

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2012

Public sitting

held on Monday, 8 October 2012, at 3 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President Shunji Yanai presiding

THE M/V “LOUISA” CASE

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

Verbatim Record

Present:

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

Saint Vincent and the Grenadines is represented by:

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

and

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

as Counsel and Advocates;

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

as Advocate;

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

as Counsel.

The Kingdom of Spain is represented by:

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

as Agent, Counsel and Advocate;

and

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

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

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

as Counsel and Advocates;

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

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

as Counsel;

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

as Adviser.

1 **THE PRESIDENT** (*Interpretation from French*): Good afternoon, ladies and
2 gentlemen. We will this afternoon be hearing further from Spain; but before I give the
3 floor again to the Agent of Spain we have an administrative issue to deal with. Today
4 and in the coming days the Tribunal will be hearing experts and expert witnesses
5 who will be speaking Spanish.

6
7 In accordance with the Rules of the Tribunal, statements from experts and expert
8 witnesses shall be interpreted from Spanish into English, one of the official
9 languages of the Tribunal, by an interpreter made available to the Tribunal by the
10 party concerned. The interpreter, Ms Delories Dunn de Ayuso, is present with us
11 today and I would like to welcome her.

12
13 Ms Dunn de Ayuso will be interpreting the statements made in Spanish into English,
14 and the Tribunal's interpreters will interpret from English into French. The same will
15 apply vice versa for questions put to experts in English or French.

16
17 The Rules of the Tribunal dictate that interpreters made available by a Party must
18 make a solemn declaration. I therefore ask the Registrar to invite Ms Dunn de Ayuso
19 to make the solemn declaration.

20
21 **THE REGISTRAR**: Good afternoon, Ms Dunn de Ayuso. Interpreters provided by
22 one of the parties are required to make a solemn declaration under article 85 of the
23 Rules of the Tribunal before entering upon their duties. You have been provided with
24 the text of the declaration. May I invite you to make the solemn declaration?

25
26 ***The interpreter, MS DELORIES DUNN DE AYUSO, made the solemn declaration***

27
28 **THE REGISTRAR**: Thank you, Ms Dunn de Ayuso, you can now go to the
29 interpretation booth.

30
31 **THE PRESIDENT** (*Interpretation from French*): Thank you. I now give the floor to the
32 Agent of Spain to continue her statement. Ms Escobar Hernández, go ahead,
33 please.

34
35 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, Mr President.
36 I would like to continue my speech and, if I may, I would now like to turn to the issue
37 of the failure to exhaust local remedies on the part of the Applicant, and the
38 implications that has for today's proceedings.

39
40 **Non-exhaustion of local remedies**

41
42 In paragraph 68 of the Order of 23 December 2010 on the Request for provisional
43 measures, you held that "the issue of exhaustion of local remedies should be
44 examined at a future stage of the proceedings".

45
46 In this connection, Spain takes the view that Saint Vincent and the Grenadines has
47 not correctly fulfilled its obligation to exhaust local remedies, as required by
48 article 295 of the Convention and the rules of general international law applicable to
49 diplomatic protection.

1 Article 295 of the Convention states:

2
3 Any dispute between States Parties concerning the interpretation or
4 application of this Convention may be submitted to the procedures
5 provided for in this section only after local remedies have been exhausted
6 where this is required by international law.
7

8 As was stated by the Tribunal in the *M/V "SAIGA" (No. 2) Case*:

9
10 the question whether local remedies must be exhausted is answered by
11 international law. The Tribunal must, therefore, refer to international law in
12 order to ascertain the requirements for the application of this rule and to
13 determine whether or not those requirements are satisfied in the present
14 case.
15

16 International courts and tribunals, including this Tribunal, have established the legal
17 nature and scope of these customary principles which provide – and I quote – that
18 “*the State where the violation occurred should have an opportunity to redress it by*
19 *its own means, within the framework of its own domestic legal system*” (*Interhandel*
20 *case*).
21

22 In order for international application to be admissible, and I quote again: “[I]t is
23 sufficient if the essence of the claim has been brought before the competent
24 tribunals and pursued as far as permitted by local law and procedures, and without
25 success”.
26

27 This customary principle is codified in article 44(b) of the articles on State
28 responsibility, which states:

29
30 The responsibility of a State may not be invoked if [...] the claim is one to
31 which the rule of exhaustion of local remedies applies and any available
32 and effective local remedy has not been exhausted.
33

34 For a tribunal, alleged non-exhaustion of local remedies indubitably raises
35 preliminary issues which must be settled immediately and independently of the
36 merits of the case (*Barcelona Traction case*).
37

38 The Co-Agent of Saint Vincent and the Grenadines denied that there was any
39 obligation to exhaust local remedies and tried to present the *Louisa* case as one in
40 which the rights at issue are only direct rights of the Applicant State, invoking your
41 case law from the *Saiga* case (*No.2*).
42

43 But the argument put forward here by the Co-Agent of the Applicant is misleading,
44 because Ms Forde considers that the direct rights of Saint Vincent and the
45 Grenadines, for example, would include any damage suffered by each and every
46 person regarding whom the Applicant seeks, with no justification, to exercise
47 diplomatic protection. An argument of that kind is not compatible with the general
48 rules of international law applicable to diplomatic protection.
49

50 Indeed, the obligation to exhaust local remedies is determined by the nature of the
51 rights claimed. As has been made clear many times in international case law, the

1 rule on the exhaustion of local remedies does not apply to violations of the direct
2 rights of the State, and this is as it should be. Conversely, local remedies must be
3 exhausted in cases such as the one now before the Tribunal, cases relating to
4 diplomatic protection, where a State demands the enforcement of international law in
5 favour of persons having a nationality connection with the State, and where the
6 State's right is merely an indirect one, that is to say, the right to the enforcement of
7 international law in relation to the person of its nationals.

8
9 Your Tribunal has accepted a distinction of this kind and has developed its reasoning
10 by reference to the concept of a "jurisdictional link".

11
12 In the *Saiga* case (*No.2*), cited as an authority by the Applicant's Co-Agent, the
13 Tribunal also looked at the question of whether there is a jurisdictional connection
14 between the responsible State and the natural or legal persons on behalf of whom
15 the Applicant has made claims. What was examined in that case was the
16 jurisdictional link in relation to activities in the exclusive economic zone of Guinea.
17 The Tribunal found that no such jurisdictional link existed because of the
18 unreasonable application of Guinean customs legislation in its exclusive economic
19 zone. In the opinion of the Tribunal – and I quote: "[W]hether there was a necessary
20 jurisdictional connection between Guinea and the natural or juridical persons in
21 respect of whom Saint Vincent and the Grenadines" - this is another case involving
22 Saint Vincent and the Grenadines -

23
24 made claims must be determined in the light of the findings of the
25 Tribunal on the question whether Guinea's application of its customs
26 laws in a customs radius was permitted under the Convention. If the
27 Tribunal were to decide that Guinea was entitled to apply its customs
28 laws in its customs radius, the activities of the *Saiga* could be deemed to
29 have been within Guinea's jurisdiction. If, on the other hand, Guinea's
30 application of its customs laws in its customs radius were found to be
31 contrary to the Convention, it would follow that no jurisdictional
32 connection existed.

33
34 The Tribunal concluded that there was no jurisdictional link and upheld the
35 allegations of Saint Vincent and the Grenadines in that case, according to which –
36 and I quote:

37
38 [T]his connection was absent in the present case because the arrest of
39 the ship took place outside the territorial jurisdiction of Guinea and the
40 ship was brought within the jurisdiction of Guinea by force.

41
42 The case of the *Louisa*, if I may say so, is exactly the opposite.

43
44 As has been shown in respect of the *Louisa*, the jurisdictional link is very clearly
45 established, given that each and every activity of the legal and natural persons on
46 behalf of whom the Applicant makes its claim took place inside Spanish territorial
47 waters, in two areas which both come within the exclusive jurisdiction of the Kingdom
48 of Spain (article 2 of the Convention).

49
50 Therefore, following the Tribunal's reasoning, the customary rule regarding the
51 exhaustion of local remedies does apply in this case.

1
2 Mr President, the Applicant, in its Request for provisional measures, stated – and I
3 quote – that: “[It] has filed its Application and Request for provisional measures
4 reluctantly and only after sustained and serious attempts to resolve this detention
5 through the Respondent’s legal system”.

6
7 In its Memorial the Applicant repeats that:

8
9 Representatives of the owner and agents for the Applicant have
10 attempted every known procedural and diplomatic maneuver to obtain
11 closure of this matter, including the release of the *Louisa*, the *Gemini III*
12 and their equipment.

13
14 These efforts, according to the Applicant, have been “*all to no avail*”.

15
16 Finally, the Applicant’s representatives, during the hearings last week, asserted that
17 a sovereign State cannot wait six years because of the malfunction of the legal
18 system in the “*Spanish provinces*” – I am citing their exact words. At the same time,
19 the Co-Agent of the Applicant stated that the Applicant no longer considers itself
20 under the obligation to exhaust local remedies because all remedies have already
21 been exhausted. In addition, Ms Forde asked herself and asked the Tribunal what
22 pending procedure remained to be exhausted. She added that: “Saint Vincent and
23 the Grenadines is not in litigation with Spain. To the best of our knowledge and
24 information, the *Louisa* and *Gemini III* are not even named as parties in Spain.”
25 These affirmations are manifestly incorrect and misleading. Allow me to make a
26 number of comments in response to them.

27
28 Firstly, the Applicant’s Co-Agent is absolutely mistaken in her understanding of the
29 meaning of “exhaustion of local remedies”. The requirement that local remedies must
30 first be exhausted applies to a State that claims the right to exercise diplomatic
31 protection; but it is a requirement that must, of course, be met by the beneficiaries of
32 diplomatic protection; that is to say, by the individuals whose direct rights have been
33 violated by a third State.

34
35 It is quite clear that neither Saint Vincent and the Grenadines nor the *Louisa* are
36 charged in the criminal proceedings in Cádiz; it is also obvious that the Applicant is
37 not a party to the proceedings. However, the Applicant’s Co-Agent omits to mention
38 the fact that Ms Avella, Mr Avella and Mr Foster have been or are parties to criminal
39 proceedings in Cádiz and that in that capacity they have the right to make
40 applications in defence of their interests and their rights; and that, what is even more
41 important, they have done so, and it is up to them first to exhaust the local remedies.

42
43 Secondly, if I may, I would like to say that the statements made by the Applicant are
44 also misleading. Saint Vincent and the Grenadines seeks to make out that the
45 exhaustion of local remedies under Spanish law includes:

46
47 -- a number of extrajudicial acts such as communications sent to individuals without
48 any direct connection to the criminal proceedings currently under way in the Spanish
49 courts, which, according to the Applicant, form the basis of this case;

1 --and in addition, a number of visits, conversations, telephone calls and letters sent
2 to the investigating judge at *Juzgado de instrucción No.4* in Cádiz, which are not of a
3 procedural nature and are not part of the case file.

4
5 Spain would remind you that the only acts deemed to meet the obligation under
6 article 295 of the Convention are domestic judicial appeals, which would make it
7 possible to remedy the alleged wrongs suffered by Saint Vincent and the
8 Grenadines, that is to say, wrongs against specific individuals. A careful reading of
9 the *petitum* in the Saint Vincent and the Grenadines Memorial shows that its aim is
10 to secure:

- 11
12 (i) first, the release of the *Louisa*;
13 (ii) secondly, a declaration concerning the allegedly unlawful detention of
14 persons involved in the case; and,
15 (iii) thirdly, reparation for direct and indirect damage allegedly suffered as a
16 result of the ship being detained.

17
18 It is not possible to achieve these ends other than by going through normal judicial
19 procedures before the competent Spanish courts. That is the only way in which the
20 persons who have allegedly suffered injury (individuals and companies), can claim
21 reparation, insofar as they are entitled thereto.

22
23 Consequently, only those procedures can be used to enforce the rule on prior
24 exhaustion of local remedies. These remedies are still pending to some extent, and
25 the Tribunal cannot accept the Applicant's assertion that the requirement laid down
26 by article 295 of the Convention has already been duly met.

27
28 Thirdly, the Applicant's statements are again misleading, when it states that it has
29 been denied justice because of an excessive delay and that Spain's behaviour, and I
30 quote, is "just a sleight-of-hand argument to prolong a case that by all reasonable
31 standards should have been settled long, long ago." I am referring to the statement
32 made by the Co-Agent for Saint Vincent and the Grenadines.

33
34 That statement shows Saint Vincent and the Grenadines' Co-Agent trying to draw
35 the conclusion that the unreasonable length of the trial meant that it was not
36 necessary to exhaust local remedies.

37
38 But a careful reading of the Applicant's Memorial shows that the individuals and
39 companies involved in this case are appealing, as it were, to this Tribunal against
40 legitimate decisions made by the competent Spanish courts. However, this Tribunal
41 cannot declare itself competent to hear appeals from Spanish courts, and I am
42 absolutely certain that the Tribunal has no intention of doing so. The point was made
43 merely for argument's sake.

44
45 Spain would point out once again, as it observed in paragraph 28 of the
46 Counter-Memorial, that criminal proceedings before the Spanish courts are still
47 under way; and, as the International Court of Justice observed in the *Interhandel*
48 case, the rule concerning exhaustion of local remedies applies even more strongly
49 when domestic proceedings are still under way.

1 As Judge Cot explained in his dissenting opinion attached to the Order on the
2 request for provisional measures in this case, and I quote:

3
4 “The complexity of the investigation and its international ramifications account for the
5 length of the preliminary judicial investigation; it is therefore understandable that it
6 has taken several years” (paragraph 9).

7
8 In order to illustrate this point, let me present some figures.

9
10 The file regarding the Cádiz case contains seventeen binders with more than six and
11 a half thousand pages. I can assure you that there is a room stacked full of
12 documentary evidence. The parties concerned have submitted an astonishing
13 number of communications, petitions and applications in defence of their rights, as
14 they are entitled to do.

15
16 In addition, as explained in outline in paragraphs 29 to 34 of our Counter-Memorial,
17 the persons and companies involved in the criminal proceedings before the Spanish
18 courts have constantly sought to obstruct the progress of the proceedings by raising
19 all kinds of legal and procedural obstacles. Their applications have caused delays in
20 all the criminal proceedings. The competent courts have noted all their applications
21 and have ruled on them.

22
23 Nevertheless, one case is still outstanding; this is the appeal lodged by the persons
24 concerned against the ruling of the investigating judge dated 31 October 2011, which
25 upheld the indictment of 27 October 2010.

26
27 This shows that even after Saint Vincent and the Grenadines had presented its
28 Memorial, persons on whose behalf the Applicant is seeking to exercise diplomatic
29 protection are still relying on domestic remedies under Spanish law to defend what
30 they consider to be their legitimate rights. It is difficult to think of a better example of
31 a situation in which local remedies within the meaning of article 295 of the
32 Convention have not yet been exhausted.

33
34 In conclusion, Mr President, I cannot fail to respond to one insinuation made by the
35 Applicant, seeking to sow confusion between the judicial proceedings and non-
36 judicial proceedings. This is unacceptable in a situation such as the one in this case,
37 where the Spanish courts, carrying out their judicial duties, have initiated criminal
38 proceedings.

39
40 Indeed, in a State governed by the rule of law, with a clear separation of powers,
41 courts and tribunals are completely independent in their decisions and are guided
42 only by the law. That is the case in Spain where no diplomatic approach can be used
43 to settle this question because it is a judicial question pending before a court.

44
45 Later we will return to this issue in more detail with the help of one of the experts that
46 Spain will be bringing along, Mr President.

47
48 That brings me to the end of my statement. Thank you, Mr President, honourable
49 Judges, for your kind attention.

50

1 Now, Mr President, I would ask you, if you agree, to be so kind as to call the first
2 expert witness for Spain, Ms Carmen Martínez de Azagra Garde.

3
4 **THE PRESIDENT** (*Interpretation from French*): Thank you, Ms Escobar Hernández.
5 The Tribunal will now hear the expert witness, Ms Martínez de Azagra Garde. Please
6 bring the expert witness in. Thank you.

7
8 **THE REGISTRAR**: Good afternoon, Ms Martínez de Azagra Garde. An expert
9 witness is required to make the solemn declaration provided for under article 79 of
10 the Rules of the Tribunal before making any statement before the Tribunal. The text
11 of the declaration is in front of you. May I invite you now, Ms Martínez de Azagra
12 Garde, to make the solemn declaration.

13
14 ***The expert witness, MS MARTÍNEZ DE AZAGRA GARDE, made the solemn
15 declaration***

16
17 **THE PRESIDENT** (*Interpretation from French*): Good afternoon, Ms Martínez de
18 Azagra Garde. I welcome you to the Tribunal. Thank you, Registrar. Before hearing
19 the expert witness, let me remind you that a sitting of this type is an extremely
20 difficult one for the interpreters and the *précis* writers, in particular because there are
21 not just two but now three languages involved, since now we have Spanish in
22 addition to English and French. So I request that you kindly speak slowly and that
23 you leave a sufficient gap after each intervention so that the interpretation can be
24 completed. Thank you for your cooperation. The Agent of Spain,
25 Ms Escobar Hernández, now has the floor, and could I ask that you now commence
26 with the hearing of the expert witness.

27
28 ***Examined by MS ESCOBAR HERNÁNDEZ***

29
30 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, Mr President.
31 As was announced, I am going to question my compatriot in Spanish but I will, in
32 compliance with what you have just said, speak very slowly and I shall wait for the
33 translation into French to be completed before continuing so as to facilitate the work
34 of the interpreters and make it easier for the Tribunal and the Applicant to
35 understand. Am I allowed to speak Spanish?

36
37 **THE PRESIDENT** (*Interpretation from French*): Indeed, yes, and I thank you for your
38 cooperation.

39
40 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Good afternoon. Thank
41 you for coming here to make your statement before the Tribunal, just as other expert
42 witnesses have also done. Could you please tell us your full name.

43
44 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Good
45 afternoon. My name is Carmen Martínez de Azagra Garde.

46
47 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): What is your
48 nationality?

49
50 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): I am Spanish.

1
2 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Could you please give
3 us some professional information about your career?
4

5 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): As for my
6 academic training, I have a degree in mining engineering. I studied from 1980-85 at
7 the High Technical School of Mining Engineering at Madrid Polytechnic University,
8 and then in 1987 I entered the National Corps of Mining Engineers after passing a
9 competitive Civil Service exam. This is a specialized high-level corps of the Spanish
10 national government, and it is under the aegis of the Ministry of Industry, Energy and
11 Tourism. So since 1987 until today, for 25 years, I have been at the service of the
12 administration, I have been a public servant. My career from 2000-07: I was at the
13 Directorate-General for Energy Policy and Mining. I was a technical adviser. Then
14 from 2007, in this same unit at the Subdirectorate-General for Hydrocarbons of the
15 Directorate-General for Energy Policy and Mining and Tourism I acted as Assistant
16 Deputy Director-General. At present, since 20 September 2012 I have been an
17 adviser to the Office of the Secretary of State for Energy at the Ministry of Industry,
18 Energy and Tourism. From now on, to simplify matters, I will just say “Ministry of
19 Industry”, if that is all right.
20

21 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Could you briefly
22 describe the responsibilities involved in the positions that you have held at the
23 Subdirectorate-General for Hydrocarbons? What tasks have you been carrying out
24 for the last 12 years?
25

26 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): As a technical
27 adviser from 2000-07 I had two main responsibilities in my job. First was to
28 supervise, control and process all of the administrative procedures required for
29 carrying out activities involving exploration, research and exploitation of underground
30 storage fields and deposits of hydrocarbons in Spain, and during that period I
31 supervised more than 100 cases of this kind. Secondly, I supervised compliance with
32 international obligations at the International Energy Agency and the European Union,
33 as well as in the area of supply security for oil and gas that are established by these
34 bodies, and I have taken part as an expert or as a member of the Spanish delegation
35 in the SEQ, Standing Group on Emergency Questions, and the SOM, Standing
36 Group on the Oil Market, at the International Energy Agency, and at the Oil Supply
37 Group and Gas Coordination Group at the European Union, and as Assistant Deputy
38 Director-General from 2007-2012 I have been mainly providing direct support and
39 advice to the Subdirectorate of Hydrocarbons, and in other areas as well, and taking
40 part in international fora regarding issues in this field, and also national and
41 international studies.
42

43 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Obviously, from what
44 you have just told us, it is clear that you have a great deal of experience in the
45 management of the concession of licences and authorizations in the hydrocarbons
46 field. Could you explain to us the system of licences and authorizations required in
47 Spain for a company or a private individual to be able to carry out activities of any
48 kind related to exploration for and exploitation of hydrocarbons in Spanish waters?
49

1 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): In Spain,
2 Act 34/1998 of 7 October on the hydrocarbons sector establishes that underground
3 hydrocarbon deposits and storage fields are in the public domain, that is to say, that
4 they are the property of the state, and therefore in order to carry out any kind of
5 activity involving exploration, research or exploitation of deposits or underground
6 storage fields of hydrocarbons in marine waters, it is necessary to have an
7 administrative authorization or an exploitation concession. There are three kinds.
8 There is an authorization for exploration, there is a research permit, and there is an
9 exploitation concession.

10
11 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Could you please
12 explain to us what is an authorization for exploration.

13
14 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): An
15 authorization for exploration is an *ad hoc* authorization that needs to be requested
16 under Spanish law for carrying out any kind of work for exploration involving
17 hydrocarbon exploration which uses geophysical or geochemical methods of
18 prospecting. That includes marine work, aerial work, land work, even shallow
19 surveys, that is to say, those that are less than 300 metres. These authorizations are
20 requested from the Directorate-General of Energy Policy and Mining, and these
21 cases are processed by the Subdirectorate-General of Hydrocarbons. These are
22 authorizations that are granted in free waters, that is to say, they cannot encroach
23 upon other areas that are already occupied, if you will, by research permits or
24 exploitation concessions, that are in force. They do not grant the title holders any
25 kind of priority or exclusivity as far as later permits are concerned. They are
26 authorizations for specific tasks carried out during a very specific period of time, that
27 can be three months to a year, and they are processed like a hydrocarbon case in
28 the Subdirectorate-General.

29
30 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): How are research
31 permits different?

32
33 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Research
34 permits are authorizations that grant their title holders an exclusive right to carry out
35 actions or work of research and exploration in a certain area, and this exclusive
36 nature remains during a period of six years, which can be exceptionally extended
37 another three years.

38
39 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Could you explain to us
40 lastly what is an exploitation concession that you referred to just now?

41
42 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Exploitation
43 concessions grant their title holders the right to exploit and maintain and continue
44 their research in a certain area during a period of 30 years, which can be extended
45 by two successive periods of ten years each. They are also exclusive authorizations.

46
47 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): When you say that they
48 are exclusive authorizations, what do you mean by that?

49

1 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): I mean that in
2 these areas only the title holders of these concessions may carry out research work
3 and exploitation of hydrocarbons.
4

5 **THE PRESIDENT** (*Interpretation from French*): Would you please wait until the other
6 person has finished? I am sorry to interrupt you. I am following the second
7 interpretation, the one from English to French. I will make a small sign indicating to
8 you when the second interpretation has been completed. So would you please wait a
9 bit?
10

11 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): What bodies of the
12 Spanish administration take part in the process of examining these applications for
13 authorization and have the authority to grant the authorizations that you just
14 explained to us?
15

16 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): For the
17 authorizations for exploration, the competent Ministry which has the final decision is
18 the Ministry of Industry. This Ministry, however, consults, for example, other
19 ministries, like the Ministry of Infrastructure, on any matters involving, say, maritime
20 navigation, or the Ministry of Environmental Affairs for any issue involving
21 environmental protection, but the final decision rests with the Ministry of Industry.
22 Research permits are granted by the Council of Ministers but the processing of these
23 cases is carried out by the Ministry of Industry, and this ministry also has, in the case
24 of research permits or investigation permits, an administrative registry, a special
25 administrative registry, where the information on all applicants in order of priority is
26 registered, and also any relevant data on these applicants. So the exploitation
27 concessions are also granted by the Council of Ministers but the ministry that
28 processes these cases is the Ministry of Industry.
29

30 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): In addition to the
31 authorizations and permits that you have just referred to, is there any other system of
32 authorization? Is there any other kind of authorization that could be granted by
33 another body or agency of the Spanish public administration which would also make
34 it possible to validly carry out activities involving exploration, research or exploitation
35 of hydrocarbons in a marine environment?
36

37 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): No. As I just
38 said, under the law, the activities related to the exploration, research and exploitation
39 of hydrocarbons have special authorities, and only those authorities may grant the
40 authorizations on a case- by=case basis.
41

42 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): You are going to see on
43 the screen a permit. This permit was obtained by a company, Tupet, which made it
44 available to the company Sage, and it authorises it to carry out certain activities. In
45 light of what you just said, do you consider that this permit – read it, take your time –
46 authorizes the interested companies to carry out any kind of research activity
47 involving hydrocarbons in the zone in order to later acquire some sort of economic
48 benefit?
49

1 *(Interpretation from French)* Mr President, would you allow me to read the most
2 important paragraphs of this, because we do not have the technological means to
3 enlarge this?

4
5 *(Interpretation from Spanish)* The permit says the following:

6
7 We request permission to be able to extract samples from the sea bottom
8 in order to expand a study for a report on the environmental impact on the
9 seabed in the waters of Andalucía between Rota and Cádiz in the
10 following coordinates.

11
12 If you would go to the second page, which is in annex 6, for the benefit of the
13 Applicant, it concludes as follows:

14
15 This Directorate-General in exercising the authority established by article
16 110 of the Coasts Act sees no problem or inconvenience in authorizing,
17 that is to say, it authorizes, the extraction of samples from the sea bottom
18 for the purpose of carrying out a report on the environmental impact on
19 the seabed regarding the points requested.

20
21 In light of the specific content of this authorization, do you believe that this
22 authorization granted by the Directorate-General of the Coasts authorizes the
23 interested company to carry out any kind of research involving hydrocarbons in the
24 zone, logically in order to then obtain economic benefits, as all hydrocarbons activity
25 is aimed at that end?

26
27 **MS MARTINEZ DE AZAGRA GARDE** *(Interpretation from Spanish)*: No. As you can
28 see on the screen, this is a permit from the Ministry of Environmental Affairs,
29 specifically, from the Directorate-General for Coasts and the Subdirector-General
30 of Managing the Public and Marine and Land Domains. As I said before, for a
31 research permit it is necessary to have an authorization from the Council of
32 Ministers, and the permit that is up on the screen could in no case be considered a
33 permit authorizing searches for hydrocarbons under Spanish law.

34
35 **MS ESCOBAR HERNÁNDEZ** *(Interpretation from Spanish)*: Taking into account
36 your wide-ranging professional experience and your years of experience at the
37 Subdirector-General of Hydrocarbons, and you said before that you have
38 processed a large number of cases of this kind of application for permits,
39 authorizations, concessions, over the course of more than ten years, I am asking you
40 the following. Do you remember if any of the following companies, Sage Maritime
41 Research Inc, Sage Maritime SLU, Tupet Sociedad de Pesquisa Maritima SA or
42 Plangas SL, obtained, between the year 2000 and the year 2006, any authorization
43 to carry out activities related to hydrocarbons in Spanish waters, specifically in the
44 Bay of Cádiz or the Gulf of Cádiz?

45
46 **MS MARTINEZ DE AZAGRA GARDE** *(Interpretation from Spanish)*: No, there is no
47 evidence of any reference to these companies. Under Spanish law, applications that
48 are sent to the administration must be registered. I have looked at the corresponding
49 archives, administrative registries, and I have been informed that there is no
50 evidence of any case that has been filed, that is now open or that is being processed
51 related to the companies that you just mentioned.

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MS ESCOBAR HERNÁNDEZ (*Interpretation from Spanish*): Based on your professional experience, do you remember if any of these companies have presented any application during this time to carry out activities, or if there is any case file open where they are trying to obtain authorization in the area of hydrocarbons?

MS MARTINEZ DE AZAGRA GARDE (*Interpretation from Spanish*): No, there is no evidence of any reference to these companies. As I said before, I have looked at the administrative registries, I have gone to see them, I have consulted with them, and they have told me that they have no evidence of any reference to them. In Spain, in order to open an administrative file, we start with the documents presented and registered by the companies, and there are no references to this in the registry.

MS ESCOBAR HERNÁNDEZ (*Interpretation from Spanish*): What kind of companies can apply for the kind of authorization or permits that we were discussing before, that you were talking about before, to carry out activities related to hydrocarbons?

MS MARTINEZ DE AZAGRA GARDE (*Interpretation from Spanish*): Under Spanish law, these activities can be requested by any company, Spanish or foreign, that meets the requirements, the legal requirements, technical requirements, economic requirements, established in Spanish law, particularly in so far as their legal capacity is concerned: in the articles of these companies there needs to be a reference to activities of exploration, investigation or exploitation of hydrocarbons.

MS ESCOBAR HERNÁNDEZ (*Interpretation from Spanish*): Thank you. Please allow me to move on to another set of questions. Within the different positions you have had at the Subdirectorate-General of Hydrocarbons, you have been responsible, as you said before, for processing and preparing cases involving different applications for authorizations and permits to carry out any kind of activity related to hydrocarbons in Spanish waters. Is that so?

MS MARTINEZ DE AZAGRA GARDE (*Interpretation from Spanish*): Yes.

MS ESCOBAR HERNÁNDEZ (*Interpretation from Spanish*): Could you explain to us how the interested companies usually proceed in obtaining an authorization of this kind and what practices the Spanish public administration follows in this regard?

MS MARTINEZ DE AZAGRA GARDE (*Interpretation from Spanish*): If a company wants to carry out activities of exploration or investigation or exploitation of hydrocarbons in Spain, it usually contacts the Subdirectorate-General of Hydrocarbons of the Ministry of Industry. First it does this to find out what kind of technical documents are available regarding work or exploration work carried out before in the same area. If it wants information about other companies that have worked there before, these technical documents regarding this type of work carried out in the past are kept in a special Technical Archive on Hydrocarbons, and there is another reason why companies often contact us, you can see there on the screen a reference to the Technical Archive on Hydrocarbons which belongs to the Ministry of Industry. That is from our website. So, going back to your question, companies tend

1 to contact us to find out the documents we have on file, to find out what is the
2 applicable legislation and to find out ---

3
4 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Please speak a little
5 more slowly, so the interpreters can follow.

6
7 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): So the
8 companies tend to contact the Deputy Director General for Hydrocarbons in order to
9 find out what the technical information is that is contained in this Technical Archive
10 on Hydrocarbons, where all these documents are filed – any document generated by
11 work involving exploration, research or exploitation of hydrocarbons carried out in the
12 area by other companies in the past. Secondly, they contact us to find out what is the
13 applicable Spanish legislation. Thirdly, they contact us in order to find out what
14 different phases and administrative procedures are involved and which phase their
15 document might be in.

16
17 There is the technical risk associated with any kind of exploration activity and
18 research projects involving hydrocarbon deposits, a technical risk that is associated
19 with the geological uncertainties of these deposits, and considerable investment
20 needs to be mobilized in order to carry out these activities. For that reason,
21 companies tend to contact us even before presenting an application in writing. They
22 contact the Spanish administration informally. Specifically, they tend to contact the
23 Subdirectorate-General of Hydrocarbons. The Spanish administration in its
24 relationship with companies has total respect for the principles of legality and
25 confidentiality, but it also maintains a very co-operative and open attitude, because
26 by law, Spanish civil servants must treat all citizens and companies with complete
27 respect, objectivity and non-discrimination in a professional manner.

28
29 Within this framework, it is our understanding that this kind of project has a singular
30 nature; we understand that. This open, co-operative attitude on the part of the
31 Spanish administration is very obvious, and that is because of the strategic interest
32 of these activities to the State and because of the huge amount of investment
33 involved in carrying out activities of this kind.

34
35 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): You were talking to us
36 just now about the openness and co-operative attitude of the Spanish administration.
37 You also talked about the principles of professional treatment in confidentiality,
38 whether it is a foreign national or a Spanish applicant. Here I would like to ask you a
39 question. Do you think that it is possible that a company could by mistake go to
40 some other agency than the Subdirectorate-General of Hydrocarbons to ask for a
41 hydrocarbons permit?

42
43 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Maybe it was
44 not familiar with the Spanish administration and perhaps would go to another unit of
45 the administration, but in this case it would be informed, “Yes, you have made a
46 mistake”, or if it had presented something in writing, whichever Director General had
47 received this document would then send it on to the Director General for Energy
48 Policy and Mines, because the general governing idea in the Spanish administration
49 is to have a single place where documents can be presented, so if it is accidentally
50 presented in the wrong place, it would be sent on to the correct one.

1
2 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Earlier you referred to
3 the Technical Hydrocarbons Archive and you said that within this technical archive of
4 hydrocarbons things were on file. Who can access this technical archive of
5 hydrocarbons? Is it public or limited access?
6

7 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): This archive is
8 a public archive. As you can see, you can access it freely on the internet. It is free;
9 there is no charge. Anyone can access it, whether an individual, a legal person,
10 citizens, companies, universities, different public administrations, or any stakeholder
11 who feels that the technical information contained in the archive could be of interest.
12

13 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Is there any confidential
14 information there, or is it all public?
15

16 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): According to
17 article 12 of Act 38/1998, the Hydrocarbons Act, all companies that carry out
18 activities of exploration, research or exploitation of hydrocarbons in Spanish waters
19 and in our territory must send to the Spanish administration, once they have carried
20 out this work, the technical documents generated according to what they found out
21 about the underground information. In the case of exploration authorizations, it is
22 kept confidential during a period of seven years. In the case of technical information
23 generated by research permits or exploitation concessions, these technical
24 documents regarding the work that has been carried out are kept confidential for the
25 entire time the permit or the concession is in force. For this reason, the free-of-
26 charge access to the documents in this archive needs to be understood as referring
27 to the public documents, not confidential documents. The confidential documents are
28 made public only after expiry of the period during which the permit has to remain
29 confidential.
30

31 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): If I have understood
32 you correctly, all other companies that have received an authorization in Spain to
33 carry out hydrocarbon activities are required to communicate the technical results of
34 their work under certain conditions to the Technical Archive on Hydrocarbons. Is that
35 correct?
36

37 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes.
38

39 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): As far as you know,
40 have any of the companies that I am now going to mention sent to the Technical
41 Archive on Hydrocarbons any kind of technical information resulting from their
42 research work on hydrocarbons regarding hydrocarbon campaigns that they may
43 have carried out in Spain under Spanish authorization: Sage Maritime Research Inc,
44 Sage Maritime SLU, Tupet Sociedad de Pesquisa Maritima SA and Plangas SL?
45

46 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): There is no
47 evidence of any reference. Having consulted the database of the Technical Archive
48 on Hydrocarbons, I have been informed that none of the companies you have just
49 mentioned has sent any technical information on work that they have carried out to
50 the Special Technical Archive on Hydrocarbons.

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MS ESCOBAR HERNÁNDEZ (*Interpretation from Spanish*): Is it compulsory for a company that wants to request a permit or an authorization to previously consult the Technical Archive on Hydrocarbons?

MS MARTINEZ DE AZAGRA GARDE (*Interpretation from Spanish*): No, it is not compulsory. It is not required, but in practice companies do this. This is what companies usually do.

MS ESCOBAR HERNÁNDEZ (*Interpretation from Spanish*): If I have understood you correctly, the Technical Archive on Hydrocarbons is actively consulted when a party is interested in finding out whether there are sufficient data that could be of interest to companies?

MS MARTINEZ DE AZAGRA GARDE (*Interpretation from Spanish*): Yes, that is right.

MS ESCOBAR HERNÁNDEZ (*Interpretation from Spanish*): Do you know whether between 2000 and 2006 there was in the Technical Archive on Hydrocarbons any information regarding hydrocarbons in the Gulf of Cádiz?

MS MARTINEZ DE AZAGRA GARDE (*Interpretation from Spanish*): Yes.

MS ESCOBAR HERNÁNDEZ (*Interpretation from Spanish*): Because in 1995 concessions for exploitation were granted, and in this area there were different jobs that had been carried out since the 1980s, and the Applicant, Saint Vincent and the Grenadines, refers in its Memorial to activities of research and exploitation of hydrocarbons that would have been carried out at that time in the Gulf of Cádiz by different companies, and even if they had been carried out previously, could you inform us whether indeed in the zone of the Gulf of Cádiz right now work is being carried out or whether in the past work has been carried out involving activities of research, exploration et cetera related to hydrocarbons?

MS MARTINEZ DE AZAGRA GARDE (*Interpretation from Spanish*): Yes. As I just said, in 1995 a concession for exploitation was granted to Poseidon North and Poseidon South. These are exploitation concessions that are still in force, and they were granted to Repsol. Then in 1996 other permits were granted to Hercules North and Hercules South, which expired in 2004. In 2002 and 2003 other blocks of permits were granted – the Calypso permits in 2002, the Circe and Marismas Marino North and Marino South in 2003, and those expired later in 2008 and 2009. As I said, that was six years after the permits first came into force. Right now only the exploitation concessions Poseidon North and Poseidon South are still in force. Only those two are still in force.

MS ESCOBAR HERNÁNDEZ (*Interpretation from Spanish*): This means that in the Gulf of Cádiz there has been systematic study in the hydrocarbons area since the last third of the 20th century?

MS MARTINEZ DE AZAGRA GARDE (*Interpretation from Spanish*): Yes, that is right. The exploitation concessions Poseidon North and Poseidon South were

1 granted in 1995, but before that, in 1987, there were already studies and research
2 permits that had been granted. Really the research in the area began in the 1970s
3 and became more intense in the late 80s.

4
5 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): On the screen we are
6 going to show you a map showing squares or rectangles. The shaded areas
7 represent different research permits and concessions of exploitation in the Gulf of
8 Cádiz that correspond to 2004. The website of the Ministry of Industry is open to
9 everybody and is free of charge. On the map you can see shaded areas that
10 correspond to permits that you referred to earlier. Right across from the Bay of Cádiz
11 in the yellow rectangle to the south, I am referring specifically to the Calypso and
12 Circe permits, and to the north, the Marino North and Marino South permits. Can you
13 explain to us the difference between the yellow areas and the red areas?

14
15 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes. The red
16 areas refer to exploitation concessions and the yellow areas refer to research
17 permits.

18
19 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): When you answered
20 my previous question you said that the Calypso, Circe and Marino permits – but
21 maybe I have made a mistake here – had expired between 2008 and 2009. What
22 happened after that? Had their title holders asked for exploitation concessions to do
23 any more drilling to obtain more hydrocarbons?

24
25 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): No. As I said,
26 they correspond to research permits that were in force in 2004. These permits were
27 granted in 2002 and 2003, and in 2008 and 2009 they expired, so their title holders
28 thereafter did not ask for an exploitation concession. I wanted to point out that just as
29 this map has been published on the website of the Ministry of Industry and you or
30 anyone can access this information, all the references to these permits, how they
31 were granted, the periods for which they were in force, their title holders, their
32 geographical co-ordinates, are published in the Spanish official State Gazette.
33 Moreover, on this website, apart from this map, you can consult the statistics for the
34 research and exploitation of hydrocarbons, which shows the situation of this
35 petroleum resources environment in 2005/2005 and thereafter. It is all published on
36 the website. All these statistics and references to these permits are published in the
37 Spanish official State Gazette – *Boletín Oficial del Estado* in Spanish.

38
39 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Going back to the
40 question that I just asked you, the permits for the yellow zones are no longer in force,
41 they have expired, and here something strikes me as especially interesting. To carry
42 out an investigation in these zones, logically the company that carries out the
43 investigation has to make a major investment. It has to draw up a plan, hire
44 technicians and scientists, and assess its data and quantify the results. Is it common
45 practice that after a research permit is granted, there is no concession to exploit the
46 hydrocarbon resources that could have been found in that zone? Is that common
47 practice?

48
49 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): The request for
50 an exploitation concession depends on the results obtained in the prior investigation

1 carried out during the research work. When this ends, or even before when the
2 research permit is in force, companies take a business decision. It is a decision
3 motivated by business considerations. If companies have identified hydrocarbon
4 deposits and they consider it technically and economically viable to exploit them
5 under conditions that would be profitable, or sufficiently profitable, then they would
6 ask for an exploitation concession, but only in those cases where the companies
7 clearly see that the deposit is profitable. As I said, it is a business decision.

8
9 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): We are now going to
10 see several maps on the screen. The first is a map that Spain has already presented
11 for the Tribunal's consideration, where you can see two shaded areas. These are the
12 areas where the Director General for Coasts had authorized research activity on an
13 environmental impact study and to get sea-bottom samples for oceanographic
14 purposes – and this authorization was given to the company Tupet – that is to say,
15 the permits that according to the Applicant justify the research activity carried out by
16 the *Louisa* in Spanish waters. Please look carefully at the map and, above all, look at
17 where the two rectangles are. You are now going to see another map, which is the
18 map that we have just looked at. This is a public map from 2004, the same year in
19 which the authorization of Tupet was processed, where you can see the areas for
20 which Spain had granted authorizations to companies to carry out investigation
21 activities in the hydrocarbons area. Although the maps are not one on top of the
22 other ... Could I just underline here that we have been unable to come up with an
23 overlapping map. We wish to dispel any possible extant doubt as to the validity of the
24 documents. I would like to reiterate that these are documents in the public domain
25 anyhow. Looking at the map and the second map, do you believe that there is any
26 overlapping of these areas? Do any of these zones coincide with each other as
27 between the permit from the Directorate-General for Coasts and the permits from the
28 Ministry of Industry on hydrocarbons?

29
30 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes, it is
31 obvious that there is some overlapping there.

32
33 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): You are now going to
34 see a third map, which corresponds to the situation in 2005. These are permits which
35 at that time had been granted by the Spanish authorities for carrying out research of
36 some kind or exploitation of hydrocarbons. Take a look at the map, please, and
37 could you go back to the first map and go back to the other map? I am going to ask
38 you the same question: do you think that there is any overlapping in these areas?

39
40 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes, it is
41 obvious that in 2005 there was also overlapping in the two areas.

42
43 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Given that there is
44 overlapping in these zones, would it have been possible for Sage to carry out some
45 kind of exploration activity involving hydrocarbons in these spaces in 2004/2005?

46
47 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): No, they could
48 not, because they did not have the required legal authorization and, as I explained to
49 you before, the research permits, the investigation permits, the exploitation
50 concessions give an exclusive right to their title holders, and therefore no one else in

1 these areas could have been carrying out activities of exploration or investigation in
2 this area.

3

4 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): To understand you
5 correctly – and this is my last question, Mr President – if Sage had, as the Applicant
6 maintains, carried out activity related to hydrocarbons in this zone, would that activity
7 have been legal or would it have been against the law in Spain?

8

9 **MS MARTINEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): It would be
10 illegal because they did not have the required authorizations under Spanish law. In
11 any case, in these zones they could not carry out any activity related to
12 hydrocarbons.

13

14 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Thank you very much,
15 Ms Martínez de Azagra Garde.

16

17 **THE PRESIDENT** (*Interpretation from French*): Thank you very much. It is now 4.30,
18 so the Tribunal will take a 30-minute break. We will resume the sitting in half an hour,
19 at five o'clock.

20

21 (*Break*)

22

23 **THE PRESIDENT** (*Interpretation from French*): Before we broke, the Agent for Spain
24 had said that she had finished her examination of the expert witness. Given the rules
25 of this Tribunal, an expert witness of one of the Parties can be subject to cross-
26 examination by the other Party, so I turn now to the Co-Agent of Saint Vincent and
27 the Grenadines to ask if the Applicant wishes to a cross-examine the expert witness.
28 (*Continued in English*) Mr Weiland, do you wish to cross-examine the expert
29 witness?

30

31 **MR WEILAND**: Yes, thank you, Mr President.

32

33 **THE PRESIDENT**: I would like to add also that the witness expert is still covered by
34 the declaration she made earlier this afternoon. Thank you.

35

36 **MR WEILAND**: Good afternoon, Senora Martínez. My name is Stephen Cass
37 Weiland, and I am a lawyer. I represent Saint Vincent and the Grenadines. We have
38 an action here against Spain. Do you understand that?

39

40 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes, I do.
41 Thank you. Good afternoon.

42

43 **MR WEILAND**: I have a few questions to ask you. On listening to your background
44 I did not hear any private companies that you have worked for in your career. Have
45 you worked for any private oil companies?

46

47 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes, I have.
48 I worked for Rio Tinto from 1985 to 1987. As I said, I ended my university studies at
49 Madrid Polytechnic University at the higher technical school for mining engineers in

1 1985. My speciality is energy and combustibles and fuels, and so from 1985 to 1987
2 I was in the private sector.

3
4 **MR WEILAND:** You have worked for the Spanish Government since that time.

5
6 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): I am a civil
7 servant of the Spanish public administration. I am a career civil servant. I am a
8 member of a specialised corps of civil servants in the Spanish administration, and
9 under the current legislation my contract with the Spanish Government, with the
10 general state administration is lifelong.

11
12 **MR WEILAND:** You have a lifetime contract for the government?

13
14 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Under current
15 Spanish legislation, that is correct, I am a career civil servant.

16
17 **MR WEILAND:** No matter what you say today, you still have a job, right? I am just
18 making a joke.

19
20 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Sorry, I want to
21 understand well what is being said and I realise it is very important what I say
22 because I am under oath, and so obviously, as a civil servant of any administration in
23 the world in any international organisation, it is a value that public servants have.

24
25 **MR WEILAND:** Let me ask you about the Gulf of Cádiz. I think your testimony was
26 most interesting in showing what a varied, important area that is for hydrocarbon
27 exploration. Is that a fair statement?

28
29 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): There is a little
30 nuance I would like to add here. All areas, all Spanish offshore areas are interesting.
31 I focus logically within my testimony on the Gulf of Cádiz because the most relevant
32 information here involves this area, but, having said that, there are other interesting
33 zones in the Spanish offshore areas because, as you know, Spanish oil production is
34 mainly in the Gulf of Lion, which is a very interesting area for oil companies around
35 the world. It is between France and Spain. It is around Barcelona. That is the area
36 where most oil is produced, and there is a lot of interest right now. In addition to that
37 area, there is another area that is moving south in the former Shell field, which could
38 be interesting in the future – all of that without saying that in the south there are
39 indeed interesting areas and all the permits for investigation that are being given and
40 sought around Malaga. In the north, there are some old fields, old gas fields that are
41 now exhausted around the urban platform. It is the only gas storage area that is
42 being exploited right now and has been for quite some time in Spain. Then the whole
43 Cantabrian Sea area, which, for technical reasons – I wouldn't say it is out of the
44 question. When you say "the most important zone" historically –you are right in the
45 sense that that is where it began; there was a first phase of interest in that zone. But,
46 as I said before, this initial interest that began – and note that this was in 1987 when
47 Spain had the National Institute of Hydrocarbons, when it was a public activity –
48 unfortunately this initial interest in the area, which was the motive for a lot of different
49 permits, for a lot of work that was carried out in 2002, 2003 – from 2008 to 2009.
50 Without it being ruled out now, it is not a priority area for companies. I would like to

1 stress that – was I trying to stress this area? No. I talked about this area because I
2 understand it was relevant. In Spain, in terms of oil, it is an area that is interesting,
3 both offshore and on national territory.
4

5 **MR WEILAND:** I am going to ask you to do a favour for me and the members of the
6 Tribunal also. I am going to ask you a question, and if you listen carefully I would like
7 you to answer just that question. Then when I am finished, your lawyer will have a
8 chance to ask more questions. Okay?
9

10 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): All right.
11

12 **MR WEILAND:** Could we have the 2004 map that you had up there? While we are
13 looking for some of the information that was shown to you earlier, let me ask you
14 about the website that you have referred to many times. Can you recall when the
15 website was first put up? What was the first year when the website was in action?
16

17 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): I would have to
18 check to make sure. I think it was probably 2000. By the year 2000 it was already up
19 and running. The Spanish administration, like other administrations, has been
20 steadily incorporating IT. The website, I think, has been up more than ten years. I
21 can't tell you the exact year, but I know that from 2000 and on, all of this was public
22 and the Ministry of Industry had a website. Starting in 2010 I am sure. They probably
23 did before, but I would need to ask my IT department at the Ministry to be able to
24 give you rigorously correct information on that.
25

26 **MR WEILAND:** Do you keep a list or record of who visits your website?
27

28 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes, as we
29 have been incorporating IT into our system in respect of formal consultations; when
30 someone just clicks on the ministry website we – I say “we” as a Deputy Director
31 General of Hydrocarbons –don't have a list of all of the individuals who click on the
32 website; but if someone today, for example, were to make a request for information
33 from the Technical Archive on Hydrocarbons, there is an email address and there is
34 a computerised list of those who have accessed it. So if I understand you correctly,
35 of everyone? No, but only all of those persons who have made a request for
36 information that could be useful to them – sort of a formal request, if you will.
37

38 **MR WEILAND:** Yes, concerning anyone associated with Sage who made a casual
39 visit to your website in 2003, you would not be able to verify that.
40

41 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): No, but what
42 I mean is ---
43

44 **MR WEILAND:** I would think the examination of the witness will take an
45 extraordinarily long time if she does not just answer my question. I think the answer
46 she said was “no”, and if she would like to give an explanation to her lawyer, I would
47 ask that you give her that direction.
48

49 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Excuse me,
50 I just want to be able to answer ---

1
2 **THE PRESIDENT** (*Interpretation from French*): Ms Escobar, have you requested the
3 floor? You have the floor.

4
5 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Mr President, I have to
6 say it is not up to me to decide how to conduct cross-examination, but in any event
7 I would just like to draw the Tribunal's attention to the fact that the witness is trying to
8 respond to the question and she was saying that she did not fully understand the
9 question and would like further clarification about that. That is all, I would ask you to
10 include my comments in the court record.

11
12 With respect to the request of Mr Weiland, Co-Agent for Saint Vincent and the
13 Grenadines, with respect to the map of 2004, my understanding is that we do not
14 have the obligation to show the map on the screen. However, this notwithstanding, in
15 order to co-operate with the Tribunal and for its benefit we will be happy to show the
16 maps to which Mr Weiland referred. In any event, Mr President, I would just wish to
17 say that there are rules of proper courtroom conduct.

18
19 **THE PRESIDENT**: Thank you very much, Ms Escobar, and thank you for your
20 co-operation. May I ask Mr Weiland to ask your question again so that the expert
21 witness can understand your question very well?

22
23 **MR WEILAND**: Yes, sir.

24
25 It is a simple question: in 2003 if someone from Sage visited your website you would
26 not have a record of that, would you?

27
28 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): I want to make
29 sure I understand your question correctly. We are talking about access by anyone
30 who just clicks on the site, any person from Sage for any reason – private, related to
31 the company – any kind of access, random access to the website – is that what you
32 are asking about?

33
34 **MR WEILAND**: Yes.

35
36 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): All right,
37 random occasional access to the website – that is not registered.

38
39 **MR WEILAND**: Now we have the 2004 map. I would ask you if you could tell us
40 which company had the Calypso concession.

41
42 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): The Calypso
43 concession? Right now I would have to take a look at the website for the specific
44 references, because they are published. I would have to look it up. It could be
45 because of the companies in that area – I really would prefer to be precise. I would
46 ask you yourself, or the Tribunal, I would ask the court, to take the opportunity to
47 take a look because I don't want to just rely on my memory here. I would like to
48 consult to see exactly which companies were the title-holders for Calypso. In the
49 case they are only talking about the Poseidon concessions – so that's the case that I
50 looked at for this case, the Poseidon North and the Poseidon South – the other

1 authorisations, they have different title-holders, different companies, and I don't want
2 to give the names of a company off the top of my head which could be incorrect. All
3 of the title-holders – it is public information and they are included in the official
4 registry. I don't have any problem with you looking it up and – or asking me again
5 because just to do it out of my own memory – this is a very serious matter, and I
6 wouldn't want to make a mistake.

7

8 **MR WEILAND:** Do you know what kind of survey work Calypso did in that area
9 before its concession expired?

10

11 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): I would have to
12 look that up but you could go on to the ministry website and see the exact list of work
13 that was carried out.

14

15 **MR WEILAND:** There were some papers filed in this case by someone associated
16 with the Respondent where it is stated that there are clearly no hydrocarbons in the
17 area, in the Bay of Cádiz. Have you concluded that yourself? I ask that question
18 because the Calypso concession seems to be taken in part in the Bay of Cádiz.

19

20 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Excuse me,
21 could you please repeat exactly what your question is so that I can answer it
22 exactly? I want to understand you correctly.

23

24 **MR WEILAND:** Let me go on to something else. Do you know what horizontal drilling
25 is? Are you familiar with that method of extraction of oil and gas?

26

27 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes, of course.

28

29 **MR WEILAND:** Do you have any oil rigs on the coast of Spain that are drilling into
30 the Gulf?

31

32 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Excuse me, in
33 the Gulf?

34

35 **MR WEILAND:** Sure.

36

37 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Could you
38 please ask the question more precisely? I don't understand your question. You are
39 talking about whose oil rigs because the Spanish State is not the title-holder? The
40 permits and concessions are held by companies and we are talking about the Gulf
41 of Cádiz – we are talking about technical areas that are not what I was brought here
42 to talk about, so could you please tell me exactly what you are asking me?

43

44 **MR WEILAND:** I was asking you if you were familiar with horizontal drilling where
45 the oil company, not your agency, will place an oil rig on the shore and drill out into
46 the open waters. Are you familiar with that?

47

48 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes, you mean
49 horizontal drilling? Well, I am not a specialist but I am an engineer, and logically I
50 have worked on these issues. Yes, I know it in general terms.

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MR WEILAND: *(No microphone)* ... is it not?

MS MARTÍNEZ DE AZAGRA GARDE *(Interpretation from Spanish):* Of course.

MR WEILAND: Your agency seems to take the regulation of hydrocarbons very seriously – would you agree with me?

MS MARTÍNEZ DE AZAGRA GARDE *(Interpretation from Spanish):* First, I want to clarify that there is no agency here. We are talking about the Ministry of Industry, Energy and Tourism. I want to clarify this because there are other countries in the world, in Europe, that due to the volume of their exploratory activity and their exploitation of hydrocarbons do have national agencies with experts. We are talking about the Ministry of Energy, Industry and Tourism. We are talking about the Office of State Secretary for Energy, the Directorate-General for Energy Policy and Mines and the Subdirectorate-General for Hydrocarbons. We are talking about administrative units. Having said that ---

MR WEILAND: Really I am asking about your administrative unit and your Ministry of Industry's regulation, and my inference from your testimony is that you take regulation very seriously – is that true?

MS MARTÍNEZ DE AZAGRA GARDE *(Interpretation from Spanish):* Logically because the principle of legality is absolutely always the guiding principle of all of the civil servants in any administration.

MR WEILAND: You said in your testimony that you regulate anyone who would do a survey even from the air – is that correct?

MS MARTÍNEZ DE AZAGRA GARDE *(Interpretation from Spanish):* That is true, yes, because that is what the regulations say.

MR WEILAND: Let me show you a map that we have that was introduced yesterday by a company. It is from a company called Infoterra. This is a map that is publicly available, and Mr McAfee testified about it. You see, this is taken from a satellite, and that is the Bay of Cádiz up on the right-hand side. Did you issue a permit to Infoterra for it to assemble this data?

MS MARTÍNEZ DE AZAGRA GARDE *(Interpretation from Spanish):* I cannot make a statement on this map because I don't see any references here. I see no administrative reference. I have no information in order to make a rigorous and truthful statement regarding this map.

MR WEILAND: Would your ministry require a permit for a company that was taking satellite pictures of the area around Cádiz?

MS MARTÍNEZ DE AZAGRA GARDE *(Interpretation from Spanish):* That is a case which in all my years of experience has never appeared to me personally. I have never had the opportunity in this area. These are probably permits that were authorizations from before. As you know, the authorizations for exploration can

1 include air or land work. When I started working in the Bay of Cádiz we were in a
2 later phase of research. The air work – other kinds of air work or other kinds of
3 technology are the first works that are carried out to investigate large areas. Indeed,
4 air work is complementary to the geophysical work that is later carried out in the sea,
5 and complementary to drilling work. I am not personally familiar with air work
6 because it is not what is usually done, and personally, in all my years of experience,
7 I have never had any situation like that, but I would obviously need to look at my
8 records to make a completely accurate statement, but right now you have just shown
9 me this map and I really couldn't tell you if this is a map that corresponds to any
10 administrative case on file.

11
12 **MR WEILAND:** In connection with the ministry's regulation of its permit process,
13 does the Guardia Civil assist you in policing that activity?

14
15 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Excuse me,
16 could you please repeat the question?

17
18 **MR WEILAND:** Are you familiar with the federal police force in Spain called the
19 Guardia Civil?

20
21 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes.

22
23 **MR WEILAND:** Would the Guardia Civil assist the ministry in enforcing permits?

24
25 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): No. The work
26 of the Ministry of Industry is technical, and it is within a regulatory framework that is
27 highly specific, which is Law 34/1998 of 7 October, the Hydrocarbons Act, and the
28 Civil Guard, unless there is some particular – has reported a crime or a case that is
29 in the courts where a report has been asked from the competent administration in
30 the work involving administrative cases, the usual administrative cases are regarding
31 authorizations for exploration, granting research permits, or exploitation concessions.
32 The Civil Guard is not directly involved usually. In the areas of the Bay of Cádiz there
33 could – and pardon me for not being more explicit for obvious reasons, but there
34 could be – you realize the area – the Straits of Gibraltar – there are some kinds of
35 installations or some kind of equipment, or locations that require special protection
36 for national security reasons and for defence, and regarding activities of national
37 protection. Only in this case and through the Council of Ministers with some very
38 specific procedures could there be some kind of intervention of this nature. Would
39 you please, since you have mentioned it – could you please put our map up again,
40 the one with the research permits?

41
42 **MR WEILAND:** Let me ask you another question. You say that the matters relating
43 to permits are "mere" regulatory matters – correct?

44
45 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): The issue itself,
46 no, the authorizations for specific work within a certain area – as I explained before,
47 the research permit grants a company the right to carry out the different activities of
48 exploration or research exclusively and there is a decree from the Council of
49 Ministers that demarcates this when a company wants to carry out a specific
50 programme of investigation, whether it is a seismic permission, physical prospecting

1 or to do drilling, exploratory drilling, It asks for authorization, specific individualized
2 authorization for this zone. This authorization is then submitted to the procedures
3 established in environmental legislation and then the body that makes the final
4 decision is the Ministry of Industry.

5
6 **MR WEILAND:** My question is really a simple question. Let me give you an example.
7 Suppose your ministry discovers that someone is operating with the wrong kind of
8 permit. Can you understand that part of my question so far?

9
10 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes.

11
12 **MR WEILAND:** Once your ministry discovers that, that is an administrative matter
13 that would be handled between the ministry and the permit holder – correct?

14
15 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): To not get lost
16 here, I would like to inject some nuance. You said that if the ministry discovers; the
17 ministry assumes, takes as its starting point the assumption that companies are
18 fulfilling their obligations correctly, in the sense that there is no inspection of ships.
19 Our regulatory activity is focused on authorizations, positive authorizations, in the
20 sense that the general State administration has peripheral organizations. The
21 peripheral administration has areas like industry, energy, in the different autonomous
22 communities, that is to say, Spain's regional administrations, and they are the ones
23 that service the liaison between the activities in the field, out on the ground, with the
24 general State administration, that is to say the national administration. So the
25 national administration has engineers and technicians who are specialists, and they
26 are stationed in different provinces, in different Spanish regions. So when you say
27 "the ministry inspects", we need to make clear this is part of an entire administrative
28 network. Directly within the ministry, the ministry is not acting in the regional
29 administrations. We have direct responsibility in the areas of energy or industry in
30 Andalucía, in the different provinces, and so these individuals are those who could
31 then request information and so on.

32
33 **MR WEILAND:** We are having a little trouble here because you have just testified,
34 as I understand it, that this company Sage had the wrong kind of permit to be out in
35 the Gulf or the Bay, towing around some things, and I want the Members of the
36 Tribunal to understand what the penalty is for that under Spanish law. We need to
37 know. Is it a regulation, is it a little fine, or do you go arrest somebody?

38
39 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Excuse me. Let
40 us see. I did not say that this permit was wrong. I want that to be very clear. What I
41 said was that this permit from the Directorate-General of Coasts, or this
42 authorization, or this administrative resolution, is not an authorization granted within
43 the framework of Law 34/1998. I did not say it was wrong. I do not want to make a
44 statement here. I am a civil servant from the Ministry of Industry, Energy and
45 Tourism, that is to say that this authorization is from another ministry, for other
46 purposes. I am not saying it is wrong for other purposes, but I am saying it is not for
47 hydrocarbons research.

48
49 **MR WEILAND:** Thank you. We have a picture here of a small boat, and it is towing
50 something. I want you to assume that the name of this boat is *Gemini III* and it is

1 towing a sonar device. The owners of the boat are interested in finding hydrocarbons
2 – just assume that – but the owners have a permit that is not issued by your ministry.
3 They have the other permit that Ms Escobar Hernández showed you. Do you
4 understand?

5
6 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes.

7
8 **MR WEILAND**: What is the penalty for this company having the wrong permit, if you
9 know? Perhaps you do not know. I do not know if that is your area.

10
11 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): The
12 Hydrocarbons Act, as I explained before, is the law regulating the hydrocarbons
13 sector in Spain. It encompasses the entire chain of the hydrocarbons business. First
14 of all, you have the general questions in title 1; title 2 is the legal system for
15 exploration, research, and prospection for hydrocarbons; title 3 is liquid
16 hydrocarbons; title 4 is gas hydrocarbons; and title 5 establishes the sanctions
17 system. So, generally speaking, I would need to look exactly at what are the
18 typifications, as you lawyers like to say, of the types of extractions produced, but one
19 would have to, in the case that someone, or if someone reports a crime, there is a
20 sanctions process. It is a complex sanctions process, and it guarantees the rights of
21 those who are being administered in the sense of establishing whether a country has
22 indeed carried out something that is untoward, but that is within the sphere of the
23 hydrocarbons sector.

24
25 As far as the coast law is concerned, the Merchant Marine Act, or some other kind of
26 law, I could not tell you. What I can tell you is that the sanctions that we are involved
27 in and that we have resolutions on within the scope of Law 34/1998, they are
28 analysed on a case-by-case basis, they have a compulsory report from the National
29 Energy Commission and, *a priori*, without establishing the specific circumstances of
30 the case, and certainly not in the case of a sanctions case, I could not quantify what
31 is the sanction on a specific individual or company, because that is a very carefully
32 regulated and very complex issue, and the sanctions process includes other
33 administrative bodies within the ministry, and even the National Energy Commission,
34 which is the regulatory body in the energy field, and therefore it is really, *a priori* and
35 in general terms, not appropriate for me to make a statement regarding any specific
36 amount as far as I know and as far as the Hydrocarbons Act is concerned.

37
38 **MR WEILAND**: I am going to assume, after ten years on the job, you are really not
39 familiar with the regulatory sanctions that the ministry issues. Let me ask you
40 another question – and I am almost finished. I know it is getting late. In ten years, do
41 you recall any case where your ministry has asked the Guardia Civil to go and arrest
42 somebody and put them in jail for months because they had the wrong permit? Can
43 you give me any example of that, in your experience?

44
45 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): I want to
46 understand the question as well as I can. Let us see now. First of all, because it is an
47 erroneous presupposition. You are saying that I do not know the amount of sanctions
48 that are within the Spanish legal framework. Excuse me. The amount of the
49 sanctions is typified, and it is set forth in the Hydrocarbons Act, in title 5, whether
50 there is light sanction, serious sanctions, very serious sanctions. The amount, the

1 level of sanctions, is specified, and so the sanctions can be different, and they are
2 established on a case-by-case basis. Excuse me. I do not know the sanctions by
3 heart, I do not know the amount of sanctions by heart but what I can tell you is that it
4 is not that I do not know it; it is that they are quantified within certain levels of
5 severity. So please. Moreover, if it helps the Tribunal to understand the sanctions
6 system better, the Hydrocarbons Act in Spain regulates the entire chain of the
7 hydrocarbons business, ranging from exploration all the way to supply of
8 hydrocarbons. Excuse me. Wait a minute.

9
10 **MR WEILAND:** That is not my question. My question is, have you ever arrested
11 anyone and put them in jail in ten years? Can you just answer that question and then
12 we could perhaps be finished soon.

13
14 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): But that is not
15 my function, to arrest anyone or to inspect anyone. My function is to apply the
16 authorization system for the hydrocarbons sector. I really do not understand very
17 well that I was brought here as a civil servant, an expert in the hydrocarbons field,
18 and why should I have to make a statement on arresting people? I really do not
19 understand very well. I really do not understand you, sir. So I am trying to
20 understand what you are getting at.

21
22 **MR WEILAND:** I am sorry you do not understand. I do not think I do either. I have no
23 further questions.

24
25 **THE PRESIDENT:** Thank you, Mr Weiland.

26
27 (*Interpretation from French*) Expert witnesses who have been cross-examined by the
28 other Party may be re-examined by the Party who called them. Accordingly, may I
29 ask the Agent of Spain if she wishes to re-examine the witness?
30 Ms Escobar Hernández.

31
32 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, Mr President.
33 Very briefly, and only with regard to questions which have already been raised by the
34 Co-Agent of Saint Vincent and the Grenadines in the cross-examination, may I
35 speak to Ms Martínez de Azagra in Spanish?

36
37 **THE PRESIDENT:** Please follow the same procedure. Thank you.

38
39 ***Re-examined by MS ESCOBAR HERNÁNDEZ***

40
41 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, Mr President.

42
43 (*Interpretation from Spanish*) Could you please tell us what is the difference, or
44 better said, so that there is no doubt regarding the content of the question and it
45 does not go beyond what the Co-Agent of the Applicant asked, what is the website of
46 the Ministry of Industry?

47
48 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): The website of
49 the Ministry of Industry, like the website of this international organization, is a
50 website where any citizen – I myself when I was asked to come here – you can log

1 on to the website and you can do searches to find out about the organization. It is a
2 website like that of the International Tribunal for the Law of the Sea, but this website,
3 if you are interested in energy or oil, you can gain access to the different public
4 information that is available.

5
6 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): In order to obtain
7 information from the technical archive on hydrocarbons, does the interested party
8 have to make a specific request? Can the interested party directly access the
9 website? Is there any registry of those who request information from the website?

10
11 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes. Right now
12 someone needs to send an email to the email address for the archive. This is
13 registered, and then the requests are attended to. So these are requests from those
14 who want more information than is on the website, because the website has lists of
15 documents, lists of different kinds of work, it depends on the category, but it does not
16 enable anyone to download, for volume reasons. People cannot download specific
17 documents. Public documents, you have to request them from the archive. You
18 cannot download them directly from the site. You can identify them on the site, and
19 then the archive has the possibility to provide a Word document or a PDF document
20 by email, whatever documents in the archive, to those who request it.

21
22 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Is the name of the
23 person or company consulting the technical archive registered?

24
25 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes, that name
26 is registered.

27
28 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): The Subdirectorate-
29 General of Hydrocarbons, where you have been working until now, is that
30 responsible for the sanctions?

31
32 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): No, the
33 Subdirectorate-General of Hydrocarbons is not responsible for sanctions. What we
34 do is we process requests, we process cases, but the sanctioning process comes
35 from a ministerial order.

36
37 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): The Subdirectorate-
38 General of Hydrocarbons, is that responsible for processing requests for
39 authorization?

40
41 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes.

42
43 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Authorizations for
44 exploration of hydrocarbons?

45
46 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes, yes,
47 authorization for exploration of hydrocarbons, yes.

1 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): The Subdirectorate-
2 General of Hydrocarbons, does it have authority to grant any kind of authorization
3 that is not linked to hydrocarbons, for example, for environmental activities?
4

5 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): No.
6

7 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Thank you. One last
8 question. I have special interest in this question and I want the Tribunal to know this.
9 You said that you are a civil servant.
10

11 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Yes.
12

13 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): You said that you have
14 a lifetime contract with the administration. Can you tell us what you mean when you
15 say you have a lifetime contract with the administration?
16

17 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): Excuse me.
18 Civil servants in the Spanish administration, under Spanish legislation, they enter
19 through a civil service exam process, a competitive civil service exam process, and
20 in 1987 I entered my ministry through this competitive civil service exam process,
21 and they freely decide that they are going to serve the Spanish administration, and
22 they could also ask to not work for the administration, so only in the case of an
23 administrative sanction or really singular cases do they retain their contract. Simply,
24 they have to carry out their work as a civil servant, serving the general interest and at
25 the service of the law.
26

27 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): So in your post at the
28 Subdirectorate-General for Hydrocarbons, are you in any way conditioned by a
29 change of government after elections, for example?
30

31 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): No. I have a
32 technical position as a civil servant.
33

34 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Could you be taken off
35 your job because you declare one thing or another in front of an international tribunal
36 or in front of a national tribunal?
37

38 **MS MARTÍNEZ DE AZAGRA GARDE** (*Interpretation from Spanish*): No.
39

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

42 Thank you very much, Mr President. I have finished with my questions. I am going to
43 go back to French now. Thank you very much, Mr President.
44

45 **THE PRESIDENT** (*Interpretation from French*): Thank you, Ms Escobar Hernández.
46 It is ten to six and I imagine it would be a bit late in the day to call another expert.
47 May I therefore take it that we have reached the end of today's sitting and if so, the
48 pleadings will continue tomorrow. We will resume the hearing at 10 a.m. tomorrow.
49 The sitting is closed.
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(The sitting closed at 5.50 p.m.)