

# INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2012

Public sitting

held on Friday, 12 October 2012, at 3 p.m.,  
at the International Tribunal for the Law of the Sea, Hamburg,

President Shunji Yanai presiding

## THE M/V “LOUISA” CASE

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

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**Verbatim Record**

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

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*Saint Vincent and the Grenadines is represented by:*

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

*and*

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

*as Counsel and Advocates;*

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

*as Advocate;*

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

*as Counsel.*

*The Kingdom of Spain is represented by:*

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

*as Agent, Counsel and Advocate;*

*and*

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

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

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

*as Counsel and Advocates;*

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

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

*as Counsel;*

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

*as Adviser.*

1 **THE PRESIDENT** (*Interpretation from French*): Ladies and gentlemen, good  
2 afternoon. Today we shall hear the second round of pleadings from Spain in the  
3 *M/V Louisa* case.

4  
5 Today is also a national day of celebration in Spain. It is the Spanish national day,  
6 and on this occasion I should like to address my warmest congratulations to the  
7 Spanish delegation.

8  
9 Before going any further, may I inform you that Judge Wolfrum will be absent today  
10 for reasons that he has conveyed to me.

11  
12 I now invite Ms Escobar Hernández, the Agent of Spain, to take the floor.

13  
14 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, Mr President.  
15 Members of the Tribunal, 12 October is indeed the Spanish national day, and I thank  
16 you for your congratulations. We feel that this is a very good opportunity to celebrate  
17 our national day by being here to present Spain's last round of pleadings in this  
18 case.

19  
20 Mr President, Members of the Tribunal, we have reached the last sitting in which  
21 Spain is to present its final arguments in this case, together with our final  
22 submissions and *petita*, to the Tribunal.

23  
24 For the purposes of our last oral presentation, we have taken into account both the  
25 written pleadings that have already been submitted to you and the hearings that  
26 have taken place here since 4 October. That being said, we do not think that it is  
27 necessary, or useful, to go back over all the arguments that have been set forth  
28 before you. On the contrary, given the nature of this second round, we have singled  
29 out a few salient points that reflect Spain's position. Not all the subjects, but a choice  
30 always has to be made.

31  
32 These points will be linked to the statements of the experts and witnesses from  
33 whom you have heard during the course of the hearings, and we shall also respond  
34 to the statement and final submissions presented yesterday by the Co-Agent of Saint  
35 Vincent and the Grenadines.

36  
37 At the same time, we shall give Spain's answers to the questions that were put to the  
38 Parties by the Tribunal on 2 October.

39  
40 However, Mr President, we would like to leave those answers to the second part of  
41 the sitting, once we have presented our arguments fully, if that suits you and we  
42 have your permission to do so.

43  
44 Mr President, let me start with a reference to what we regard as the most salient  
45 points that we wish to submit for your consideration at this stage.

46  
47 First, this International Tribunal for the Law of the Sea has no jurisdiction to rule on  
48 the application made by the Applicant, both from the standpoint of admissibility and  
49 *ratione materiae*. The Applicant tried yesterday to steer you towards another  
50 justification for jurisdiction, as presented by the Co-Agent of Saint Vincent and the

1 Grenadines using what we regard as deceptive arguments with no legal basis. I do  
2 not think it necessary to dwell on this subject now. I shall refer to certain aspects of it  
3 throughout my presentation.

4  
5 Second, the *Louisa* is, of course, the only potential connection, if one ever existed,  
6 between this case and the United Nations Convention on the Law of the Sea. The  
7 Applicant has proved no other possible form of connection between its complaint and  
8 either the Convention or the law of the sea in the broad sense of the term; and,  
9 despite that, the Applicant seeks to present a big picture with lots of colour, but with  
10 no basic design, based on facts - the Applicant's facts - which cannot be connected  
11 with the Convention unless one accepts a very broad, crude and misleading  
12 interpretation of what happened in Cádiz. With your permission, I shall return to this  
13 subject later.

14  
15 Third, the fact that the *Louisa* was flying the flag of Saint Vincent and the Grenadines  
16 is the only basis for the case to be submitted to you, and that nexus was presented  
17 by the Applicant once again in a misleading manner, because it would seem that the  
18 flying of a flag on a vessel has unexpected and inadmissible consequences in  
19 international law. Let me cite two of those consequences:

- 20  
21 - according to the Applicant, the presence of a ship makes it possible to exclude  
22 any well established rule on diplomatic protection and to ignore the sovereign  
23 jurisdiction of a third State exercised in pursuance of the Convention on the Law  
24 of the Sea and other conventions and treaties and general international law;  
25  
26 - further, the presence of a ship, again according to the Applicant, transforms into  
27 maritime law any subject, from the exercise of criminal jurisdiction by a third  
28 State exercising its sovereignty in the field of human rights. I shall not, however,  
29 not go back over arguments that I have already presented to you.

30  
31 However, let me say that for the Applicant the mere presence of the *Louisa* seems to  
32 turn everything into the law of the sea, and they would have us believe that  
33 everything has to be analyzed from that perspective. I must tell you that Spain does  
34 not believe that international law should be considered in a vacuum, like a closed  
35 box.

36  
37 On the contrary, as we said in our pleadings, the law of the sea is a component of  
38 international law, and your Tribunal is entitled to consider as applicable law both the  
39 Convention and other rules of international law that are not incompatible with the  
40 Convention. That being said, however, I must also remind the Applicant that, while  
41 the law of the sea incontrovertibly constitutes international law, not every rule of  
42 international law is automatically a rule of the law of the sea or indissociably linked  
43 with the law of the sea.

44  
45 On the subject of the flag, I would draw your attention to the fact that the Applicant  
46 seems not to have fully understood what flagging a ship means. I think it is sufficient  
47 to say that the nature of such an institution, which is closely bound up with one of the  
48 freedoms of the sea – the freedom of navigation - and which is a sovereign State  
49 right, does not correspond at all to the meaning that the Applicant has given  
50 recognition of the flag in subparagraph (l) of its final submissions, which I shall read:

1 (Continued in English) “order reparations to Saint Vincent and the Grenadines in the  
2 amount of €500,000 for costs and damages to its dignity, integrity and vessel  
3 registration business”.

4  
5 (Interpretation from French) Mr President, can the exercise of a sovereign right be  
6 characterized as a business? I believe that in this case the Applicant has gone well  
7 beyond the “progressive development of international law”. It would seem that it does  
8 not understand some of the essential categories of international law or, worse still, if  
9 it does understand them, it prefers to ignore them.

10  
11 Fourth, the dispute, if there ever turns out to be one, between Saint Vincent and the  
12 Grenadines and Spain does not and cannot bear on anything other than the  
13 detention of the *Louisa* and the conformity of that detention with applicable  
14 international law, in particular the United Nations Convention on the Law of the Sea.

15  
16 As I said yesterday, the detention of the *Louisa* and a number of individuals and the  
17 adoption of other precautionary measures do not make up an indissociable block of  
18 measures relevant to the United Nations Convention and the law of the sea. The  
19 only connection between the detention of the *Louisa* and some of the individuals on  
20 board is the criminal procedure in Cádiz in connection with significant criminal acts.

21  
22 Yesterday the Applicant mentioned an article by Professor Treves as an authoritative  
23 reference, and they did well to do so - Spain has also used that reference. But they  
24 drew an astounding conclusion from it: no doubt they have not read it fully, because  
25 they conclude, if I am not mistaken and if I can believe the record, that the  
26 Convention on the Law of the Sea somehow exerts an absolute power of attraction  
27 over human rights. This is surprising and shows once again how deceptive the  
28 Applicant’s arguments are. I would not presume to comment on that article. You are  
29 familiar with it and it is for you to decide how to interpret it.

30  
31 Permit me to make two comments:

32  
33 first, Spain has never said, as the Applicant appears to claim, that it is impossible to  
34 apply and take account of human rights in the context of the Convention and in the  
35 exercise of your jurisdiction. What Spain said was that it is logical to pay attention to  
36 human rights, but always within the Convention framework;

37  
38 second, it is surprising, to say the least, that the Applicant has made no reference to  
39 your case law in this respect; especially if, as the Applicant itself says, they have  
40 called upon experts in the field of the law of the sea – and I have no reason to  
41 question that assertion. Apparently it was those experts who told them to invoke  
42 article 300 and the alleged violation of human rights by the Spanish authorities.

43  
44 Fifth, Spain has breached no rule or principle of international law by detaining the  
45 *Louisa*. The *Louisa* was detained in full conformity with international law and Spanish  
46 domestic law; more on that subject later when I answer the questions that the  
47 Tribunal has submitted to us. However, at this stage may I offer a remark on an  
48 assertion made yesterday by the Co-Agent of the Applicant, who said that Spain is  
49 trying to justify the fact that article 561 of the Spanish Code of Criminal Procedure

1 (*Ley de Enjuiciamiento Criminal*) has been modified so as to support the action taken  
2 by the Spanish judge regarding the order to board and search the *Louisa*.

3  
4 Mr President, as I shall have occasion to explain at more length subsequently, the  
5 Co-Agent of Saint Vincent and the Grenadines constantly distorts Spain's words. He  
6 referred to the testimony of Mr Martín Pallín and to my remarks at that time  
7 concerning article 561 of the Code of Criminal Procedure. Spain never said that the  
8 article was not in force.

9  
10 Spain never said that the article in question was no longer in force. Spain never said  
11 that article 561 had been modified, which, in a democratic country, would entail a  
12 decision by parliament.

13  
14 What we said was that article 561 had been the subject of different interpretations by  
15 the judges and courts in Spain, that there had been several interpretations of its  
16 scope, and that the Supreme Court had stated that non-fulfilment of the conditions  
17 stipulated in this article would affect neither the validity of the evidence obtained  
18 during the arrest and search of the vessel nor the validity of the procedure itself,  
19 because there was no prejudice to the rights of the accused or any prejudice to due  
20 process, let alone a denial of justice.

21  
22 However, the Spanish Supreme Court was not alone in holding thus. The European  
23 Court of Human Rights confirmed this interpretation in the decision that we  
24 presented to you two days ago. I would have expected a lawyer who customarily  
25 works in the field of common law, and in consequence uses the word "precedent"  
26 frequently, to be able to understand the arguments presented by Spain and not  
27 confuse this with a modification of the law.

28  
29 Sixth, the detention of the *Louisa* occurred in the context of the exercise by Spain of  
30 its criminal jurisdiction, in particular with regard to certain offences against the  
31 underwater cultural heritage, the protection and conservation of which were  
32 voluntarily accepted by Spain in line with a number of international legal instruments.  
33 I shall reply later to one of the questions from the Tribunal, but at this stage let me  
34 say that the ongoing criminal procedure in Cádiz, under which the *Louisa* was  
35 detained, is neither unreasonable nor excessive – not unreasonable because, as  
36 I shall explain later, this is an instrument contributing to the protection of the  
37 underwater cultural heritage, in accordance with the obligations assumed by Spain  
38 under the Convention on the Law of the Sea and the 2001 UNESCO Convention.

39  
40 Additionally, as to the weapons found on board the *Louisa*, it should be recalled that  
41 the maintenance of internal security is one of the rights and obligations of any  
42 sovereign State, and the control of weapons that could be in the hands of individuals  
43 is considered by Spain as an absolute prerequisite for guaranteeing public order and  
44 safety.

45  
46 Nor is Spain's exercise of jurisdiction excessive because the offences that are the  
47 subject of the judicial investigation were committed in Spain, within its territory, its  
48 internal waters and territorial sea, by a network of individuals present on Spanish  
49 territory, and their consequences were felt in Spain, by Spain.



1 Seventh, the facts alleged by the Applicant do not correspond in any fashion to what  
2 happened in Spain within the framework of these criminal proceedings, where the  
3 detention of the *Louisa* was just one of the measures adopted by the competent  
4 judicial authorities. In both its Memorial and its Reply the Applicant has always stated  
5 very clearly that the *Louisa* arrived in Spain to carry out activities of hydrocarbon  
6 exploration; but it has not been able to demonstrate that the vessel had a permit  
7 granted by the Spanish authorities, in exercise of the powers expressly conferred on  
8 them by the United Nations Convention on the Law of the Sea.

9  
10 Subsequently, we were told by the Applicant that it thought that the permit obtained  
11 by Tupet was valid to carry out the surveys that Sage was interested in; but,  
12 Mr President, distinguished members of the Court, is it really likely that a major  
13 company like Sage, in respect of which Saint Vincent and the Grenadines claims to  
14 exercise diplomatic protection, a company specializing in hydrocarbon research,  
15 would agree to participate in an operation of the kind described by the Applicant,  
16 unless it was absolutely sure that its partner had adequate permits?

17  
18 Is it likely that Sage would not have consulted its own legal services to verify the  
19 validity of a document that is the only title authorizing the presence of its vessel in  
20 Spain and authorizing it to develop costly activities with a high degree of financial  
21 risk?

22  
23 Even more surprisingly, the Applicant now tells us that if it was doing something  
24 wrong, that was not its fault or responsibility, but that of third parties: Tupet for the  
25 permits, Plangas for the deflectors, and perhaps the divers for having taken items  
26 from the seabed and put them on board the *Louisa*.

27  
28 Mr President, I find this surprising as a legal argument and I find it even more  
29 surprising that such a line of argument should be used by a State before an  
30 international tribunal.

31  
32 Spain, for its part, has quite clearly demonstrated the truth of its assertion: that Sage  
33 had no authorization to conduct hydrocarbon exploration and that, consequently, the  
34 Applicant's claim in defence of the legality of the *Louisa's* activity in Spain is utterly  
35 false. Furthermore, Spain has demonstrated that there is a reasonable basis for  
36 considering that the *Louisa* was part of the crime ring responsible for the offences  
37 that are the subject of proceedings in Spain, and that it was an instrument for the  
38 commission of those offences. It is for this reason and this reason alone that the  
39 *Louisa* has been detained in Puerto de Santa María.

40  
41 However, the Applicant told us yesterday that Spain has not proved any of its  
42 assertions either with respect to the objects found on the *Louisa* or even with respect  
43 to the participation of the *Louisa* in the commission of the offences. Spain, for its  
44 part, considers that it has very clearly demonstrated the link between the *Louisa* and  
45 the crime ring, as well as the fact that objects belonging to its underwater cultural  
46 heritage were on board that vessel. Ms Avella recognized that fact during her own  
47 witness testimony.

1 The fact that she characterized those objects as stones is but the logical  
2 consequence of the fact that she is not an expert in underwater archaeology, no  
3 more than I am.

4  
5 What other evidence does the Applicant demand from Spain? The dates and times  
6 when the participants in the alleged criminal organization met and what they said?  
7 Who took this or that item? How is the crime ring organized? What role was played  
8 by one or another person? What were the contents of one or another hard disk?  
9 These are just a few examples.

10  
11 Mr President, I am not sure that this Tribunal would wish to transform itself into a  
12 criminal court. And yet, that is what the Applicant would like. All this is the subject of  
13 criminal proceedings under way in Cádiz, and all this evidence, which has already  
14 been gathered, will be presented to the accused by Spain. They will not be required  
15 to provide negative evidence and to show that none of this happened, contrary to  
16 what Saint Vincent and the Grenadines claims about Spain's actions. It is, of course,  
17 for Spain to demonstrate before the Spanish courts that offences have been  
18 committed, where criminal proceedings are under way. The rules of procedure are  
19 there to guarantee the presumption of innocence, and Spain is proud of the fact that  
20 it scrupulously respects these rules. Unfortunately, the Applicant does not seem to  
21 have adopted the same stance with regard to Spain, since it has demanded, for  
22 example, that Spain should prove that it has not committed any violation of  
23 international law without, at the same time, recognizing that it is incumbent upon  
24 Saint Vincent and the Grenadines to demonstrate the truth of its assertions. And  
25 what are those assertions? That the *Louisa* was in Spain in conformity with Spanish  
26 law and international law and that the *Louisa* was carrying out lawful activities.

27  
28 Spain has given sufficient proof of its arguments. The Applicant, on the other hand,  
29 has provided no evidence in support of its own. It merely states repetitively that it  
30 thought that everything was in order. Mr President, if I have the time, I will revisit the  
31 issue of the burden of proof later on and look at it from another perspective.

32  
33 Eighth, all the measures and decisions taken by Spain with respect to the detention  
34 of the *Louisa* are consistent with the principle of good faith and are certainly not an  
35 abuse of rights.

36  
37 Mr President, I do not think it necessary to repeat our arguments on the nature and  
38 meaning of article 300 as they have already been set forth clearly before you.

39  
40 Obviously, article 300 has to be used to assess whether or not Spain has complied  
41 with the obligation to act in good faith and not to commit an abuse of rights; but allow  
42 me to say a few words in respect of this important question. Spain acted in an utterly  
43 reasonable manner when it detained the *Louisa*. The *Louisa* was the instrument of  
44 the crime and there were important items of evidence. That was why the judge did  
45 not allow the Hungarian crew members to remain on board the *Louisa*, because the  
46 evidence had to be preserved. This did not at all reflect any discrimination against  
47 foreigners.

48  
49 Furthermore, the detention caused no injury whatsoever to the rights of the owner,  
50 as we have shown through the testimony of Mr Martín Pallín. All along, the vessel

1 remained the property of Sage and of Mr Foster. Furthermore, Spain adopted such  
2 measures as were necessary to ensure the security of the vessel and its  
3 maintenance, pending the final decision by the judge in the criminal proceedings.  
4 Furthermore, the proprietor was always absent and remained silent about the vessel  
5 until a very late stage in the proceedings. He never asked the judge to return the  
6 vessel and never showed the slightest interest in its maintenance, apart from a few  
7 visits to the ship during which his representatives, both Spanish and American, were  
8 able to take photographs, the same photographs that have been shown to the  
9 Tribunal during these hearings.

10  
11 Ninth, the alleged breaches of the rights of individuals, that is, human rights and  
12 property rights, never took place. All the measures adopted by the Spanish  
13 authorities are wholly in keeping with the principle of good faith and do not constitute  
14 an abuse of rights.

15  
16 I do not intend to revisit the role of human rights in this case. You are already well  
17 aware of Spain's position on this subject and it need not be repeated. That having  
18 been said, Spain, as a country resolutely committed to the legal and political  
19 protection of human rights, would never oppose the defence of human rights in any  
20 forum.

21  
22 Allow me to say a few words about the very serious accusations made by the  
23 Applicant against Spain with respect to Ms Avella, Mr Avella and Mr Foster - all  
24 United States nationals.

25  
26 Ms Avella and Mr Avella gave witness testimony before you with respect to this  
27 question, and it is a pity that the Applicant did not think it necessary to present the  
28 testimony of the two Hungarian crewmen because that could have given us a more  
29 complete picture of the human rights violations alleged by the Applicant to have been  
30 suffered by all those who were detained when the *Louisa* was seized.

31  
32 Be that as it may, the Applicant is entitled to choose the witnesses it considers useful  
33 to its case.

34  
35 But let us return to the substance of the case, the alleged breaches of human rights,  
36 in all the guises in which they have been raised by the Applicant.

37  
38 This serious accusation only came to light during the oral hearings and only in  
39 relation to the witness testimony of Ms Avella and Mr Foster, which the Applicant  
40 seeks to present to you as irrefragable proof. I do not intend to go further on the  
41 contents of the witness testimony which, as I have said already, is extremely weak,  
42 as is clear from a mere reading the minutes.

43  
44 I cannot fail to point out that the introduction of these new arguments at the oral  
45 stage of the proceedings deprived Spain of the possibility of preparing its defence,  
46 as required by the principle of equality of arms, but I would like to say a few words  
47 about this.

48  
49 First, no evidence has been submitted to us regarding the ill-treatment allegedly  
50 undergone by Ms Avella and Mr Avella – no medical certificates, no complaints of

1 improper police practices, no evidence of any failure by the court to respond to  
2 appeals, no evidence that reparations were claimed for alleged injury.

3  
4 What breaches of human rights have been committed? Can such a serious  
5 accusation, levelled without the slightest evidence other than that the persons  
6 concerned considered themselves to be the victims of abuses of their rights, be  
7 tantamount to a genuine violation of human rights?

8  
9 As Spain has demonstrated, the basic rights of Ms Avella, Mr Avella and the two  
10 members of the Hungarian crew have not been breached. They were detained in  
11 strict compliance with the law; they were informed of their rights; they were brought  
12 before a judge; they were heard by that judge; they were able to submit written  
13 statements, applications and appeals to defend their rights and interests. The  
14 measures taken by the Spanish judge were measures of the least possible severity  
15 for the persons concerned and they had the option to demand reparation for any  
16 prejudice to which they might have been subjected. That option remains open and  
17 they have the right to refer their case to the European Court of Human Rights, if they  
18 so wish.

19  
20 As a consequence, even if your Tribunal were to consider that it has jurisdiction over  
21 this matter, as it is fully entitled to do, Spain respectfully affirms that the detained  
22 persons have suffered no violation of their fundamental human rights.

23  
24 With respect to Mr Foster we have the same line of thought: his rights remained  
25 intact before the Spanish judges and, as a consequence, his human rights have not  
26 been breached either. Furthermore, with respect to property rights, we have already  
27 said on a number of occasions that such rights are not at issue. Mr Foster continues  
28 to be the owner of the *Louisa*. He could have asked to have the *Louisa* returned to  
29 him, but he has not done so in more than five years. He has the right to recover the  
30 *Louisa* once the criminal proceedings have ended if the judge finds that no crime has  
31 been committed. In any event, he is entitled to lodge a compensation claim with the  
32 Spanish authorities for any alleged damage to the *Louisa*, if it emerges that there  
33 has been some malfunction of the Spanish justice system.

34  
35 Tenth, Spain has not been guilty of a denial of justice. Although Spain feels that the  
36 absence of denial of justice is crystal clear after what has already been said, I should  
37 nonetheless like to say a few words with respect to an element of this question which  
38 seems to me to be particularly important. The Applicant has said that there has been  
39 a denial of justice inasmuch as the *Louisa* has been detained for six years without  
40 any final judicial decision being taken

41  
42 I admit that, in ordinary circumstances, a period of six years is quite a long one for  
43 criminal proceedings, but conversely, it would not be reasonable for proceedings to  
44 last only a few days. But I would draw your attention to the fact that the proceedings  
45 under way in Cádiz are neither simple nor straightforward.

46  
47 I have already talked about this during the oral hearings. I am not in a position, and  
48 this is not the place, to set forth all the procedural steps that were taken in Cádiz.  
49 Yesterday the Co-Agent of the Applicant complained that Spain had asserted that  
50 much of the delay in the proceedings was attributable to the written filings and briefs

1 and the constant appeals of the accused. It is true that I said that, but my intention  
2 was not to blame the accused for the delays, but merely to explain them.

3  
4 Let me elaborate. The Applicant said yesterday in response to certain questions  
5 recently addressed to us by the Tribunal, that the pending remedy that has to be  
6 exhausted is indubitably the *auto de procesamiento*, which has to be sent to a higher  
7 judicial body. What was meant, in fact, was the referral of the entire proceedings by  
8 the investigating judge to the trial court, the *Audiencia provincial* of Cádiz.

9  
10 This referral has not yet taken place because of the need to notify all the accused  
11 persons, some of whom have either changed or dismissed their legal representative  
12 (known in Spain as the *procurador*), or they have not appointed one. Despite the  
13 repeated requests of the judge in Cádiz, they have not selected a new legal  
14 representative or new counsel.

15  
16 Finally, the judge had to turn to the national chamber of *procuradores* and advocates  
17 to appoint *ex officio* counsel to continue the proceedings.

18  
19 Mr President, if yesterday the Co-Agent of the Applicant spoke about coincidences,  
20 events that happen without any reason, it is also a coincidence that this occurred  
21 right before these hearings were held. So you can understand that, under these  
22 circumstances, Spain can in no way accept that there has been a denial of justice.

23  
24 Eleventh, Spain is not obliged to pay reparation, in the form of damages, to the  
25 Applicant. Furthermore, the compensation claimed by Saint Vincent and the  
26 Grenadines is imprecise, unreasonable, and it does not meet any proportionality test.  
27 I am not going to go on about this particular point, Mr President, because my  
28 colleague, Mr Aznar Gómez, will deal with this after my statement.

29  
30 Twelfth, the Applicant has not abided by its obligation to act in good faith in the  
31 present case. As I said earlier, Mr President, article 300 applies horizontally to all  
32 provisions of the Convention and it is therefore also applicable to the dispute  
33 settlement system. I have already made comments on this subject during Spain's  
34 oral pleadings and I was not planning to return to this point today, but I am sorry to  
35 say that, following the statement made by the Co-Agent of the Applicant yesterday, I  
36 am obliged, despite my original intention, to come back to the topic. Yesterday the  
37 Co-Agent of Saint Vincent and the Grenadines set out its final submissions. It is not  
38 for Spain to comment on their substance; it is for you to assess them, because they  
39 are addressed to you. Nevertheless, I cannot remain silent on a number of  
40 disgraceful events which took place before you yesterday.

41  
42 Firstly, regarding the experts and witnesses presented by Spain, the statement by  
43 the Co-Agent of Saint Vincent and the Grenadines was unfortunate, to say the least,  
44 and we were "shocked", to employ a word already used by the Co-Agent of the  
45 Applicant, at the use, in an international tribunal, of words, expressions and  
46 comments which would be more appropriate, if anywhere, in criminal proceedings  
47 taking place in front of a jury with no legal training, the intention being to employ a  
48 well-known tactic of criminal lawyers known as "atmospheric arguments". Behaviour  
49 of that kind is not appropriate here, Mr President.

1 Second, it would not be fitting for Spain to comment on the choice of experts and  
2 witnesses presented by the Applicant, but the same also applies to Saint Vincent  
3 and the Grenadines. In addition, we must bear in mind that it is not for the Parties to  
4 judge the competence, reliability or credibility of experts and witnesses, less still to  
5 make claims which could call the honour of the experts and witnesses into question.  
6 It is for the Tribunal to make up its own mind, and we have every confidence in its  
7 judgment. We would never be so bold as to make comments on a witness who is not  
8 present. However, Mr President, please allow me to draw your attention to the  
9 weaknesses in the testimonies and statements given by the experts called by the  
10 Applicant.

11  
12 Secondly, and still on the subject of the arguments relating to the failure to  
13 demonstrate good faith in the proceedings, yesterday the Co-Agent of Saint Vincent  
14 and the Grenadines made claims which are completely false, as is apparent simply  
15 by reading the verbatim reports. In order to give you just one example, you will  
16 remember that yesterday the Co-Agent of Saint Vincent and the Grenadines said  
17 that it was during these hearings that the Agent of Spain had explained for the first  
18 time how the indictment (*Auto de procesamiento*) of 27 October 2010 had been  
19 submitted to the Tribunal. He even went as far as to deny that it was the Tribunal  
20 that asked for a copy of that document. He said that he had carefully read the  
21 transcript of the hearings on Provisional Measures and that he had not found  
22 anything on the subject. It is not my intention to waste your precious time but I would  
23 simply draw your attention to the verbatim record for the afternoon of 10 December  
24 2010, page 29, line 49, where Mr Weiland himself read the written question asked by  
25 the Tribunal.

26  
27 In addition, has the Co-Agent of Saint Vincent and the Grenadines already forgotten  
28 that, at his own request, back in September, the Registrar sent all the documents  
29 produced during the Provisional Measures hearings and that the first of those  
30 documents was the *Auto de procesamiento*, with a covering letter from the Agent of  
31 Spain explaining the way in which that document had been submitted to the Tribunal.

32  
33 Another example is the way in which the Applicant has presented the *Odyssey* case  
34 before you. Bearing in mind that there are enormous differences between that case  
35 and this one, Mr President, it seems to me that this is not in keeping with the  
36 principle of good faith in the proceedings.

37  
38 Mr President, I have put forward just two examples. There are many others, and I  
39 have neither the time nor the desire to dwell on them. It is very unpleasant to have to  
40 do this, but these examples show that the Co-Agent of the Applicant wishes to re-  
41 write the facts, and that he has no problem making claims before you which are  
42 completely false if he thinks that they serve his interests and his strategy.

43  
44 Thirdly, I would like to say that the Co-Agent of the Applicant would appear not to  
45 have understood the nature of the proceedings in which he is taking part as a  
46 representative of a sovereign State. Firstly, he is trying to change the interlocutory  
47 structure, saying that this is the first time in his professional life that he has been the  
48 first to speak, and that he has not had the last word. I imagine that is because he has  
49 always been on the side of the defence, because otherwise I am not aware of any  
50 judicial system based on the adversarial principle where the applicant always has the

1 right to the last word. He is also trying to persuade you that you need to reverse the  
2 burden of proof and oblige Spain to prove something which does not exist; in other  
3 words, demanding negative proof. Once again, a bizarre situation in adversarial  
4 proceedings, and the European Court of Human Rights and the Inter-American Court  
5 of Human Rights have given a large number of judgments on this subject.

6  
7 Finally, and perhaps the most serious point, he has attempted to turn the Tribunal  
8 into a jury. He expressly said “you are the jury and you are the Judges”. But I would  
9 say a few more words on this subject. The Applicant has attempted to turn the  
10 Tribunal into a jury in a criminal case, with an intention which is very easy to  
11 understand: to focus purely on the facts while ignoring the law in order to create a  
12 certain “atmosphere”. This is quite common in certain countries and certain kinds of  
13 criminal proceedings. I must express my deep conviction that these kinds of  
14 atmospheric arguments are not acceptable before an international tribunal, even if  
15 they are merely used dialectically.

16  
17 Mr President, I am sorry to have to say these words. What I have done is simply to  
18 draw attention to the great importance that Spain attaches to the judicial system of  
19 dispute settlement, and in particular to this Tribunal, and I have spoken with the  
20 greatest respect for a Tribunal composed of eminent jurists, who are all well known  
21 internationally and are all experts in the law of the sea and in international law.

22  
23 Finally, my thirteenth point. It seems that the final submissions of the Applicant are  
24 full of contradictions and, in some respects, excessive. My colleague, Mr Aznar  
25 Gómez, will deal with certain claims made in the final submissions, particularly the  
26 claim for damages. However, I would like to make a few more general comments, if I  
27 may. I have already referred to the specific request to have vessel recognition  
28 characterized as a “business”. I do not want to come back to that point again but I  
29 would like to draw your attention to the fact that the Applicant’s final submissions are  
30 full of contradictions, as during the hearings it has abandoned the arguments  
31 regarding infringements of particular articles of the Convention, apart from article  
32 300. It had even removed the reference to article 300 from its written submissions  
33 and claimed it was a typographical error. At no point in the hearings have we heard  
34 anything in relation to articles 73, 87, 226 and 227, but if we read the final  
35 submissions, these articles re-appear, even though the Co-Agent of the Applicant  
36 told us yesterday, and earlier, that the most important thing of all was the violation of  
37 human rights and that the Tribunal’s jurisdiction stemmed from the relationship  
38 between article 300 and the human rights violations.

39  
40 Is the reintroduction of article 303 into the final submissions another typographical  
41 error? What about the reference to article 73(2) and (4), article 87, article 226, and  
42 article 227 – is that a typographical error as well? Or is it that the Applicant is not  
43 clear as to the subject-matter of the supposed dispute? With all due respect, Mr  
44 President, Spain takes the view that these final submissions clearly demonstrate the  
45 confusion which the Applicant has sought to introduce into these proceedings in  
46 order to take advantage of it.

47  
48 Another point I would like to make regarding the contradictions in the final  
49 submissions: the Applicant requests the Tribunal to order Spain to return the *Gemini*  
50 *III*, but what about the *Louisa*? The *Louisa* is not mentioned at all. There is no

1 request for the *Louisa* to be returned to its owner or to Saint Vincent and the  
2 Grenadines. Is there no interest in the *Louisa*, even though it is the only link which  
3 connects Saint Vincent and the Grenadines to the present case, or is the Applicant  
4 or its lawyers pursuing another objective through the *Louisa*?

5  
6 This brings me to my last comment. The Applicant's final submissions are completely  
7 excessive and contain specific claims which are perplexing. Firstly, it asks you to  
8 make declarations on certain acts pertaining to individuals, which have nothing to do  
9 with the detention of the *Louisa* but are related to the Spanish criminal proceedings  
10 which are still in progress, and I am referring in particular to paragraphs (f) and (g).  
11 In addition, the Applicant has asked you to prescribe measures which I can only  
12 describe as "protective measures", provisional measures vis-à-vis certain individuals  
13 and their interests. Here I refer to paragraphs (h) and (i) and, if I may, I would like to  
14 read them. Paragraph (h):

15  
16 ...order that Respondent is prohibited from retaliating against the interests  
17 of Mario Avella, Alba Avella, Geller Sandor, Szuszkzy Zsolt, John B Foster  
18 and Sage Maritime Scientific Research, Inc, including the initiation of any  
19 procedure requesting the arrest, detention or prosecution of these  
20 individuals or the seizure or forfeiture of their property in domestic  
21 Spanish courts.

22  
23 Paragraph (i):

24  
25 ...order that Respondent is prohibited from undertaking any action against  
26 the interests of Mario Avella and John B Foster, including the continued  
27 prosecution of these individuals in domestic Spanish courts.

28  
29 Mr President, in final submissions which are made to an international tribunal by one  
30 State against another State, it is requested that the Respondent be prohibited "from  
31 retaliating", prohibited from "initiation of any procedure ... or prosecution". Lastly, it  
32 requests that the Respondent be prohibited "from undertaking any action against the  
33 interests" of certain persons "including the continued prosecution of these individuals  
34 in domestic Spanish courts". Mr President, Judges, I am sorry but I must make a few  
35 comments. These requests, apart from being excessive, show very clearly the  
36 Applicant's real interest in this case. Its interest is not to guarantee respect for the  
37 law of the sea, or respect for the right of Saint Vincent and the Grenadines regarding  
38 the maintenance of a vessel flying her flag.

39  
40 Finally, the Co-Agent of the Applicant told you yesterday that this is a landmark case,  
41 and that you should not miss the opportunity to exercise your jurisdiction and to  
42 undertake an exercise in the progressive development of international law. Spain  
43 can only affirm the importance of the progressive development of international law,  
44 which, with codification, guarantees the existence of international law and the rule of  
45 law at international level, but such an important notion must be treated with the  
46 necessary seriousness. In any case, Mr President, I am very happy that, after two  
47 years, I have managed to agree with Saint Vincent and the Grenadines on one point.  
48 Spain takes the view that the present case is very important and that by your  
49 decision you will be able to do a great service to international law and its progressive  
50 development. You will do this by taking a decision which sends a message to the  
51 whole international community that it is important to ensure the protection of



1 underwater cultural heritage, which, I must say, is not just the heritage of Spain in  
2 this instance, but the heritage of all humanity.

3  
4 Mr President, directly below this magnificent chamber there is an atrium with a fine  
5 view of the old and new buildings of the Tribunal. In the atrium there is a gift from the  
6 Government of the Republic of Cyprus. It is a small gift but it is of enormous  
7 importance. It is a model of an ancient Greek merchant vessel known as the *Kyrenia*  
8 *II*, which sank in the fourth century BC at the time of Alexander the Great. It is  
9 because it was uncovered in accordance with the rules, following lengthy  
10 investigations conducted by historians, archaeologists, naval engineers and  
11 shipbuilders, that a precise and detailed replica could be built.

12  
13 The archeological site of the *Kyrenia II* gives us, and will give future generations,  
14 precious information about our past. Imagine now if what happened to the  
15 archeological sites in the Bay of Cádiz during the “visits” carried out by the *Louisa*  
16 and the *Gemini III* had happened to the *Kyrenia*. We would have lost all this precious  
17 information. We would never have been able to tell this part of our history to our  
18 children.

19  
20 Mr President, Members of the Tribunal, I am going to stop there, but as you can see,  
21 I have not dealt with all the questions which were asked and which have been  
22 expounded upon before you by Spain. Because of the time constraints I was obliged  
23 to make a choice, and to flag up several questions on which there were still  
24 considerable contradictions which should be drawn to your attention.

25  
26 Mr President, Members of the Tribunal, thank you for your patience and your  
27 attention. I know my statement was very long.

28  
29 Mr President, may I now ask if you would call my colleague Professor Aznar to take  
30 the floor to continue Spain’s pleadings?

31  
32 **THE PRESIDENT** (*Interpretation from French*): Thank you, Ms Escobar Hernández.  
33 I now give the floor to Mr Aznar Gómez.

34  
35 **MR AZNAR GÓMEZ:** Mr President, in the next few minutes I am going to address  
36 some of the particular issues concerning international responsibility that this case  
37 presents. My colleague Professor Jiménez Piernas has already addressed some  
38 general questions in his pleading on Wednesday. In my case, I am going to focus on  
39 the particular claims regarding responsibility brought up by Saint Vincent and the  
40 Grenadines, some of them surprisingly added yesterday afternoon in its final  
41 submission.

42  
43 However, it must be clarified at the very outset that these questions of responsibility  
44 are discussed by Spain only subsidiarily since, as clearly explicated in our  
45 Counter-Memorial and Rejoinder and during these hearings, Spain considers that  
46 none of the actions discussed in this case entail the international responsibility of  
47 Spain.

48  
49 Mr President, the Applicant has argued, in a confusing and even contradictory  
50 manner, its claim on responsibility. As a whole, it seems to be asking for reparations

1 for: alleged damages to the *Louisa*, although not clearly specified in its final  
2 submission; alleged damages to certain persons for the violation of their human  
3 rights; and alleged “lost opportunity damages” due to the impossibility of using  
4 certain information. These damages are, however, quantified in a disproportionate  
5 range, not specifying the particular origin and evidence supporting them, against  
6 what has been codified by the International Law Commission after a careful review of  
7 international practice and jurisprudence.

8  
9 Regarding damages to the *Louisa* – and only to the *Louisa*, given that the *Gemini III*  
10 could never be addressed in this case – in the opinion of Spain, the following should  
11 be noted. First, that, as has already been said, a possible option for reparation would  
12 be simply *restitutio in integrum*, the first desirable option under international law.  
13 However, Saint Vincent and the Grenadines seems to have neglected this possibility;  
14 yesterday’s *petitum* confirmed this. Second, that in the case of compensation the  
15 condition of the ship must be taken into account, and to this end we must remind the  
16 Tribunal that when the *Louisa* came into port on 29 October 2004 it was not, by any  
17 measure, in the pristine state that the Applicant would have us believe. On the  
18 contrary, the *Louisa* – a vessel built in 1962 and used by different owners under  
19 different flags – was in a poor state upon its arrival in Spain, as may be seen in  
20 photograph 3 annexed to the Spanish Counter-Memorial. This is the unique,  
21 undisputed dated photograph of the vessel in November 2005, namely before its  
22 immobilization.

23  
24 It must also be said that from the time of its voluntary docking the *Louisa* was not  
25 subjected by its owner to any maintenance work to improve the general state of the  
26 ship. Some issues must then be recalled. First, from March 2005 onwards the *Louisa*  
27 was unclassed, with the consequent impact on its economic value. In March 2005,  
28 that is before its immobilization, the *Louisa* could not, functionally speaking, be  
29 considered a ship legally permitted to navigate under international law; and this  
30 responsibility lay with Saint Vincent and the Grenadines, not upon Spain. In addition,  
31 from the time of its immobilization Saint Vincent and the Grenadines, the flag State,  
32 ignored the ship, just as its owners generally did, despite the constant requests from  
33 the Spanish judge to proceed to the maintenance of the *Louisa*. For this reason, it  
34 was Spain, through the *Capitanía Marítima de Cádiz*, and not Saint Vincent and the  
35 Grenadines, that took responsibility for certain costs involved in the maintenance of  
36 the vessel.

37  
38 In summary, what we have here is an unclassed ship, without effective maintenance  
39 by its owners from the very moment it arrived in a Spanish port, which was  
40 abandoned by its flag State. The economic value of the said ship is, therefore, zero;  
41 and under no circumstance can that devaluation be attributable to Spain. The  
42 Applicant has submitted other claims of responsibility with regard to some equipment  
43 aboard the *Louisa*. Surprisingly, as with the vessel itself, the owners of that  
44 equipment never appropriately claimed its devolution. As soon as it had been done,  
45 the judge in Cádiz might have decided that devolution. The Guardia Civil, bearing the  
46 costs of its maintenance, has been taking care of that equipment.

47  
48 Regarding the alleged damages to persons, Spain has already made it very clear  
49 that no reclamation of any kind can be submitted, because neither of the two basic  
50 requisites for diplomatic protection have been met – a diplomatic protection which is

1 the legal procedure that Saint Vincent and the Grenadines is claiming to exercise  
2 before this honourable Tribunal.

3  
4 Moreover, the alleged damages to these persons have no relationship whatsoever to  
5 the immobilization of the *Louisa*. Rather, these damages (if any) are related to a  
6 criminal proceeding legitimately initiated in Spain, the immobilization of the *Louisa*  
7 being only one of its components.

8  
9 To this must be added the incomprehensible evaluation of these damages by the  
10 Applicant. This evaluation was done without any prior experience in the said  
11 evaluation on the part of the accountant who Saint Vincent and the Grenadines  
12 presented as an expert before this Tribunal. Moreover, the said expert evaluated  
13 these damages incorrectly, as if they were lost opportunity damages. That evaluation  
14 did not take into account at any time the well-established principles of the  
15 international law on human rights in the evaluation of these kinds of damages; and,  
16 finally, the evaluation quantified the damages to human rights using the arbitrary  
17 magic number of \$1,000 a day – a magic number that would serve equally for a  
18 21-year-old student, a marine technician, two crewmen and one wealthy Texas  
19 businessman.

20  
21 Finally, regarding the alleged lost opportunity damages, let me summarize the  
22 question by saying that nothing was lost, that there was no opportunity and that there  
23 were no damages whatsoever.

24  
25 Sage, not Saint Vincent and the Grenadines, alleges economic losses due to the  
26 impossibility of using the data supposedly stored on the hard disks of the computers  
27 retained by Spanish authorities on 1 February 2006. However, the following points  
28 should be noted.

29  
30 First, and prominently, Saint Vincent and the Grenadines has never supported this  
31 claim with clear and convincing evidence. No proof has ever been exhibited before  
32 this Tribunal that that data exists, or of its scientific or commercial value.

33  
34 Secondly, as has been shown through these hearings, the data that Sage was  
35 allegedly using for its work were already well known and had been assessed by the  
36 company itself. As Sage's Director, Ms Linda Thomas, admits in her affidavit  
37 annexed to the Applicant's Rejoinder as Annex 41: "The survey was satisfied in May  
38 of 2005." Mr McAfee, the expert of Saint Vincent and the Grenadines, confirmed this.  
39 When talking about these alleged "lost opportunity damages", the question is: what  
40 was lost, then? The fact is, *nothing* was lost.

41  
42 Thirdly, it was only on 11 April 2011, that is, more than five years and two months  
43 after the immobilization of the *Louisa*, that Sage's lawyers requested the return of  
44 these computers. As soon as they did so, the judge authorized the return of the  
45 computers on 12 July 2011, which was indeed carried out three weeks later – in  
46 other words, as promptly as the demand was made through the proper judicial  
47 channels. Therefore, it makes no sense to evaluate lost opportunity damages,  
48 because where is the opportunity here?

1 Fourthly, as has also been shown over the course of these hearings, the data to  
2 which Sage refers are, they allege, geological and geophysical data referring to the  
3 Bay of Cadiz. However, these data were and are available, free of charge, on  
4 free-access databases. They are, therefore, data without any commercial value  
5 whatsoever, so regarding these supposed lost opportunity damages, where is the  
6 damage?  
7

8 In the evaluation of these data, the expert from Saint Vincent and the Grenadines,  
9 Mr Mesch, also came up with a quantification that makes no sense. As has been  
10 previously said, he provided no evidence whatsoever regarding the possible content  
11 of these data, and he quantified these data according to standards which are, to put  
12 it kindly, incomprehensible.  
13

14 The absence of any serious contention by the Applicant with regard to that data may  
15 be found in paragraph 84 of its Memorial. In that paragraph it is said: “[t]he  
16 consultants have reported to Sage that the anticlines (arches of sedimentary rock)  
17 within the geological anomalies that have been identified contain very substantial  
18 reserves.”  
19

20 Mr President, we believe that it has been demonstrated by Spanish experts during  
21 the hearings that it is plainly impossible to find anticlines or to discover geological  
22 anomalies with the instruments and methodology used by Sage aboard the vessels.  
23 Furthermore, the data to which the Applicant refers were acquired through the  
24 fraudulent use of permits. As has been proved, the permits obtained by Tupet, and  
25 then used by Sage, were for environmental research. Therefore, any data gathered  
26 regarding hydrocarbons would have required a different kind of permit, as was  
27 explained by the expert presented by Spain.  
28

29 However, let me add another point. Along these hearings, Sage is trying to evade,  
30 escape, all and any responsibility regarding its conduct in Spain. They say that they  
31 were not responsible for the permits, that they were not responsible for the war  
32 weapons aboard the *Louisa*, that they were not responsible for the administrative  
33 situation of the *Gemini III*, that they were not responsible for the conduct of the divers  
34 aboard the vessels, and that the cultural objects that they admit were aboard the  
35 *Louisa* were a mermaid’s gift to the master of the vessel.  
36

37 This is not serious, Mr President. Sage was violating Spanish law; and its conduct,  
38 insofar as international responsibility is concerned, must be taken into account as it  
39 relates to the possible evaluation of damages, as codified in Article 39 of the ILC  
40 Articles on State Responsibility, to which Professor Jiménez Piernas referred last  
41 Wednesday.  
42

43 In summary, Mr President, strictly speaking we should only be discussing the  
44 international responsibility relationship between Saint Vincent and the Grenadines  
45 and Spain. If it did indeed exist, this responsibility would refer solely to the  
46 immobilization of the *Louisa*.  
47

48 Hence, it should be a relationship of international responsibility between States and  
49 governed by the customary rules and principles of the international responsibility of  
50 States for wrongful acts, codified by the ILC in 2001. These basic principles of the

1 international responsibility of States need no further explanation in this courtroom,  
2 Mr President. You are not a jury; Spain is perfectly aware that you are the judges of  
3 the International Tribunal for the Law of the Sea.

4  
5 But some comments made yesterday by the Co-Agent of Saint Vincent and the  
6 Grenadines, and some of the final submissions of the Applicant, deserve to be  
7 addressed.

8  
9 It was only yesterday - and perhaps upon some comments of the Agent of Spain -  
10 that Saint Vincent and the Grenadines suddenly realized that it might claim for  
11 responsibility for any possible damage to its "dignity" and "integrity" that might have  
12 been caused by the immobilization of the *Louisa*. This damage was evaluated at  
13 €500,000. However, we do not know which part of this amount relates to that dignity  
14 and integrity - which Spain fully respects - because in the same package the  
15 Applicant also included damages to "vessel registration business".

16  
17 With regard this "vessel registration business", this Tribunal, in the *Saiga No 2 Case*  
18 (paragraph 177), noted that: "no evidence [had] been produced by Saint Vincent and  
19 the Grenadines that the arrest of the *Saiga* caused a decrease in registration activity  
20 under its flag, with resulting loss of revenue". The Tribunal further considered that:  
21 "any expenses incurred by Saint Vincent and the Grenadines in respect of its officials  
22 must be borne by it as having been incurred in the normal functions of a flag State."

23  
24 For these reasons, the Tribunal did not accede to these requests for compensation  
25 made by Saint Vincent and the Grenadines in the *M/V "SAIGA" Case*.

26  
27 *Mutatis mutandi*, the same has occurred with regard to this tardy submission by the  
28 Applicant in this case.

29  
30 Mr President, in the present case, Saint Vincent and the Grenadines have been used  
31 to seek, before this Tribunal, what should be sought before the Spanish courts and, if  
32 appropriate, other international legal bodies - but not before this honourable Tribunal.

33  
34 The only responsibility that Spain could entail to the benefit of Saint Vincent and the  
35 Grenadines would stem from an immobilization of the vessel in violation of the  
36 UN Convention on the Law of the Sea; but Spain has already demonstrated with  
37 facts and law that in the immobilization of the *Louisa* none of the provisions of the  
38 Convention were violated, nor did this action breach any rule of general international  
39 law. On the contrary, Spain was exercising, in its internal waters and territorial sea,  
40 the sovereign rights that current international law, including UNCLOS, recognizes for  
41 coastal States. These sovereign rights are also reflected in Spanish domestic law,  
42 and have been correctly exercised in this case.

43  
44 Consequently, if there is no international wrongful act, no international responsibility  
45 is entailed whatsoever. If no international responsibility is entailed, then there can be  
46 no obligation to repair and no apology to be given as a form of satisfaction.

47  
48 In the opinion of Spain, Mr President, this is indeed the case now before the  
49 Tribunal.

1 Mr President, distinguished Judges, before asking you to give the floor again to the  
2 Agent of Spain, let me stress that it has been a privilege and a true honour to have  
3 had the opportunity to plead before you on behalf of the Kingdom of Spain.  
4

5 **THE PRESIDENT:** Thank you, Mr Aznar Gómez. Now I give the floor to Ms Escobar  
6 Hernández.  
7

8 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, Mr President.  
9 Once I have finished my statement it is my intention to answer the questions which  
10 you have asked us and then to present our final submissions. Do you think that a  
11 break would be appropriate? It is as you wish.  
12

13 **THE PRESIDENT** (*Interpretation from French*): Do you feel a need to have a break  
14 for fifteen minutes?  
15

16 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): If possible. I would be  
17 grateful because I shall be speaking for an hour. Thank you, Mr President.  
18

19 **THE PRESIDENT:** Then the sitting is adjourned for a quarter of an hour. The hearing  
20 will resume at a quarter to five.  
21

22 (*Break from 4.27 p.m. to 4.45 p.m.*)  
23

24 **THE PRESIDENT** (*Interpretation from French*): Ms Escobar Hernández has the  
25 floor.  
26

27 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Mr President, as I said,  
28 my intention is quickly to answer the questions put to us by the Tribunal in the list  
29 sent to us on 2 October. Although we have made reference to some of the  
30 questions, we feel that it would be better and more helpful to the Tribunal to answer  
31 specifically here. I understand, Mr President, that I do not need to make reference to  
32 the question, but simply to the answer with the number.  
33

34 My first answer relates to question No. 2, which is addressed directly to the  
35 Respondent. Under the Spanish Constitution of 1978 individuals are entitled, under  
36 the provisions of the law, to compensation for any damage to their rights or property,  
37 except in cases of force majeure, provided that the loss is attributable to the  
38 functioning of the public services. More specifically, it also includes the individual's  
39 right to compensation from the State, in accordance with the law, for damage caused  
40 by judicial error and damage arising from irregularities in the functioning of the  
41 judicial administration system (article 121).  
42

43 Title 5 of Organic Law 6/1985 of 1 July on the judiciary concerns State responsibility  
44 for the functioning of the judicial administration system (articles 292-297). Situations  
45 in which compensation may be due include judicial error following an unlawful  
46 judgment and irregular functioning of the judicial services that make up the judicial  
47 administration system, for instance excessive delay in judicial proceedings or loss of  
48 or damage to property which is under the custody of judicial bodies.  
49

1 According to the case law of the Spanish Supreme Court, the irregular functioning of  
2 the judicial administration includes all decisions made by judges or magistrates, in  
3 the exercise of their judicial functions, in establishing and appraising the facts and  
4 also in interpreting and applying the law (judgment of the Supreme Court of 26  
5 November 2004). According to the same case law, for the damage arising from  
6 judicial decisions regarding property to be attributed to the judicial administration  
7 system, by virtue of irregular functioning, there has to be express recognition of a  
8 judicial error, or even unjustified delays, in a judgment. Under no circumstances is  
9 there an entitlement to compensation in cases where a judicial error or irregular  
10 functioning of the public service is the consequence of an act committed intentionally  
11 or wrongfully by the injured party.

12  
13 Article 293(2) of the Organic Law on the judiciary refers to the administrative  
14 procedure applicable where a claim for compensation is made under articles 142  
15 and 143 of Law 30/1992 and the implementing decree. These are the laws governing  
16 the work of the public authorities in Spain. In any case, Mr President, I will give you a  
17 copy with all the specific references.

18  
19 The claimant must make a claim for compensation directly to the Ministry of Justice.  
20 Article 6(1) of the decree governs the required content of the administrative claim, in  
21 which it is necessary to note the damage caused and the causality link between the  
22 damage and the functioning of the public service.

23  
24 Article 12(2) also requires an opinion procedure involving the Council of State, the  
25 highest consultative body in the Spanish system, which is the consultative body for  
26 the government. The Council of State must rule as to whether there is a causality link  
27 between the functioning of the judicial administration system and the loss suffered. If  
28 necessary, it may also rule on the assessment of the damages and the amount and  
29 form of compensation.

30  
31 In addition, the second provision in the same decree stipulates that when a claim is  
32 made invoking State responsibility in connection with the irregular functioning of the  
33 judicial administration system, there must be a report from the General Council of the  
34 Judiciary, the *Consejo General del Poder Judicial*.

35  
36 Once the decision is made by the Ministry of Justice, it brings the administrative  
37 procedure to an end. An appeal could be made against that decision through  
38 administrative channels or directly through the courts and, in the case of a denial of  
39 justice, an appeal can even be lodged with the Constitutional Court. All the  
40 information relating to these remedies is available on the website of the Ministry of  
41 Justice, where you can also find the form for making a claim.

42  
43 Question No. 3 refers to the order of 29 July 2010. The order in question is dated 29  
44 July 2010. Please note that there is a typographical error in the French version; it  
45 says 2009 and it should read 2010. To better understand why this date was chosen  
46 we have to go back in time to 22 February 2006. On that date, barely 21 days after  
47 the boarding and searching of the *Louisa*, the State lawyer, representing Cádiz port  
48 authority, which is responsible for the port of El Puerto de Santa Maria where the  
49 *Louisa* was berthed, informed the judge *inter alia* that:

50

1 (Continued in English)

2  
3 “ ... the vessel’s security may be affected if it is not boarded for the  
4 purpose of checking the moorings, some of which may be loosened by  
5 the action of waves against the side of the vessel ... Accordingly  
6 authorization is requested to board the vessel and to examine elements  
7 that are relevant to the ship’s safety.”

8  
9 (Interpretation from French)

10  
11 (Annex 8.2 to Spain’s Counter-Memorial.)

12  
13 Following that request, the Judge at Court No. 4 in Cádiz authorized the  
14 representatives of Cádiz port authority to board the *Louisa*, which was sealed and  
15 under surveillance by the Guardia Civil, to remove the water supply pipe and to  
16 inspect the safety of the ship and its moorings, and these operations had to be  
17 performed by officials from the port authority who would then report to that court.  
18 This is Annex 8.1 to Spain’s Counter-Memorial.

19  
20 The operation was performed by the port authority officials on 13 March 2006. “The  
21 holds and bilges were checked and the food store and the refrigerator were emptied,  
22 as they contained perishable food”. It was on 23 March that the judge received a  
23 report along these lines from the port authority (Annex 8.3).

24  
25 It was not until 22 February 2008, two years later, that Sage’s representative in the  
26 proceedings in Cádiz then made an application to the Judge at Court No. 4  
27 requesting:

28  
29 (Continued in English)

30  
31 All possible information regarding the current situation of the ships *Louisa*  
32 and *Gemini III*, property of my clients, or alternatively, to agree to lift the  
33 seizure of the same; or alternatively, to agree to any other measure  
34 tending to facilitate their adequate maintenance and conservation, all for  
35 the purpose of avoiding the occurrence of irreparable damages. (Annex  
36 9.3 of our Counter-Memorial)

37  
38 (Interpretation from French) The magistrate judge forwarded this request to the  
39 prosecutor, who on 27 May recommended the adoption of the measures required for  
40 the proper maintenance of the vessel. In June the judge requested a reasoned  
41 opinion from the Guardia Civil on the request – the application which had been made  
42 by Sage – and its answer was given in July. It pointed out that under similar  
43 circumstances the normal procedure is to appoint a sailor from the crew to look after  
44 the maintenance of the vessel (Annex 9.6). As a consequence, on 22 July 2008 the  
45 judge asked Sage to appoint a sailor to look after the boat’s maintenance  
46 (Annex 9.1). This was notified to Sage’s representative just a few days later (Annex  
47 9.2). Strangely, the request never received an answer. A few months later, on 18  
48 February 2009, the magistrate judge received a request from Sage’s representative  
49 that Cass Weiland and William Weiland be allowed to visit the vessels. The judge  
50 gave his authorization and stipulated that: (Continued in English) “The visit is to be  
51 restricted to the evaluation of the condition of the vessels and the needs for repairs.”



1  
2 (*Interpretation from French*) The visit took place on 5 March 2009 in the presence of  
3 Mr Avella. Despite this visit on 5 March 2009, whose sole purpose was to evaluate  
4 the condition of the vessels, Sage's representation in Spain had still not replied to  
5 the judge's order requiring that a sailor be appointed to maintain the boat. That is  
6 why in July 2010, after having requested the port authority to perform a further  
7 inspection of the condition of the vessel, the magistrate judge proposed that the  
8 owners choose between maintenance by the owner, designating a depository, or  
9 auctioning the vessel.

10  
11 In fact, the reason for these three options can be found in the former article 104(4) of  
12 the Law on State ports and merchant shipping. That article has become  
13 article 304(4) in the updated version of this law dated 5 September 2011. The new  
14 law retains the wording of the former article 104(4), under which, and I quote:

15  
16 Where, during judicial or administrative proceedings, detention,  
17 conservation or custody of a vessel has been authorized in the service  
18 area of a port, the port authority may request the judicial authority to  
19 scuttle the vessel or to auction it if the continued presence of the vessel in  
20 the port represents a real or potential danger for persons or goods or  
21 entails serious problems for the operation of the port. The judicial  
22 authority shall order the vessel to be scuttled or sold in accordance with  
23 the procedure established by law in each case unless it considers that its  
24 conservation is essential for the purposes of the investigation and for the  
25 time strictly necessary. Similarly, the vessel shall be auctioned in cases  
26 where because of the envisaged length of the judicial proceedings there  
27 is a risk of a significant depreciation in the vessel's value, the proceeds of  
28 the sale being deposited with a view to a decision of their use depending  
29 on the outcome of the proceedings.

30  
31 In short, Mr President, Spanish law authorizes the judge to auction the vessel, the  
32 proceeds of the sale being deposited with a view to a decision on their use  
33 depending on the outcome of the proceedings. However, the judge tried to give the  
34 owners less onerous options, maintenance or appointment of a depository. The  
35 expert presented by the Applicant in the Provisional Measures stage, Mr Moscoso,  
36 himself underlined - and the Applicant recalled this yesterday - that the decision was  
37 a correct one, and added that it should have been taken earlier. But what he did not  
38 know is that in March 2006 the port authority had already taken the necessary  
39 measures to ensure the safety of the vessel, and in July 2008 it requested Sage to  
40 appoint a crew member to maintain the vessel.

41  
42 Unfortunately, Sage's lawyers never deigned to respond to this request, even after  
43 the visit by Cass Weiland and William Weiland in March 2009. That really does not  
44 surprise us. At that time, as today, the vessels did not interest them at all, and that  
45 explains why to this day they have not taken any steps to maintain and conserve the  
46 vessels, despite repeated requests from the magistrate judge. It was the magistrate  
47 judge himself who, because the owners were doing nothing, finally appointed a  
48 custodian for the proper maintenance of the vessels.

49  
50 Let us move on to the question of notification. It is true that, according to the case  
51 file, it would appear that this order was not notified to Sage's lawyers before January

1 2011 but, as Judge Martín Pallín said, there are procedural circumstances that can  
2 cause delays. Late notification has not caused any breach of the rights of the  
3 defence of the accused, nor prejudice to their interests (the vessel), since back in  
4 July 2008 the judge requested Sage to appoint a crew member for maintenance, a  
5 request that received no response. So those are the facts concerning the  
6 proceedings in Cádiz as regards the measures to maintain the vessels. Any other  
7 version does not correspond to reality.

8  
9 Moving on to question No. 4 now, with article 149, article 303 is the only article  
10 concerning underwater cultural heritage in the 1982 Convention. Paragraph 1 simply  
11 states that: “States have the duty to protect objects of an archaeological and  
12 historical nature found at sea and shall cooperate for this purpose.”

13  
14 Paragraph 2 provides:

15  
16 In order to control traffic in such objects the coastal State may, in applying  
17 article 33, presume their removal from the seabed in the zone referred to  
18 in that article without its approval would result in an infringement within its  
19 territory or territorial sea of the laws and regulations referred to in that  
20 article.

21  
22 The Convention says nothing about individual rights of coastal States with respect to  
23 the protection and regulation of underwater cultural heritage situated in internal and  
24 territorial waters. However, the rights of the coastal State in these areas are  
25 established in article 2 of the Convention, under which the sovereignty of a coastal  
26 State extends beyond its land territory and inland waters to the territorial sea, as well  
27 as to its bed and subsoil.

28  
29 Spain, like Saint Vincent and the Grenadines, has ratified the 2001 UNESCO  
30 Convention on the Protection of the Underwater Cultural Heritage. Article 7(1) of that  
31 Convention provides that:

32  
33 States Parties, in the exercise of their sovereignty, have the exclusive  
34 right to regulate and authorize activities directed at underwater cultural  
35 heritage in their internal waters, archipelagic waters and territorial sea.

36  
37 As was explained in the testimony from Mr Martín Pallín, the Spanish penal  
38 legislation, both its 1995 Criminal Code and the 1995 Law on illegal trafficking,  
39 provides for the prosecution and punishment of conduct that is contrary to the  
40 protection of underwater cultural heritage. This includes prosecution and  
41 imprisonment of those found guilty, the imposition of fines, and the detention of  
42 instruments used to perpetrate the crime.

43  
44 Acts which cannot be characterized as criminal offences can be prosecuted in Spain  
45 as administrative offences. Both the 1985 Law on the Spanish historical heritage and  
46 the complementary regional legislation, specifically the 1991 law of Andalucía,  
47 provide for special, rigorous monitoring and for the prosecution and punishment of  
48 activities contrary to these administrative laws. As a consequence, even before the  
49 entry into force of the UNESCO Convention on 2 January 2009, Spain had already  
50 included in its administrative and criminal legislation the specific obligations relating  
51 to conduct laid down in article 14 of that Convention (control of entry into the

1 territory, dealing and possession), article 15 (non-use of areas under the jurisdiction  
2 of States Parties), article 17 (sanctions), and article 18 (seizure and disposition of  
3 underwater cultural heritage).

4  
5 The Convention does not, however, introduce a system of sanctions. Nevertheless,  
6 in its annex, which forms an integral part of the Convention pursuant to article 33,  
7 there is a list of conditions and requirements for the proper performance of activities  
8 directed at underwater archaeological cultural heritage, as agreed by the  
9 international scientific community. The majority of these conditions and requirements  
10 are also already provided for in Spanish general and regional legislation.

11  
12 I would now like to move on, Mr President, to question No. 5. This question has been  
13 answered at various points during the oral proceedings in the Respondent's  
14 statements. Article 561 of the Spanish Criminal Code governs the boarding and  
15 searching of a foreign vessel and states that prior authorization from the captain or  
16 from the consul of the flag State is required. This Code was promulgated in 1882 and  
17 is based on an ancient doctrine, which is now obsolete, whereby a foreign vessel  
18 was deemed to form part of the territory of the flag State in these circumstances.  
19 This gave it special protection. I quote:

20  
21         Boarding and searching of foreign merchant vessels shall also not be  
22         permitted without the authorization of the captain or, if the captain  
23         refuses, without the authorization of the consul of his country.

24  
25 Article 561 has not been amended or repealed, despite all the time that has passed  
26 since the Code was issued, but 130 years after its publication, the normative content  
27 of the article must be interpreted and adapted, not amended, by Spanish judges and  
28 courts in the light of the specific circumstances of each individual case and in the  
29 context of an international society which is very different from that of the 19<sup>th</sup> century.

30  
31 Judicial practice in Spain in this regard was set out in some detail by Judge Martín  
32 Pallín, whom Spain presented as an expert. We would therefore refer you to the  
33 verbatim records of the public hearings held on Tuesday 9 and Wednesday  
34 10 October. We would like to give you a brief summary now. The restrictions on the  
35 interpretive adaptation – not amendment, I insist – of this article are determined by  
36 the wish to avoid a breach of the rights of the defence and to ensure justice and an  
37 impartial trial, that is to say, the right to a fair trial known as due process. In any  
38 case, jurisprudence takes the view that the exception relating to the application to  
39 article 561 is not *a priori* a defect which nullifies the trial. This provision is not  
40 essential for the proceedings, and it must be interpreted in light of the 1978  
41 Constitution and the European Convention on Human Rights. Of course, there would  
42 have to be special circumstances which would, in good faith, justify a specific  
43 exception to the application of article 561.

44  
45 A number of exceptions have been made, for example, in order to prosecute certain  
46 types of criminal activity, such as drug trafficking and terrorism, and also when it is  
47 necessary to board a vessel for humanitarian reasons or because of crimes  
48 committed on board.

1 The Spanish Supreme Court has recognised, in exceptional cases, that a judge may  
2 disapply that article without having thus exercised his power in an arbitrary manner.  
3 In light of the specific circumstances, in terms of geography, time and persons, and  
4 bearing in mind reasons of necessity, a judge must, in each case, explain his  
5 decision not to apply article 561 literally if this was reasonable and proportional as  
6 required. That may lead to different interpretations by different judges. Of course,  
7 that is nothing new for you, Members of the Tribunal, as you are well aware of the  
8 vital role played by case law in the most appropriate application of the law in the  
9 continental legal culture and in the common law system.

10  
11 In the *Louisa* case, there were criminal proceedings where there was a risk of loss of  
12 evidence. The judge had to ensure the success of the boarding and of the  
13 investigation. Some of the crimes committed had taken place in Spanish territory, the  
14 possible final destination of the objects was Spain, and part of the criminal network  
15 that was involved in the crime consisted of Spanish nationals who were resident in  
16 Spain. The flag of the *Louisa* was a flag of convenience. Furthermore, the captain,  
17 who was a Hungarian national, could not be consulted because he had vanished,  
18 and Saint Vincent and the Grenadines had no consular representation in Spain,  
19 since it had never designated the consulate responsible for Spain and had not  
20 informed the Spanish diplomatic authorities of the existence of any such consulate.  
21 Those, therefore, are the reasons behind the Spanish Embassy's *note verbale* to  
22 Kingstown, which was also accredited to the Applicant. Indeed, crimes against  
23 historical heritage are highly emotive in Spain and are particularly vilified among the  
24 general public. All these special circumstances justify the necessity and the  
25 proportionality, and therefore the reasonableness, of the decision taken by the  
26 magistrate-judge in the present case.

27  
28 In order to give you some significant precedents, I would refer you to the judgments  
29 of the Spanish Supreme Court of 25 November 2003 and 16 February 2006 in the  
30 *Prado Bugallo* case. Here, a Spanish citizen alleged an infringement of article 17 of  
31 the 1988 Vienna Convention because a fishing vessel had been boarded on the high  
32 seas without the prior authorization of the flag State, which was Togo. At the same  
33 time he claimed an infringement of article 561. The Spanish Supreme Court noted  
34 that the infringement complained of by Mr Prado Bugallo did not affect the  
35 fundamental rights of the person, nor had it made the applicant unable to defend  
36 himself in the course of proceedings. The Spanish Supreme Court took the view that  
37 the central investigating judge at the *Audiencia Nacional*, in a fully reasoned  
38 decision, authorized the boarding as an exceptional measure in order to prevent  
39 narcotic substances reaching their final destination and in order to ensure the  
40 success of the investigation. The Spanish Supreme Court also warned against an  
41 excessively formalist interpretation of the 1988 Vienna Convention against Illicit  
42 Traffic in Narcotic Drugs and Psychotropic Substances, as claimed by the applicant.  
43 The applicant then lodged an application for *amparo*, an action for the protection of  
44 fundamental rights, at the Spanish Constitutional Court, which ruled that the action  
45 was inadmissible because it was manifestly lacking in any content which would  
46 justify it ruling on the merits.

47  
48 Finally, the Spanish Supreme Court took the view that this failure to comply with  
49 article 561 of the Code of Criminal Procedure in any case constituted an irregularity

1 which would not necessarily nullify the proceedings or have implications for the  
2 assessment of the evidence obtained without authorization.

3  
4 The Spanish Supreme Court considers that the failure to comply with the provision  
5 which requires the request for authorization does not affect the rights of the accused  
6 persons, does not constitute a ground to nullify the proceedings and does not  
7 influence the State's jurisdiction in accordance with international law. It is in any  
8 event necessary to look at the specific circumstances of each case in order to  
9 resolve this aspect.

10  
11 Finally, the European Court noted in this same case that the applicant was simply  
12 expressing his disagreement with the interpretation of domestic legislation by the  
13 Spanish national courts in the light of the international conventions to which Spain is  
14 a party in relation to the need to obtain the prior authorization of the flag State. In this  
15 case the Court points out that it is first and foremost for the national authorities, and  
16 in particular for the courts and tribunals, to interpret domestic law and relevant  
17 international law, and that it will not substitute its own interpretation of the law for  
18 theirs in the absence of an arbitrary decision.

19  
20 The European Court takes the view that the final destination of the cocaine was  
21 Spain, that the buyers of the drug were Spanish, that some of the criminal activities  
22 had taken place in Spanish territory, and that account must be taken of the fact that  
23 Togo's flag was a flag of convenience and that there was no genuine link between  
24 the vessel and the flag State, as required by the relevant international conventions.  
25 Therefore, the Court concludes that the proceedings in Spain were fair. Finally, the  
26 Court also points out elsewhere in its ruling that interpretation of the provisions of  
27 domestic law, and in this case the question whether the alleged activities were  
28 criminal offences, falls within the exclusive competence of domestic courts and  
29 tribunals. There are therefore many sound reasons not to regard the decision of the  
30 judge in Criminal Court No. 4 as arbitrary and unfounded.

31  
32 Finally, in answer to the last section of these questions, I would simply say,  
33 Mr President, that in Spain's view there is no rule of general international law which  
34 Spain is required to follow in this regard, i.e. requiring Spain to obtain the  
35 authorization of the vessel's captain or the authorization of the consul in order to be  
36 able to board and search a vessel that is voluntarily moored in a port. The Applicant  
37 made references in this regard, but they related to different circumstances, in  
38 particular vessels that are underway at the time, not in port.

39  
40 Lastly, Mr President, to finish this long list of questions – I do apologize – I will  
41 answer question No. 6. As Spain has shown in the written pleadings and during its  
42 oral statements – for example, I would refer you to the answer to question No. 3 –  
43 the owner of the detained vessel and his representatives were able to ask the  
44 Spanish judicial authorities at any time for authorization to board the vessel in order  
45 to take the measures that they deemed necessary, such as to recover their personal  
46 effects (the visit which took place on 9 June 2006) or to check the condition of the  
47 vessel (the visit by the Weiland brothers, as mentioned above, finally made on 5  
48 March after a last-minute change from the date requested by Sage's representative  
49 and Mr Foster). This is in Annexes 10.1 and 10.2 of Spain's Counter-Memorial.

1 These examples, and other similar ones we have seen during the course of the  
2 proceedings, show that Spanish law takes a very flexible stance on requests of this  
3 kind and that judges will accept them provided the conservation and the safety of the  
4 objects seized (including vessels) is ensured. Thus, Sage's representatives could  
5 have asked the magistrate judge for authorization to carry out the necessary  
6 technical visits so as to have the *Louisa* ready for reclassification in due time. The  
7 fact that no such request was made to Criminal Court No. 4 in Cádiz shows once  
8 again how little the owner is interested in his vessels.

9  
10 I have one final point regarding these questions, Mr President. I would like to add  
11 that the Applicant, Saint Vincent and the Grenadines, was also informed at the  
12 appropriate time that the vessel had been detained and that the flag State had done  
13 nothing in order to try to ensure that the *Louisa* had all the certificates and the  
14 classification necessary for navigation.

15  
16 Mr President, that brings me to the end of our answers to the questions.

17  
18 With regard to the questions you asked yesterday, it is a national holiday in Spain  
19 today and it has not been possible for us to obtain the documents and permits that  
20 might be of interest to you, Mr President. We will reply to you next week.

21  
22 Thank you, Mr President.

23  
24 **THE PRESIDENT** (*Interpretation from French*): Thank you, Ms Escobar Hernández.

25  
26 That was the last statement by Spain during this hearing. As I stated yesterday,  
27 article 75(2) of the Rules of the Tribunal provides that at the conclusion of the last  
28 statement made by a Party at the hearing, its Agent, without recapitulation of the  
29 arguments, shall read that Party's final submissions. A copy of the written text of  
30 these submissions, signed by the Agent, shall be communicated to the Tribunal and  
31 transmitted to the other Party.

32  
33 Ms Escobar Hernández, I now invite you to read the final submissions of Spain.

34  
35 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, Mr President.  
36 In accordance with article 75(2) of the Rules of the Tribunal, the Kingdom of Spain  
37 presents its final submissions.

38  
39 I quote:

40  
41 On the grounds set out in the written pleadings and then elaborated in the  
42 course of its oral statements, and on any other grounds, the Kingdom of  
43 Spain requests the International Tribunal for the Law of the Sea to  
44 adjudge and declare that:

- 45  
46 1. the Application submitted by Saint Vincent and the Grenadines is not  
47 admissible and must be dismissed;  
48  
49 2. this honourable Tribunal has no jurisdiction in the case;  
50

- 1 3. subsidiarily, the Applicant's contention that Spain has breached its  
2 obligations under the Convention is not well-founded;  
3  
4 4. consequently, each and all of the requests made by the Applicant  
5 must be rejected; and  
6  
7 5. the Applicant be ordered to pay the costs incurred by the Respondent  
8 in connection with this case, as determined by the Tribunal, but in an  
9 amount no less than US\$ 500,000.

10  
11 With that, Mr President, I have finished my statement and once again I offer the  
12 thanks of my entire delegation. We are a delegation composed of civil servants,  
13 public servants, who have links with the State either through universities or through  
14 the Spanish public administration, and our obligation is always to serve the State.  
15 We are here simply to demonstrate the importance that Spain attaches to this case.  
16 You will appreciate that, even though there are five or six of us – depending on the  
17 day – this is a remarkable effort on the part of Spain, given the current economic  
18 situation in which we find ourselves. Thank you very much, Mr President and  
19 distinguished Members of the Tribunal, for your kind attention. Thank you for the  
20 support that we have received from the Secretariat of the Tribunal in order to ensure  
21 that Spain's interests can be defended.

22  
23 **THE PRESIDENT** (*Interpretation from French*): Thank you, Ms Escobar Hernández.  
24 This brings us to the end of the oral proceedings.

25  
26 (*Continued in English*) I would like to take this opportunity to express our  
27 appreciation of the high quality of the representations made by the representatives of  
28 both Saint Vincent and the Grenadines and Spain. I would also like to take this  
29 opportunity to thank both Co-Agents of Saint Vincent and the Grenadines and the  
30 Agent of Spain for their exemplary spirit of cooperation.

31  
32 The Registrar will now address questions in relation to the documentation.

33  
34 **THE REGISTRAR** (*Interpretation from French*): Thank you, Mr President. Pursuant  
35 to article 86(4) of the Rules of the Tribunal, the Parties may, under the supervision of  
36 the Tribunal, correct the transcripts of speeches and statements made on their  
37 behalf, but in no case may such corrections affect the meaning and scope thereof.  
38 These corrections relate to the verified versions of the transcripts in the official  
39 language used by the Party in question. The corrections should be submitted to the  
40 Registry as soon as possible and by Wednesday, 24 October at 5.00 p.m. Hamburg  
41 time, at the latest.

42  
43 **THE PRESIDENT** (*Interpretation from French*): Thank you, Mr Registrar.

44  
45 (*Continued in English*) The Tribunal will now withdraw to deliberate. The judgment  
46 will be read on a date to be notified to the Agents. The Tribunal currently plans to  
47 deliver the judgment in spring 2013. The Agents of the Parties will be informed  
48 reasonably in advance of the precise date of the reading of the judgment.  
49

1 In accordance with the usual practice, I request the Agents to kindly remain at the  
2 disposal of the Tribunal in order to provide any further assistance and information  
3 that it may need in its deliberations prior to the delivery of the judgment.

4

5 The hearing is now closed.

6

7

*(The sitting closed at 5.33 p.m.)*