

**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER**



2010

Public sitting

held on Friday, 10 December 2010, at 2.30 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President José Luís Jesus presiding

THE M/V “LOUISA” CASE

(Request for provisional measures)

(Saint Vincent and the Grenadines v. Spain)

Verbatim Record

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

Saint Vincent and the Grenadines is represented by:

Mr S. Cass Weiland, Esq.

as Co-Agent and Advocate;

Mr William H. Weiland, Esq.

as Advocate;

Mr Christoph Hasche

as Counsel.

Spain is represented by:

Ms Concepción Escobar Hernández, Professor, Legal Adviser, Ministry of Foreign Affairs and Cooperation, Spain,

as Agent, Counsel and Advocate;

Mr Mariano J. Aznar Gómez, Professor, International Law Department, Universitat Jaume I (Castellón), Spain,

as Counsel and Advocate;

Mr Esteban Molina Martín, Desk Officer for Regulatory Matters, Directorate General for Maritime Affairs, Ministry of Public Works, Spain,

as Adviser;

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

as Technical Adviser.

1 *The sitting was called to order at 2.30 p.m.*

2

3 **CLERK OF THE TRIBUNAL:** All rise

4

5 **THE PRESIDENT:** Please be seated.

6

7 **CLERK OF THE TRIBUNAL:** The International Tribunal for the Law of the Sea is
8 now in session.

9

10 **THE PRESIDENT:** On 24 November 2010, an Application instituting proceedings
11 before the Tribunal was submitted by Saint Vincent and Grenadines against Spain in
12 a dispute concerning the *M/V Louisa*. The case was named *The M/V "Louisa" Case*
13 and entered in the List of cases as Case No.18. On the same day Saint Vincent and
14 the Grenadines submitted a Request for the prescription of provisional measures
15 under article 290, paragraph 1, of the United Nations Convention on the Law of the
16 Sea.

17

18 This public sitting is being held to hear the parties present their arguments in the
19 *M/V "Louisa" Case* in respect of the Request for the prescription of provisional
20 measures.

21

22 I call on the Registrar to read out the submissions of Saint Vincent and the
23 Grenadines as contained in its Request.

24

25 **THE REGISTRAR:** The Applicant requests the Tribunal to prescribe the following
26 provisional measures:

27

- 28 (a) declare that the Request is admissible;
- 29 (b) declare that the Respondent has violated Articles 73, 87, 226, 245 and
30 303 of the Convention;
- 31 (c) order the Respondent to release the M.V. Louisa and the Gemini III
32 and return property seized;
- 33 (d) declare that the detention of any crew member was unlawful; and
- 34 (e) award reasonable attorneys' fees and costs associated with this
35 request as established before the Tribunal.

36

37 **THE PRESIDENT:** On 24 November 2010 a copy of the Request was transmitted to
38 the Government of Spain. By Order of 30 November 2010 the President of the
39 Tribunal fixed 10 December 2010 as the date for the opening of the hearing of the
40 case. On 8 December 2010, Spain filed its Statement in response regarding the
41 Request of Saint Vincent and the Grenadines.

42

43 I now call on the Registrar to read the submissions of the Government of Spain.

44

45 **THE REGISTRAR:** The Respondent requests the Tribunal:

46

- 47 (a) to reject the prescription of provisional measures requested by Saint
48 Vincent and the Grenadines; and

1 (b) to order the Applicant to pay the costs incurred by the Respondent in
2 connection with this request, including but not limited to Agents' fees,
3 attorneys' fees, experts' fees, transportation, lodging, and subsistence.
4

5 **THE PRESIDENT:** In accordance with the Rules of the Tribunal, copies of the
6 Request and the Statement in response are being made accessible to the public as
7 of today. The Tribunal notes the presence in court of Mr S. Cass Weiland, the
8 Co-Agent of Saint Vincent and the Grenadines, and of Ms Concepción Escobar
9 Hernández, the Agent of Spain.

10
11 Mr Grahame Bollers, the Agent nominated by the Applicant, informed the Tribunal
12 yesterday that he had to appear in court in Saint Vincent and the Grenadines on an
13 "extremely urgent matter" and, therefore, was unable to attend the hearing today.
14

15 I now call on the Co-Agent of the Applicant to note the representation of Saint
16 Vincent and the Grenadines. Mr Weiland, please tell us of Saint Vincent and the
17 Grenadines.
18

19 **MR WEILAND:** Thank you, Mr President. I confirm that I have the power to
20 proceed, and I reiterate that the primary Agent, Mr Bollers, expresses his great
21 regrets.
22

23 **THE PRESIDENT:** Thank you very much. I now call on the Agent of Spain to note
24 the representation of Spain.
25

26 **Professor ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you,
27 Mr President. It is a great pleasure and honour to be here today in front of you to
28 present the Spanish delegation. Thank you.
29

30 **THE PRESIDENT:** Thank you Ms Escobar Hernández. I now request the Co-Agent
31 of Saint Vincent and the Grenadines to begin his statement.
32

33 **MR WEILAND:** Thank you, Mr President. May it please the Tribunal: I am Stephen
34 Cass Weiland, and I am privileged to represent, as Co-Agent, Saint Vincent and the
35 Grenadines in this Application for provisional measures.
36

37 Before I begin I would like to introduce formally the members of our delegation. With
38 me today is Mr William Weiland. There is no coincidence about the name: he
39 actually is my brother, and he has been a very able member of the delegation and
40 has contributed mightily to our efforts. Also together with me at the counsel table
41 today is Mr Christoph Hasche, an international lawyer based in Hamburg; and a
42 member of his firm, a lawyer-to-be who is in the courtroom today, Ms Jennifer
43 Kunze.
44

45 I would be remiss in not mentioning that my partner Robert Hawkins and my able
46 long-term assistant Martha Rose have contributed tremendous amounts of time and
47 energy to this application. As I said a moment ago, Mr Bollers, our primary Agent,
48 expresses his regret that he cannot be here. He was due to arrive on Thursday
49 afternoon, and the Prime Minister asked him to please stay and appear in court.
50 Monday is the national elections in Saint Vincent and the Grenadines and there was

1 a matter of extreme urgency that required his presence. My other Co-Agent is
2 Ms Rochelle Forde, a very superb lawyer in Saint Vincent and the Grenadines, and
3 a member of the legislature.

4
5 We have an extraordinarily tight schedule. There is a limited time allocated to our
6 presentation and I intend to keep on that schedule and indeed give back some of my
7 time this afternoon no doubt.

8
9 I think that starting with an outline of our position in this case would be useful despite
10 our scheduling issues. I want to start by showing you what has brought us here
11 today, if my assistant, Mr Travers Whittington, would display exhibit 1A. This is the
12 *M/V Louisa*, a ship constructed in 1962, which was refurbished and set up by its
13 owner to undertake some scientific investigation in the Bay of Cadiz, specifically
14 looking for oil and gas deposits and, even more specifically, methane gas. The
15 industry information is replete with commentaries that there are well-founded
16 suspicions that there are very large methane deposits in the Bay of Cadiz, and the
17 owner of Sage Maritime, the operator of the *Louisa*, is in the oil and gas business
18 and undertook to explore in the Bay.

19
20 What has happened is that we have (exhibit 1A) the *Louisa* today. After arriving in
21 Cadiz in 2004 the ship was seized by the Spanish authorities on February 1, 2006,
22 and the ship was still at dock in Puerto de Santa Maria, which is adjacent to Cadiz.

23
24 The fact that we are nearing year six of this ship's captivity is a critical consideration
25 to our case because as our evidence will show, we have no other place to go: this is
26 the literal court of last resort for Saint Vincent and the Grenadines as the flag State
27 and for the ship's owners. The evidence will show that they have tried every
28 manoeuvre and legal mechanism possible in order to secure the ship's release.

29
30 We have filed a case on the merits and are seeking some \$10 million in damages.
31 That is not a subject of today's hearing. The Spanish papers have taken great pains
32 to point out that the merits of this case are not before you today. We agree. We
33 agree with that conclusion: of course they are not. However, what are before you
34 are the issues relating to the analysis of the rights of the parties under article 290,
35 paragraph 1. During the course of the afternoon we will explore that with you in
36 detail and recount for you what we believe are the salient points that entitle us to an
37 order releasing the ships; and we address in this case not only the *Louisa*, which is
38 flagged in Saint Vincent and the Grenadines, but also its tender, a work boat
39 (exhibit 2) *Gemini III*.

40
41 *Gemini III* is not flagged in the Grenadines. Admittedly, it is probably registered in
42 the United States. It is only 11 metres long but it does have value and it has been
43 laid up now for almost five years.

44
45 The case that we are going to discuss this afternoon will address the equities of the
46 two parties. Without going into the merits deeply we are going to describe for you
47 why we think the equities in this case all lie with Saint Vincent. The papers that the
48 Spanish have filed not only do not present a compelling reason for Spain to continue
49 to hold these vessels; in our opinion, they do not articulate any reason why the
50 vessels need to continue to be held.

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We suspect that flag States like ours are extremely interested in the outcome of this case because there is an increasing propensity on the part of coastal States to seize vessels and hold them almost for ransom. There are recent reports about certain Mediterranean States seizing vessels on trumped-up charges and extorting payments for their release. That is not the case here and we are not addressing that, but we do believe that flag States world-wide are interested in this case to be decided under article 290.

The Tribunal has decided several prompt-release cases under article 292, and I do not think it is a stretch to suggest that there is some tension in the court over the length and breadth of article 292. It appears to deal only with pollution matters and fishing matters, and yet the very first case decided by this court dealt with bunkering of fishing vessels at sea. In that case Saint Vincent and the Grenadines, my client, asked the court to consider an expansive reading of article 292 – but let us not confine article 292 to just fishing incidents and pollution incidents.

While that point was not really reached in the *M/V “SAIGA” Case* because the court determined, I believe by a vote of 12 to 9, that the activities of a coastal State fit within the parameters of article 292 as written, there were suggestions by Members of the court:

We do not need to read article 292 in an artificial way, in an overly expansive way, because we have article 290.

Judge David Anderson wrote:

Part XV of the Convention is available to the flag State Party in the event of any abusive use by a coastal State Party of its powers of arrest and prosecution, whether on smuggling or any other criminal charges.

That, gentlemen, is what I suggest we have here . We have a situation where article 290, of course as part of Part XV of the statutes, is the exact vehicle for you to lay down some ground rules, and indeed some new law on under what circumstances a flag State can secure the release of its vessel.

Continuing the preview of what I expect to cover this afternoon, I will present to you one expert who will testify about the circumstances under which the ships, the *Louisa* and *Gemini III*, were boarded and searched on February 1, 2006. It is a rather curious set of procedures followed by the Spanish judge, and I would represent to you that we have the same judge in Spain who apparently launched an investigation of the activities of the *Louisa* some six months before issuing the order to have her boarded.

Really, this dates back to October 2005. The same judge has allowed this case just to drift, despite inquiries from the ship’s owner, repeated inquiries. We will lay those out for you, so that you will have no doubt that the owner and the flag State had made every effort to exhaust their remedies before coming here to you.

1 Let us begin with some analysis of what happened here and why we are entitled to
2 relief. Exhibit 26 is another view of the ship as it was a few months ago. The
3 *Louisa*, as I indicated briefly earlier, was rehabilitated in Jacksonville, Florida, and
4 sailed to Cadiz in 2004. We have some pictures of the *Louisa* in exhibits 1A, B and
5 C which show the refurbishment of the ship. The expedition that was being mounted
6 here is critically important because there are provisions under statute that apply to
7 scientific endeavours by vessels and, indeed, that relate to archaeological and
8 historical items that may be at stake in the coastal seas.

9
10 I use the words “exhibit” and “annex” interchangeably, so please excuse me.

11
12 Annex 31 relates to the underpinnings of the idea of the shipowners to embark on
13 this expedition. This is simply a map of the Bay of Cadiz which has many notations
14 on it which suggest that there are methane deposits there. The idea, as explored by
15 the man who owned the stock of Sage Maritime, Mr John Foster, who, as I
16 mentioned, was in the oil and gas business, was to utilize a procedure that is
17 extremely popular in the United States now, and that is that he would mount some
18 drilling rigs on the shore and drill horizontally into the bay in order to tap these
19 methane reserves. This procedure has been wildly successful in various parts of the
20 world. Indeed, the technology has advanced so far that these horizontal drilling
21 efforts can extend more than 50 miles. That was the idea. Mr Mark McAfee, who
22 owns the consulting company dealing with Sage, wrote a letter (page 3 of this
23 exhibit) explaining to Mr Foster what he had in mind. What he had in mind involved
24 some particular pieces of equipment which apparently were heretofore unknown to
25 the Spanish. If you would look at paragraph 1 of this exhibit, Neftco Exploration was
26 suggesting that Foster use a piece of equipment called a digital cesium
27 magnetometer. He even gave him the type of specific model that he would propose
28 to use. This magnetometer together with a sonar device (also referenced in this first
29 paragraph of the letter written at the end of 2003) were items that were going to be
30 towed in the Bay of Cadiz. It just so happens, as Spain has pointed out,
31 magnetometers apparently are also used for treasure hunting. I can assure you that
32 Sage Exploration was interested in methane gas. The last page of this exhibit is a
33 chart provided to Sage, prior to the acquisition even of the vessel, which showed the
34 manner in which the area would be first mapped and then analyzed for the purpose
35 of tapping into these methane reserves.

36
37 The evidence suggests that after the ship arrived in Cadiz and was used for a period
38 of time it was decided that it was not the right size, that this vessel was not going to
39 work. They needed a much smaller vessel that would be able to tow these devices
40 in the bay, so they acquired the *Gemini III*. After first they experimented by leasing
41 someone else’s work boat, *Gemini III* was acquired, I believe in the Netherlands, was
42 removed down to the Bay of Cadiz and was used extensively to explore the bay. In
43 the meantime the *Louisa* was docked and seldom moved. This investigation started,
44 we believe because Sage had contracted with a company called Tupet. It was
45 represented to Sage, the shipowner, that Tupet had the proper permit from the
46 Spanish Government that would permit this type of preliminary activity. It was also
47 apparent that Tupet had acquired earlier permits and was somewhat known to
48 Spanish authorities because they were able to secure a permit that extended their
49 time and allow this new expedition to be launched. Spain in its papers, although
50 they eschew the notion that the merits of the case are really at stake here, takes

1 great pains to point out that the owner of the Tupet company was really a treasure
2 hunter or was known to be interested in shipwrecks and that sort of thing, and that is
3 a fact which we would stipulate to – perhaps they were – but the permit allowed the
4 kind of exploration that Sage was interested in and so they went forward. No doubt
5 Sage’s partnership with this company attracted increased attention from the Spanish
6 authorities.

7 As you will hear at some point today, I am sure, consistent with this timeframe –
8 unfortunately for Sage – a gigantic international incident occurred with respect of
9 another company. The *Odyssey Explorer*, an admitted treasure hunting ship owned
10 by US interests, was seized by the Spanish and accused of plundering some of their
11 shipwreck sites illegally. We submit, by the way, that that legal activity emanated
12 from no other place than Cadiz. There was a judge right down the hall in the
13 courthouse in Cadiz dealing with the *Odyssey* and then Judge De Alegre apparently
14 is advised that there is some shipwreck hunter out there known to own this Tupet
15 company and he should look into them. For whatever reason, Sage gets caught up
16 in this and here we are ending our fifth year of captivity with no evidence that the
17 company Sage disturbed the patrimony of Spain in any way. The judge and the
18 prosecutor just never made a case. After issuing an order on February 1 to search
19 these two ships the judge had one of the crewmen, a man called Mario Avella (that is
20 Avella, not Aveya – he is a US citizen of Italian extraction) arrested. Avella, who was
21 in Spain and had come back to Spain from the United States to check on his
22 daughter’s status (because Spain also had his daughter arrested because she was
23 on board the *Louisa*), ended up in jail for nine months. That is part of our ultimate
24 damage case.

25
26 From the judge’s order of February 1, where he has the police search the vessels,
27 he actually considers the question of whether notice should be given to the flag
28 country, and he rejects the idea. He decides that. There is language in this order,
29 quite peculiar, that because there is a proliferation of flags of convenience countries,
30 it is not necessary in this case to warn anybody or advise any consulate, to send any
31 diplomatic note, just go out and search and board the vessels and search them. You
32 will hear from Mr Moscoso that this is an absolute violation of Spanish law. To this
33 day, we have never seen a subsequent order from the judge that actually authorized
34 the quarantine of the vessel, the detention of the vessel. There are some things in
35 the file where the port authority is reporting that the judge has ordered the detention
36 of the vessel but we have never seen an order. Indeed, before I think it was
37 Thursday night we never saw the order which is Spain’s exhibit 9, supposedly issued
38 in July 2010 – a very, very interesting order which we will cover later today and that
39 will be addressed by Mr Moscoso.

40
41 Finally, I would mention, because there is a question propounded to us about an
42 order issued by the judge, I believe on 27 November/29 November, this year, that we
43 have never seen that order either. It was not included in the Spanish exhibits; it was
44 just referenced.

45
46 If we analyze article 290, paragraph 1 (exhibit 22), we see that you are really faced
47 with deciding two issues: can you prescribe some provisional measures to preserve
48 the respective rights of the parties or to prevent serious harm to the marine
49 environment? We suggest to you that the evidence in the case is going to show that
50 Saint Vincent and the Grenadines satisfies both parts of article 290, paragraph 1.

1 Why? Because the equities, the balancing that was really required of you under the
2 rubric of protecting the respective rights of the parties, tilts completely in favour of
3 Saint Vincent and the Grenadines. There are really no equities left for Spain after
4 five years as to why they should hold these vessels.

5
6 On the environmental side, we would suggest to you that we have a 1962 model
7 former ferry boat which has led a rather stressful life. It is laden with, we know,
8 5,000 gallons of lubrication oil, because it was put on the ship shortly before it was
9 seized, and, I am told, amounts of diesel fuel. The Spanish suggest that that is no
10 problem to the environment because we have someone monitoring whether the ship,
11 I guess, is leaking any of this oil yet. We have not heard from them as to what they
12 are doing to ensure that the ship stays at its moorings, but a large storm might move
13 on to Puerto de Santa Maria area and break this ship off and let it drift out into the
14 bay. We suggest to you that there is a definite threat to the environment by leaving
15 this ship docked in Puerto de Santa Maria for any significant additional time.

16
17 The other antecedent requirements of article 290 relate to a duly submitted dispute,
18 which of course you have here, for which the Tribunal has jurisdiction under
19 article 287. We can look at annex 10 and see the declaration of the Foreign
20 Minister. I would say to you that Spain has complained that the declaration of the
21 Foreign Minister of Saint Vincent came almost simultaneously with the filing of the
22 action. In fact, Saint Vincent was most eager to file this action once it realised what
23 had been going on here. I can barely describe the incredulity of the maritime
24 authorities in Saint Vincent when they realised that one of their ships had been
25 detained for some four years by the time they were first advised of it. We will review
26 that evidence of the correspondence between Saint Vincent's Maritime Agency and
27 Spanish authorities. In fact, however, the declaration was initially submitted, as
28 some of the administrators of the Tribunal are aware, by the Attorney General of
29 Saint Vincent, initially about two weeks before this, and the UN Treaty Section
30 rejected that on the basis that the Attorney General was not an appropriate or
31 satisfactory person; it had to be the Prime Minister or the Foreign Minister.

32
33 So, once that was submitted, the case was ripe for filing. We would say that we
34 have a *bona fide* dispute here based on the claims that we are making in the
35 underlying case. If you look at the provisions of your statutes that we are claiming
36 had been violated, I think that you would agree that we have a *prima facie* case on
37 several grounds. Article 87 of the [Convention] (annex 17) speaks to freedom of the
38 high seas. This ship has been denied access to the sea for, as I said, we are
39 beginning the sixth year of the denial of access to the high seas. In the statute,
40 article 245 (annex 19) relates to the conduct and promotion of scientific studies. We
41 would say that we are in full agreement that a coastal State can control that activity.
42 We thought the shipowner in Saint Vincent, the flag country, would say, "We thought
43 we had the proper permit to conduct scientific studies. Apparently for want of the
44 proper permit, we have been detained for five years". The same kind of comment
45 could be said with respect to article 303 relating to archaeological and historical
46 studies. Article 303 talks about the right of a coastal State to regulate that kind of
47 activity as well. Being fully aware of that, Saint Vincent's response would be: "What
48 kind of a permit do you really need that will help you avoid arrest and detention for
49 five years? Is this not a traffic ticket situation?" especially when there are no
50 valuable artefacts that were recovered. You know of course that Spain's

1 investigation of the *Louisa* also relates to the fact that there were weapons on board
2 the ship. I read with great interest the disdain of Spain when they responded to our
3 papers about why the weapons were on the ships. I do not think I need to really
4 provide much analysis to describe to this august panel about the 21st century
5 phenomenon of piracy. The record shows that Sage is not a professional shipping
6 company; it relies on suggestions, information, consulting from outside sources.
7 Sage hired what they thought to be one of the most experienced and indeed famous
8 shipping management companies in the world, Seascot. Seascot suggested putting
9 some weapons on board; it is dangerous out there, not necessarily in the Bay of
10 Cadiz but if the ship is routed to the east coast of Africa, into the Mediterranean
11 somewhere, have a few rifles on the ship. The evidence will show that the owner of
12 the vessel proceeded to procure the weapons that were suggested and did so in a
13 manner completely consistent with US law. We have exhibits 24 and 25 that we
14 have submitted to the Tribunal that merely show the manner in which these weapons
15 were procured – open and obvious, in complete compliance with US law. Weapons
16 were put on board for protection. By the way, only the Captain had the key to the
17 locked gun compartment in the hold of the *Louisa* but in order to seize the weapons,
18 the Spanish had to blow open the locked gun compartment in the hold of the ship.
19 So we have always contended that there was a completely specious argument that
20 somehow the owners of the *Louisa* had violated Spain's laws relating to weapons.

21

22 Let me move on to talk about one of Spain's primary complaints and that is our
23 perhaps over-reliance on the analogy between articles 290 and 292. We have
24 suggested to the Tribunal that the case history of article 292 is perhaps instructive,
25 perhaps useful, for you to consider as to whether or not provisional measures are
26 available to us under article 290, and again perhaps we have over-relied on the
27 analogy because this is not an article 292 case. We are not suggesting that but
28 there are aspects of the analysis that the Tribunal has been through in the past
29 cases. You have had many prompt release cases, far more than you have ever had
30 under 290, where the issue was release of a ship. In fact, I am not aware of one that
31 you have had except perhaps the first, the *M/V "SAIGA" Case*, that was somewhat
32 unclear.

33

34 In any event, we described some of the bases for relief under article 292 in our
35 papers such as "has the ship been held long enough?" and the answer is: obviously
36 it has, and what other provisions, at least in case law under article 292, might be
37 useful to look at and support the position of Saint Vincent? Again, we think that the
38 Tribunal has an opportunity here to embark on a whole new agenda with respect to
39 article 290 and flag States around the world are waiting for some relief under
40 article 290, I believe because you have the authority, and we are asking you to make
41 use of it in this case.

42

43 The Tribunal has traditionally been wary of extending its authority artificially, and the
44 dissents in the *M/V "SAIGA" Case* have addressed those at some length, but we
45 suggest to you here that the relief that we are seeking, if granted, would not be
46 placing the Tribunal in some far off, inappropriate kind of area, that you can grant
47 relief in this case and still be considered as a conservative implementation of 290.
48 The facts are just that much in favour of the flag State.

49

1 Really, as you are going to hear, Saint Vincent has been faced, I guess you would
2 say, with a dysfunctional court system in Spain. How else could you describe the
3 fact that few if any artefacts were ever discovered on board the *Louisa*? We have
4 never heard exactly what they claim was recovered by personnel who were on the
5 *Louisa* or on the *Gemini*. We never heard what areas of the bay these artefacts were
6 supposedly taken from. What we have heard from the investigatory file or seen in
7 the investigatory file is that all of the artefacts that the Spanish police were able to
8 put together, whether they were seized from homes of some of the suspects, the
9 Spaniards that I referenced earlier, or taken off the deck in plain view on the *Louisa*,
10 all of those artefacts together were valued at under 3,000 euro.

11
12 Unless there are questions at this point, I would like to call Javier Moscoso as an
13 expert, Mr President.

14
15 **THE PRESIDENT:** Thank you, Mr Weiland. We now call upon the Registrar to
16 administer the solemn declaration to be made by the interpreter and by the expert
17 authorized by Saint Vincent and the Grenadines.

18
19 **THE REGISTRAR:** Before the expert is called upon to make the solemn
20 declaration, I call upon the interpreter provided by Saint Vincent and the Grenadines
21 to interpret the testimony of the expert from Spanish into one of the official
22 languages of the Tribunal, English, to make the solemn declaration under article 85
23 of the Rules of the Tribunal.

24
25 *(The Interpreter made the solemn declaration in English.)*

26 *(The Interpreter left the courtroom to move to the interpreter's booth.)*

27
28 **The witness, MR JAVIER MOSCOSO, made the solemn declaration**
29 **Examined by MR WEILAND**

30
31 **THE WITNESS** *(Interpretation from Spanish):* Your Lordships, if I may, before we
32 move on to the examination ---

33
34 **THE PRESIDENT:** You will have an opportunity when questioned by Mr Weiland to
35 make the considerations you are about to make. I now give the floor to Mr Weiland,
36 advocate for Saint Vincent and the Grenadines, to start the examination of the
37 expert.

38
39 **THE WITNESS** *(Interpretation from Spanish):* Your Lordship, if I may, I wanted to
40 greet the Tribunal, the President and all the Members of this high Tribunal. I would
41 also like to greet the delegation of Spain, my country. I know very well the
42 responsibility and the honour it is for me to be here. As a member of Spain, I want to
43 greet you.

44
45 **THE PRESIDENT:** Thank you. Mr Weiland?

46
47 **MR WEILAND:** Mr Moscoso, can you hear and understand my question?

48 A *(Interpretation from Spanish)* No, I am sorry, I do not hear the interpretation.
49 *(The earphones were adjusted)*

50

1 Q You are Javier Moscoso?
2 A (*Interpretation from Spanish*) Yes.
3
4 Q Would you tell the Tribunal briefly your educational and professional
5 background?
6 A (*Interpretation from Spanish*) I am a Doctor of Law. I am retired now but I have
7 been a member of the prosecution of the Ministry of Spain. I was Attorney General
8 of Spain. I have been Speaker in the Parliament of Spain and a Minister for the
9 Presidency during the first government of Mr Gonzales. Very briefly, that is a little of
10 my career.
11
12 Q So you have served as a law professor and you have served in the executive
13 branch of the Spanish Government?
14 A (*Interpretation from Spanish*) Not a law professor, no. Years ago I was in charge
15 of the Chair of Criminal Law at the University of Navarra and, yes, I have worked in
16 the executive branch of the Government of Spain.
17
18 Q At one time you served as the Attorney General. Is that correct?
19 A (*Interpretation from Spanish*) Yes, that is correct. For four years I was Attorney
20 General.
21
22 Q Are you generally familiar with the facts of this case?
23 A (*Interpretation from Spanish*) About one year ago, I was asked to give a legal
24 opinion on the facts of the case. I studied the legal acts that were available. The
25 defence of Mr Foster and the defence of Sage Maritime made available those
26 documents to me. I also had a meeting with the prosecutor and with the judge in
27 order to greet them and also to have another view on the facts and that is how I
28 know the case because I studied the documents and I gave a legal opinion and that
29 is how I came to know the case.
30
31 Q Were you asked by the Spanish lawyers for Sage to give that legal opinion?
32 A (*Interpretation from Spanish*) Yes, the Spanish lawyers.
33
34 Q As part of your review of the facts of the case, have you had occasion to read
35 and understand the details of what happened on February 1, 2006, when the *Louisa*
36 and the *Gemini* were boarded and searched?
37 A (*Interpretation from Spanish*) If my memory does not fail me, I think that is
38 indeed the date when the ships were boarded and searched.
39
40 Q In your opinion as an expert in Spanish law and procedure, was the boarding
41 of the *Louisa* legal?
42 A (*Interpretation from Spanish*) I remember that the legal opinion I wrote gave
43 special attention to that issue and in my opinion the acts when entering and
44 searching were not legal, not correct from the legal point of view, and they were not
45 correct because I understand that they took place without fulfilling Article 561 of our
46 criminal law, which establishes the procedures for these sorts of things.
47
48 Q I will show you annex 27, which is a reproduction of the Spanish Article 561
49 that you have just referred to, in both Spanish and English. I know you are familiar
50 with it yourself, and I would ask you to explain to the Tribunal what it was about the

1 search and boarding of the vessels that makes the actions of the Spanish police
2 illegal.

3 A (*Interpretation from Spanish*) I would say it like this. The actions of the Spanish
4 police were not illegal because they had an authorization from the Spanish judge. I
5 think that the resolution of that judge in itself did not fulfil this law because it required
6 either the authorization of the captain, or it needed to communicate the intention to
7 the consulate of the country of flag. That was something that did not happen; the
8 judge did not do this because in his opinion, as we can read from the justifications of
9 the order of search, the article that we quote was not applicable. He says a series of
10 things that I cannot share, but in his opinion he said that Article 561 is not to be
11 applied. In my opinion, it is in force and it must be applied.

12
13 Q One of the things that the judge said in his order was that there was no need
14 to notify the flag country because there was a proliferation of flags of convenience
15 now. Is that not correct?

16 A (*Interpretation from Spanish*) That is the opinion of the judge. I do not share that
17 opinion.

18
19 Q But that was the judge's statement – correct?
20 A (*Interpretation from Spanish*) In the resolution that orders the boarding and
21 search, yes, the judge does make that declaration.

22
23 Q I think it is uncontroversial in this case that there was no notice to any
24 authority in Saint Vincent prior to the boarding, and there was no permission from the
25 captain, because the captain, who was employed by Seascot, had returned to
26 Hungary. Is it your position that the boarding of the ships was improper or the
27 judge's order in the boarding of the ships is improper absent one of those two
28 things?

29 A (*Interpretation from Spanish*) In my opinion, it was procedurally incorrect.

30
31 Q I ask you to consider some recent litigation in Spain over a treasure-hunter
32 whose ship was called the *Odyssey Explorer*: has there been an opinion from a
33 Spanish court relating to Article 561 in the *Odyssey* situation?

34 A (*Interpretation from Spanish*) I imagine you are making reference to a sentence
35 that I happen to know because I am interested in these matters, because the issue
36 has come out in the press. I do not have the sentence to hand right now. If I
37 remember correctly and I am fairly sure that I remember correctly, the captain of that
38 ship, the *Odyssey* was accused of disobedience because he opposed the search of
39 his ship. There was a case in the Court in Cadiz and he has been considered free of
40 all charges because according to this paragraph 561 of our law, he had the right to
41 deny access to the police to search his ship, and the authorities had to consult the
42 consulate of the flag country. That is what I remember from each case.

43
44 **MR WEILAND:** I would represent to the court that the opinion, the excerpts of which
45 are reproduced at exhibit 29 in our papers, essentially are from a ruling that the
46 captain of the *Odyssey Explorer* could not be prosecuted for denying entry on his
47 ship, because the Spanish authorities had failed to give notice to the Bahamas,
48 which is the flag country for that ship. It was a very highly publicised situation in
49 Spain.

50

1 (To the witness): Now, I would ask the expert if he is aware of any effort by the judge
2 in Cadiz in this case to notify Saint Vincent and the Grenadines of his intention to
3 allow the boarding of the ship.

4 A (*Interpretation from Spanish*) This is a question for me?

5
6 Q Yes.

7 A (*Interpretation from Spanish*) In the documents that I could examine, before the
8 police entered the ship there was no communication – in the documents that I was
9 able to examine, at least – of anything in this sense. Some days later I do remember
10 that the consulates of the different countries of the two ships were notified. That is
11 what I know from the documents that I received from the lawyers' office in Madrid.
12 That intention to notify the country came some days after the ship was searched,
13 and in my opinion it should have come before the searching of the ship.

14
15 Q Can I ask you about the notification of Saint Vincent? I would ask my
16 assistant to put Spain exhibit 5 up if he could. I will show you a better copy. (*Same*
17 *handed*)

18 A (*Interpretation from Spanish*) It is in English. Embassy of Spain; 2006; 15 March
19 2006 ...

20
21 Q This is the document submitted by Spain allegedly relating to notification of
22 the flag country, is it not?

23 A (*Interpretation from Spanish*) It is the first time I see this document. I have no
24 opinion on it.

25
26 Q Are you aware of any other document that Spain claims was used to notify the
27 Saint Vincent authorities of the boarding of the ship?

28 A (*Interpretation from Spanish*) No, but I would like to insist with respect to the
29 legal opinion I drafted, I did take much care to search whether there was a previous
30 notification and I can say that there was not. There were no previous notifications –
31 later notifications, yes, but previous notifications, which is what matters for the legal
32 opinion that I submitted, there was no type of previous consultation or previous
33 notification, and I actually studied that quite in detail. I found no previous notification
34 of any sort.

35
36 Q I come to the issue of quarantine or detention of the two ships. Have you
37 seen an order from the Court specifically having the *Louisa* quarantined?

38 A (*Interpretation from Spanish*) There was a declaration of the port police saying
39 they were quarantining the ship by order of the judge, but I did not actually see that
40 document from the judge. I do not know whether that order was an oral order or
41 whether it was a written order. I have certainly never seen a written document, and it
42 was not in the documents that I received.

43
44 Q In your opinion, was the quarantine appropriate under Spanish law?

45 A (*Interpretation from Spanish*) Quarantine is not specifically regulated in our
46 procedural laws. It is usually a measure that is taken in order to preserve items of
47 evidence. It can also be used to stop illicit activities, for example. It is usually of
48 very short duration. When a judge, whether it is an investigation judge or another, is
49 informed of the possibility of a crime or a crime, that judge may make use of this
50 quarantine, but it is not usual for that quarantine to be prolonged in time, and much

1 less for several years. This is extremely rare and, frankly, I have never seen another
2 case like this.

3
4 Q Was it possible for the Court in Cadiz to order some kind of less offensive
5 relief other than to hold the ship for such a long time?

6 A (*Interpretation from Spanish*) I think so, yes, because you see the problem is
7 that if the judge in Cadiz understands that the ships are instruments of a crime – I do
8 not share that opinion; I do not think they are instruments of a crime – but if the judge
9 considers they are instruments of a crime, then he should apply Article 127 of our
10 Penal Code. However, in Articles 127 and 128 of our Penal Code, it is said that if it
11 is a matter of goods that have a legal use, they must be put in the hands of the
12 owner or of a third person, imposing obligations on the person who is to be in charge
13 of those goods. They both could be taken by the State only after a sentence, so
14 what I think is appropriate is to have the goods deposited under guarantee. There is
15 specific regulation on the conservation of elements of evidence, and the law
16 understands that when the value of this instrument of the crime is much superior to
17 the object of the crime, which in this case, if my memory does not fail me, was less
18 than €3000 - that was the value estimated for the underwater objects that were found
19 – if there is that imbalance between the value of the proof and the value of the crime,
20 there is an obligation for the judge to place those goods in the hands of the owners.
21 Therefore I think that that quarantine should have been ended very briefly with a
22 motivated judicial decision that those ships would have been placed in the hands of
23 their owners with the guarantees that civil legislation establishes.

24
25 **THE PRESIDENT:** I have been informed that the expert is speaking too fast.
26 Would you slow down so that that might facilitate the interpretation into English of
27 what you say? Thank you.

28
29 **MR WEILAND:** Sir, let me ask you this question before we end – I just have a
30 couple more questions. Spain, in its papers that it recently filed, refers to the ship
31 *Louisa* as if it was a knife in a murder case. That is the language of the Spanish
32 argument. I take it from your opinion that you do not agree with it, but why is the
33 ship not like a knife in a murder case?

34 A (*Interpretation from Spanish*) It is often said that in law, everything is a matter of
35 opinion, and this could also be a matter of opinion; but I think that both ships here
36 are carrying out legal activities. They have corresponding permits, so there is a
37 presumption of legality because what they are doing has already been authorized. It
38 is, of course, possible that something other than what had been authorized may
39 have happened, but the fact is that for the crime of which they are accused they do
40 not need these ships. You can use much smaller ships, you can use other
41 equipment. They are not the most adequate equipment for the crime that is being
42 imputed to them. That is on the one hand, but on the other hand it is absolutely out
43 of all proportion to quarantine two ships for almost five years when the value of the
44 ships is so much higher than the value of the objects that were supposedly illegally
45 found on the sea floor. That is the position that I do not share with the Spanish
46 judge.

47
48 Q The Spanish delegation has provided us with an order, supposedly issued by
49 the Court in Cadiz on 29 July this year, which we have not seen before; it was never

1 served on Saint Vincent and on the owner. This is exhibit 9. I have a couple of
2 questions about this for you. Have you seen this order yesterday?

3 A (*Interpretation from Spanish*) Yes, because you gave it to me last night.

4
5 Q For your convenience I am going to give you a copy of that so you can read it.
6 (*Same handed*) The order relates to three separate issues, does it not?

7 A (*Interpretation from Spanish*) Yes.

8
9 Q This order was not translated for us but the third issue relates to the ships that
10 are at issue in this case. Is that correct?

11 A (*Interpretation from Spanish*) Yes, this is the case.

12
13 Q Would you tell the Tribunal: what is the judge suggesting there in the last
14 sentence or two of his order?

15 A (*Interpretation from Spanish*) First of all, I would like to call your attention to the
16 fact that this is a photocopy that makes reference to an order that has no seal from
17 the Court and is not signed. If this has been brought by the representation of the
18 Spanish State, I admit that it would be genuine, and I trust my country, but I just
19 happen to know that it has no seal or signature. When I read this order, I think that
20 this is what should have happened four years ago, in my opinion. I think this order is
21 fine; it is good; but I think it comes too late.

22
23 Q Is the judge suggesting that there are alternatives as to how to handle the
24 *Louisa* in that order?

25 A (*Interpretation from Spanish*) Yes. The expression that is used here, which is
26 probably very particular to Spanish law, says "*lo que a su derecho interese*" which
27 means that we have to say what we prefer. The party is given three options. They
28 ask: "What do you want to happen on the maintenance of the ship? Do you want it
29 to be sold or do you want it to be handed over to somebody who would take care of
30 it?" What is happening here is that the judge is asking the owner of the ship to say
31 what would be their preference for the ship.

32
33 **THE PRESIDENT:** Mr Weiland, you had asked the expert to read out the note and
34 I think that was a good thing to do. You have been posing questions about the note
35 but Judges are not privy to the content. Could I ask you to see to it that the note is
36 read out so that we can have the benefit of its content.

37
38 **MR WEILAND:** I am sorry, Mr President, but I did not understand the question.

39
40 **THE PRESIDENT:** The exhibit you have just commented upon was not read out by
41 the expert, so that we could be fully aware of the content and, therefore, understand
42 very well the questions that you are posing to him. My question would be whether
43 you would be in a position to have him reading out the exhibit.

44
45 **MR WEILAND:** It was an unfortunate situation because the order has not been
46 translated, but I did want to elicit his opinion about one thing. Perhaps I could ask
47 one final question about this document.

48
49 (*To the witness*) Mr Moscoso, the document uses the word "*subasta*". What does
50 that mean, please?

1 A (*Interpretation from Spanish*) It is a public auction. It is a sale in a public
2 auction.

3
4 **MR WEILAND:** I have no further questions.

5
6 **THE PRESIDENT:** Thank you very much. Pursuant to article 80 of the Rules of
7 the Tribunal, an expert called by one party may also be examined by the other party.
8 Therefore, I ask the Agency of Spain whether the Respondent wishes to examine
9 the expert also.

10
11 **Professor ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Yes,
12 Mr President.

13
14 **THE PRESIDENT:** In that case, please take the floor and ask your questions.

15
16 **Professor ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, Mr
17 President. First of all, I would like to express myself in Spanish because it would be
18 rather strange for me to address such a worthy compatriot in a language which is not
19 our common tongue. May I speak Spanish?

20
21 **THE PRESIDENT:** Please do.

22
23 **Professor ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you,
24 Mr President.

25
26 **Cross-examined by Professor ESCOBAR HERNÁNDEZ**

27
28 Q (*Interpretation from Spanish*) Good afternoon, Mr Moscoso. Would you please
29 tell me your name, your first and last names. Are you Javier Moscoso del Prado,
30 appointed as expert for Saint Vincent and the Grenadines to testify in this case on
31 your understanding of the law and the facts of the detainment of the vessels *Louisa*
32 and *Gemini III* and other legal matters related to Spanish law in relation to this case?

33 A (*Interpretation from Spanish*) Yes – although I would not call myself an expert. I
34 am a connoisseur of Spanish criminal law. Given what experts have done to the
35 world economy, I think it would be very dangerous to call me an expert and so I
36 would call myself a connoisseur.

37
38 Q (*Interpretation from Spanish*) In any case, you are appearing as an expert in
39 accordance with the statute and rules of the Tribunal and you have been called to
40 testify as an expert by the applicant. I want to ask you again about your professional
41 background and policy where you have already referred to that, but I would like to
42 ask you one question which I think would be useful. Could you indicate to us
43 throughout your professional life what matters have you dealt with, with regard to
44 boarding and the search and quarantine of foreign vessels and measures relating to
45 the search and quarantine and the legal effects thereof and could you tell us when.

46 A (*Interpretation from Spanish*) In my career professionally? Professionally, this is
47 the first time. I have led a seminar in Seville on these issues and studied these
48 issues but in my career I, up until today, have not dealt with that professionally.

49

1 Q (*Interpretation from Spanish*) You led a seminar in a very prestigious university
2 in Seville and taught postgraduate work in continuing education and you focused
3 mainly on issues with regard to boarding and arrest of vessels specifically.
4 A (*Interpretation from Spanish*) Not specifically boarding and arrest of vessels. It
5 was a broader seminar that raised that matter and the issue of underwater treasures
6 and the rights of others who find the treasures and the conflict of interests among
7 territorial waters and non-territorial waters and problems related thereto.
8
9 Q (*Interpretation from Spanish*) In your seminar did you approach the issue of
10 boarding and arrest of vessels and the Spanish law that applies thereto?
11 A (*Interpretation from Spanish*) No. I do not believe so.
12
13 Q (*Interpretation from Spanish*) Could you please indicate the approximate date of
14 the seminar that was held?
15 A (*Interpretation from Spanish*) I do not know exactly. It was about three years
16 ago.
17
18 Q (*Interpretation from Spanish*) At the time, Spain was having an open debate on
19 this kind of issue of plundering of cultural heritage and underwater treasure.
20 A (*Interpretation from Spanish*) It was because of the interest generated about that
21 subject.
22
23 Q (*Interpretation from Spanish*) Yes, I understand. You said that you consider
24 yourself a scholar of these matters. Could you indicate any scientific publications of
25 yours, any work that you have led, seminars that led to published articles with regard
26 to this kind of matter that might be of interest to this case, both with regard to the
27 matters relating to the arrest and boarding of the vessels and also, if you would like,
28 issues relating to the plundering of underwater cultural heritage in relation to the
29 Seville seminar?
30 A (*Interpretation from Spanish*) This issue you are asking about is so specific.
31 Occasionally I publish articles, but not specifically on this issue. Last week, I
32 published an article. It was not related to this specifically. It was on another matter
33 that was legal. If you want specific publications, I cannot say that I have published
34 anything specifically. I am a scholar and I understand the legal effects of boarding
35 and search of vessels. I have studied related matters throughout my career.
36
37 Q (*Interpretation from Spanish*) You said that last year you were asked to give an
38 advisory opinion.
39 A (*Interpretation from Spanish*) No, merely an advice.
40
41 Q (*Interpretation from Spanish*) Yes, it is not always easy to distinguish between
42 an advisory opinion and merely an advice, but you were asked to give an opinion on
43 the situation that occurred following the boarding and search of the *Louisa* and you
44 also said that you went on visits to Cadiz.
45 A (*Interpretation from Spanish*) One visit.
46
47 Q (*Interpretation from Spanish*) Could you tell us what the purpose of the visit in
48 Cadiz was and who you talked to in Cadiz?
49 A (*Interpretation from Spanish*) I met with the attorney in charge and the judge, the
50 prosecutor and the judge, and it was a protocol visit. I did not say anything

1 specifically, but I was accompanying the attorney for the defence of the interests of
2 Sage and Mr Foster. He wanted to see the state of the *Louisa* and we went to Santa
3 Maria port but we were not allowed to go on the ship and I recall that it was
4 quarantined and some of the cordons had fallen but it was still cordoned off. My
5 work has been based on the documents that I have been given.

6
7 Q (*Interpretation from Spanish*) This opinion that you were asked to give and that
8 you produced last year on the basis of the documents, is that an opinion that the
9 Applicant asked that you give before the Tribunal, that is Saint Vincent and the
10 Grenadines, or is it an opinion requested by the company that owns the vessel or the
11 legal representative of one of those involved in the case?

12 A (*Interpretation from Spanish*) It is an opinion that Mr Foster's law firm requested
13 of me but it was mainly concerned with Mr Foster's situation with the procedural and
14 legal issues relating to his interests, although, in addition, the company Sage was
15 indirectly concerned but I was just asked to give an opinion with regard to Mr
16 Foster's situation.

17
18 Q (*Interpretation from Spanish*) Did you provide any further counsel or assistance?

19 A (*Interpretation from Spanish*) No.

20
21 **Professor ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): I would like, if I
22 may, to ask a number of questions relating to the issues referred to with regard to
23 the situation we are examining today.

24
25 (*Interpretation from French*) Mr President, with your permission, could I discuss the
26 facts which I think are important? I think we are in provisional measures
27 proceedings, not determining the case on its merits. This has to do with the violation
28 by Spain of the provisions of the Convention, but with your permission I would like to
29 continue questioning this witness.

30
31 **THE PRESIDENT:** Yes.

32
33 **Professor ESCOBAR HERNÁNDEZ** (*Interpretation from French*) Thank you very
34 much.

35
36 (*To the witness*) (*Interpretation from Spanish*) Mr Moscoso, you said that in your
37 view Article 561 of the Criminal Procedural Law establishes the obligation to obtain a
38 prior authorisation from the vessel's captain or, failing that, to notify the boarding to
39 the consulate. Could you tell me if in Spanish law there are any exceptions that
40 would allow for the boarding and search of a vessel anywhere, including a domicile?
41 Are there any exceptions that would allow for the boarding and search without
42 notification?

43 A (*Interpretation from Spanish*) I believe there are with regard to drugs trafficking,
44 but I would have to check the legal texts to give you a more accurate answer. There
45 are cases of that nature.

46
47 Q (*Interpretation from Spanish*) There is no exception relating to the commission of
48 a crime?

49 A (*Interpretation from Spanish*) If it is a flagrant crime, then yes.

1 Q (*Interpretation from Spanish*) Is there not an exception with regard to the
2 instrument of a crime?

3 A (*Interpretation from Spanish*) In the case of an evident crime, yes, there are
4 cases, due to urgency and the nature of certain crimes, where boarding may be
5 ordered automatically by a judge, but this is specifically related to drug trafficking and
6 terrorism crimes. If you want me to give you specific examples in positive Spanish
7 law, I cannot give you an example here now.

8
9 Q (*Interpretation from Spanish*) You have said that you do not share the opinion of
10 the judge regarding the decision to order the search without notifying the captain and
11 you have said you believe that this is mainly because at some point the judge made
12 certain statements to the effect that it would be very dangerous, given the very large
13 quantity of flags of convenience. Do you believe that the fact that the captain of the
14 vessel was not available and was arrested a few days later in Lisbon as a result of a
15 European arrest warrant has any bearing on the boarding and search without need
16 for prior authorization?

17 A (*Interpretation from Spanish*) No, I do not think so, for one reason: the judge has
18 to give a reason for his decision and he has to say that the article does not apply. If
19 it had happened that way, that would have been all right, but the judge declared that
20 the article does not apply. It was not because of the absence of the captain.

21
22 Q (*Interpretation from Spanish*) According to the documents provided by
23 Mr Foster's law firm, do you have any awareness as to whether the order was
24 appealed? If there was an appeal against the order, what is the effect of the ruling?

25 A (*Interpretation from Spanish*) That might have been the case more recently. I
26 cannot recall any events such as that. I understand that the folios have been
27 increasing and there will be new documents but I do not have recollection to that
28 effect.

29
30 Q (*Interpretation from Spanish*) With regard to the quarantines, you have said that
31 the quarantine was not necessary. Depending on certain conditions, you said that it
32 can be necessary initially but that it was no longer necessary after a certain time and
33 that it went on too long. How would you describe the vessel, the *Louisa*? Do you
34 believe that it is being quarantined temporarily on a provisional basis?

35 A (*Interpretation from Spanish*) There has not been a decision of provisional
36 arrest. There is only an order to quarantine. When I was looking at the documents, I
37 saw that the judge called for a quarantine.

38
39 Q (*Interpretation from Spanish*) The *Louisa* is currently docked at Puerto de Santa
40 Maria. Do you believe that it is a necessary instrument to commit a crime? I am not
41 asking you to state whether or not a crime was committed. I am not going to ask
42 your opinion on that but, if the judge did find that there was sufficient evidence of a
43 crime, do you believe that the vessel could be called under the well-established
44 jurisprudence of the Spanish Supreme Court? Could it be seen as a necessary
45 means to commit a crime? Keeping in mind the crimes that have been alleged.

46 A (*Interpretation from Spanish*) Well, as I said, the law is open to opinion and I
47 would not say that myself, but I know that there are judges who would.

48
49 Q (*Interpretation from Spanish*) Can you tell me why you think that is excessive?

1 A (*Interpretation from Spanish*) I think it is excessive because after a search and
2 after keeping the vessel for several months, it should have become clear that the
3 evidence is scant and not of great value and it should have been deduced that the
4 vessel was carrying out certain activities that were not paying off and I think the
5 interpretation whereby it was meant to commit a crime is probably disproportionate,
6 but that is not the problem I highlighted. I was highlighting the fact of the situation
7 that the vessel has not been regularized. If it was an instrument of crime, then it
8 should be proven and that situation should be regularized.

9

10 Q (*Interpretation from Spanish*) Let me ask you a general question relating to your
11 experience as a prosecutor for several years and a State prosecutor. Let us assume
12 a different crime. Let us now forget the plunder of underwater cultural heritage but
13 let us assume that there might be a crime relating to drug trafficking and the crime is
14 committed, for example, by altering the internal structure of a vehicle for the purpose
15 of transporting drugs from Portugal to Spain, for example. How would that vehicle
16 be qualified or classified? Would it be an instrument of a crime? Would that vehicle
17 have to be the subject of a provisional measures embargo and kept by the judiciary
18 throughout the proceedings?

19 A (*Interpretation from Spanish*) I believe so, yes. In an obvious case like that
20 under Article 127, the judge would have to make a ruling stating that the vessel
21 would be under provisional embargo and then civil law would apply and the situation
22 would have to be regularized. In this case it has not been.

23

24 Q (*Interpretation from Spanish*) Then there would be a need for a legal decision...I
25 am just asking a question. Then it would be necessary to have a judicial order for a
26 provisional embargo for a road vehicle?

27 A (*Interpretation from Spanish*) You are asking me. Well, the confiscation of
28 instruments of a crime relates to the punishment. Article 127 states that the
29 instruments of a crime can be confiscated and logically there is a time frame
30 between the confiscation and the guilty sentence. If arms and other things are found
31 under Article 127 – we are talking about vehicles – ships, planes – the judge has to
32 determine the status of those vehicles.

33

34 Q (*Interpretation from Spanish*) Thank you, but can you say that the confiscation
35 only takes place in relation to the sentence?

36 A (*Interpretation from Spanish*) Yes.

37

38 Q (*Interpretation from Spanish*) Moving to the second question, which I think is of
39 interest because it was raised in the application for provisional measures, and this
40 relates to the merits of the case, you said that you were not aware of the *note*
41 *verbale* sent by Spain to Saint Vincent and the Grenadines on 5 March 2006 stating
42 that there had been the boarding and search of the vessel. Can you explain to us
43 what the boarding and search of the vessel actually involved?

44 A (*Interpretation from Spanish*) Well, they go on to the vessel and look for any
45 evidence of the crime. I think that is clear. I do not understand your question.

46

47 Q (*Interpretation from Spanish*) Could you just explain what a boarding and search
48 of the vessel involved, just in case the court is not aware?

49 A (*Interpretation from Spanish*) It involves going on to the ship and a search for
50 instruments and objects relating to the alleged crime.

1
2 Q (*Interpretation from Spanish*) The objects that might be found on the vessel on
3 the occasion of the boarding and search and that might be presumed to be evidence
4 relating to the acts under investigation, this would be the result of lengthy
5 investigation by the *Guardia Civil*. It is not just a decision pulled out of a hat
6 overnight. The things that are found on the vessel, could they be seen to be integral
7 to the case, for example nautical charts, computers and data on the computers?
8 Would it be legitimate to hold those items in the judiciary so that the State may carry
9 out the necessary judicial proceedings?

10 A (*Interpretation from Spanish*) Yes.

11
12 **THE PRESIDENT:** We have a technical problem to solve. We had planned to have
13 a recess now at 4.15 – in fact, we are already late by two and a half minutes – and to
14 resume in 30 minutes from now. I would have allowed this examination to go on,
15 had it not been for the technical problem related to interpretation. If we do not
16 interrupt now, then we will not have interpretation from Spanish into English because
17 there are technical rules to be abided by in respect to the rest that interpreters
18 should have. Therefore, I decide that we are now going to go into recess. We will
19 come back 30 minutes from now as planned. We will resume with your cross-
20 examination of the expert.

21
22 (*Short break*)

23
24 **THE PRESIDENT:** We shall now resume our meeting.

25
26 **Professor ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you,
27 Mr President. I am going to try to be a little more brief and succinct than in my first
28 intervention.

29
30 (*To the witness*) (*Interpretation from Spanish*) Earlier you raised the matter of
31 diplomatic channels. I am not going to continue asking about the *note verbale* that
32 Spain duly submitted to the authorities of Saint Vincent and Grenadines to inform
33 them that there had been the boarding and search, but I would like you to give me
34 your opinion on one document that I am going to show, with the permission of the
35 President. This is a document on the notification to the consulate of persons
36 detained.

37
38 **MR WEILAND:** Excuse me, could we ask the representative of Spain to speak more
39 slowly because we have some Spanish speakers on this side and we are afraid that
40 the interpretation is somewhat lacking? Slower questioning, I believe, would help.

41
42 **THE PRESIDENT:** Thank you very much. I have made that point in respect of the
43 expert. I reciprocate the same question to the Agent of Spain. If both of you could
44 speak in a way that the interpreter might get everything that you are saying and put it
45 into English, I would appreciate it.

46
47 **Professor ESCOBAR HERNÁNDEZ** (*Interpretation from French*) I will do my best
48 to do so, Mr President.

49

1 (To the witness) (Interpretation from Spanish) The document that I have just handed
2 to you, Mr Moscoso, is a document from the *Guardia Civil*, which I believe was not
3 necessary because it was general knowledge, but it is a document by the *Guardia*
4 *Civil* saying that at a given time the consular authorities of the US and the consular
5 authorities of Hungary and Spain were notified of the detention of those individuals
6 who were arrested on the vessel. Mr Moscoso, would you be so kind as to read out
7 the paragraph relating to the notification?

8 A (Interpretation from Spanish) At the time indicated by fax, notification was given
9 of the arrest of Anibal Beteta. There is a number in parentheses, "17005632" to the
10 Consulate of the United States in Seville and the detainees, "(000541)" and
11 "CJ036896" to the Consulate of Hungary in Malaga.

12
13 Q (Interpretation from Spanish) Could you tell us if this letter is the letter normally
14 sent when foreign nationals are arrested by the Spanish authorities?

15 A (Interpretation from Spanish) Yes, this is the letter sent to consulates.

16
17 Q (Interpretation from Spanish) The document I have given you, if the President
18 allows, I will include in the folio with respect to a possible ruling on the merits of the
19 case. If the Tribunal wishes, I could provide it, but it has to be translated into
20 English. This is a document issued by the central operations unit at the *Guardia*
21 *Civil*. Mr Moscoso, do you believe, as an expert, that this document is a reliable
22 one? Is it faithful?

23 A (Interpretation from Spanish) Well, if you are presenting it ... It does not have a
24 seal. It is signed.

25
26 Q (Interpretation from Spanish) Does it have a heading and an address?

27 A (Interpretation from Spanish) Yes – sorry, it does have a seal of the UCO.

28
29 Q (Interpretation from Spanish) Thank you very much.

30
31 **Professor ESCOBAR HERNÁNDEZ** (To the Agent for Saint Vincent and the
32 Grenadines) (Interpretation from French) You can keep the document if you so wish.
33 Previously you raised the matter in the previous examination of the meaning of one
34 paragraph that is contained in an order from the magistrate judge of Criminal Court
35 No.4 in Cadiz, examining a case that is dated 29 July 2010. It refers to the future
36 use of the vessel. Previously Mr Moscoso was asked this, but if the President allows
37 I would like for Mr Moscoso, since this document is included in the folio – and I
38 received the English translation of the annexes that were only in Spanish, and in
39 keeping with the Rules of the Tribunal, I will submit them to the Tribunal - but I would
40 like for Mr Moscoso to read out the last paragraphs of this order in full so that I can
41 ask him a question. Do I have your permission?

42
43 **THE PRESIDENT:** If he accepts to read that paragraph, which you are asking him
44 to read – I see no objection to that.

45
46 **MR WEILAND:** We have no objection. We would like the document translated
47 eventually.

48
49 **THE PRESIDENT:** Thank you. It will be translated as the Agent of Spain has
50 informed us.

1
2 **THE WITNESS** (*Interpretation from Spanish*): Mr President, I am happy to read this
3 although I have not been called as an expert reader! I am happy to do that. (*The*
4 *witness read out the relevant paragraphs in Spanish*)

5
6 **Professor ESCOBAR HENÁNDEZ** (*Interpretation from Spanish*): Before you
7 explain what is meant by the word *subasta*, auction, the legal meaning of that word,
8 can you indicate what is being referred to in this paragraph when it mentioned the
9 three possible options?

10 A (*Interpretation from Spanish*) Before I answer the question that the
11 representative of the Respondent asked, I would say that I believe this decision of
12 the judge is correct but too late, and this should have happened four years ago. This
13 option, return to the owner of the vessel, could have been operational. I also said
14 that the vessel could be considered an instrument of crime or not – that is a matter of
15 opinion. You likened it to a knife and in that case Decree 76 would apply. I believe it
16 is subject to opinion, but I would say one thing of interest: the *Odyssey*, which, as the
17 Tribunal knows, found a treasure of great value and it was detained for three days in
18 a Spanish port and it was then released by the judge; so in that clear case the judge
19 thought it was an instrument of crime in spite of the proceedings. So these are
20 disagreements among judges that can be explained, but I believe that in this case
21 we are examining there is no merit.

22
23 Q (*Interpretation from Spanish*) I am sorry, Mr Moscoso, I am grateful for your
24 clarification on the *Odyssey* case, although it is a different case to this one. I do not
25 think we should confuse the cases but I am grateful for your comment because it
26 allows for comparison. My question was if you could tell us what is meant by “timely
27 measures” for auction, return to third party, or the third option which is covered in this
28 letter.

29 A (*Interpretation from Spanish*) It means that the judge is requesting Sage
30 Maritime to indicate their preference from two options because there is a third option
31 with regard to the maintenance of the *Louisa*. It appears to say: “How should we
32 maintain the vessel; or should it be turned over to a third party or auctioned?” They
33 are asked to make a choice between the three options.

34
35 Q (*Interpretation from Spanish*) So the owner of the vessel is being given the
36 option to give their view on the fate of the vessel.

37 A (*Interpretation from Spanish*) Yes.

38
39 Q (*Interpretation from Spanish*) Just one last question, and then I will conclude: in
40 accordance with Spanish legislation that is applicable today, is it possible to proceed
41 to the auction of this vessel? Without the favourable opinion of the State bodies
42 present in the case – and here I am referring to the Prosecutor General, the State
43 and the State lawyers, can the Tribunal decide in favour of auction if the Ministry or
44 lawyers of the State object?

45
46 **MR WEILAND**: I have to object. The translation that I just got seemed to be asking
47 him what the Tribunal could do. There is no way that this expert could testify about
48 what the Tribunal’s authority could be. It is complete speculation.

1 **THE PRESIDENT:** Thank you very much. Could you please reformulate your
2 question?

3
4 **Professor ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Yes,
5 Mr President, of course I can. Thank you.

6
7 (*To the witness*) In accordance with Spanish legislation what requirements have to
8 be met for a vessel that has been placed in the judiciary as part of the proceedings
9 to be auctioned?

10 A (*Interpretation from Spanish*) Well, I believe that would take time to answer. At the
11 risk of giving a hasty response I would say that the parties in the case would have to
12 be heard and as far as I see the decree on confiscations would entail that it would
13 have first to be found an instrument of crime. In this case, there is provision for an
14 auction when the objects of licit trade have not been given back to their owners.
15 Then they can be auctioned after two or three years from the date of confiscation or
16 alienation from the interested party.

17
18 **Professor ESCOBAR HERNÁNDEZ** (*Interpretation from Spanish*): Thank you.
19 Mr President, I have no further questions. I would like to thank you for your patience.
20 Please allow me to sincerely thank Mr Moscoso for so kindly answering our
21 questions in great detail. Thank you.

22
23 **THE PRESIDENT:** I thank Mr Javier Moscodó del Prado Muñoz for his testimony.
24 Your examination is now finished and you may withdraw, Sir.

25
26 (*The witness withdrew.*)

27
28 **THE PRESIDENT:** I now give the floor to the Co-Agent of Saint Vincent and the
29 Grenadines to conclude his statement.

30
31 **MR WEILAND:** Thank you, Mr President. Before I complete my presentation of
32 some prepared issues that I think should be addressed, I must comment upon some
33 of the issues raised in the cross-examination of Mr Moscoso.

34
35 We have now heard from the Spanish in their papers and in a question to the
36 witness about their annex 5, which I believe we are in a position to display to the
37 court – fortunately this is one document that is in English. I would like to direct the
38 court's attention to this because Spain has attributed significance to this document
39 as having notified Saint Vincent and the Grenadines of the search and seizure of the
40 vessel. I would suggest to you that the words "search" and "seizure" are nowhere
41 mentioned here. The word "boarding" is not used. Indeed, when Saint Vincent and
42 the Grenadines inquired of Spain as to whether they had ever given notice, the
43 Government official demurred and merely referred the maritime administration to the
44 Court.

45
46 I think it is a blatant misrepresentation for Spain to suggest a notification was
47 effective or that it actually gave Saint Vincent notice of anything. If I am sitting in
48 Kingston, and if this was delivered – there is no indication that it was delivered to
49 Saint Vincent – in fact the stamp on it is the Spanish stamp, not a stamp as received
50 by our authorities – I read this and it says: "We have the honour to inform you that

1 the Court in Cadiz processed the entry and registration of the vessel". I think the
2 court has a question about the meaning of those words. I do, too. In fact, I read it
3 with great interest last night, especially as I read the paperwork that Spain
4 presented, alleging that that was notice to the flag State. Well, it was notice way too
5 late. Even March 15 was far too late in 2006. I suggest to the court that it was not
6 notice, whether it was timely or untimely. It is not notice.

7
8 I would like to present some information to the court relating to the timing of this
9 action because I believe that it is possible for you to wonder why we are here now.
10 I will show you annex 30, which is a brief form of a chronology of several important
11 events in this matter, all of which are either admitted by Spain or we have
12 substantiation for.

13
14 So that the court understands, the first several items relate to the arrest of the vessel
15 and the imprisonment of Mr Avella. I would like to direct your attention to 2007.
16 After the owner tried to allow the court proceeding to run its course in Cadiz it began
17 to, utilizing their lawyers, attempt to meet with the prosecutor and the judge to figure
18 out just what was going on with this ship. I would remind the court that the *Louisa's*
19 owner was not a professional shipowner. In fact, the records would eventually show
20 in this case that the owner of the *Louisa* and the *Gemini III* had no knowledge at the
21 time that Saint Vincent had never been notified; it just assumed Saint Vincent had
22 been notified, and that these kinds of things took time for the Spanish judicial system
23 to play out.

24
25 By 2007 the owners were becoming much more active. As indicated here, there was
26 a meeting with the prosecutor, who expressed little interest in this matter in 2007.
27 Then months go by, with no action from the judge, no indictments, no charges, no
28 museum estimates or appraisals of the few little artefacts that were found; and so the
29 owner stepped up his efforts to secure the release. I would urge you to consider that
30 the shipowner's efforts in this regard to exhaust his remedies are imputed to the flag
31 State, so Saint Vincent gets credit for the efforts of the owner to release the ship.
32 Those are not just a nullity; they cannot be ignored. By the time Saint Vincent was
33 advised of the ship's detention by the owners, they became aware that the owner
34 had made all sorts of efforts in his own right.

35
36 We have a series of meetings that occur and letters. Then on 12 February 2010, we
37 have the port authority queried by the maritime administration. In view of the cross-
38 examination of Mr Moscoso, I think it is appropriate to look at annex 7 and consider
39 just what transpired here. Keep in mind that by early this year, the owner had
40 contacted the Saint Vincent authorities to inquire what their view of the detention of
41 one of their ships was after four years. So the maritime administration, rather
42 incredulous that one of their ships could have been detained for so long without their
43 knowledge, sends a message to the port captain and another official.

44
45 What are they informed of? They are not sent this annex 5, which the Spanish have
46 represented to be some kind of notice to Saint Vincent; this annex 5 is not sent out to
47 the people in Geneva, the office of Saint Vincent, the maritime administration: no,
48 instead what is received is basically the kind of message that you get, "do not bother
49 us". In fact, the Spanish representative says: "The *Louisa* was detained by
50 resolution of the penal judge". That is news to Saint Vincent; that is news to the

1 owner, because we have never seen a resolution of detention, as Mr Moscoso
2 testified. We have never seen one. The port authority can say nothing more about
3 this.

4
5 Meanwhile, the people in Geneva are saying on 19 February: "Kindly provide details
6 of the resolution for the detention, the date and the reason for the detention". The
7 response is: "The ship is in the dock at Puerto de Santa Maria by order of the
8 Tribunal. For any information go to the Tribunal". We have not seen the order.
9 Apparently, the port captain has – at least he thinks he has - the right to continue to
10 hold the ship.

11
12 After this inquiry, on 27 April, Mr William Weiland writes to the Spanish Ambassador,
13 which is annex 4. What does the Spanish Ambassador have to say about this?
14 Nothing! I represent to you that it is a very nice letter, on a nice law firm's letterhead:
15 you would think that perhaps the Spanish could go to the trouble to respond in some
16 form to this letter. The Spanish say nothing.

17
18 They do not point to this annex (annex 5): "We do not notice". They do not say: "The
19 judge is going to confiscate and sell your ship". Nothing. On 13 October of this year,
20 the President of Sage, Linda Thomas, files a formal complaint with the Consulate of
21 Spain in Texas (annex 8). The complaint is delivered in the Spanish language for
22 the convenience of the Consulate (annex 8B). Not that the Spanish in Texas cannot
23 speak English –I am sure they can – but for their convenience it is delivered in
24 Spanish. There is no response whatsoever.

25
26 We hear from Spain that we have moved too quickly; that this is unfair; that we
27 should have had more negotiations.

28
29 Finally, on October 26 a diplomatic note was sent (annex 11) and, indeed, it said,
30 "We plan to file an action". I suggest to the court that the notion that we have not
31 exhausted our remedies or for some reason this action is premature is ridiculous. It
32 is the start of year six and up until now Spain has shown no interest - no interest.
33 But apparently the judge got wind of this, because we were told two days after we
34 filed that he has issued some mysterious new order. I am anxious to see that order.
35 It sounds like retaliation to me but we will look at it with great interest when it finally
36 arrives.

37
38 We have these efforts that we have made and, as I said, the efforts of the owner
39 should be credited to the flag country because they are aware of these efforts and
40 they are substantial and they are sufficient. After considering that, we would suggest
41 that you go back to a balancing of interests. Whose interests predominate here in
42 order to satisfy the requirements of article 290, paragraph 1, relating to the
43 respective interests of the parties. As I said earlier today, we think that requires
44 some kind of balancing of interests. The Spanish have suggested in their
45 cross-examination of Mr Moscoso that this is indeed some kind of instrument of a
46 crime, this ship *Louisa* and this ship *Gemini III*, not to mention all of the equipment
47 and everything taken off this ship. We have at least six computers that they
48 confiscated. In some jurisdictions when the police take a computer they download
49 the information and give the computer back. That did not happen here. They made
50 no effort to return anything. Valuable, valuable gear was confiscated, and when the

1 ship was finally looked at in 2009 we were told, “The gear is all stored in Seville
2 somewhere, don’t worry about it”. This gear, valuable diving gear, is depreciating
3 every day. The methane gas exploration required divers to go down to the sea floor
4 and inspect what was on the sea floor, what was there. In the Bay of Cadiz you
5 have oil seeping up through the sand. They have all of that. They are going to give
6 none of it back, it sounds like, because it is instruments of a crime. Maybe sometime
7 in the next five years we will get around to having a trial, where the owners, the
8 people who were personnel on the ship, are acquitted, and we will get back
9 eventually useless equipment. That is unfair and that is an illustration of how the
10 balance of equities in this case is with Saint Vincent.

11
12 What is on those computers? I am going to touch on that. Those computers
13 recorded what our towed instruments were registering; extremely valuable
14 information about the electromagnetic propensities and properties of the floor of the
15 Bay of Cadiz. We have been given none of those back. Fortunately, some of those
16 reports, at least one or two, were printed out approximately a year earlier and taken
17 back to the owner’s headquarters. What is happening with oil and gas exploration in
18 the Bay of Cadiz? Public reports indicate it is moving forward. What company has
19 one of the major interests in exploring the Bay of Cadiz? The Spanish oil company
20 Repsol. I am not going to stand here today and suggest that Repsol is using our
21 information of our computers that they have had for five years but I do not really like
22 the notion that we are not exploring the Bay of Cadiz and they are – we being the
23 shipowner.

24
25 How long do they have to keep this equipment? “These ships are instruments of
26 crime. We have to continue to have them tied up at the dock,” says Spain. The
27 fundamental issue seems to be they are evidence of some kind. They are evidence
28 of crime. I ask you: do they intend to drive the boat into the courtroom or
29 something? Why is a picture of the boat not adequate? We have lots of them. We
30 will give them the pictures. The notion of keeping the boat until the case is over is
31 absurd. If they are going to forfeit the boat/confiscate the boat/sell it as an
32 instrument of crime, when is that going to happen? The shipowner has some rights
33 about confiscation. There is no order to confiscate the ships. Yet time goes by.

34
35 What is time doing to the ship? I would like to look at a couple of additional exhibits.
36 Exhibit 26 is the ship in an early 2010 photograph laden with at least 5,000 gallons of
37 lube oil and untold amounts of diesel. The ship was not getting to be in any better
38 shape. If you look at exhibit 12, included in our documents, you see some more
39 views of the ship, including some interior views of what kind of condition Spain has
40 left the ship in. It is no wonder that the judge apparently issued an order in July of
41 this year, unbeknownst to us, unseen by the owner or the flag State, asking: “Would
42 you like to sell the ship at a public auction?” I say that that indicates a lack of interest
43 on the part of the judge in this supposed instrumentality of a crime. I suggest to you
44 that that is why we spent some time with Mr Moscoso over this Spanish order that
45 Spain has included in its documents (exhibit 9). What does it mean? It came,
46 unfortunately, in Spanish, but that is all right; you have now heard from Mr Moscoso
47 and you have heard the translation of it. The judge sitting in Cadiz, every once in a
48 while, awakens and I think he must be driving to work or something, and says, “You
49 know, we have a couple of ships here and we are starting year six and maybe
50 somebody is going to grade my report card and question me about this, so I will

1 issue an order. We won't send it to the lawyers for the shipowner, we won't send it
2 to Saint Vincent, but we will let it lie in the file as if I gave the owners the
3 prerogatives: "Do you want us just to sell the ship for you?" Spain – I really have to
4 ask about their good faith – is arguing vehemently that it is an instrument of a crime
5 that has to continue to be tied up in the port. It is a specious argument that you have
6 to tie that ship up into year six and the *Gemini III* has to be kept up out of the water
7 and retained. For what purpose, as we go into year six, when the judge himself is
8 suggesting: "It's okay with me if we just sell it at public auction"?

9
10 I am going to ask permission, Mr President, to consult with my colleagues in a
11 moment before I end my presentation – which will not be a minute too soon, I am
12 sure. It is already 5.30 in the evening. I want to take a few minutes, maybe a very
13 few minutes, to talk about the questions which we understand interest some
14 Members of the Tribunal. We were advised in a conference last evening to think
15 about some questions that have percolated up already; indeed, there may be some
16 more, and I will certainly try to answer them this afternoon if I can. If I may,
17 Mr President, I am just going to walk through these.

18
19 The first question is addressed to the Applicant. The question is: would it be
20 possible to provide information as to the flag State of the tender? Again the tender
21 is only 11 metres long. I think it is registered in the United States with some kind of
22 minor license because it is a small boat. It has not been flagged in Saint Vincent.
23 There is no registration that the owners pay in Saint Vincent.

24
25 The next question is about the permit. Saint Vincent has been told there was
26 a permit that these shipowners were using to explore the bay. You have heard quite
27 a bit about the permit already. The question is: was the permit contained in annex 6,
28 for the prescription of provisional measures, preceded by other permits? If so, is it
29 possible to submit a copy of the initial permit? The response to the question is: we
30 think it was preceded by other permits. Saint Vincent has been advised by the
31 shipowner that when the shipowner entered into a contract with this Tupet company,
32 Sage was under the impression that Tupet had all the authority it needed and in fact
33 had secured several permits – several permits over time, Spain's papers suggest
34 that it was a renewal that was at issue here. We have no quarrel with that. In fact,
35 we think it supports the position of the shipowner that he simply was utilising a permit
36 that had been granted over and over.

37
38 I should mention parenthetically that the evidence in the case will eventually show
39 that when the personnel of Sage were out canvassing or touring the bay, whether it
40 was in the *Louisa* or in the *Gemini III*, they were stopped by the *Guardia Civil*, who
41 asked to see the permit and consider what they were doing out there. I think the
42 answer to the question is: yes, it was some kind of extension of permit authority.

43
44 The last question addressed to the Applicant is: would it be possible to provide
45 evidence on the risk for the marine environment posed by this vessel? Indeed it is,
46 and I am delighted that the question was asked. We have some formal information
47 and I am going to tender it to the Tribunal in just a moment.

48
49 Before we get to that point, however, I would invite your attention to annex 2. There
50 are several documents that we provided in connection with our application relating to

1 the ownership of the *Louisa* and its particulars. If you look at exhibit 2B and
2 exhibit 2C you can learn more about the ship. When I say to you that the ship was
3 constructed in 1962 and worked as a ferry in Scotland for several years, I am not
4 making that up. At least, that is what the official documents that accompanied the
5 ship so indicate. There is a lot of wear and tear on this ship. I think it is
6 uncontroversial that there are petroleum products on this ship. The ship is not being
7 looked after. Spain suggests in the papers that it is being “monitored”. Someone
8 was going by and seeing if the oil was leaking out of it, I guess.

9
10 We have a document that we want to tender to the court. We had already been in
11 touch with an expert on this issue and we asked him to prepare a very short report
12 on the environmental threat posed by the continued detention of the vessel. May
13 I approach the clerk, Mr President, and distribute this?

14
15 **The PRESIDENT:** Yes, please.

16
17 **MR WEILAND:** Pursuant to article 90, paragraph 3, of your Rules, we understand
18 that the Tribunal may accept evidence up until the time of the termination of the
19 hearing. We would suggest, therefore, that the submission of this document is
20 timely. (*Same handed*)

21
22 May I be so presumptuous as to read this document? It is in your possession.
23 I would point to just one small part of it on the first page and say for the record that
24 this document is produced by an expert in Hamburg by the name of Bernd Holst, in
25 this Weselmann firm which is expert on these issues, I would represent to you.
26 Mr Holst says: “We see a high risk that water ingress to the vessel can be sustained,
27 which can cause flooding of some compartments of the vessel and possibly flooding
28 of the complete vessel. This subsequently will cause oil contamination as the
29 vessel’s tanks as well as machineries most probably still contain lube oil and
30 possibly also fuel oil”.

31
32 We submit that in response to the specific questions of the Tribunal.

33
34 Now I would like to address these final questions that were primarily the
35 responsibility, I guess, of the Respondent team to answer, but I would like to suggest
36 some responses of Saint Vincent.

37
38 The first question is: would it be possible to clarify the meaning of the term from the
39 Number 4 Court in Cadiz “processed the entry in the registration of the vessel
40 *Louisa*”? I have already talked about that and I think it is going to be most interesting
41 to hear what Spain has to say, but I would suggest to you that the real inquiry should
42 be: what was the normal meaning of those words? What would an administrative
43 person sitting in an office in Kingstown Saint Vincent and the Grenadines have
44 thought when they received that missive, if it was ever delivered? We do not have
45 evidence that it was. I am sure that Spain would suggest that means they have
46 announced that the ships have been boarded and detained. But it does not say that,
47 of course.

48
49 The next question is: would it be possible to produce a copy of the criminal
50 indictment – that is how it is referred to in Spain’s papers – at 27 October 2010

1 referred to in paragraph 13 of their statement? We would very much like to see that
2 also. One would think that after several trips to see the judge and the prosecutor, to
3 have a lawyer stationed in Cadiz who goes to the courthouse weekly, if not daily, that
4 this order of 27 October might have been delivered to the shipowner's lawyers, if not
5 to the flag State. We have not seen it.

6
7 The last question is also extremely incisive. The last question is: in which maritime
8 areas did the alleged offence that led to the arrest of the *Louisa* and the *Gemini III*
9 take place? We would like to know what areas. We know it was in the economic
10 zone. We know it was in the Bay of Cadiz, if that is the question. Of more interest to
11 the shipowner, however, is where specifically were we supposed to have been in the
12 Bay that perhaps we were not allowed to be? Or perhaps you think we were looking
13 for a ship wreck. Tell us, after five years – please, tell us – where were we that we
14 were not supposed to be? We look forward to that answer too, because the judge in
15 Cadiz has not notified us and certainly not notified the flag country of anything, much
16 less the details of the alleged criminal activity.

17
18 I thank you for your patience. I am prepared to answer any questions, if there are
19 any *ad hoc* questions, Mr President.

20
21 **The PRESIDENT:** Thank you. I take it that you have concluded your submission.

22
23 **MR WEILAND:** That concludes my presentation.

24
25 **The PRESIDENT:** Thank you very much. This brings us to the end of today's
26 proceedings. The pleading will be resumed tomorrow morning at 9.30, as planned,
27 when we will hear the statement of Spain. The sitting is now closed.

28
29 (*Adjournment*)