

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

MV Louisa

SAINT VINCENT AND THE GRENADINES v. THE KINGDOM OF SPAIN

REQUEST FOR THE PRESCRIPTION OF PROVISIONAL MEASURES
UNDER ARTICLE 290, PARAGRAPH 1, OF THE UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA

23 NOVEMBER 2010

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CHAPTER 1

Introduction

1. Pursuant to Articles 287(1)(a) and 290(1) of the United Nations Convention on the Law of the Sea ("Convention"), and Annex VI, Article 25 thereof, Saint Vincent and the Grenadines requests that the International Tribunal for the Law of the Sea ("Tribunal") prescribe the provisional measures specified below in the dispute between Saint Vincent and the Grenadines and The Kingdom of Spain which is the subject of an Application Instituting Proceedings filed this date. Although the origins of the dispute date to 2006, the continued intransigence of the Respondent and deterioration of two vessels seized by the Respondent necessitates immediate Tribunal action.

2. The Applicant requests the Tribunal, by means of provisional relief:

(a) declare that the Tribunal has jurisdiction under Articles 287 and 290 of the Convention to hear the Request for Provisional Measures concerning the detention of the vessel, the *M.V. Louisa* (hereinafter "the *Louisa*"), in breach of the Respondent's obligations under various articles of the Convention, including 73 (notification of arrest), 87 (freedom of the high seas), 226 (investigations), 245 (scientific research), and 303 (archaeological objects).

(b) declare that the Request is admissible, that the allegations of the Applicant are well-founded, and that the Respondent has breached its obligations under the Convention;

- (c) order the Respondent to release the vessel *Louisa* and its tender, the *Gemini III*, upon such terms and conditions as the Tribunal shall consider reasonable;
- (d) order the return of scientific research, information, and property held since 2006; and
- (e) order the Respondent pay the costs incurred by the Applicant in connection with this Request, including but not limited to Agents' fees, attorneys' fees, experts' fees, transportation, lodging, and subsistence.

3. The Applicant makes this request based on jurisdictional Articles 287 and 290, and substantive violations relating to Articles 73, 87, 226, 245 and 303 of the Convention, as well as Articles 54 and 89-90 of the Rules of the Tribunal (hereinafter "Rules") and on the grounds as appearing in the statement of facts and law and supporting documents which follow.

4. Pursuant to the Rules, the Agents have been authorized to bring this Request on behalf of Saint Vincent and the Grenadines. Documents supporting the authorization are attached. Additionally, pursuant to the Rules, Applicant certifies that a copy of this application and all supporting documentation have been delivered to the Tribunal for service on the Respondent.

5. Pursuant to Article 56(2) of the Rules, G. Grahame Bollers and Rochelle Forde of Saint Vincent and the Grenadines, and S. Cass Weiland of the United States of America have all been appointed by the Government of Saint Vincent and the Grenadines as its Agents for the purpose of all proceedings

in connection with this Application. G. Grahame Bollers has been designated the lead agent.

6. The Applicant requests that copies of any communications from the Tribunal to the agent of Saint Vincent and the Grenadines in this matter be transmitted by facsimile or e-mail to counsel whose names and details appear herein as well as to the agents. The Applicant also requests that for the purposes of any conferences that may take place prior to the hearing of this matter, counsel as well as the agent be given the opportunity to attend by telephone.

CHAPTER 2

Statement of Facts

(A) General Overview

7. This Request for Provisional Measures is made in conjunction with an Application to determine a dispute on the merits. This Request involves the *Louisa*, a research vessel which was boarded by the authorities of the Respondent on 1 February 2006, and has since been detained while docked in the Spanish port of Puerto Santa Maria near Cadiz. Additionally, authorities of the Respondent seized a second ship, the *Gemini III*, which served as a tender to the *Louisa*.

8. The *Louisa* is a seagoing vessel operated by Sage Maritime Scientific Research, Inc. (hereinafter "Sage"), a U.S. Corporation registered in Texas. The owner is a United States corporate affiliate of Sage organized under the laws of the State of Texas, JBF Holdings, LLC. The *Louisa* was flying the Saint Vincent and the Grenadines flag at the time of detention and retains Saint Vincent and the Grenadines nationality at the time of filing this Request

and accompanying Application. It is registered at Kingstown. The *Louisa* is a vessel of 787 tons and bears the official registration number 8343 and IMO number 5264259. Its estimated value at this time is unknown but at the time of its detention its estimated value was approximately \$1,000,000.00 (USD). The appearance of the ship before and after its detention is illustrated in **Annex 1**. Equipment on board the *Louisa* was valued at approximately \$1,000,000 (USD). Documents that evidence the ownership and specifications of the *Louisa* and its equipment are attached as **Annex 2**.

9. The *Gemini III* is a workboat of approximately 11 meters. It had a value of approximately \$200,000 (USD). It has been stored in a facility in Puerto Sherry, Spain, a location near Puerto Santa Maria, since on or about 1 February 2006. Documents relating to the *Gemini III* are attached as **Annex 3**.

10. The *Louisa* had several crew members including its Master, all Hungarian except for one U.S. citizen. Some were detained for one or two days after the vessel's arrest and released. The Master was not detained. The U.S. citizen was detained for more than eight (8) months.

11. No notice of the vessel's detention was transmitted by The Kingdom of Spain to Saint Vincent and the Grenadines.

12. Representatives of the owner and agents for the Applicant have attempted every known procedural and diplomatic maneuver to obtain closure of this matter, including the release of the *Louisa*, the *Gemini III*, and their equipment. These efforts included travel to Cadiz, Spain, meetings with the Judge and Fiscal, meetings at the U.S. Embassy in Madrid, and a formal

request directed to the Spanish Ambassador to the United States dated April 27, 2010 – all to no avail. Letter to Spanish Ambassador. See **Annex 4**.

13. In addition to its counsels' meetings in Cadiz with Judge de Diego Alegre, the Magistrate Judge of Magistrate's Court No. 4 in Cadiz, the owner, through counsel, also attempted to obtain relief by sending this Judge formal letters dated February 11, 2009 and August 27, 2009, to which no response was ever received. See **Annex 5**. (English translations with Spanish original texts.)

(B) The Sequence of Events

14. Between June and October of 2004, Sage conducted sonar and cesium magnetic surveys of the sea floor of the Bay of Cadiz, Spain. The purpose of the surveys was to locate and record indications of oil and methane gas.¹ Initially Sage conducted the survey utilizing a small vessel leased for this activity. Sage undertook this action pursuant to an official permit granted to its Spanish partner. A copy of the permit is included in **Annex 6**.

15. As more fully explained below, confidential information provided to Sage as well as widely disseminated public reports indicated that the Bay of Cadiz is one of the marine areas with the greatest potential for petroleum accumulations.

16. Beginning in June 2004, a Sage affiliate had purchased, outfitted, and dispatched the *Louisa* to Spain. The ship arrived in Cadiz from Jacksonville, Florida on 20 August 2004.

¹ Sage and its affiliates have a lengthy history of oil and gas exploration and trading in the United States, Russia, and Latin America.

17. For a brief period in 2004, the *Louisa* was used to conduct additional surveys, and then docked near Cadiz for the winter.

18. Due to navigation issues relating to the size of the *Louisa*, in February 2005, another Sage affiliate purchased a smaller vessel, the *Gemini III*. The *Gemini III*, rather than the *Louisa*, performed additional survey work in the Bay of Cadiz and served as a tender to the *Louisa* during the first few months of 2005. All operations ceased, however, in April 2005.

19. Having completed its oil and methane gas exploration program, Sage chartered the *Gemini III* on occasion during 2005. Subsequent to the term of the last charter agreement in 2005, Sage attempted to sell or find other uses for both the *Louisa* and *Gemini III*.

20. In February 2006, the Spanish Guardia Civil arrested the *Louisa* and *Gemini III* at the dock, along with a U.S. citizen and Hungarian crew members. Mr. Mario Avella, a crewman who served Sage as an independent contractor, was not in Spain at the time. No indictments were authorized, but Magistrate's Court No. 4 of Cadiz carried out an investigation of allegations of theft of Spanish "patrimony" during Sage's conduct of its undersea survey, as well as the presence of weapons aboard the *Louisa*. These weapons had been placed on board the *Louisa* for protection of its crew at the direction of ASP Seascot, the *Louisa's* shipping management firm, for protection against pirates.

21. In May 2006, crewman Avella was arrested in Portugal while en route to Spain. He was transported to Cadiz, where he was detained based on his service on of the *Louisa*. Mr. Avella remained unlawfully detained until February 2007.

22. Upon information and belief, the Spanish investigation included Avella, the *Louisa* crewmen, Sage and its owner and several Spanish citizens. The inquiry was conducted in Magistrates' Court No. 4 in Cadiz, under Judge Luis de Diego Alegre. After more than four and one-half (4 ½) years, no indictments were returned and no action to forfeit the vessels was ever undertaken.

23. Because of these procedural delays and lack of action by Respondent, the *Louisa* has deteriorated significantly in Puerto Santa Maria, having received no maintenance or other attention since its arrest.

24. During a visit to Puerto Santa Maria in September 2007, representatives of the owner were unable to find the *Gemini III* and officials of the Port Authority of Cadiz refused to disclose its whereabouts.

25. In March 2009, representatives of the owner again visited Puerto Santa Maria urging release of the vessels which were, by that time, in extremely poor condition. During this inspection trip, agents were finally able to locate the *Gemini III*, in Puerto Sherry, but it too had deteriorated. Valuable personal property was missing from both vessels, including computers and scientific data. The officer of the Spanish Guardia Civil on duty at the time could not explain why the detention was still in effect. The *Louisa* is laden with some 5,000 gallons of lubricating oil and an unknown quantity of diesel fuel, and the ship's condition suggests that these pose a threat to the environment and present substantial liability exposure to the owner and flag country. See **Annex 1** for pictures illustrating the *Louisa* before and after its arrest.

26.

(C) Sage Corporate History and Purpose

1. Sage Maritime Scientific Research, Inc.

27. The operator of the *Louisa* is Sage Maritime Scientific Research, Inc., a Texas corporation ("Sage").² Sage was organized to transact every kind of lawful business including the exploration and production of oil and natural gas. From its inception, Sage and its affiliates have conducted oil and gas projects in many countries.

27. Sage was incorporated in the State of Texas on 3 December 1976. The President and only Director is Linda K. Thomas. Sage Maritime is an affiliate of JBF Holdings, LLC, the owner of the *MV Louisa*.

2. Exploration Program in the Bay of Cadiz and Results of the Program

28. During 2003, Sage began to consider the Bay of Cadiz as an exploration prospect. High-resolution aeromagnetic images and a study prepared specifically for Sage in 2003 by Nefco Exploration confirmed to Sage that the Bay of Cadiz is one of the marine areas with greatest potential for petroleum accumulations in the world. As a result, Sage entered into an agreement with a Spanish partner, which obtained an appropriate permit, whereupon it launched its hydrocarbon survey program in the Bay of Cadiz in 2004-05. This entailed acquiring the *Louisa* and having her flagged in Saint Vincent and the Grenadines.

3. Equipment Used for the Hydrocarbon Survey

29. Nefco Exploration, recommended that Sage use both a digital cesium magnetometer and digital side scan sonar for evaluation of the geological

² The company was originally known as Sage Enterprises, Inc.

basins in the Bay of Cadiz. Specifically, Sage used on board its ships the *Geometrics G-882* magnetometer, an ultra-sensitive/high sample rate marine magnetometer designed for shallow and deep oil and gas survey applications. By utilizing the G-882 to conduct a magnetic survey in the Bay of Cadiz, Sage was able to determine where oil-bearing sedimentary rock was more likely to be found. During the survey program Sage recorded, processed, mapped and interpreted the magnetic variations recorded during the investigation. The accumulated data provided Sage important geological information concerning possible hydrocarbon accumulations in the Bay of Cadiz. As a corollary to the magnetic survey, Sage used digital side scan sonar (100 & 500 kHz) to image variations on the sea floor (*e.g.*, domes and faults) and to detect active hydrocarbon-rich fluid seepage. Extraordinarily important electronic data was stored in a computer on the *Louisa*. This computer data is urgently required and should be returned.

4. *Technical Survey Findings*

30. The technical information collected during the exploration program conducted in the Bay of Cadiz: proved the existence of faults that may indicate the presence of one or more large oil and gas reservoirs in the Bay of Cadiz, and the cesium magnetometer readings and digital side scan sonar data indicated a high probability of petroleum accumulations in the Bay of Cadiz. Much of this valuable information has been converted by the Respondent in violation of Articles 226 and 245 of the Convention.

(D) Communications Between the Government of Saint Vincent and the Grenadines and the Government of Spain

31. At the time of the arrest of the vessels in February 2006, Sage possessed the appropriate permit to undertake this preliminary survey. The *Louisa* was properly flagged in Saint Vincent and the Grenadines.

32. In violation of Article 73 of the Convention and Spanish law, Respondent has to date provided no official notice to Saint Vincent and the Grenadines, regarding the arrest of the *Louisa* and its crewmen.

33. In response to the request of the *Louisa's* owner, the Saint Vincent and the Grenadines Maritime Administration has attempted to contact Spanish authorities. See **Annex 7**. To date, the Spanish authorities have not provided any substantive responses. See also **Annex 8** (owner complaint to Spanish authorities.)

34. Despite the arrest, no bond or other security that would allow release of either the *Louisa* or the *Gemini III* has been set by the Respondent.

35. Other efforts to resolve the claim through the extensive efforts of the *Louisa's* representatives have been unsuccessful. Meetings with the Spanish Judge, prosecutor (Fiscal), and Guardia Civil have not resulted in any relief. A formal letter from counsel for the owner to the Spanish Ambassador to the United States received no response. See **Annex 4**.

CHAPTER 3

I. The Tribunal's Jurisdiction and the Admissibility of the Application

(A) Jurisdiction

36. Both the Applicant and the Respondent are Parties to the Convention. Saint Vincent and the Grenadines is the flag country of the detained ship. Saint Vincent and the Grenadines ratified the Convention on 1 October 1993.

The Kingdom of Spain ratified the Convention on 15 January 1997. Saint Vincent and the Grenadines has filed previous, successful, claims in this Tribunal.

37. Article 290 of the Convention reads as follows:

Article 290

Provisional Measures

1. If a dispute has been duly submitted to a court or tribunal which considers that *prima facie* it has jurisdiction under this Part or Part XI, section 5, the court or tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision.
2. Provisional measures may be modified or revoked as soon as the circumstances justifying them have changed or ceased to exist.
3. Provisional measures may be prescribed, modified or revoked under this article only at the request of a party to the dispute and after the parties have been given an opportunity to be heard.
4. The court or tribunal shall forthwith give notice to the parties to the dispute, and to such other States Parties as it considers appropriate, of the prescription, modification or revocation of provisional measures.
5. Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea or, with respect to activities in the Area, the Seabed Disputes Chamber, may prescribe, modify or revoke provisional measures in accordance with this article if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires. Once constituted, the tribunal to which the dispute has been submitted may modify, revoke or affirm those provisional measures, acting in conformity with paragraphs 1 to 4.
6. The parties to the dispute shall comply promptly with any provisional measures prescribed under this article.

38. Spain has recognized the competence of the International Tribunal for the Law of the Sea, in its declaration on the occasion of the ratification of the Convention on 15 January 1997.

39. Saint Vincent and the Grenadines ratified the convention on 1 October 1993 and has also filed the appropriate declaration with the Secretary General of the United Nations. **Annex 10.**

40. The *Louisa* is an exploration vessel which was flying the flag of Saint Vincent and the Grenadines at the time of detention and retains Saint Vincent and the Grenadines nationality at the time of filing this Application.

41. Accordingly, the Applicant has at all material times, been, and still is, the flag state of the *Louisa*, and the Tribunal has jurisdiction over this Request and accompanying Application and Saint Vincent and the Grenadines is entitled to the provisional measures requested.

CHAPTER 4

Legal Grounds

(A) The Tribunal's Jurisprudence Under Article 292 Is Most Applicable

(1) The Time Elapsed Since the Initial Boarding of the Vessel Enables the Tribunal to Enter Provisional Relief

42. Because of its very nature, this matter incorporates elements of a Prompt Release Application pursuant to Article 292. For this reason, the Tribunal's history with Article 292 cases is most relevant and the holdings in those cases are equally applicable here.

43. Thus, the Tribunal may consider whether sufficient time has elapsed since the arrest and detention of the *Louisa* and the filing of this application. The *Louisa* was detained in February 2006. The owner of the *Louisa* and

Gemini III endeavored to secure the release of the ship through private means until finally turning to the Applicant to invoke the Applicant's rights under the Convention. Obviously, sufficient time has elapsed.

44. On the converse point, this Request is not inadmissible because too much time has elapsed since the arrest of the *Louisa*. This Tribunal has already addressed this issue in the *Camouco* case, under Article 292. There, the vessel was arrested on 28 September 1999, and Panama filed its application with the Tribunal on 17 January 2000. France challenged the admissibility of the application on the ground that more than three months had passed since the detention of the *Camouco*. The Tribunal, however, rejected this argument, stating:

"54. The Tribunal finds that there is no merit in the arguments of the Respondent regarding delay in the presentation of the Application. In any event, article 292 of the Convention requires prompt release of the vessel or its crew once the Tribunal finds that an allegation made in the Application is well-founded. **It does not require the flag State to file an application at any particular time after the detention of a vessel or its crew.** The 10-day period referred to in article 292, paragraph 1, of the Convention is to enable the parties to submit the question of release from detention to an agreed court or tribunal. It does not suggest that an application not made to a court or tribunal within the 10-day period or to the Tribunal immediately after the 10-day period will not be treated as an application for "prompt release" within the meaning of article 292."

(The Camouco case, Judgment, 7 February 2000)(emphasis added)

45. In the *Volga* case, ten months elapsed between the arrest of the vessel on 7 February 2002 and the filing of the application by the Russian Federation on 2 December 2002. Australia, the Respondent, did not raise

any objection; and the Tribunal said nothing to indicate any change in the position that it had taken on this point in the *Camouco* case.

46. In the *53rd Tomimaru* case, eight (8) months elapsed between the arrest of the vessel on 2 November 2006, and the filing of the application on 6 July 2007.

47. Furthermore, the setting of time limits within which prompt release claims must be brought could discourage the pursuit of amicable settlements of disputes between States Parties through bilateral negotiations. Indeed, Saint Vincent and the Grenadines has filed its Application and Request for Provisional Measures reluctantly and only after sustained and serious attempts to resolve this detention through the Respondent's legal system. The actions taken by the Respondent have been unreasonable and unresponsive.

48. This Request also seeks a decision on the illegality of the detention of the *Gemini III* in the present proceeding. The facts relating to the *Gemini III* are relevant to the Tribunal because this vessel was related to the *Louisa* and should be released before further deterioration and environmental consequences.

(2) The Tribunal Can Render Judgment Although Domestic Proceedings Are Continuing

49. Investigative proceedings were instituted by the authorities of the Respondent and these proceedings may not have terminated. Nevertheless, it is the very purpose of the provisional measures authority contained in the Convention to secure interim relief before proceedings in the arresting State's

courts conclude. In this regard, Article 292 cases are, again, instructive and applicable.

50. For example, the effect of continuing domestic procedures was also considered in the *Camouco* case. There the Tribunal stated:

55. The other objection to admissibility pleaded by the Respondent is that domestic legal proceedings are currently pending before the court of appeal of Saint-Denis involving an appeal against an order of the court of first instance at Saint Paul, whose purpose is to achieve precisely the same result as that sought by the present proceedings under article 292 of the Convention. The Respondent, therefore, argues that the Applicant is incompetent to invoke the procedure laid down in article 292 as a 'second remedy' against a decision of a national court and that the Application clearly points to a 'situation of *lis pendens* which casts doubt on its admissibility.' The Respondent draws attention in this regard to article 295 of the convention on exhaustion of local remedies, while observing at the same time that 'strict compliance with the rule of the exhaustion of local remedies, set out in article 295 of the Convention, is not considered a necessary prerequisite of the institution of proceedings under article 292'.

56. The Applicant rejects the argument of the Respondent and maintains that its taking recourse to local courts in no way prejudices its right to invoke the jurisdiction of the Tribunal under article 292 of the Convention.

57. In the view of the Tribunal, it is not logical to read the requirement of exhaustion of local remedies or any other analogous rule into article 292. Article 292 of the Convention is designed to free a ship and its crew from prolonged detention on account of the imposition of unreasonable bonds in municipal jurisdictions, or the failure of local law to provide for release on posting of a reasonable bond, inflicting hereby avoidable loss on a ship owner or other persons affected by such detention. Equally, it safeguards the interests of the coastal State by providing for release only upon the posting of a reasonable bond or other financial security determined by a court or tribunal referred to in article 292, without prejudice to the merits of the case in the domestic forum against the vessel, its owner, or its crew.

58. Article 292 provides for an independent remedy and not an appeal against a decision of a national court. No limitation should be read into article 292 that would have the effect of defeating its

very object and purpose. Indeed, article 292 permits the making of an application within a short period from the date of detention and it is not normally the case that local remedies could be exhausted in such a short period.

(The Camouco case, Judgment, 7 February 2000)

(B) Breach of Obligations Under Article 73

51. There is no doubt from the facts set out in Section B above that the vessel *Louisa* and its tender, *Gemini III*, were arrested and detained by the authorities of the Respondent. The owner of the vessels was ready and willing to post bonds or other security necessary of the vessel and its crew, provided that it was reasonable. However, no bond or other security was ever set by the Respondent, and provisional relief is, therefore, appropriate. After such a long delay and after inspection by representatives of the owner, the *Louisa* has sustained very significant deterioration and damage. Laden with oil, it is in danger of creating an environmental disaster in the area of Puerto Santa Maria. Moreover, the owner continues to insure the vessels and to retain Saint Vincent and the Grenadines as the flag country for the *Louisa*.

52. It is clear from the provision of Article 73(2) of the Convention, interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Article, that the Respondent is under an obligation to fix a reasonable bond or other security in respect of arrested vessels and their crew and to release the arrested vessels promptly upon the posting of that bond or security. Article 73 of the Convention reads as follows:

Article 73

Enforcement of laws and regulations of the coastal State

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living

resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.

2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.

4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

53. The Respondent also has failed to officially notify the Flag State in violation of Article 73 (4) of the Convention, which has prevented Applicant from taking earlier action.

54. It is clear from the provision of Article 73, interpreted in good faith in accordance with the ordinary meaning to be given to the article, that the Respondent was under an obligation to notify the flag state, through appropriate channels, of the action taken and of any penalties subsequently imposed. By not taking the essential step of notifying the flag state, Respondent prohibited Applicant from becoming involved and effectively concealed its violation of the flag state's right for more than three (3) years.

(C) Breach of Obligations under Article 226

55. The Convention specifically addresses the issue of unjustified delays with respect to the investigation of foreign vessels. Article 226 states:

*Article 226**Investigation of foreign vessels*

1. (a) States shall not delay a foreign vessel longer than is essential for purposes of the investigations provided for in articles 216, 218 and 220. Any physical inspection of a foreign vessel shall be limited to an examination of such certificates, records or other documents as the vessel is required to carry by generally accepted international rules and standards or of any similar documents which it is carrying; further physical inspection of the vessel may be undertaken only after such an examination and only when:

(i) there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of those documents;

(ii) the contents of such documents are not sufficient to confirm or verify a suspected violation; or

(iii) the vessel is not carrying valid certificates and records.

(b) If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the protection and preservation of the marine environment, release shall be made promptly subject to reasonable procedures such as bonding or other appropriate financial security.

(c) Without prejudice to applicable international rules and standards relating to the seaworthiness of vessels, the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard. Where release has been refused or made conditional, the flag State of the vessel must be promptly notified, and may seek release of the vessel in accordance with Part XV.

2. States shall cooperate to develop procedures for the avoidance of unnecessary physical inspection of vessels at sea.

56. As discussed above, the Respondent has purportedly been "investigating" the activities of the *Louisa* since at least February 2006. In fact, information disclosed to Applicant indicates the investigation began well before the time the ships were seized in February 2006. Five years is ample time to

investigate. Even assuming that a violation of the State's laws took place – which Applicant denies – Article 226 (b) requires a “prompt” release. Moreover, it cannot be denied that the treatment of the foreign vessels, *Louisa* and *Gemini III*, is discriminatory in violation of Article 227 of the Convention.

(D) Breach of Obligations under Article 245

57. Applicant also brings its action on the merits for compensation arising from Respondent's violation of Article 245 relating to marine scientific research. This provision states:

Article 245

Marine scientific research in the territorial sea

Coastal States, in the exercise of their sovereignty, have the exclusive right to regulate, authorize and conduct marine scientific research in their territorial sea. Marine scientific research therein shall be conducted only with the express consent of and under the conditions set forth by the coastal State.

58. The complete nature of this violation will be discussed in applicant's Memorial to be filed when requested by the Tribunal. But Provisional Measures are appropriate based on Respondent's conduct in violation of Article 245 interpreted in good faith in accordance with the ordinary meaning to be given to the Article. That is, Applicant's owner had obtained a permit pursuant to Respondent's regulatory scheme to research in the territorial sea (Bay of Cadiz) and thus had the express consent of the State to operate. **Annex 6.** Notwithstanding this, Respondent has seized vessels and scientific equipment and denied the Applicant the opportunity to pursue oil and gas opportunities. Upon information and belief, at least one Spanish oil company may presently be

engaged in developing methane gas reserves to the exclusion of foreign interests, such as those who dispatched the *Louisa* and *Gemini III*.

(E) Breach of Obligations under Article 303

59. As noted above, Respondent's approximate five-year investigation has as its principal focus, an allegation that personnel on the *Louisa* improperly brought from the ocean floor objects constituting the patrimony of the State. Article 303 states:

Article 303

Archaeological and historical objects found at sea

1. States have the duty to protect objects of an archaeological and historical nature found at sea and shall cooperate for this purpose.
2. In order to control traffic in such objects, the coastal State may, in applying article 33, presume that their removal from the seabed in the zone referred to in that article without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article.
3. Nothing in this article affects the rights of identifiable owners, the law of salvage or other rules of admiralty, or laws and practices with respect to cultural exchanges.
4. This article is without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature.

60. This Article, interpreted in good faith in accordance with the ordinary meaning to be given to its language suggests that Applicant has a duty to cooperate with Respondent in protecting objects of a historical nature. Here, the evidence apparently shows that personnel on the *Louisa* recovered several cannon balls, some pieces of pottery, and a stone with a hole in it. The Respondent's expert valued this cache at approximately € 3000 Euros. These are items found in restaurants and hotels throughout the coast of

Spain! For this, Respondent imprisoned a crewman for eight months and arrested two vessels for more than four and one-half years. Clearly, these actions exceed what is permissible under Article 303, and Applicant is entitled to provisional measures as a result.

(F) Breach of Obligations under Article 87

61. The *Louisa* is (or was in 2006) an oceangoing vessel. It was outfitted in Jacksonville, Florida. Fully equipped, and supplied with a captain and crew by Seascott, Ltd., one of the world's best known shipping management companies. Article 87 provides:

Article 87

Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:

- (a) freedom of navigation;
- (b) freedom of overflight;
- (c) freedom to lay submarine cables and pipelines, subject to Part VI;
- (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
- (e) freedom of fishing, subject to the conditions laid down in section 2;
- (f) freedom of scientific research, subject to Parts VI and XIII.

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

62. The complete nature of this violation will be discussed in Applicant's Memorial to be filed when requested by the Tribunal. But provisional measures are appropriate based on Respondent's failure to allow the *Louisa* to enjoy its rightful freedom of navigation and to conduct scientific research. Unfortunately, the Applicant's ship appears to have been destroyed by Respondent through neglect and intentionally wrongful detention. The lack of present seaworthiness, however, does not diminish respondent's liability for violating Article 87.

CHAPTER 5

Provisional Measures Are Urgently Needed

63. The Respondent continues to hold the vessels and the aforementioned scientific information, and other property, with no indication of their release nor willingness to enter into diplomatic negotiations with Applicant. Without Tribunal intervention, the *Louisa* may simply sink at its dock, release massive amounts of hydrocarbons, endanger shipping in the port area and wreak havoc on its owner and flag country.

Request for Relief


64. For the reasons set out above, the Applicant requests the Tribunal prescribe the following provisional measures:

- (a) declare that the Request is admissible;
- (b) declare that the Respondent has violated Articles 73, 87, 226, 245 and 303 of the Convention;
- (c) order the Respondent to release the *M.V. Louisa* and *Gemini III* and return property seized;

(d) declare that the detention of any crew member was unlawful; and
(e) award reasonable attorneys' fees and costs associated with this request as established before the Tribunal.

Respectfully submitted,

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