

MEMORIAL OF SAINT VINCENT AND THE GRENADINES

**INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA**

MV Louisa

SAINT VINCENT AND THE GRENADINES

v.

THE KINGDOM OF SPAIN

**MEMORIAL OF
SAINT VINCENT AND THE GRENADINES**

10 JUNE 2011

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CHAPTER 1

I. Introduction

Saint Vincent and the Grenadines requests that the International Tribunal for the Law of the Sea ("Tribunal") consider this Memorial submitted in connection with the dispute between Saint Vincent and the Grenadines and The Kingdom of Spain.

1. Pursuant to an Application Instituting Proceedings filed on 23 November 2010, the origins of the dispute date to 2006. At this time, the continued intransigence of the Respondent, the complete deterioration of two vessels seized by the Respondent, and the direct and consequential damages resulting from Respondent's unlawful activity fully support and justify the relief sought herein.

2. The Applicant requests the Tribunal:

- (a) declare that the Memorial is admissible, that the allegations of the Applicant are well-founded, and that the Respondent has breached its obligations under the United Nations Convention on the Law of the Sea ("Convention");
- (b) order the Respondent to return the vessel *Louisa* and its tender, the *Gemini III*;
- (c) order the return of scientific research data and property held since 2006;
- (d) order the Respondent to pay direct damages for its improper and illegal actions in the amount of \$5,000,000 (USD);
- (e) order the Respondent to pay consequential damages for its improper and illegal actions in the amount of \$25,000,000 (USD); and

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(f) 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 the following provisions of the Convention: Articles 73, 87, 226, 227, 245, 293, and 304, as well as Articles 54 *et seq.* of the Rules of the Tribunal (hereinafter "Rules") and on the grounds appearing in the statement of facts and law, including those violations of national and international law identified herein.

4. Pursuant to the Rules, the Agents have been authorized to file this Memorial on behalf of Saint Vincent and the Grenadines. Documents supporting the authorization have been previously filed with the Tribunal. Additionally, pursuant to the Rules, Applicant certifies that a copy of this Memorial 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 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

I. Statement of Facts

(A) General Overview

7. This Memorial is submitted in conjunction with the Applicant's request for the Tribunal to resolve a dispute between Applicant and Respondent on the merits. This dispute involves the *Louisa*, a research vessel which was boarded by the authorities of the Respondent on 1 February 2006, and has since been detained and searched while docked in the Spanish port of Puerto Santa Maria near Cadiz. Additionally, authorities of the Respondent wrongfully imprisoned two persons and seized a second ship, the *Gemini III*, which served as a tender to the *Louisa*, and an entire shipload of valuable equipment and computers, including the intellectual property of the ships' owner.

8. The Tribunal previously considered an Application for Provisional Measures at a hearing conducted on 10-11 December 2010. Provisional measures were denied in part based on assurances from Spain that no threat to the marine environment existed. **Tribunal Order**, at paragraphs 72-78.

9. The *Louisa* is a seagoing vessel operated by Sage Maritime Scientific Research, Inc. (hereinafter "Sage"), a United States corporation registered in Texas. The owner is a United States corporate affiliate of Sage organized

under the laws of the State of Texas, Sage Maritime Partners, Ltd..¹ 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 Memorial. 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 \$600,000.00 (USD). The appearance of the ship after its detention is illustrated in **Annex 1**.² Equipment on board the *Louisa* was valued at approximately \$800,000 (USD). Documents that evidence the ownership and specifications of the *Louisa* and its equipment are attached as **Annex 2**.

10. The *Gemini III* is a workboat of approximately 11 meters. When detained it had a value of approximately \$220,000 (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**.

11. The *Louisa* had several crew members including its Master, all Hungarian except for one U.S. citizen. Respondent detained some of the crew for as many as five days after the vessel's arrest. The Master was not detained. The U.S. citizen was detained for more than eight (8) months. Another U.S. citizen found on board with no connection whatsoever to the *Louisa* was

¹ The original owner, JBF Holdings, LLC assigned this asset to Sage Maritime Partners, Ltd.

² All citations to "Annex" refer to Applicant's Annexes beginning with those submitted in November 2010 with the Request for Provisional Measures. Annexes or exhibits submitted with the case on the merits are numbered consecutively and then incorporated by reference as part of this submission.

arrested and detained. Respondent then refused to return her passport for eight (8) months.

12.No notice of the vessel's detention was transmitted by The Kingdom of Spain to Saint Vincent and the Grenadines. During the hearing on Provisional Measures in December 2010, Respondent produced a copy of an alleged diplomatic note with no proof of delivery and Applicant has no record of such a diplomatic message. **Respondent Annex 5**. The note itself, even if delivered, failed to specify a seizure of the vessel and instead conveyed an equivocal message. Respondent has conceded that no notice was delivered prior to the seizure and the captain did not give his consent to board.

13.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 repeated travel to Cadiz, Spain, meetings with the Judge and Fiscal, meetings at the U.S. Embassy in Madrid, a request directed to the Spanish Ambassador to the United States dated April 27, 2010, and other meetings – all to no avail. See **Annex 4** (letter to Spanish Ambassador).

14.In addition to its counsels' meetings in Cadiz with Magistrate Judge Luis de Diego Alegre, the owner also attempted to obtain relief by sending the 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.) As of this date the owner's urgent attempts to secure the release of the valuable computer information through Spanish courts have been unsuccessful.

(B) The Sequence of Events

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 a marine area with great potential for petroleum accumulations.

16. During the period June – August 2004, the *Louisa* was purchased, outfitted, registered in Saint Vincent and the Grenadines, and dispatched to Spain. The ship arrived in Cadiz from Jacksonville, Florida on 20 August 2004.

17. 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.³ 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**.

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

19. 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.

20. Having completed its oil and methane gas exploration program, Sage chartered the *Gemini III* to a third party for a period in 2005. Subsequent to

³ Sage and its affiliates have a lengthy history of oil and gas exploration and trading in the United States, Russia, and Latin America.

the term of the last charter agreement in 2005, Sage attempted to sell or find other uses for both the *Louisa* and *Gemini III*.

Ship Arrests

21. In February 2006, the Spanish Guardia Civil arrested the *Louisa* and *Gemini III* at the dock in Puerto Santa Maria, along with a U.S. citizen⁴ and Hungarian crew members. Mr. Mario Avella, a crewman who served Sage as an independent contractor, had returned to the United States to attend to his mother who was ill; he was not on board. No indictments were authorized, but Magistrate's Court No. 4 of Cadiz investigated anonymous allegations of theft of Spanish "patrimony" during Sage's conduct of its undersea survey, as well as the presence of weapons aboard the *Louisa*.⁵

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

23. Upon information and belief, the Spanish investigation included Mario Avella, the *Louisa* crewmen, Sage and its owner and several Spanish citizens. The inquiry was initiated in Magistrates' Court No. 4 in Cadiz, under Judge 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.

⁴ This U.S. citizen was Alba Avella, who was visiting her father, Mario Avella, in Spain, and taking Spanish classes at the time. She had no connection to the *Louisa* other than being physically located on the *Louisa* at the dock. Her arrest was completely illegal.

⁵ Indeed, there were weapons on board, having been placed there for protection of the crew at the direction of ASP Seascot, the *Louisa's* ship management firm. Apparently, the Seascot captain did not declare them, perhaps because they were in a locked cabinet and he had the key.

24. On or about December 11, 2010, the Spanish Delegation presented this Tribunal with a copy of a special document. This was a copy of a Court Order labeled "indictment" and purported to charge two Americans, Mario Avella and John Foster. This was the first formal charge of any kind of which the Applicant is aware.⁶ The document was dated as if written on 27 October 2010, but it had never been released to the public prior to the Tribunal's hearing. Coincidentally, by October 2010, Saint Vincent and the Grenadines was feverishly working on its Application for Provisional Measures and had contacted the Tribunal about procedural matters. Hence, upon information and belief, the Order dated 27 October was simply contrived by the Cadiz court at some point to cover up the illegality of its actions up to that time. **See Annex 32** (Order of 27 October 2010).

25. Because of these procedural delays and lack of action by Respondent, the *Louisa* has deteriorated significantly in Puerto Santa Maria, to the point that she is completely unseaworthy and almost certainly a total loss.

26. 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.

27. 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 and, by now, may

⁶ The Order appears to charge John Foster and certain Spaniards with damage to historic patrimony. It appears to charge Mr. Foster and Mario Avella with possession and depositing of arms. At the Tribunal hearing on 11 December 2010, Applicant produced evidence that the "patrimony" in question was valued by a Spanish museum at less than 3000 Euros and much of it was recovered from homes

also have to be scrapped. 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 in 2009.

Environmental Threat

28. 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* after its arrest. It should be noted that Spanish records themselves indicate the *Louisa* posed a threat to the environment by Summer 2010 – if not long before that time – although this was not disclosed at the hearing on Provisional Measures. In fact, Spain insisted there was no threat. On or about 10 December 2010, the Spanish Delegation produced another alleged Order of the Cadiz court dated 29 July 2010. (**Respondent Annex 9**) As was the case with the other crucial document produced in Hamburg, this Order never had been served on the owner nor released to the public. Its disclosure during the hearing on Provisional Measures was, indeed, mysterious. Clearly the document was presented to this Tribunal to show that the Cadiz court had given the owner the opportunity to take charge of the *Louisa*, and that the owner had failed to do so.⁷

– not the ships. The museum report also noted that the items were not excavated from beneath the sea floor.

⁷ This Order was finally made public in Cadiz on 31 January 2011. **Annex 33**. See page one of Order in Spanish: "Notificado 31 Enero 2011" and accompanying English translation.

29. There is, however, a far more serious problem with the July 2010 Order. The document was incomplete when it was presented to the Tribunal just before the commencement of the hearing on Provisional Measures.⁸ In fact, the original Order included an attachment from the Maritime Captain (inspector) in Cadiz, Pedro de Frustos Garcia, dated 29 June 2010. This attachment was not disclosed to the Tribunal. The attached report indicated the *Louisa* was listing to port and apparently leaking water in the hold. The importance of this inspection report cannot be exaggerated. The Tribunal will recall that the Applicant had presented evidence during the hearing on 10-11 December 2010, that the *Louisa* posed an environmental threat. **Annex 34.** Spain dismissed this idea completely and claimed the ship was being “monitored.” Indeed, the ship was being inspected and the inspection supported the Applicant’s position. (**See Annex 33**, copy of Order of 29 July with attached report.) In any event, on 23 December 2010 the Tribunal overruled The Application for Provisional Measures in part because the ship seemed to pose no environmental risk. **Tribunal Order**, para. 74-78.

(C) Sage Corporate History and Purpose

1. Sage Maritime Scientific Research, Inc.

30. As noted, Sage Maritime Scientific Research, Inc. (“Sage”), contracted with ASP Seascot to operate the *Louisa*. 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.

⁸ To be clear, the Agents of Saint Vincent and the Grenadines had never seen the July Order nor the October Order until after commencing this action because the Orders had not been released to the

31. Sage was incorporated in the State of Texas on 3 December 1976. The President and only Director is Linda K. Thomas.

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

32. 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.

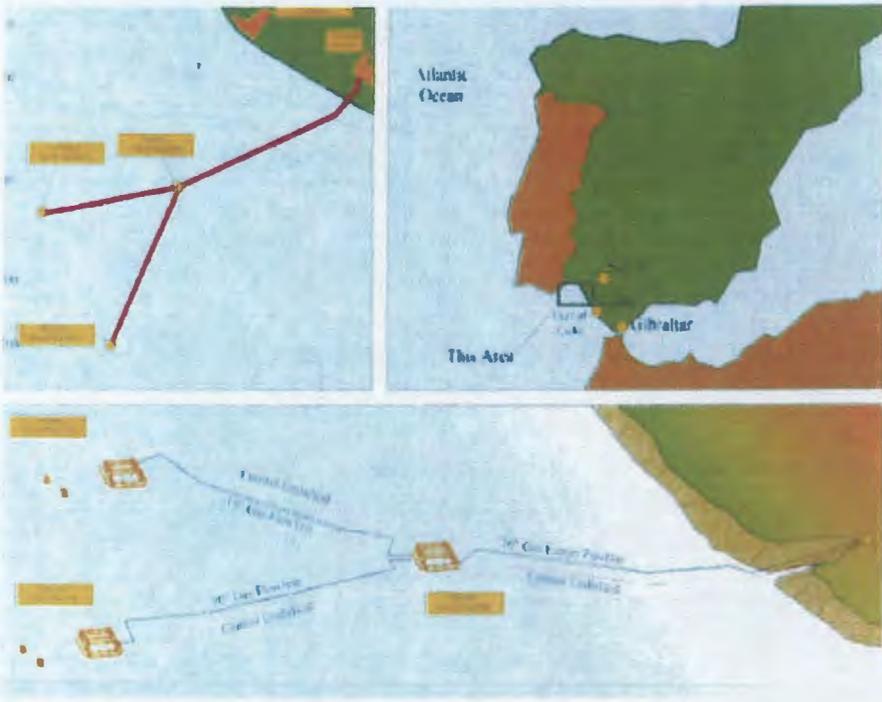


33. As a result of this research Sage entered into an agreement with a Spanish partner, which obtained what Sage believed to be an appropriate permit, whereupon it launched its hydrocarbon survey program in the Bay of Cadiz in 2004-05. As noted, this entailed acquiring the *Louisa* and having her flagged in Saint Vincent and the Grenadines, and the later acquisition of the *Gemini III*. Thereafter, with full knowledge of Spanish authorities the

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ships operated in and around Cadiz equipped with the permit the Spanish now claim was inadequate.

34. Since Sage's early interest in the Bay of Cadiz, other oil and gas companies have expressed similar plans. For example, as noted elsewhere in this Memorial, the Spanish company Repsol has engaged in the production of gas at various times, including in 2011. The Poseidon Field is located in the area Gulf of Cadiz approximately 30-40 kilometers offshore Huelva. This is near the area explored by the *Louisa* and *Gemini III*. The map below depicts Repsol's operations off Huelva, north of Rota. A 10" gas pipeline with a "north umbilical," "south umbilical," and "central umbilical" link the gas wells to the shore.



3. Equipment Used for the Hydrocarbon Survey

35. Neftco Exploration recommended that Sage use both a digital cesium magnetometer and digital side scan sonar for evaluation of the geological basins in the Bay of Cadiz.⁹ 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. This method has been widely acclaimed as effective. **Annex 35.**

36. Extraordinarily important electronic data was stored in at least one computer on the *Louisa*. This computer data is urgently required. The owner has repeatedly sought its return in Cadiz, and Saint Vincent and the Grenadines has similarly requested the computers. These technical findings and related research are effectively confirmed by the fact that Repsol is now actively engaged in producing gas in the area as shown above. In fact, Repsol reopened its efforts to produce in 2009, after Spanish authorities had seized the *Louisa* and Sage's computers.

37. During the Tribunal's hearing on 10-11 December 2010, Respondent produced pictures and made various statements regarding the equipment used for the exploration. For example, Respondent produced a picture of large aluminum deflectors installed on the stern of the *Gemini III* without an indication of the time of installation. Respondent failed to note that these deflectors were installed by the company which leased the *Gemini III* in 2005, Plangas! Moreover, these deflectors are commonly used in the underwater testing of seabed anomalies for oil and gas purposes. Spain also did not disclose to the Tribunal that the installation of the deflectors was discussed with Spanish maritime authorities and their use approved!

4. Sage's Scientific Survey, its Strategy and Findings

38. Independent oil and gas companies like Sage historically have made the great majority of significant oil and gas discoveries.

39. Because they often lack the capital resources of larger companies, independent oil and gas companies place heavy reliance on the technical knowledge of their personnel and their abilities to react quickly to opportunities and to conduct operations economically. Many petroleum prospects that have resulted in significant discoveries initially have been identified by crude oil seeps and geological anomalies. Despite Respondent's contention that equipment found on board the *Louisa* was intended only for the identification of sunken ships, magnetometers and side scan sonar

⁹ This equipment was leased by Sage and sent by air freight to and from Spain at great expense.

devices are commonly used to locate these crude oil seeps and geological anomalies. **Annex 35.**¹⁰

40. Consultants employed by Sage described the existence of geological anomalies previously identified by magnetic surveys conducted by the United States government and the existence of crude oil seeps recorded by satellite imagery by companies such as Infoterra Ltd. of Leicester, UK. Using the information provided by its consultants, Sage designed a program to survey certain areas of the Bay of Cadiz using the cesium magnetometer and side scan radar equipment described elsewhere in this Memorial. The partial results of the survey transmitted to Sage indicated geological anomalies with great reservoir potential.

41. There is a well-developed market in the international oil and gas industry for technical information that may identify or assist in the identification of prospective areas in which there is a good chance of success to discover oil and gas reserves. Sage's plan, rather than conducting its own drilling and development programs, was to gather information and sell it to others. It intended to find and would have found a buyer for the information it developed during the course of its exploration program in the Bay of Cadiz. The strategy was foiled, however, because Respondent confiscated all of the computers that were found aboard the *Louisa* and generally disrupted the company to the extent that it was rendered inoperable. The computers contained almost all of the information collected in the survey program.

¹⁰ See also Klaucke, I., H. Sahling, et al. (2006). "Acoustic investigation of cold seeps offshore Georgia, eastern Black Sea." *Marine Geology* 231 (1-4); 51-67; Nikolovska, A., H. Sahling, et al. (2008). "Hydroacoustic methodology for detection, localization, and quantification of gas bubbles

42. Sage has filed a motion in the Cadiz Court requesting the return of the computers confiscated by Respondent or copies of the hard drives of those computers. In 2011 the Court apparently ordered the Guardia Civil to turn over the equipment and information requested but to date the Guardia Civil has not complied with the Court's order. This refusal of the Guardia Civil makes it difficult for Sage to defend itself in the investigation in Cadiz and complicates its preparation of its claim to this Tribunal.

43. That is, 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, and the cesium magnetometer readings and the Klein digital side scan sonar data indicated a high probability of petroleum accumulation. Much of this valuable information has been converted by the Respondent in violation of Articles 226 and 245 of the Convention.

communicated to Saint Vincent and the Grenadines. But if it was communicated, it completely failed to notify the flag country. The note verbale included this equivocal language:

The Embassy of Spain presents its compliments to the Ministry of Foreign Affairs, Commerce and Trade of St. Vincent and the Grenadines and has the honour to inform that on February 1 and 2, the N° 4 Court in Cadiz processed the entry and registration of the vessel *Louisa* flying the flag of Saint Vincent and the Grenadines. . . .

Applicant submits that these words do not communicate the boarding and search of a vessel flagged in a foreign jurisdiction. Finally, as is discussed below and at the hearing on Provisional Measures, the timing of this alleged notice violated Spanish law.

46. In the meantime, in response to the request of the *Louisa's* owner, the Saint Vincent and the Grenadines Maritime Administration attempted to contact Spanish authorities prior to filing this action. **Annex 7.** Spanish authorities did not provide any substantive responses, and this case ensued. *See also Annex 8* (ship owner complaint to Spanish authorities.)

47. After the arrest, no bond or other security that would allow release of either the *Louisa* or the *Gemini III* was set by the Respondent.

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

49. In the Order of 23 December 2010, the Tribunal found that the requirements of Art. 283 of the Convention were satisfied. **Tribunal Order** at

paragraph 65. Notwithstanding that decision, representatives of Applicant and the owner met with the Spanish delegation in Madrid in March 2011 about this matter but no resolution was obtained.

CHAPTER 3

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

50. 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.

51. 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.

52. 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.**

53. The Tribunal has jurisdiction to consider a case on the merits and may admit this claim pursuant to Articles 20, 21, and 23, Statute of the International Tribunal for the Law of the Sea and Articles 287, 288, 291, 293, and 304 of the Convention.

CHAPTER 4

I. Legal Grounds

(A) Spain Violated Its Own Law

54. Based on its presentation in the hearing on Provisional Measures, we understand the Respondent's defense on the merits to be based on the endless criminal investigation in *Cadiz* and the idea that the ship *Louisa* and the workboat *Gemini III* are instruments of a crime. Thus, Respondent argues that Spanish authorities are entitled to hold the ships for an indefinite amount of time and that this Tribunal should avoid these important issues entirely.

55. Applicant submits that similar defenses have been previously rejected by the Tribunal as discussed below. Effective enforcement of the Convention requires Tribunal action. And Applicant would submit that the evidence presented to the Tribunal on 10 December 2010 in the form of the oral testimony of the Honorable Javier Moscoso provides ample justification for a finding by this Tribunal that Saint Vincent and the Grenadines is entitled to substantial damages.

Testimony of Javier Moscoso

56. Dr. Moscoso testified about the illegal nature of the ship seizures and his testimony outlined the basis under Spanish law upon which the Tribunal can rely for some portion of its findings. Dr. Moscoso is a Doctor of Law and a former Spanish prosecutor. He has served as the Attorney General of Spain, a Speaker in Parliament and a Minister during the Presidency of Felipe Gonzalez. He also served as chair of Criminal Law at the University of Navarro (Spain). (Transcript, 10 Dec. 2010 at 9-10). Hence, his credentials

are irrefutable and his appearance on behalf of the Applicant truly extraordinary.

57. Dr. Moscoso testified that the boarding of the *Louisa* was illegal under Spanish law because the judge had failed to follow Article 561 of Spanish criminal law:

Q. In your opinion as an expert in Spanish law and procedure, was the boarding of the *Louisa* legal?

A. I remember that the legal opinion I wrote gave special attention to that issue and in my opinion the acts when entering and searching were not legal, not correct from the legal point of view, and they were not correct because I understand that they took place without fulfilling Article 561 of our criminal law, which establishes the procedures for these sorts of things.

Q. I will show you Annex 27, which is a reproduction of the Spanish Article 561 that you have just referred to in both Spanish and English. I know you are familiar with it yourself, and I would ask you to explain to the Tribunal what it was about the search and boarding of the vessels that makes the actions of the Spanish police illegal.

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

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

A. That is the opinion of the judge. I do not share that opinion.

(Transcript, 10 Dec. 2010, at 10-11)(emphasis added)

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58. At this point in his testimony, Dr. Moscoso addressed directly Spain's contention that notice to the flag country had been given and that, therefore, Spain was in compliance with its own law – and, by implication, international law.

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

A: This is a question for me?

Q: Yes.

A: In the documents that I could examine, before the police entered the ship there was no communication in the documents that I was able to examine at least of anything in this sense. Some days later I do remember that the consulate of the different countries of the two ships were notified. That is what I know from the documents that I received from the Lawyers' office in Madrid. That intention to notify the country came some days after the ship was searched, and in my opinion it should have come before the searching of the ship.

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

A. It is in English. Embassy of Spain; 2006; 15 March 2006

...

Q. This is the document submitted by Spain allegedly relating to *modus* [notice] to the flag country, is it not?

A. It is the first time I see this document. I have no opinion on it.

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

A. No, but I would like to insist with respect to the legal opinion I drafted, I did take much care to search whether there was a previous notification and I can say that there was not. There were no previous notifications – later notifications, yes, but previous notifications, which is what matters for the legal opinion that I admitted, there was not type of previous consultation or previous notification.

and I actually studied that quite in detail. I found no previous notification of any sort.

(Transcript, 10 Dec. 2010, at 11-12)(emphasis added)

59. The Tribunal will recall that Respondent submitted a note verbale as Annex 5 to its Response to the Application for Provisional Measures. The complete inadequacy of this note as a means of notifying St. Vincent and the Grenadines of a ship seizure is discussed elsewhere in this Memorial. But Dr. Moscoso effectively addressed two more fundamental problems: the note was served too late and the judge erroneously claimed that Article 561 did not apply.

60. During the cross-examination of Dr. Moscoso, Respondent attempted to establish that the judge in *Cadiz* could not obtain permission of the captain to board the *Louisa* because he had fled to Portugal. Dr. Moscoso rejected this excuse:

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

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

(Transcript, 10 Dec. 2010 at 17)(emphasis added)

61. The Tribunal should be aware that the underlying basis for the question put to Dr. Moscoso was completely erroneous. The captain of the *Louisa* was

not arrested in Lisbon. The captain was Hungarian and he had left Spain after the ship was docked in 2005. The Court in *Cadiz* has never charged the captain although he failed to declare the weapons on board the *Louisa*. This approach is just another mystery to St. Vincent and the Grenadines posed by this case. If the *Louisa* and the *Gemini III* engaged in some wrongdoing, why was the captain never charged?

62. Notwithstanding the failure of Respondent's judicial system to provide Sage information to which it is entitled for its defense, consultants using preliminary information from the survey program have been able to estimate the size of a number of reservoirs that could contain substantial reserves of petroleum.

(B) Breach of Obligations Under Article 73

63. As further explained below, the Convention and this Tribunal's precedents give rise to numerous different bases for liability.

64. There is no doubt from the facts set out in Chapter 2 that the vessel *Louisa* and its tender, *Gemini III* and several individuals, were arrested and detained by the authorities of the Respondent. The owner of the vessels was ready and willing to post reasonable bonds or other security necessary for the release of the vessel and its crew. However, no bond or other security for the ships was ever set by the Respondent. After such a long delay and after inspection by representatives of the owner, the *Louisa* should probably be scrapped. Laden with oil, it is in danger of creating an environmental disaster in the area of Puerto Santa Maria. The fact is apparent from the expert report furnished by Applicant on 11 December 2010 and by Spain's own inspector as discussed above. **(Annex 33)** Moreover, the owner continues to insure

the vessels and to retain Saint Vincent and the Grenadines as the flag country for the *Louisa*.

65. 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 was 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. *****
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.

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

67. 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 actually 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 that the ship had been seized, Respondent prohibited Applicant from becoming involved and effectively concealed its violation of the flag state's rights for almost five (5) years.

(C) Breach of Obligations under Articles 226 and 227

68. 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.

69. As discussed above, the Respondent has purportedly been "investigating" the activities of the *Louisa* and *Gemini III* 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. More than 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 Articles 245 and 227

70. 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.

71. Respondent has acted 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 conduct research in the territorial sea (Bay of Cadiz) and thus had the express consent of the State to operate. **Annex 6.** For months the ships in question openly cruised the Bay and displayed this permit when requested. Notwithstanding this, Respondent has seized vessels and scientific equipment and denied the Applicant the opportunity to pursue oil and gas opportunities. In the meantime, at least one Spanish oil company, Repsol, is presently engaged in developing methane gas reserves to the exclusion of foreign interests, such as those who dispatched the *Louisa* and *Gemini III*.

28

The actions of the Spanish state are truly discriminatory and violate Art. 245 and Art. 227.

(E) Breach of Obligations under Article 87

72. 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 ASP Seascott, Ltd., one of the world's best known ship 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.

73. Unfortunately, the Applicant's ship appears to have been destroyed by Respondent through neglect and wrongful detention. The lack of present seaworthiness, however, does not diminish Respondent's liability for violating

Article 87. The *Louisa* and *Gemini III* have been denied access to the high seas and Applicant is entitled to damages as a result.

CHAPTER 5

Reparations/Damages

74. Applicant would respectfully next address the question of the damages to which it is entitled as a result of the violations described in this Memorial. Based on a good faith interpretation of the Convention and the Tribunal's rules, and precedents, it cannot be denied that damages may be awarded to the flag state. *M/V Saiga* (No. 2), 120 I.L.R. 143, para. 104-109 (Int'l Trib. L. of the Sea 1999).¹² Indeed, the Respondent, in documents previously filed with the Tribunal, has never questioned the jurisdiction of this body to award damages to Saint Vincent and the Grenadines.

75. Rather, Spain has insisted that the detention and consequent destruction of the *Louisa* and *Gemini III* are simply justified by a criminal investigation underway since 2005 which should not be disturbed. Similarly, it argues that the illegal detention of Mario Avella and his daughter, Alba, involved the criminal investigation conducted by a provincial court. Responsibility cannot be denied with such ease.

76. The Applicant contends that the business losses, direct and consequential and, indeed, the deprivation of liberty and the pain and suffering inflicted by the Respondent during the now almost six (6) years of "investigation" over the trivial and inconsequential matters supposedly involved entitles it to damages. For these reasons, Applicant presents the following outline of the

¹² See also, ILC Articles on State Responsibility, Art. 2, para. 9 and Advisory Opinion, *Seabed Disputes Chamber*, (at 53) (Int'l Trib. L. of the Sea, 1 February 2011)

factual and legal grounds which support a Tribunal award. Further evidence supporting these claims will be presented at trial.

77. In the *M/V Saiga* (No. 2) the Tribunal stated the following with respect to reparations under the Convention:

The provisions of this Convention regarding responsibility and liability for damage are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law. It is a well established rule of international law that a State that suffers damage as a result of an internationally wrongful act by another State is entitled to obtain reparation for the damage suffered from the State which committed the wrongful act and that "reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablishes a situation which would, in all probability, have existed if that act had not been committed." (*Factory at Chorzow, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 47*). Reparation may be in the form of "restitution in kind, compensation, satisfaction and assurances and guarantees of non-repetition, either singly or in combination" (article 42, paragraph 1 of the Draft Articles of the International Law Commission on State Responsibility). Reparation may take the form of monetary compensation for economically quantifiable damage as well as for non-material damage, depending on the circumstances of the case. The circumstances include such factors the conduct of the State which committed the wrongful act and the manner in which the violation occurred. Reparation in the form of satisfaction may be provided by a judicial declaration that there has been a violation of a right.

78. As noted in *M/V Saiga* (No. 2), the Tribunal has previously cited the Draft Articles of the International Law Commission on State Responsibility as authority to award and determine the amount of damages. *M/V Saiga* case (No. 2), para. 171. These Draft Articles were since adopted by the U.N. General Assembly at G.A. Res, 56/83, U.N. Doc. A/RES/56/32 (Jan. 28, 2002).

79. Hence, the Articles provide guidance here and justify a large award for lost profits, financially assessable damages, and general damages. G.A. Res. 56/83, at Art. 36.

80. Moreover, Art. 245 (Marine Scientific Research) specifically provides for damages and the Tribunal can rely on other authority found in Art. 23 of the Statute and Arts. 293 and 304 of the Convention. See also International Court of Justice (ICJ), Art. 36.

81. The reparations which Applicant seeks include the following:

1. Payment for the *Louisa* in the amount of \$600,000 (USD);
2. Payment for the *Gemini III* in the amount of \$220,000 (USD);
3. Reparations for the violation of human rights of Alba and Mario Avella.
4. Payment for the contents of the ships, including but not limited to the items listed below.
5. Payment for the value of the intellectual property, specifically the lost profits the owner would have realized in the amount of \$25,000,000 (USD); and
6. Attorneys' fees and costs in an amount not less than \$400,000 (USD).

82. Damages Relating Directly to *MV Louisa*:

Damages: Equipment on MV Louisa

No.	Item	Value
1.	Hyperbolic Recompression Chamber, DL-54, #409052	
2.	Deep diving suits with helmets and communications equipment <ul style="list-style-type: none"> • Diving Helmet – Kirby Morgan Superlight 17, #9160, 40A83, 40 A91 • Diving Bank Mask – Kirby Morgan EXO 26 • 4 Dive Radios – Amron II 2820 #24526 	

No.	Item	Value
	<ul style="list-style-type: none"> • Diver's Supply TDR #21549, #21545 • Diver's Supply CDR #30031 • Air Filter 3 Stage • Dive hose umbilicals 300 • Diving Stage • Hand Jet 	
3.	Scuba diving suits and equipment Air Regulator Meco <ul style="list-style-type: none"> • 02 Regulator Victor • 2 Scuba Regulators OMS "din" • 2 Eagle "din" • Air Bank for 12 cylinders • 3 Scuba cylinders Twin 80 with yoke • Single 80 • Weight Belts Miller • Air Manifold Diver's Supply • Pneumo Gauge • Video Manifold DS P&L ccu-3100 #178 	
4.	Computer Laptop (Apple)	
5.	Two (2) large tool chests with power tools and hand tools in ship's hold	
6.	Drill Press	
7.	Three (3) Air Compressors (LP, LP, HP) Quincy 325 & 5120; Bauer MIIV – E 3	
8.	Industrial Oxy/acetylene cutting torch with parts <ul style="list-style-type: none"> • Oxy Bottle K • Argon Bottle K • Acetylene Bottle F 	
9.	Three (3) types of welding equipment (TIG, MIG and portable engine driven welder/generator) Miller bobcat 250, #E017236570	
10.	Boxes of welding parts and equipment <ul style="list-style-type: none"> • Job Box Greenlee • Job Box Snap On 	
11.	Other diving equipment <ul style="list-style-type: none"> • Toolbox with Scuba Parts 	
12.	Pressure Washer Excell 2R3700, #2451257089	
13.	Underwater Altimeter – Fisher's UA-2	
14.	Three (3) Metal Detectors – Excalibur 800 #28679, #14423, #14414	
15.	Digital Underwater Camera SONY Mavica FD7	
16.	Davit and Winch – Dayton 1500 lb.	

No.	Item	Value
	#91023383/9102455	
17.	Two (2) Dredge Inductors 3" and 5"	
18.	Dredge Hose	
19.	Dredge Pumps – Keene 380447 #203 1224 Vanguard 23 HP #2031203	
20.	Pelican Weatherproof Containers for all ROV Equipment	
21.	Two (2) 12V Batteries for Pulse	
22.	HYPACK Max	
23.	1 x 54" Chamber fully plumbed, canopy and double lock	
24.	Chamber Mattress	
25.	Two (2) Rack chamber bottle set of 2 painted and removable	
26.	Boat-Towed Metal Detector with 300' umbilical	
27.	DDW deep dive wing (weight for Pulse 12)	
	TOTAL EQUIPMENT	\$193,000
28.	Trimble Digital GPS DSM 212H	47,000
29.	Deck Mounted Tender	81,000
30.	Submarine Voyager	18,000
32.	Remote Operated Vehicle (ROV) -- Outland 1000, #131 <ul style="list-style-type: none"> • 500' umbilical • Control Unit • Fisher Mag Coil with control unit 	36,000
33.	Two (2) Underwater Flashlights Kinetics Light Cannon 100 and Sunlight C8	9,700
34.	Computer information relating to oil & gas exploration in Bay of Cadiz	\$\$\$\$
35.	Travel	63,000
36.	Repairs	39,000
37.	Supply, Postage, Shipping	27,000
38.	Management Fees	26,000
39.	Insurance	55,000
	GRAND TOTAL	\$594,700

Damages: Lost Profits

83. As noted above in describing the strategy employed by the owner of *MV Louisa*, the company has suffered extraordinarily substantial consequential damages as a result of the loss of its survey work based on preliminary data which was produced during the scientific expedition and returned to the

Louisa's owner in the United States. Sage and its Consultants believe the intellectual property had immense value and could have been sold to a large international petroleum company.

84. The consultants have reported to Sage that the anticlines (arches of sedimentary rock) within the geological anomalies that have been identified contain very substantial reserves.

85. Based on its experience and the advice of its consultants, it is estimated that Sage could have sold the information it gathered in the internationally accepted manner discussed above for a sum of at least \$25,000,000 (USD).

Request for Relief

86. For the reasons set out above, the Applicant requests the Tribunal prescribe the following 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 *MV Louisa* and *Gemini III* and return property seized;
- (d) declare that the detention of any crew member was unlawful;
- (e) order reparations in the amount of \$30,000,000 (USD); and
- (f) award reasonable attorneys' fees and costs associated with this request as established before the Tribunal.

Respectfully submitted,



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