS FORDE:** What about one of the beneficial owners of the vessel, John Foster?  
2

3 **MR MESCH:** John is a very difficult person to try to put any type of damages on. It is  
4 my understanding that he has decided to not travel to Europe because of this  
5 ongoing dispute with Spain, and he has basically just been in the United States,  
6 even though he does business abroad. I would say it is a limited restriction on his  
7 liberty because he still, obviously, resides in the United States.  
8

9 **MS FORDE:** You said that he does business abroad.  
10

11 **MR MESCH:** Yes.  
12

13 **MS FORDE:** You would have known him and his company for a number of years. In  
14 his regular business transactions did that entail his travel to European countries?  
15

16 **MR MESCH:** I don't know the details of his day-to-day travel schedule but I do know  
17 that he does do business abroad. I can only imagine that it would interfere with that. I  
18 would actually suggest really just a token amount for John Foster, a type of  
19 recognition that liberty has been restricted for him. Maybe if you use the same logic  
20 as Mario, just one day at €1,000, so a total of just €1,000 for Mr Foster.  
21

22 **MS FORDE:** €1,000 for Mr Foster.  
23

24 **MR MESCH:** Yes.  
25

26 **MS FORDE:** Under your first category, your first heading of direct damages, I would  
27 have asked a question as it particularly related to divers. I ask this question as it is a  
28 question asked directly by the Tribunal, and from your review of the account records,  
29 as it were, for Sage, you say that there were divers paid by Sage.  
30

31 **MR MESCH:** Yes.  
32

33 **MS FORDE:** You are also aware that there were other divers on the *Louisa* who  
34 were employed by the Tupet company.  
35

36 **MR MESCH:** It is my understanding that that is correct.  
37

38 **MS FORDE:** And of course it would be remiss of me, Mr Mesch, if I did not ask for  
39 your opinion as it relates to compensation for the sovereign State of Saint Vincent  
40 and the Grenadines. Can you assist us in giving what you in your professional  
41 capacity would term "reasonable" compensation?  
42

43 **MR MESCH:** Sure. In going through really all three categories of damages, it is my  
44 understanding under international law and in parts of at least European law that it is  
45 different than the United States in that it only looks to compensatory damages only;  
46 there is no punitive nature involved like we have in the United States. So here we are  
47 trying to come up with some type of restitutorial damages. I would think that a dollar  
48 figure that could put Saint Vincent whole as far as its out-of-pocket expenses for  
49 travel, professional fees and other matters to bring this case forth would be a  
50 reasonable compensatory damage. In light of all of the professional fees that Sage

1 has incurred, I think that a 250,000 euro or dollar figure is well within a range of  
2 something that is reasonable for Saint Vincent.

3

4 **MS FORDE:** €250,000 would be reasonable compensatory damage for the  
5 sovereign State of Saint Vincent and the Grenadines?

6

7 **MR MESCH:** Yes.

8

9 **MS FORDE:** Thank you very much, Mr Mesch.

10

11 Mr President, those are the questions that I have for Mr Mesch.

12

13 **THE PRESIDENT:** Pursuant to article 80 of the rules of the Tribunal an expert called  
14 by one Party may also be examined by the other Party. Therefore I ask the Agent of  
15 Spain whether the Respondent wishes to cross-examine the expert.

16

17 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): It will be for my  
18 colleague Mr Aznar to ask the questions.

19

20 **THE PRESIDENT:** Mr Aznar, you have the floor.

21

22 ***Cross-examined by MR AZNAR GÓMEZ***

23

24 **MR AZNAR GÓMEZ:** Good morning, Mr Mesch. We have a problem: I have a  
25 terrible accent; you have, shall we say, a complicated accent; and we are talking  
26 about accountancy! So let us talk very smoothly and slowly in order not only to  
27 facilitate the task of the interpreters but also my understanding of all this complicated  
28 stuff. Could you please tell me, how many times you have quantified damages to  
29 vessels, how many vessels?

30

31 **MR MESCH:** I have testified in other cases before where damages have been  
32 involved but I can't say how many.

33

34 **MR AZNAR GÓMEZ:** One time?

35

36 **MR MESCH:** No.

37

38 **MR AZNAR GÓMEZ:** Do you remember one previous case?

39

40 **MR MESCH:** Yes, I remember at least one other time, yes.

41

42 **MR AZNAR GÓMEZ:** The only documents given by Saint Vincent and the  
43 Grenadines with regard to the possible costs related to the immobilization of the  
44 *Louisa* are included as annex 45 in the Applicant's Memorial and Reply. They are  
45 euphemistically entitled "Damage Evidence". Apart from the fact that the term  
46 "evidence" before an international tribunal cannot be used simply referring to several  
47 disordered transactions lifted from unidentified accounts or references without any  
48 official stamp or seal, these lists are alleged transaction lists of 2004, 2005 and 2006  
49 – this is correct?

50

1 **MR MESCH:** Yes, this reflects financial transactions that occurred during those  
2 years.

3  
4 **MR AZNAR GÓMEZ:** The *Louisa* was immobilized on 1 February 2006. Could you  
5 explain how the data of 2004, 2005 and that of January 2006 may serve as any kind  
6 of serious evidence of alleged damage caused by Spain to a vessel operated by  
7 Sage?

8  
9 **MR MESCH:** Well, if the data was seized by Spain, then that data would no longer  
10 be available for the Applicant to use.

11  
12 **MR AZNAR GÓMEZ:** So you base the damages caused by my country to an  
13 American company on data when the vessel was operated by this American  
14 company.

15  
16 **MR MESCH:** This would only be in reference to the second prong of indirect  
17 damages. The direct damages are the actual funds that were expensed during the  
18 course of this venture.

19  
20 **MR AZNAR GÓMEZ:** Then let us go to these indirect damages. The previous  
21 witness, Mr McAfee, in his affidavit of 19 September 2007, reproduced annex 40 of  
22 the Applicant's Memorial and Reply. It is said: "In 2004 and 2005 I reviewed data  
23 produced by Sage in the Bay of Cádiz and determined that it demonstrated the  
24 absolute accuracy of my earlier conclusions about the presence of hydrocarbons in  
25 the area." Therefore the valuable data had already been sent to the United States  
26 and technically assessed by Mr McAfee by 2005. What lost opportunity damages are  
27 we then talking about?

28  
29 **MR MESCH:** First of all, I am not a petroleum engineer or a geologist. I do not in my  
30 day-to-day duties analyse technical oil and gas materials. My calculations for the  
31 interim damages were based on what a typical oil and gas venture may produce. So  
32 if you have valuable scientific data, this is the type of transaction that one could enter  
33 into. It is really just offered up as a range showing that this type of data can be  
34 valuable and it is used by businessmen to partner and venture with other oil and gas  
35 companies.

36  
37 **MR AZNAR GÓMEZ:** Before asking you a question on what you have just said there  
38 is another clarification. All these lost opportunity damages that you evaluate are  
39 attributed to the vessel or to the American company, or to Sage?

40  
41 **MR MESCH:** It is really Sage as a whole.

42  
43 **MR AZNAR GÓMEZ:** Sage as a whole, not to the vessel.

44  
45 **MR MESCH:** But scientific data that the company would have an interest in that  
46 would have been on board the vessel.

47  
48 **MR AZNAR GÓMEZ:** So we are talking about damages to a company. You have  
49 evaluated a percentage of future oil production and this link with what you have just

1 said, answering my previous question. A percentage of future oil production as the  
2 possible lost opportunity damage.  
3

4 **MR MESCH:** Not exactly. The figures that I have come up with are just based on a  
5 proxy for the cost that would be incurred to actually develop a well. It does not take  
6 into account future profits that would be earned from the well.  
7

8 **MR AZNAR GÓMEZ:** But keep in mind a possible future commercial exploitation of  
9 this.  
10

11 **MR MESCH:** Yes.  
12

13 **MR AZNAR GÓMEZ:** But how you were able to do this without any oil production at  
14 all?  
15

16 **MR MESCH:** That is right, you do not need oil production for these calculations; this  
17 is based on the costs that it would take in order to drill and start the production  
18 process.  
19

20 **MR AZNAR GÓMEZ:** Yes, but if there is no possibility to drill how can you evaluate  
21 this?  
22

23 **MR MESCH:** I am assuming there is a possibility to drill.  
24

25 **MR AZNAR GÓMEZ:** You are assuming that there will be a drilling in Spanish  
26 waters?  
27

28 **MR MESCH:** Yes.  
29

30 **MR AZNAR GÓMEZ:** Would you agree that if that oil production is zero because  
31 Sage has no possibility to drill, the percentage of zero would be zero?  
32

33 **MR MESCH:** Yes, if they have no ability to drill it would be zero, but if they had the  
34 ability to drill the figures would go far higher.  
35

36 **MR AZNAR GÓMEZ:** Do you know the permits that were used by Sage?  
37

38 **MR MESCH:** I do not know.  
39

40 **MR AZNAR GÓMEZ:** How can you evaluate as lost opportunity damage if these  
41 permits were only for a cartographic map and environmental impact and absolutely  
42 not for oil and gas prospects?  
43

44 **MR MESCH:** Again, I am not a legal expert on permits and the applications to drill for  
45 oil off the coast of Spain – I am sorry.  
46

47 **MR AZNAR GÓMEZ:** Correct me if I am wrong: if you are quantifying damages, and  
48 particularly lost opportunity damages that you have said – I think we can agree to  
49 evaluate lost opportunity damages is quite complicated.  
50

1 **MR MESCH:** Yes.  
2  
3 **MR AZNAR GÓMEZ:** If these lost opportunity damages are supposed to be based  
4 on data gathered under an environmental permit and not an oil and gas prospect  
5 permit, how can you evaluate this?  
6  
7 **MR MESCH:** I am assuming that you can get an oil and gas permit and drill there.  
8 This is based on the assumption that a well could legally be drilled.  
9  
10 **MR AZNAR GÓMEZ:** Mr Mesch, in Spain, if you buy a car you are obliged to pass  
11 several and timely technical inspections. I guess you have something similar in the  
12 US.  
13  
14 **MR MESCH:** Yes.  
15  
16 **MR AZNAR GÓMEZ:** If you decided to sell your car without this inspection the car  
17 devaluates significantly, does it not?  
18  
19 **MR MESCH:** Sure, sure, yes.  
20  
21 **MR AZNAR GÓMEZ:** You have proposed an economic evaluation of the vessel.  
22 Have you visited or asked to visit the *Louisa*?  
23  
24 **MR MESCH:** I have not but I have seen photographs of the boat before its departure  
25 and I have seen photographs of it that were a couple of years old, and it is clear from  
26 just a plain man's eye the deterioration.  
27  
28 **MR AZNAR GÓMEZ:** But you have never been on board the *Louisa*?  
29  
30 **MR MESCH:** No.  
31  
32 **MR AZNAR GÓMEZ:** Have you seen annex 2 of Saint Vincent and the Grenadines'  
33 Memorial? How did you assess the value of the vessel as an accountant and its  
34 alleged deterioration, keeping in mind that, first, the last inspection by the flag State  
35 was carried out in 2004 and that the last inspection of the port State control was  
36 carried out in 2005, that is before the immobilization; and that the official certificates  
37 of seaworthiness of the vessel had expired by March 2005, that is before the  
38 immobilization. Let me pose this question another way. Almost one year before its  
39 immobilization the *Louisa* had no classification at all. It had not passed its technical  
40 inspection, like cars. It had no classification at all with any official classification  
41 agency. Have you considered that this considerably devalues the value of the  
42 vessel?  
43  
44 **MR MESCH:** No, I did not consider that at all. The types of costs in the first category  
45 were pure dollar outlays that Sage had made on this vessel. I did not take into  
46 account any type of fair market value or sales precedents to look at what was the  
47 vessel purchased at. I simply looked at what it cost to purchase the vessel and the  
48 costs that went into the vessel, and then I presumed it has only zero scrap value  
49 now, and that is the difference between the damages.  
50

1 **MR AZNAR GÓMEZ:** Unclassed, it has no accounting value.  
2  
3 **MR MESCH:** Whether it is classed or not, whether something has a licence or not,  
4 all I know is that money was paid for the vessel and it is now worth virtually nothing.  
5  
6 **MR AZNAR GÓMEZ:** Yes, but I can pay a thousand dollars for a vessel and if I do  
7 not take the utmost care, passing all the technical inspections and so on, and  
8 suddenly I want to sell my vessel, the buyer of the vessel will ask me: “Are all the  
9 papers for the vessel correct? Has it passed all the inspections?” – and I say: “No.”  
10 then in that case the price will be lower. Can you agree with me in general terms?  
11  
12 **MR MESCH:** I would agree, but I would find it difficult to believe that someone would  
13 pay expenses for a vehicle that would be impounded if they are never going to get it  
14 back.  
15  
16 **MR AZNAR GÓMEZ:** Mr Mesch, I began my intervention with a joke but now I am  
17 very serious, because at the very end you were talking about human rights. Before  
18 asking the President of the Tribunal to give the floor to the Agent of Spain, let me just  
19 pose you some very, very simple questions. Have you, in your professional life, had  
20 any experience evaluating human rights damages?  
21  
22 **MR MESCH:** Fortunately, I have never had to do that before.  
23  
24 **MR AZNAR GÓMEZ:** Are you familiar with the evaluation of damages to human  
25 rights in international adjudication: the rules, the standards, the evidence used?  
26  
27 **MR MESCH:** In law school we talk about compensatory-type damages or punitive  
28 damages, to the loss of liberty or life, in the United States.  
29  
30 **MR AZNAR GÓMEZ:** You talk about loss of labour opportunity, only that.  
31  
32 **MR MESCH:** Yes, because it is very difficult to put a value on a person’s freedom.  
33  
34 **MR AZNAR GÓMEZ:** We are talking about human rights.  
35  
36 **MR MESCH:** That is right.  
37  
38 **MR AZNAR GÓMEZ:** This is very serious. Just a last question, not on human rights,  
39 before asking the President to give the floor to the Agent of Spain. You have said  
40 that Sage paid all the attorneys’ fees for this case.  
41  
42 **MR MESCH:** They did not pay all the attorneys’ fees. Saint Vincent had their own  
43 costs.  
44  
45 **MR AZNAR GÓMEZ:** But Sage paid you, for example, to be here.  
46  
47 **MR MESCH:** Yes.  
48  
49 **MR AZNAR GÓMEZ:** Thank you very much. Mr President, could you please give the  
50 floor to the Agent of Spain?

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**THE PRESIDENT:** Yes. Ms Hernández, you have the floor.

***Cross-examined by MS ESCOBAR HERNÁNDEZ***

**MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): I am sorry for the time taken to set up the recording and interpreting equipment. I would not presume to encroach upon the President's prerogatives. I would like to say that my problem at this stage is not my poor accent in English but our problem is that I speak French and you speak English, meaning that we have to go through interpretation for you to be certain of what I am saying. I am referring to the content of the questions. So I am going to speak very slowly, and I would invite you, sir, to do the same. Take your time answering the question. Shall I start, Mr President?

**THE PRESIDENT:** I would ask you, Mr Mesch, to speak even more slowly, because your statement will be translated into French and Ms Escobar Hernández's French will be translated into English, so we need more time. Thank you for your cooperation.

**MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Good morning, Mr Mesch. Thank you for being with us to make your statement. Speaking of human rights, you are speaking of something very important, as my colleague said, and the reason for that is that human rights underpin human dignity. Without human rights there can be no human dignity, and without human rights there can be no democratic political system, there can be no true rule of law, and there can be no proper functioning of society worthy of humankind. Of course, law is made for people and human rights are the expression of that. I would like to ask you a few very concrete questions, and then after those questions some questions on your answer to Mr Aznar Gómez when you said that it is very difficult to provide an assessment of damages when human rights are involved. That is true; it is difficult, but there are mechanisms, analyses, practices and case law.

Firstly, concerning Mario Avella, you said that you had assessed the damages to which in principle he would be entitled on the basis of a unilateral statement by himself. He said, "Under normal conditions and with the instruments I own, my expectation would be of a daily compensation of approximately \$1,000 roughly." Your technical professional assessment has been predicated on a unilateral statement by the person concerned himself, who says, "I could earn \$1,000" but what if he had said, "My expectation would be that I could earn \$5,000 daily" or \$20,000? How would you have reacted to that? In your professional framework, is there not some reference that is generally acknowledged to be the normal amount due to a certain person doing a certain job? Obviously, as you said, it would be a range rather than a specific amount, but is there not something factual, something quantified?

**MR MESCH:** The numbers that I quantified were simply using his statement as a guide. It is, like I said, difficult, if not impossible, to come up with a value on someone's liberty, so all I attempted to do was try to use the logic and the reason of putting a man back into the position that he would have been in had he had his freedom and his tools to work for himself.



1  
2 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, but what you  
3 said was that you had made your calculation on the strength of the argument that,  
4 had he been free, he would have been able to earn \$1,000 a day. Was that not  
5 pretty much what you said?  
6

7 **MR MESCH**: Yes, that's the reasoning.  
8

9 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): I understand the  
10 reasoning to a certain extent and in a certain direction but is there not some other  
11 means of determining in a more objective fashion the value of the damage or the lost  
12 earnings for Mr Avella, for example, the wages he received from Sage?  
13

14 **MR MESCH**: Sure, you could use customary wages due, but, again, this was simply  
15 used as a guide. Are you going to use the same standard to apply for time  
16 incarcerated as the same as time that you are without a passport and unable to  
17 work? Maybe it is worse to be free in a country but unable to work than incarcerated;  
18 at least you are provided with food and shelter. I simply just took his word on it and  
19 said, "That sounds reasonable" and applied his concept of \$1,000 a day by the  
20 number of days that he was unable to work as a free man, and of course, there  
21 probably are other ways to calculate all sorts of damages, but this is simply one  
22 means that I find reasonable. Of course, it is up to the Tribunal to determine what  
23 they find reasonable as to the violation of human rights.  
24

25 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You used the same  
26 criterion to determine the earnings shortfall as the damages suffered by the two  
27 Hungarian crewmen. Have I got it right?  
28

29 **MR MESCH**: Yes.  
30

31 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Did these two Hungarian  
32 crew members perform the same activity or the same kind of activity as Mr Avella?  
33

34 **MR MESCH**: I do not know.  
35

36 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Did they have the same  
37 possibilities as Mr Avella might have had to secure a similar job for a similar wage  
38 had they been free? I am not sure if I am saying this properly. Do you understand  
39 me?  
40

41 **MR MESCH**: I believe I understand you but I do not know.  
42

43 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): So you have not factored  
44 those items into the way in which you assessed and determined the damages or the  
45 earnings shortfall?  
46

47 **MR MESCH**: No, I did not.  
48

49 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): In other words, there is  
50 no proportionality. Regarding Ms Avella, could you repeat something which I did not

1 understand earlier on, when you discussed how you assessed the damages due to  
2 Ms Avella. Could you repeat that reasoning, please?

3  
4 **MR MESCH:** I simply used the same reasoning as Mario, because this is so difficult  
5 to quantify. I looked at Mario's statement and I looked at the statements that Alba  
6 made to me and thought there were a lot of factors that come in. There are age  
7 differences, one was working, one was in university. I simply thought that \$1,000 a  
8 day sounded like a reasonable proxy for Mario and thought that the same could  
9 apply to the daughter. If this had happened to me, I would be asking for much more.

10  
11 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Turning to Mr Foster, in  
12 your statement you said that Mr Foster, who had been charged in Spain, had some  
13 limitation of movement, and of course, we do not have the record yet, but you said  
14 that this was not so serious because he was usually in the United States. Replying to  
15 the question asked by the Co-Agent of Saint Vincent, you said that he travelled, that  
16 he could leave the country and so forth. Would you confirm what I have just said?

17  
18 **MR MESCH:** I said that he had the ability to travel within the United States, and in  
19 factoring John Foster's damages, he is in a completely different category, because  
20 he was able to work for himself in the United States. He was not in the United States  
21 without any form of identity or ability to provide for himself. So I believe it is very  
22 difficult to compare the two. That is why I only put a nominal or token-gesture  
23 amount for the restriction on John Foster's liberty.

24  
25 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): On that basis, you  
26 consider that €1,000 is sufficient to cover the damages due to Mr Foster. Is that so?

27  
28 **MR MESCH:** Absolutely not, but in order to calculate a damage for John Foster's  
29 inability to travel, you would probably be venturing into punitive damages territory, so  
30 I simply thought it would be a very difficult, if not impossible, task for John Foster,  
31 and that is why I came up with just the nominal or token payment amount.

32  
33 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): So apparently, 1,000  
34 dollars is a magic figure at this stage.

35  
36 Saint Vincent and the Grenadines now. If I am not mistaken, you said regarding  
37 damages to which Saint Vincent would be entitled, in other words, the Applicant in  
38 this case, that this should include Sage's professional expenses. Did I understand  
39 you to say that?

40  
41 **MR MESCH:** Some of the professional expenses are included in my damages  
42 calculation in my first category of direct damages, yes.

43  
44 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): What type of expenses  
45 or costs are we talking about here? What are the costs or expenses incurred by  
46 Sage which should be included in the calculation of damages due to Saint Vincent  
47 and the Grenadines?

1 **MR MESCH:** Some of the professional fees would be legal expenses for US  
2 attorneys and legal expenses for Spanish attorneys, to try to resolve this case prior  
3 to coming to this Tribunal.  
4

5 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): May I infer from that that  
6 you are saying that it is Sage who is paying the American and Spanish attorneys  
7 representing Saint Vincent and the Grenadines before this Tribunal?  
8

9 **MR MESCH:** Not all of them, no.  
10

11 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Which ones?  
12

13 **MR MESCH:** I believe that Patton Boggs is being paid for by Sage but Saint Vincent  
14 is here on their own accord and Sage is not paying for any of their expenses  
15 whatsoever.  
16

17 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Are there fees due to  
18 attorneys now before this Tribunal which are being paid by Sage? Yes or no?  
19

20 **MR MESCH:** No, because Saint Vincent is here on their own accord, so the country  
21 of Saint Vincent, as far as I know, is paying their own way here. I have not seen any  
22 expenses for them.  
23

24 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): What then are the  
25 professional fees Sage had to incur and which you say should be attributed to Saint  
26 Vincent as part of the damages due to them?  
27

28 **MR MESCH:** They would be legal fees for the American attorneys and for the  
29 Spanish attorneys that represented them to try to resolve this case prior to coming to  
30 this Tribunal, as part of my damages in the first direct damages category.  
31

32 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Before the hearing of  
33 this case before this Tribunal? Is that right?  
34

35 **MR MESCH:** Yes.  
36

37 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Concluding with Saint  
38 Vincent and the Grenadines, how did you assess the damages suffered by a  
39 sovereign and independent State – let me repeat that: a sovereign and independent  
40 State – such as Saint Vincent and the Grenadines? How do you go about assessing  
41 the prejudice or the damage done to the dignity of that State, to its sovereignty? I  
42 understand, because we are in a similar position, as rightly referred to by the Co-  
43 Agent of Saint Vincent in her initial statement last Thursday.  
44

45 **MR MESCH:** I did not assess any damages to the dignity or the sovereignty of Saint  
46 Vincent. I simply tried to come up with an approximate figure to try to compensate  
47 Saint Vincent for its out-of-pocket legal expenses, time, and travel expenses that are  
48 incurred with this Tribunal. There is no punitive or damages beyond trying to put  
49 them back in the same position they would have been but for this Tribunal.  
50

1 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): I don't understand the  
2 meaning of the "punitive damages" you referred to, but in your prior statement you  
3 said that, for the purposes of assessing the damages due to Saint Vincent, you  
4 evaluated direct damage suffered by the Applicant, in other words, Saint Vincent and  
5 the Grenadines, period, and secondly, direct damages and loss of earnings from the  
6 loss of scientific data that could potentially have been put on the market to secure a  
7 profit. Thirdly, the damages suffered by any other person, and you listed them – we  
8 are not going to go back over them – in terms of violation of human rights. Is that  
9 what you said?

10  
11 **MR MESCH**: My only comment to that statement would be that there is no punitive  
12 nature in any of these damages that I have calculated at all. They are all an attempt  
13 to provide direct economic damages only.

14  
15 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Direct economic  
16 damages? That was all you assessed? Is that so?

17  
18 **MR MESCH**: Yes.

19  
20 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Then how did you  
21 assess the human rights damages? These are non-pecuniary in nature, relating to  
22 the dignity of individuals and respect due their rights. How did you assess that, since  
23 you say that you assessed only direct economic damages?

24  
25 **MR MESCH**: I assessed it based on using lost wages or the lost ability to earn a  
26 living as a proxy of direct damages for a violation of human rights. That is how I  
27 considered it a direct damage.

28  
29 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): I understand very well  
30 how you proceeded, and thank you for the explanation. I am, however, surprised  
31 that, when the Applicant tries to represent to this Tribunal that we are facing serious  
32 human rights infringements, no reference is made to any element of international  
33 human rights law, a field of law that is highly developed and concerning which there  
34 is substantial case law, including very clear case law on how to determine and  
35 assess direct damage. You have been talking about damage which potentially could  
36 have resulted from human rights infringements. If there is direct human rights  
37 damage, it would be that mentioned by the Co-Agent of Saint Vincent the first day,  
38 and also referred to by Professor Nordquist yesterday, which for Spain would not be  
39 admissible. They said that there was a violation of human rights because there was  
40 a denial of justice.

41  
42 Thank you, Mr President. I have no further questions.

43  
44 **THE PRESIDENT**: Thank you, Ms Escobar Hernández. As an expert who is cross-  
45 examined by the other Party may be re-examined by the Party who had called the  
46 expert, I ask the Co-Agent of Saint Vincent and the Grenadines whether the  
47 Applicant wishes to re-examine the expert.

48  
49 **MS FORDE**: The Applicant does not wish to re-examine the expert, Mr President.

1 **THE PRESIDENT:** Thank you very much. The examination of the expert is finished.  
2 Mr Mesch, you may withdraw. Thank you very much for your testimony.

3  
4 **MR MESCH:** Thank you.

5  
6 **MS FORDE:** Mr President, if I might, that brings the case for the Applicant effectively  
7 to a close at this time.

8  
9 Further, with the Tribunal's indulgence, I would like to indicate, as I had previously  
10 done to you, Mr President, that today is the last day that I will appear in this matter  
11 before this honourable Tribunal. I have family and other professional matters that  
12 require my attendance in Saint Vincent and the Grenadines. I wish to take this  
13 opportunity, with your permission, to thank the Tribunal for hearing me, and also to  
14 express on behalf of my country our pleasure, once again, to be here. I also hope  
15 that the remainder of the proceedings will continue to flow smoothly as you then go  
16 off into your deliberations. Thank you again, Mr President and Members of the  
17 Tribunal. I am truly obliged.

18  
19 **THE PRESIDENT:** Thank you very much. We were informed that you had other  
20 obligations, and I take this opportunity to thank you very much for your appearance  
21 at this Tribunal. We will miss you very much. Have a nice trip.

22  
23 **MS FORDE:** Thank you, Mr President.

24  
25 **THE PRESIDENT:** Thank you. Mr Weiland, this means that the first round of  
26 argument by Saint Vincent and the Grenadines is concluded. We will meet again on  
27 Monday 8 October 2012 at 10 a.m. to hear the first round of oral arguments of Spain.  
28 Have a good weekend. The sitting is now closed.

29  
30

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