

(b) Response of Applicant to List of questions, 11 October 2012

RESPONSE OF APPLICANT TO LIST OF QUESTIONS

October 11, 2012

To the Applicant:

1. What is the legal justification for St. Vincent and the Grenadines to request the release of the vessel *Gemini III* not flying its flag?

The *Gemini III* served as a tender for the *Louisa* and is inextricably linked to it. The *Gemini III* is a small boat and was never flagged as the owner believed it was a vessel that did not require flagging. The vessel was transferred to Spain by truck and to the belief and knowledge of Applicant's co-agent was never registered in any jurisdiction after it arrived in Spain. It is considered property like the other property on the *Louisa* and the Applicant is entitled to restitution based on loss of value.

To both Parties:

4. Applicant believes this was partially addressed by Prof. Nordquist during his presentation but takes this opportunity to consider the question in greater detail. Respondent has never produced an inventory of items taken from the ship nor any proof of their origin and this is a complicated question which is dependent upon the facts of a particular case.

The direct reply is that the Spanish criminal legislation in the present case may conform in principle to UNCLOS including Article 303 or other principles of international law, including in particular the UNESCO Convention of 2 November 2001 on the Protection of Underwater Cultural Heritage (UCH Convention). Even if it does conform, however, as repeatedly pointed out before the Tribunal, it was unlawfully applied to Applicant and those for whom Applicant is responsible.

Because a far smaller number of States have become parties to the UCH Convention than are parties to UNCLOS, it can be argued, that the UCH Convention is not customary international law as almost all of UNCLOS is. Additionally, the UCH Convention creates new jurisdictional competences not provided in UNCLOS.

5. Article 561 of the Spanish Law of Criminal Procedure has been discussed

at length. The applicant rejects the contention of the Respondent that Article 561 of the Spanish Law of Criminal Procedure has been modified. Article 561 is consistent with international law in that the consent of the captain or of the flag state is required before boarding and searching a vessel.

6. Javier Moscoso testified during every Request for Provisional Measures hearing that the Judge, in accordance with the provisions of Articles 127 and 128 of the Spanish Criminal Code, shortly after the arrest of the vessels should have given the Owner the alternatives he proposed to give it in this order of 29 July 2010. This order was never notified to the accused persons before Spain introduced it at the Request for Provisional Measures hearing. In fact it was not notified to the accused parties until 31 January 2011.

By the time the judge issued this order the Louisa had been arrested without maintenance for 4 1/2 years and Owner did refuse to elect any of the alternatives described by the Judge.

Additionally, the judge had refused to allow the Hungarian crewmen, the only crewmen aboard the ship when it was arrested, to live on the ship. There was therefore no sailor to maintain it even if the judge had designated a sailor as was stated in the letter of the Port Authority of Cádiz dated 22 July 2008 was normally done in this type of situation. That is, the judge normally would appoint a sailor not the Owner (see Annex 9.6 of Spain's Counter Memorial).