

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2012

Public sitting

held on Thursday, 4 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)

Verbatim Record

<i>Present:</i>	President	Shunji Yanai
	Vice-President	Albert J. Hoffmann
	Judges	Vicente Marotta Rangel
		L. Dolliver M. Nelson
		P. Chandrasekhara Rao
		Joseph Akl
		Rüdiger Wolfrum
		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
		Markiyany Kulyk
	Registrar	Philippe Gautier

Saint Vincent and the Grenadines is represented by:

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Mr S. Cass Weiland, Esq., Patton Boggs LLP, Dallas, Texas, USA,

as Co-Agents, Counsel and Advocates;

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,

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as Counsel.

The Kingdom of Spain is represented by:

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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:** Good afternoon. We will now continue the examination of the
2 witness, Ms Avella.
3
4 Ms Avella, you are still covered by the declaration that you made this morning.
5
6 Mr Weiland, before you continue, let me say the following. The interpreters and the
7 verbatim reporters have experienced some difficulties in following the examination of
8 the witness. Could I ask you both, Mr Weiland and Ms Avella, to speak more slowly
9 and allow for sufficient interpretation after the other finishes before continuing to
10 speak. Thank you very much for your co-operation.
11
12 **MR WEILAND:** Thank you very much for that reminder, Mr President. I actually
13 mentioned that to Ms Avella during the lunch break, and we will try and do better.
14
15 **THE PRESIDENT:** Thank you. Now you can continue.
16
17 **MR WEILAND:** Then I will proceed, Mr President.
18
19 Ms Avella, when we took our lunch break we had just had some testimony about
20 your having been sent back to the jail in Cádiz for the weekend of Saturday and
21 Sunday, February 4 and 5. Do you recall that?
22
23 **MS AVELLA:** Yes.
24
25 **MR WEILAND:** Would you describe to the Court briefly what happened to you over
26 the weekend?
27
28 **MS AVELLA:** Over the weekend I slept and cried a lot. I prayed. I was hoping that
29 on Monday morning I would be released.
30
31 **MR WEILAND:** Was there an opportunity over the weekend to call your father?
32
33 **MS AVELLA:** No, there was not.
34
35 **MR WEILAND:** I have been remiss this morning in not mentioning your mother and
36 your efforts to talk to your mother. Your mother was back in Colorado during this
37 time – is that correct?
38
39 **MS AVELLA:** Yes, she lives in Denver.
40
41 **MR WEILAND:** Was there some medical situation affecting your mother that
42 heightened your own unease and tension in terms of the entire experience?
43
44 **MS AVELLA:** Yes. My mother is very ill. She has her second round of breast cancer.
45 She was involved in her radiation and treatment while I was away.
46
47 **MR WEILAND:** You were not able to talk to her?
48
49 **MS AVELLA:** I was not able to talk to her, no.
50

1 **MR WEILAND:** In fact, were there any calls that you were able to make to anyone
2 over the weekend?
3
4 **MS AVELLA:** No, I wasn't able to make any phone calls.
5
6 **MR WEILAND:** Did they let you out of your jail cell at all?
7
8 **MS AVELLA:** No, they did not.
9
10 **MR WEILAND:** So there was nothing like a recreation period or anything?
11
12 **MS AVELLA:** No.
13
14 **MR WEILAND:** On Monday morning, 6 February, and you had now been in jail since
15 1 February, what happened in terms of your relationship to the court process?
16
17 **MS AVELLA:** I was taken to the courthouse. I sat in a cell in the courthouse for a
18 few hours, and then I was brought out to the judge's chambers and was met there by
19 my lawyer and an interpreter.
20
21 **MR WEILAND:** Okay, so you now went to the judge's office?
22
23 **MS AVELLA:** Yes.
24
25 **MR WEILAND:** Judge Luis Diego Alegre happened to be working on Monday?
26
27 **MS AVELLA:** Yes.
28
29 **MR WEILAND:** What happened in his office?
30
31 **MS AVELLA:** What happened was that my lawyer gave a statement to the judge
32 asking for the release of my passport, explaining that I had only been there a few
33 days, that I had had no involvement in what was going on. After he made his
34 statement, the judge denied his request to return my passport and said that I could
35 be released from jail, but I was not allowed to have my passport back.
36
37 **MR WEILAND:** Did the judge give any explanation as to why you, as essentially a
38 foreign tourist, would be deprived of your identification like that?
39
40 **MS AVELLA:** He really had no explanation for me.
41
42 **MR WEILAND:** Were you prepared for that kind of a ruling?
43
44 **MS AVELLA:** No.
45
46 **MR WEILAND:** What was your situation as you left the courthouse on February 6?
47 Did you have anywhere to live?
48

1 **MS AVELLA:** I had nowhere to live. I had no money, just a few euros in my pocket
2 that my father had given me prior to him leaving. I had nothing, no cell phone, no
3 identification, nothing.
4
5 **MR WEILAND:** You didn't even have a driver's licence?
6
7 **MS AVELLA:** I did not, no.
8
9 **MR WEILAND:** I take it that you had no job prospects!
10
11 **MS AVELLA:** No job prospects, no.
12
13 **MR WEILAND:** Despite being in the presence of some Spanish speakers for the last
14 several days, your Spanish, I presume, was not up to par.
15
16 **MS AVELLA:** No, it wasn't up to par.
17
18 **MR WEILAND:** So you did not speak the language; you did not have any money;
19 you did not have any place to live, and you did not have any identification.
20
21 **MS AVELLA:** That is correct.
22
23 **MR WEILAND:** And the judge put you on the street in that situation.
24
25 **MS AVELLA:** Yes.
26
27 **MR WEILAND:** So what did you do?
28
29 **MS AVELLA:** Well, I went with my lawyer to his office. A friend of my father's met me
30 there and arranged a hotel for that evening and gave me some money, and that was
31 it.
32
33 **MR WEILAND:** So then at least you could start trying to obtain some way to call
34 back to the United States.
35
36 **MS AVELLA:** Yes, I was able to speak with my mom, my sisters, my brother, back in
37 Colorado.
38
39 **MR WEILAND:** What had become of the Hungarian crewmen, if you know?
40
41 **MS AVELLA:** The Hungarians met us as well after they had spoken with the judge. I
42 presume - I didn't see them very much until after our release from jail, but a hotel
43 and some money was provided for them as well.
44
45 **MR WEILAND:** Who was providing the money to the Hungarians?
46
47 **MS AVELLA:** At the time I really didn't know. I assumed it was my father or my
48 father's boss that helped to provide that.
49

1 **MR WEILAND:** The Court has just heard that then you ended up in Spain for quite a
2 while. Is that right?

3

4 **MS AVELLA:** Yes, that is correct.

5

6 **MR WEILAND:** When was your passport returned to you?

7

8 **MS AVELLA:** My passport was returned on October 9, 2006.

9

10 **MR WEILAND:** Tell the Court what life was like in Spain without a job, any money to
11 speak of or any identification?

12

13 **MS AVELLA:** It was very lonely. My brother and my sister came out to visit me at
14 one point. Other than that, I spent a lot of time by myself.

15

16 **MR WEILAND:** Did you attempt to get the US Government to assist?

17

18 **MS AVELLA:** I did. My sisters tried calling the Embassy. I physically went to the
19 Embassy. They told me that because it was a legal matter that they could do nothing
20 for me.

21

22 **MR WEILAND:** What about Mr Sandor and Mr Zsolt – were they also marooned?

23

24 **MS AVELLA:** I am sorry?

25

26 **MR WEILAND:** The two Hungarian crewmen, Mr Sandor and Mr Zsolt, were they in
27 a similar predicament?

28

29 **MS AVELLA:** Yes, they were.

30

31 **MR WEILAND:** Was the Spanish lawyer giving you any indication as to how this
32 might be resolved or when?

33

34 **MS AVELLA:** You know, he kept saying: “All this will be resolved in a couple of
35 weeks.” A couple of weeks turned into a couple of months. I would check in with him
36 periodically, towards the end of every month that I was there, and he kept telling me,
37 “Oh, another thirty days, another thirty days” and there was no success in the return
38 of my passport at that time.

39

40 **MR WEILAND:** We have not talked a lot about your father since your arrest other
41 than a call about the gun closet. What was your dad trying to do during this time?

42

43 **MS AVELLA:** My dad was trying to help me. He was trying to be in touch with the
44 lawyers at the time, trying to put pressure on them to get my passport released. He
45 was providing me with, you know, fatherly support, and sending me money.

46

47 **MR WEILAND:** Did there come a time when he actually came to Spain in an effort to
48 help you exit the country?

49

50 **MS AVELLA:** Yes.

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MR WEILAND: Tell the Court about that.

MS AVELLA: There was a time when we had made arrangements – he had made arrangements with the lawyer to meet him and try and speak with him. I spoke with him briefly and I informed him that I didn't think that it was the best idea because if he came back to Spain I was scared that he was going to be arrested as well.

MR WEILAND: Do you think that was part of the reason you were still there?

MS AVELLA: I did think that was part of the reason.

MR WEILAND: So they could entice him back?

MS AVELLA: I do feel that was, like, part of their reasoning, yes.

MR WEILAND: Well, he did come back and he did get arrested, so you were right. Tell the members of the Tribunal in so far as you know what happened when he came back to try to help you.

MS AVELLA: I know that he came back to try and help me. From what I heard from his lawyer, he was trying to go back to the United States to further assist me in my situation, and was then arrested.

MR WEILAND: Did he actually see you when he was in Spain and when he came back?

MS AVELLA: No, he didn't.

MR WEILAND: Why not?

MS AVELLA: I told him that I thought the Guardia Civil was following me around. I had recognized a couple – while my brother was visiting we were sitting in a restaurant, eating, and I had recognized one of the officers sitting at the same restaurant. When I saw him and recognized him he left very quickly, and I thought that they were following us. I thought that they were keeping surveillance on me, and so I told him that.

MR WEILAND: You told you are dad that?

MS AVELLA: Yes.

MR WEILAND: If he got arrested he would not be in a position to help you, I guess.

MS AVELLA: Right.

MR WEILAND: So as far as you know he was arrested on some kind of warrant when he reached Lisbon?

MS AVELLA: Yes.

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MR WEILAND: We will hear from your father so I will not pursue that with you, but you mentioned another lawyer became involved.

MS AVELLA: At the time another lawyer was put into contact with me from Madrid. He and his wife came down to El Puerto where I was living, and I met them for dinner. He informed me of what happened to my dad, and he informed me that because they had now arrested my father that he was very confident that my passport would be released back to me.

MR WEILAND: In what month was that?

MS AVELLA: That was May of 2006.

MR WEILAND: You said you did not actually get your passport until October.

MS AVELLA: That is correct.

MR WEILAND: So your father was arrested and in jail in May 2006, and you were living a hand-to-mouth existence?

MS AVELLA: Yes, absolutely. I was living very minimally during that time.

MR WEILAND: What about the money that you did have. Was that coming from the ship-owner?

MS AVELLA: Yes, it was. I would receive a Fedex package with some euros in it. I wasn't able to go to Western Union. I wasn't able to go to a bank or anything. I had no form of identification so we had to deal strictly with cash. I wasn't able to put a deposit down on an apartment or anything like that; so that's why I had to have assistance from other people to help me.

MR WEILAND: So the ship-owner literally had to send you currency.

MS AVELLA: Correct.

MR WEILAND: And he also sent currency for the Hungarians?

MS AVELLA: Yes, that is correct.

MR WEILAND: The Hungarians had actually been hired by the ship management company, not by the ship-owner – is that right?

MS AVELLA: I guess so. I don't know.

MR WEILAND: So there came a time in October that you were able to pick up your passport. Was there any explanation as to why the court finally released your passport?

1 **MS AVELLA:** No. I didn't even meet with anyone. I literally walked into the
2 courthouse with my lawyer and a secretary had me sign a piece of paper, and he
3 handed me my passport.
4
5 **MR WEILAND:** That was what day in October?
6
7 **MS AVELLA:** October 9.
8
9 **MR WEILAND:** What day did you leave Spain?
10
11 **MS AVELLA:** October 10.
12
13 **MR WEILAND:** Was there some other restriction on you when you were in Spain
14 without your passport? Were you supposed to report in or something?
15
16 **MS AVELLA:** I had to check in every fifteen days to the court and get a stamp on a
17 piece of paper.
18
19 **MR WEILAND:** How did that work? You mean you physically had to go to the
20 courthouse?
21
22 **MS AVELLA:** Yes, I had to physically go to the courthouse. I had to meet – I guess it
23 would be similar to a probation officer of some sort over in the United States. That is
24 what I was comparing it to. I had to check in with him and he had to sign off on my
25 piece of paper that I had.
26
27 **MR WEILAND:** You said you did spend some time in Madrid during all of these
28 months.
29
30 **MS AVELLA:** I did. My father's lawyer and his wife kind of took me under their wing
31 and invited me up to Madrid to stay with them for a while, and Juan was nice enough
32 to take me to the courthouse in Madrid and check in there.
33
34 **MR WEILAND:** So you were able to do it in Madrid if you happened to be staying
35 there.
36
37 **MS AVELLA:** Yes.
38
39 **MR WEILAND:** I wanted to ask you about the consequences of your unexpected
40 forced time in Spain. What happened to your job that you had left for a vacation for
41 two weeks?
42
43 **MS AVELLA:** I lost both my jobs. I lost my credits at my college. I was forced to
44 resign from school and I was sued by my room-mate for not paying rent and for
45 breaking the lease on the apartment.
46
47 **MR WEILAND:** So you had a room-mate in Denver; you go off for a couple of weeks'
48 vacation; you don't return; she was stuck with the rent; she actually sued you for the
49 back rent, your share.
50

1 **MS AVELLA:** Yes. When I returned to the United States I was served with papers of
2 a civil law suit against myself.

3
4 **MR WEILAND:** What about your jobs? You say you were terminated from your jobs.

5
6 **MS AVELLA:** Yes, I was terminated from both my jobs.

7
8 **MR WEILAND:** Where did you live when you got back?

9
10 **MS AVELLA:** I moved in with my mother.

11
12 **MR WEILAND:** Were you able to enroll back in college?

13
14 **MS AVELLA:** I was not. October was the middle of the semester. I had to wait until
15 the following spring to re-take and re-do all of my classes that I had missed.

16
17 **MR WEILAND:** Ms Avella, based on what you have told us do you think that you are
18 entitled to some compensation or reparation for what has happened to you?

19
20 **MS AVELLA:** I feel that I am, yes.

21
22 **MR WEILAND:** Do you feel that the Government of Spain was responsible for what
23 happened to you?

24
25 **MS AVELLA:** I do, yes.

26
27 **MR WEILAND:** To your knowledge were you ever charged with any crime?

28
29 **MS AVELLA:** Not to my knowledge. To this day I still don't know what the charge
30 was. I was never given an explanation.

31
32 **MR WEILAND:** That is all the questions I have, Mr President.

33
34 **THE PRESIDENT:** Under article 80 of the Rules of the Tribunal a witness called by
35 one Party may also be examined by the other Party. Therefore, I ask the agents of
36 Spain whether the Respondent wishes to cross-examine the witness. I give the floor
37 to the Agent of Spain to cross-examine the witness.

38
39 ***Cross-examination by MS ESCOBAR HERNÁNDEZ***

40
41 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, Mr President.
42 I hope that you will now be able to follow the interpretation, Madam. I will speak at a
43 reasonable speed in order to make it easier for the interpreters and so that you can
44 be certain that you have fully understood everything I say, as well as to make it
45 easier for you to give your testimony. Before starting my cross-examination I would
46 first of all like to thank you for your testimony. I would like to thank you for coming
47 here from the United States. You have taken time out to appear before the Tribunal,
48 bearing in mind that the proceedings have a number of aspects which the Applicant,
49 Saint Vincent and the Grenadines, considers relevant to your detention in Cádiz. I
50 would like to thank you very sincerely, particularly because you have accepted the

1 heavy responsibility that any witness or any expert bears, which is to give evidence
2 and make statements under oath, bearing in mind that in democratic countries an
3 oath sworn before a court of justice is very important; it is very serious and, of
4 course, swearing an oath before a court in Spain or the USA is very important. I am
5 sure you are fully aware of that, so I thank you most sincerely for deciding to come
6 here and for bearing in mind that you are under oath.
7

8 I would like to put a number of questions to you in relation to the examination carried
9 out by Mr Weiland. Firstly, could you tell us on which day you arrived in Cádiz?
10

11 **MS AVELLA:** I arrived at the end of January. I can't remember the exact date. I
12 believe it was the 29th or 30th – I am sorry, the 27th or 28th of January – perhaps the
13 25th. I can't remember the exact date, but it was the last week of January.
14

15 I would say January 26, January 25, January 26 – something like that.
16

17 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): So you arrived in Cádiz
18 to meet your father. I imagine it had been a long time since you had last seen him
19 because he had been in Spain. I also imagine that you were shocked to find that he
20 had had to leave Spain, and not just shocked, but I imagine – I am trying to put
21 myself in your shoes -- perhaps even disappointed not to be able to spend your time
22 in Spain with your father. Is that right?
23

24 **MS AVELLA:** Yes, very disappointed.
25

26 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You said that your father
27 had had to leave Spain because your grandmother had fallen ill and that he had to
28 go to the United States in order to look after his mother. Is that the case?
29

30 **MS AVELLA:** Yes, that was the case.
31

32 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you. Can you
33 remember whether at some point in Cádiz you made a statement that your father
34 had gone to Texas in order to take part in a project concerning which you did not
35 know the details?
36

37 **MS AVELLA:** He said that he was going to take care of his mother and there were a
38 few things that he had to take care of while he was there as well, a few other things.
39 He didn't go into detail about it so I don't know what it entailed.
40

41 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): The problem is that the
42 headset is not working terribly well. I apologize, Mr President.
43

44 Would you repeat your answer? I do apologize but I did not hear the French
45 interpretation coming through.
46

47 **MS AVELLA:** He said that he had to go back to take care of his mother as well as do
48 a few other things that he needed to do, take care of, while he was back in the
49 United States. He didn't tell me any other details.
50

1 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): So your father had gone
2 to the United States and it was not solely in connection with your grandmother's
3 illness?
4

5 **MS AVELLA**: Yes, I guess so.
6

7 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Your grandmother fell ill?
8

9 **MS AVELLA**: Well, as I said before, my grandmother was ill. He went back to help
10 tend to her and said he had a couple of other things he had to take care of while he
11 was there.
12

13 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): When you were
14 questioned and made a statement before the Spanish authorities, did you inform the
15 Spanish authorities that your father had left because of your grandmother's illness?
16

17 **MS AVELLA**: I don't remember what I said.
18

19 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You arrived in Cádiz on
20 the date that you indicated not very clearly or precisely, but when did your father
21 leave for the United States?
22

23 **MS AVELLA**: It was two or three days after I arrived.
24

25 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Did your father leave you
26 in the care of a reliable person who would take care of you, bearing in mind that it
27 was the first time you had ever been to Spain and you had only once before left the
28 United States? If my memory serves me correctly from what you said earlier, you
29 had spent a month in Sweden when you were fourteen or so, and you absolutely did
30 not know any Spanish, and he had to leave the country unexpectedly. Did he leave
31 you in the hands of someone he trusted?
32

33 **MS AVELLA**: He left me with the two Hungarian crewmen. Alex, as I said before,
34 was a very nice man, very fatherly to me, as well as Anna, the friend that spoke
35 Spanish and was just a few years older than myself; he also informed her to look
36 after me.
37

38 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You said, if I remember
39 rightly, that the Hungarian crewmen spoke no Spanish at all. How could they be
40 helpful in looking after you in Spain? How could they help you organize your Spanish
41 language classes and things like that?
42

43 **MS AVELLA**: They did not have to organize my Spanish classes. They were already
44 organized for me. Anna, as I said before, was fluent in Spanish and was able to meet
45 me every morning or help take me back from Spanish class if Alex was unable to
46 pick me up, but Alex was there to drive me to class and pick me up from class and
47 help cook me dinner.
48

1 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): What was your
2 relationship with Anna? Forgive me, I cannot pronounce her surname correctly. I
3 shall simply say Anna to facilitate matters.
4

5 **MS AVELLA**: I just met her prior to my father leaving, and she was just a nice girl,
6 fluent in Spanish, she had lived in El Puerto for a while so she knew the town and a
7 few friends there that she would take me to a couple of bars, a restaurant,
8 throughout that time.
9

10 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): I see, and when did you
11 make her acquaintance?
12

13 **MS AVELLA**: I just met her after I enrolled in my Spanish class, probably the day
14 after I arrived in Spain. I cannot remember the exact time but I think within one or
15 two days of my arrival.
16

17 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You just said that your
18 father went and fetched you from the airport at Jerez, which of course was the
19 nearest airport, so it is understandable that he should go there, but afterwards how
20 did you spend the rest of that day?
21

22 **MS AVELLA**: We went back to the ship, I dropped off my suitcase, we spent some
23 time with Alex and Zsolt, we went and enrolled in my Spanish class and had dinner. I
24 think I met Anna that night for dinner. I believe that it was either the first night or the
25 second night that I met Anna for dinner with my father.
26

27 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): From that time onwards
28 Anna became your point of contact in Spain. Am I getting it right?
29

30 **MS AVELLA**: Yes.
31

32 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): When Mr Weiland asked
33 you about your statement to the Spanish judge, you said that Anna had been with
34 you and had served as an interpreter with the Spanish judge. I think that is what you
35 said. I may be getting this wrong, Mr President, but it seems to me that you said it
36 was on that day that you made Anna's acquaintance. In other words, at least ten
37 days after your arrival, on a rough calculation, between the date on which the *Louisa*
38 docked and the date on which you were taken in by the Guardia Civil.
39

40 **MS AVELLA**: I did not meet her ... She was not my interpreter with the judge. I was
41 appointed an interpreter with the judge. I met Anna ... Anna was helping me interpret
42 when the Guardia Civil was on the ship after it was seized.
43

44 **MS ESCOBAR HERNÁNDEZ** (*Interpretation*): Perhaps that is where my mistake
45 came from. You said that she was your interpreter when you made a statement to
46 the Guardia Civil and that was when you made her acquaintance.
47

48 **MS AVELLA**: No, I met her prior to that.
49

1 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): So she was a person
2 you knew well, a person whom your father trusted with regard to your stay in Spain?
3

4 **MS AVELLA**: I do not understand the question. I am sorry.
5

6 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Let me try to restate
7 what I said to make it easier for you to understand. You made Anna's acquaintance
8 immediately after arriving in Spain, in Cádiz, and after that she became your
9 confidante, your trusted acquaintance, in charge of helping you with your life in
10 Spain, particularly after your father left Spain. Is that correct?
11

12 **MS AVELLA**: Yes, that is correct.
13

14 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you. Could you
15 tell us where you were living in Cádiz up until the time when the judge gave his
16 instructions regarding the *Louisa*? Where were you housed until the time of the
17 detention of the vessel?
18

19 **MS AVELLA**: I was staying on the boat, on the *Louisa*, prior to it being seized.
20

21 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Are you sure that you
22 remained on board the *Louisa* up until the time of the seizure. Can you confirm that?
23

24 **MS AVELLA**: Yes, that is correct.
25

26 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Do you remember
27 whether in the statements you made in Spain you stated that you were not living on
28 board but living with Anna at the Puerto de Santa Maria address, and that you had
29 merely left your luggage and all your things on the boat?
30

31 **MS AVELLA**: The Guardia Civil had asked me for an address for where I was
32 staying. I did not know what the address was for the *Louisa*. It was a boat, so I did
33 not have any address to give them, so Anna provided her address as a local address
34 to use as a place of residence. I stayed with her maybe one night as a friendly sleep-
35 over but I mostly slept on the boat.
36

37 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Are you sure that the
38 Guardia Civil simply wanted an address for communication purposes or did they ask
39 you where you were living?
40

41 **MS AVELLA**: They asked me if I was staying on the boat. I said yes, and they asked
42 me if I had stayed on the boat, and I said that I was staying there and that I had
43 occasionally stayed with Anna. I think one night was all I stayed with her.
44

45 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Are you sure? Can you
46 confirm that before the Tribunal?
47

48 **MS AVELLA**: Yes. I cannot remember exactly what I said to the Guardia Civil.
49

1 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): In any case, you did
2 make a statement before the Guardia Civil, and you had a lawyer with you for that
3 purpose. I shall return to that matter later. You signed the statement. Can you not
4 remember precisely what it was you said to the Guardia Civil?
5

6 **MS AVELLA**: My lawyer was never around when the Guardia Civil was interrogating
7 me, so that is inaccurate. I was never approached by the Guardia Civil with my
8 lawyer present.
9

10 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Are you sure of what you
11 have just stated?
12

13 **MS AVELLA**: Yes. I cannot remember. It was such a long time ago.
14

15 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): In any case, did you
16 have a lawyer with you at the time of your second statement to the judge?
17

18 **MS AVELLA**: I only made one statement to the judge, and yes, my lawyer was
19 present at that time.
20

21 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Can you remember what
22 you said on that occasion when you gave your statement before the judge?
23

24 **MS AVELLA**: I do not remember what exactly was said. It was an extremely
25 emotional time. I do not remember what was said.
26

27 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): I understand. Another
28 question, and then I would like to talk a little about the time in jail. You said that your
29 father was an engineer or a mechanic. What exactly was his profession – at that
30 time, of course?
31

32 **MS AVELLA**: I understood him to be a mechanic, helping on the boat for mechanical
33 purposes. I did not really discuss with him the details of his job description.
34

35 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): That is what you stated
36 to the Guardia Civil – is that so?
37

38 **MS AVELLA**: I do not remember what I told the Guardia Civil. They were extremely
39 intimidating. There were a lot of them around. I cannot recall what I said to them.
40

41 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): That is a pity because
42 the contents of your witness statement would be of great interest and importance to
43 the Tribunal if you could remember what you had said in the course of the procedure
44 in Cádiz but I shall go no further. Could you tell us, if you know, what was the
45 relationship between your father and Mr Foster and how your father met Mr Foster,
46 or how Mr Foster met your father, as the case may be?
47

48 **MS AVELLA**: My father knew Mr Foster from after the time I had already left home. I
49 had moved down to Denver after I graduated high school and my father had taken

1 himself to Texas, and that is where he met him and worked for him. I do not know
2 what exactly he did for him.

3
4 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You do not know how
5 the relationship between your father and Mr Foster started?

6
7 **MS AVELLA**: My father was a house builder in Steamboat. I believe that he was
8 continuing on with that in Texas. I believe that that is how they met. I believe he
9 helped build a house for Mr Foster.

10
11 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Do you remember if you
12 ever said that to the Spanish authorities?

13
14 **MS AVELLA**: I may have. I do not recall.

15
16 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): I have just the tiniest
17 doubt. To be absolutely sure of what you said, your father was an engineer, he was
18 a mechanic, he was working on boats, or he was a builder. His main job was building
19 houses and it was in that context that he first met Mr Foster?

20
21 **MS AVELLA**: Yes. I am sorry. I am not sure I understand what the question is.

22
23 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You said that your father
24 was an engineer. Then you said he was a mechanic. We heard you say this. You
25 said this, and now you have said that your father was also a house builder and that
26 he had even built a house for Mr Foster, and that it was on that occasion, building a
27 house for Mr Foster, that he met him. My question is as follows: what actually is your
28 father's business? Is he a builder? Is he a mechanic? Is he an engineer? What was
29 he doing on the *Louisa*?

30
31 **MS AVELLA**: At the time in Steamboat he was a house builder. Prior to that he built
32 boats down in Florida, where we lived prior to moving to Steamboat. He is educated
33 in many different fields, so yes, he is all three essentially. At the time when we lived
34 in Steamboat he was a house builder.

35
36 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Do you remember if in
37 Cádiz you said something to that effect?

38
39 **MS AVELLA**: They never ... They asked me where my father was. I do not
40 remember them asking me what his profession was. I do not recall that question
41 coming from the Guardia Civil.

42
43 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Take your time. Can you
44 remember, do you have any recollection of making a statement or being questioned
45 on that subject? Once again, take your time. We are in no hurry here.

46
47 **MS AVELLA**: At the time they were asking me a lot of questions about things that I
48 had no idea about. As the passport stated, as I stated, I had only been there a few
49 days. I did not know why they were asking me these questions. They were extremely

1 abrasive with me, extremely intimidating to me. I cannot remember what exactly
2 word for word question was asked to me. I am sorry.

3
4 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You just said – I think I
5 heard you say earlier -- that you were very nervous, very anxious, and even in a
6 state of hysteria because of your detention and the situation in which you found
7 yourself in Cádiz. I can understand that a young lady who is in a foreign land and
8 against whom criminal charges are being brought should be in a state of great
9 nervousness; that is understandable. But can you tell me something: do you think
10 that a Spanish citizen aged 20, roughly your age at the time when you were
11 imprisoned in Cádiz, would consider him or herself to be under pressure, in a
12 situation of insecurity, if, say, they were in the hands of the FBI, in Denver, for
13 example?

14
15 **MS AVELLA**: OK.

16
17 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Did you get the sense of
18 that question or shall I repeat it?

19
20 **MS AVELLA**: Can I imagine a person in a similar situation? If that is what you are
21 asking, yes.

22
23 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Would the situation be
24 the same if that person was detained by the FBI in Denver and subjected to
25 proceedings?

26
27 **MS AVELLA**: It would not be the same situation. I was not offered a lawyer, I was
28 not offered a phone call, I was not offered anything like that, I was not read any
29 charges against me, so no, that would not happen in the States with the FBI. No.

30
31 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Meaning then that you
32 think the situation would be different, and that a young Spaniard going to the US,
33 picked up by the FBI, would not be in a situation of uncertainty and insecurity?

34
35 **MS AVELLA**: I am sure they would be, but they would not have been treated the
36 same way that I was treated by the Guardia Civil. I think that it would have been
37 quite different. The same emotions would probably be there but I do not think that
38 the FBI would have acted the same as the Guardia Civil.

39
40 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Do you think that the
41 Spanish police authority in charge of criminal investigations, custody of suspects,
42 border controls, immigrant controls and so on, do you think that the Guardia Civil
43 does not have sufficient status to be considered as a comparable investigative entity
44 to the FBI? Is there a difference in capacity? Is there a difference in resources?

45
46 **MS AVELLA**: I do not know.

47
48 **MR WEILAND**: Excuse me, Mr President. I have to object to questions that would be
49 obviously beyond the competence of the witness. There is no predicate to show that
50 she would be familiar with FBI practices. There is no predicate to know that she

1 would have anything to do with the Guardia Civil practices other than what she
2 experienced. I also object to the question because it was a triple, compound
3 question and totally unfair and indecipherable.

4
5 **THE PRESIDENT:** May I ask the Agent of Spain to reformulate your question.

6
7 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Yes, Mr President, I shall
8 indeed reformulate the question but it is not I who raised the question about the
9 relationship and the comparison between the Guardia Civil and the FBI. It was the
10 witness herself. I shall indeed restate the question. Could you answer simply
11 whether you consider, in view of your experience and knowledge – and I am not
12 calling for a technical answer; you are here as a witness to give us the facts and tell
13 us your view of the facts. That is what I am trying to get at. That is why you are here.
14 Do you think that a Spanish citizen under the same circumstances, held in Denver by
15 the FBI, would have more rights to uphold his freedom and safety than a US national
16 in Spain, from what you know of the activity of the Guardia Civil?

17
18 **MS AVELLA:** Yes.

19
20 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you. During your
21 introductory statement you several times referred to the fact that you had problems
22 understanding and communicating with the Guardia Civil and the various persons
23 you were in touch with because no-one, you said, could speak English or they spoke
24 very little English; I think those were your words. Can you confirm that?

25
26 **MS AVELLA:** Yes, they spoke broken English. The Guardia Civil spoke barely
27 English. The gentlemen that were in suits from Madrid spoke some English, again,
28 not extremely strong English but they spoke some.

29
30 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): I shall return later to the
31 matter of the interpreter. Before that I have a question. I can understand that, after
32 all, because your mother tongue is English, obviously you had difficulty
33 communicating in Spain with people speaking Spanish. For you, would this be
34 different for a Spaniard held in the US and speaking only Spanish?

35
36 **MS AVELLA:** I do not know. I guess not.

37
38 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You do not know but you
39 do not think so?

40
41 **MS AVELLA:** I think they would probably have a hard time understanding but, again,
42 I do not know how it would work over in the United States. I do not know how that
43 works, if they would have brought in an interpreter right away or if they would have
44 just spoken to them and interrogated them in English. I have no idea.

45
46 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You said that when you
47 were detained, you only saw the judge a few days afterwards, that you saw only the
48 Guardia Civil, and that was your only contact with the Spanish authorities. You were
49 picked up leaving your Spanish class, and you said that you were taken to the
50 vessel, and that after that you were taken the next few days to be present at the

1 search of the *Louisa* and also the *Gemini*, dry-docked at the time. Was there
2 someone else with the Guardia Civil at that time, do you remember?
3
4 **MS AVELLA:** No, there was no one, and I was never taken to the police station on
5 that first day. I was taken back to the *Louisa*, and it was just two agents from the
6 Guardia Civil.
7
8 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): That is all – just two
9 agents?
10
11 **MS AVELLA:** Who picked me up and brought me back to the *Louisa*, yes, it was two
12 agents.
13
14 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): When you were in
15 attendance at the *Louisa* and the search occurred the next day, followed by the
16 *Gemini III*, do you remember whether the Spanish equivalent of the clerk of the court
17 was in attendance? In other words, was the judiciary assistant present on board the
18 two boats?
19
20 **MS AVELLA:** The judiciary assistant, no, there were just the Guardia Civil agents
21 and, like I said, the gentlemen in suits from Madrid who took me over to where the
22 *Gemini* was.
23
24 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Could I ask you once
25 again to go back very carefully over your recollections of what happened that day?
26 You are, I remind you, under oath.
27
28 **MR WEILAND:** I object to this lawyer continually lecturing the witness about being
29 under oath. It is improper to continue to remind the witness that she is under oath,
30 and I strongly object to it.
31
32 **THE PRESIDENT:** Do you have the interpretation, Ms Escobar Hernández?
33
34 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): The problem is that the
35 interpretation comes through at the same time as Mr Weiland is speaking, so I end
36 up not being able to hear either of them. I would be most grateful if the point could be
37 repeated.
38
39 **THE PRESIDENT:** Ms Escobar Hernández did not get the interpretation. She heard
40 your statement and the interpretation at the same time. Would you please repeat
41 your point?
42
43 **MR WEILAND:** I am happy to do so, Mr President. I think Ms Escobar Hernández
44 speaks very adequate English, but just so that the record is clear, I am objecting. I
45 allowed her to try to lecture the witness at the outset about the importance of the
46 oath. That in itself is improper, but now she continues to do that. It is an improper
47 technique of interrogating a witness and I strongly object to her continually referring
48 the witness to the fact that she is under oath. It is meant to imply that she is giving
49 deceitful answers and I object to it. It is improper.
50

1 **THE PRESIDENT:** Thank you, Mr Weiland. Ms Escobar Hernández, when you refer
2 to the witness being under oath, what do you mean exactly? Are you referring to the
3 declaration that she made here or in the Spanish court?
4

5 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): No, not quite, Mr
6 President. My first statement to the witness that she was under oath was to thank
7 her most sincerely for the responsibility that she was shouldering. I am not trying to
8 put the witness under any kind of pressure. I am simply stating a fact. It is a very
9 important fact in the Spanish and other legal systems, and of course before the
10 International Tribunal for the Law of the Sea.
11

12 I am not constantly referring in my questioning to the fact that Ms Avella is under
13 oath. I have only said it once, and I said it because it is useful for the Tribunal. When
14 I refer to the oath, I am simply pointing out that she has taken an oath this morning
15 before this honourable Tribunal. That is all. If you prefer me not to refer to it, I will
16 refrain from doing so, but it is still a fact that she has sworn an oath. All I am trying to
17 do is help her and remind her and ask her to bear the fact in mind. That is all I am
18 doing, Mr President. I have no other intention. Anyway, if I may, I would like to say
19 that we are dealing with a process where we have a witness statement with
20 examination by the party calling the witness and cross-examination, and there may
21 be a further examination. I did not make any attempt to interrupt when the Co-Agent
22 of Saint Vincent and the Grenadines carried out his examination. That is all I want to
23 say, Mr President. However, if you do not wish me to refer to the oath, as far as I am
24 concerned I have no need to do so. It is simply for the record of the session.
25

26 **THE PRESIDENT:** I think it is very clear that she is still covered by the solemn
27 declaration that she made this morning, so I do not think it is necessary to repeat it.
28

29 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you. I shall not do
30 it again, Mr President.
31

32 To come back to the question that I asked you a moment ago, when the ship was
33 entered and searched and you were taken into custody, do you remember whether
34 there was any clerk of the court or any judicial secretary? Was there a judicial
35 commission supervising the activity, or was it simply two officers from the Guardia
36 Civil?
37

38 **MS AVELLA:** Again, two police officers picked me up. We were taken to the *Louisa*.
39 There were many people around. Nobody showed me any badge, nobody identified
40 themselves as a judicial supervisor, so I do not know.
41

42 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you. At the time
43 you were taken into custody by the Guardia Civil, did they read to you your
44 constitutional rights, your fundamental rights in accordance with the Spanish
45 Constitution?
46

47 **MS AVELLA:** They did. They read me my rights while we were observing the
48 *Gemini*. Anna was there and she interpreted them for me.
49

1 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Were you informed that
2 you had the right to get in touch with a member of your family?
3

4 **MS AVELLA**: I do not remember what the rights were. They may have said that, but
5 I was not offered the opportunity to do so.
6

7 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Were you informed that
8 you had the right to appoint a lawyer?
9

10 **MS AVELLA**: I believe that those rights were read to me, yes. Again, I was
11 extremely emotional and I was not really listening when he was reading me those
12 rights, because I was shocked that I was being arrested. I do not remember.
13

14 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Were you informed that
15 you had the right to undergo a medical examination to establish your personal
16 situation in a Spanish hospital or by a Spanish doctor?
17

18 **MS AVELLA**: Again, I am sorry, I do not remember exactly what was said in the
19 rights that were read to me.
20

21 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): In any case, you cannot
22 say that you were not told all those things. You are simply saying that you cannot
23 remember. Is that right? Am I interpreting your answers correctly?
24

25 **MS AVELLA**: Yes.
26

27 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You had an interpreter
28 translating from Spanish into English for you, as you were entitled to?
29

30 **MS AVELLA**: Yes. Anna was not appointed as my interpreter. She was there as my
31 friend and she just happened to tell me what the officer was saying to me.
32

33 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): So you did have an
34 interpreter. Someone was there interpreting what the police said to you?
35

36 **MS AVELLA**: Yes.
37

38 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Did you have a lawyer?
39

40 **MS AVELLA**: I met my lawyer on Friday morning. That was the first time I met my
41 lawyer.
42

43 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you. Could you
44 tell us whether you appointed the lawyer yourself, or was the lawyer appointed by
45 the court under the free legal assistance system? Did you or the court appoint the
46 lawyer?
47

48 **MS AVELLA**: I do not know. I had nothing to do with it. I showed up on Friday
49 morning and a gentleman approached me and said, "I am your lawyer."
50

1 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): In your earlier statement
2 you said that you thought it was your father who had sent the lawyer to help you.
3 Could you confirm that?
4

5 **MS AVELLA**: Yes, I thought it was my father or my father's boss or someone who
6 had called him.
7

8 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): In that case, you had the
9 right to choose your lawyer. As regards the conditions in which you were held, you
10 have said many times that there was no female police officer among the officers who
11 arrested and held you. There was no woman from the Guardia civil or other police.
12 Could you confirm that?
13

14 **MS AVELLA**: Yes, I can confirm that.
15

16 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You were held at the
17 same time as the two crew members, who are Hungarian nationals, two men. Were
18 you held and guarded by the Spanish police with two men?
19

20 **MS AVELLA**: No, I was in a cell by myself.
21

22 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): In the room close to the
23 cell where you were held, were there other men or women or was it just you alone?
24

25 **MS AVELLA**: Over the weekend I heard some men's voices in other cells. I did not
26 see anybody else.
27

28 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You did not see anybody
29 else. No person, male or female, came close to you?
30

31 **MS AVELLA**: No. There was just an officer who would come in to offer me food.
32 Other than that, I did not see anyone.
33

34 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): You said that while you
35 were held you were put in extremely uncomfortable situations and that the conditions
36 were terrible. I do not want to go through all the details of the precise size of the cell,
37 a little bigger, smaller or whatever, but I would like to ask you a couple of questions.
38 In your opinion, the situation was so terrible – I am not commenting on your opinion;
39 you are giving us your views – and you were under such pressure that your situation
40 was intolerable. That is more or less what you said. Bearing that in mind, what did
41 you do? Did you get in touch with a lawyer in order to appeal and ask to be released
42 at once? Did you demand a habeas corpus writ, which is a familiar legal principle in
43 Spain and in the United States?
44

45 **MS AVELLA**: No. I was very young and scared. I had no idea what was going on. I
46 did not know what kind of questions I should ask. I did not know who I should ask for.
47 I never asked for any of that.
48

49 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Did your lawyer not give
50 you any advice?

1
2 **MS AVELLA:** It was very hard to communicate with my lawyer without the
3 interpreter. As I said before, I met with the lawyer on Friday morning. That was the
4 first time I had met him. He said that he was going to take care of everything and that
5 I was going to get my passport back and going to be able to go home.

6
7 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Yes, but at least you
8 understood that the lawyer said, in Spanish I imagine, that everything was going to
9 be okay, that he would take care of you, that he would lodge a request to get your
10 passport back. Is that right?

11
12 **MS AVELLA:** Yes. Anna was there to meet me at the court on Friday morning. She
13 was able to help me understand what Philippe was telling me.

14
15 **MS ESCOBAR HERNANDEZ** (*Interpretation from French*): At that point Anna was
16 there and she could help you to understand what the lawyer was saying to you, and
17 you did not raise the question of instituting proceedings, of lodging a request for
18 immediate release?

19
20 **MS AVELLA:** Of course I did. I repeated multiple times that I had just arrived in
21 Spain, that I was there for a vacation, that I wanted to go home and that I wanted my
22 passport back. My requests were very clear.

23
24 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Another question on this
25 subject regarding the assistance that you were given. You are a US citizen. I think I
26 can say that the United States is very proud that it has always sought to defend and
27 protect its nationals abroad and, as a result, the United States always provides
28 consular assistance. The consuls of the United States in Seville were informed that
29 you had been arrested. They were informed by fax immediately. I do not remember
30 what you said in your earlier statement, but during your arrest did you or any
31 member of your family go to the consul in Seville in order to ask for consular
32 assistance and US consular protection?

33
34 **MS AVELLA:** Yes, we did. After I was released from jail, when my sister came over
35 to visit we made a trip over to Seville to visit the Consulate and ask them for their
36 assistance.

37
38 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): No, my question was
39 quite a different one. I was talking about while you were in detention, under great
40 pressure and feeling very insecure. If I were in that situation, I would get straight on
41 the phone to my consul. Mr President, please disregard what I have just said. Did
42 you attempt to get in touch with the US consul in Seville, bearing in mind that the
43 Spanish police and judicial authorities had contacted the US Consulate in Seville and
44 had informed him that a US national had been arrested in Cádiz?

45
46 **MR WEILAND:** Excuse me. I hate to object, and please forgive me. She is testifying
47 about a document that is not in evidence in this Tribunal. She has said at least twice
48 that the Consulate was notified. I believe that she used the term “immediately”, but
49 there is no evidence of that in the record and I object to it. If she had thought that the

1 judge had notified the Consulate, she should have put that document in the record. If
2 she has done and I am mistaken, I would like to see it on the board.

3
4 **THE PRESIDENT:** I do not think the Agent of Spain is referring to any document.
5 Was any document included in the written proceedings? If so, please show it to us.

6
7 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Mr President, I would like
8 to make a comment. I referred to a fact; I did not refer to a specific document. Be
9 that as it may, if you would turn to Annex 6.1 to the Counter-Memorial lodged by the
10 Kingdom of Spain, you will see that a communication was made by the authorities
11 that had arrested Ms Avella. I will read it in English:

12
13 (*In English*) In Cádiz, at 22.00 hours on 3 February 2006, at the Civil
14 Guard headquarters, the Investigating Judge ordered the present report
15 to be issued, stating officially that:

16
17 At the above time, notification was sent by FAX to the United States
18 Consulate in the city of Seville of the arrest of **ALBA JENNIFER AVELLA**
19 ...

20
21 That is the English translation but, of course, you know that the original document
22 would have been in Spanish.

23
24 **THE PRESIDENT:** (*Interpretation*) Yes, that is in the document that you presented
25 earlier. You may continue.

26
27 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, Mr President.

28
29 You have stated that your passport was withdrawn from you at the point of your
30 arrest and that you lodged a request to have your passport returned to you, but what
31 happened to your efforts? When did you lodge your request to get your passport
32 back? Can you remember?

33
34 **MS AVELLA:** I remember going to Seville a few weeks after I was released and
35 asking them for their assistance. That was the time when I put in a request for my
36 passport. Again my lawyer was the one who said that he was taking care of
37 everything, and I trusted him that he was going to do that.

38
39 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): I quite understand that
40 you put your faith in your lawyer; that is normal. However, that is not the question I
41 am asking you. I am asking whether your lawyer made a request to the judge who
42 had ordered your passport to be withdrawn for the return of your passport. In your
43 earlier statement you said that that had happened?

44
45 **MS AVELLA:** That is correct. That did happen.

46
47 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Can you tell us whether
48 the judge responded to that request?

49
50 **MS AVELLA:** I believe that the response was “no”, because I did not get my
51 passport back.

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MS ESCOBAR HERNÁNDEZ (*Interpretation from French*): But you do not know whether there was any response at all?

MS AVELLA: When I met with the judge on Monday my lawyer made a statement requesting the passport back and the judge denied it and said that I had to stay in Spain, that I could be released from jail but that my passport was not going to be returned to me.

MS ESCOBAR HERNÁNDEZ (*Interpretation from French*): Can you tell us what reasons the judge gave you when he said that he would not give your passport back?

MS AVELLA: The only explanation that I can remember was that while this investigation was ongoing I was not allowed to leave.

MS ESCOBAR HERNÁNDEZ (*Interpretation from French*): Can you remember whether at any point your lawyer spoke to you about the fact that having your passport withdrawn was the most lenient of all the measures that the court might choose to take against you? Did your lawyer tell you something along those lines?

MS AVELLA: No, he never said anything like that.

MS ESCOBAR HERNÁNDEZ (*Interpretation from French*): I quite understand that when you are in a situation such as this you put all your faith in your lawyer. Once you had been granted an interim release, but before the date on which you were given your passport back, where did you stay in Spain? Or did you remain in Cádiz?

MS AVELLA: I was actually in Puerto de Santa Maria. An apartment was arranged for me and a separate apartment in the same building for the Hungarians. That is where I stayed for most of the time until my father's lawyer came down from Madrid and he and his wife graciously invited me to stay with them in Madrid.

MS ESCOBAR HERNÁNDEZ (*Interpretation from French*): When did you know that your Hungarian friends had asked the court for permission to stay on the *Louisa*, and what did you do?

MS AVELLA: I do not recall that. I do not remember. They were not able to, because they had an apartment, so they were staying at the apartment. I do not know whether they had requested to stay on the *Louisa*. I do not remember.

MS ESCOBAR HERNÁNDEZ (*Interpretation from French*): It must have been a very expensive business. You have mentioned the loss and harm you suffered in your work and your studies in the United States because of your detention in Cádiz, Spain. I quite understand what you said. Could you give me an answer to my final question? Would the damage caused have been any different if you had been detained the United States?

1 **MS AVELLA:** I do not think so, no. It probably would have been the same. I would
2 have lost my job. I would not have been able to work if I had been detained in the
3 United States.

4
5 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Finally, you were saying
6 you were obliged to stay in Spain until November 2006. During that period or after
7 that period, once you had been released from the criminal proceedings – once you
8 had been staying in Spain ...

9
10 I apologize, President. I have just been given a piece of paper and I have rather lost
11 my thread. I apologize.

12
13 You said a moment ago that you have suffered significant harm, both on the
14 professional front and on the academic, educational front. You also said that it is
15 possible that it would have been the same story if you had been held in the United
16 States. My last question is along different lines. Did you lodge any request, any
17 complaint or any claim to the Spanish judicial or administrative authorities once the
18 court had ruled that you were released from the criminal proceedings? In other
19 words, they did not declare you innocent; they simply said that you were no longer
20 part of the case, but you had not been accused of anything, you were not charged.
21 Did you make any attempt to make any complaint or to claim any damages from the
22 judicial or administrative authorities in Spain, in the light of the events that you had
23 experienced, the harm that you have just talked about?

24
25 **MS AVELLA:** No, I didn't have the ability to do so. When my passport was returned
26 to me I immediately left and went back to the United States.

27
28 **THE PRESIDENT:** Madam Escobar Hernández, it is 4.30 pm and at this stage the
29 Tribunal will withdraw for a break of thirty minutes, so we will continue the hearing at
30 five past five.

31
32 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, President.

33
34 **(Adjournment)**

35
36 **THE PRESIDENT:** We will now continue the hearing. Madam Escobar Hernández,
37 you have the floor.

38
39 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you, Mr President.
40 I have two or three questions to ask Ms Avella. In her previous statement Ms Avella
41 said that she was put up on the boat and she even gave us an idea of the condition
42 of the boat. It was clean and tidy, I think she said, or words to that effect. You will
43 correct me if I am wrong. She gave an assessment of the boat.

44
45 But to be able to do that did you visit – did you inspect every part of the boat? Were
46 you familiar with the entire boat? Were you able to see the stores, the navigation
47 deck, the crew's accommodation?

48
49 **MS AVELLA:** No, I didn't spend much time in all areas of the boat. I mostly spent
50 time in my cabin and the kitchen area, the living area – but that area was clean.

1
2 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you. One last
3 question. In your statement this morning you were questioned about a photo in the
4 annexes to the Spanish Counter-Memorial in which you see strange objects that look
5 a bit like rocks. It is not something that you would immediately recognize: can you
6 confirm that you saw those objects on the boat?

7
8 **MS AVELLA**: I saw what looked like rocks, pieces of concrete.

9
10 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Did you see those
11 objects on the boat?

12
13 **MS AVELLA**: Yes.

14
15 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): One final question and I
16 will be done, Mr President, I promise. Did seeing such objects on the boat not arouse
17 your curiosity? Did you not wonder about what such an object might be?

18
19 **MS AVELLA**: No, they looked like pieces of rock. I didn't have any curiosity about it.

20
21 **MS ESCOBAR HERNÁNDEZ** (*Interpretation from French*): Thank you. Thank you,
22 Mr President. At this juncture that is my last question to the witness, Ms Avella.

23
24 **THE PRESIDENT**: A witness who was cross-examined by the other Party may be
25 re-examined by the Party who had called the witness. Therefore I ask the Co-Agent
26 of Saint Vincent and the Grenadines whether the Applicant wishes to re-examine the
27 witness. I wish to repeat that no new issues should be raised during the
28 re-examination.

29
30 **MR WEILAND**: Mr President, we have no further questions.

31
32 **THE PRESIDENT**: Ms Avella, thank you for your testimony. Your examination is now
33 finished. You may withdraw. Thank you again.

34
35 **MR WEILAND**: We are prepared to call our next witness, Mr Mario Avella.

36
37 **THE PRESIDENT**: Yes, please. The Tribunal will then proceed to hear the witness,
38 Mr Avella. He may now be brought into the courtroom.

39
40 I call upon the Registrar to administer the solemn declaration to be made by the
41 witness.

42
43 **THE REGISTRAR**: Thank you, Mr President. Mr Avella, Good afternoon. A witness
44 is required to make a solemn declaration under article 79 of the rules of the Tribunal
45 before making any statement before the Tribunal. The declaration is in front of you.
46 May I invite you, Mr Avella, to make the solemn declaration.

47
48 ***The witness, MR MARIO AVELLA, made the solemn declaration***

49
50 **THE REGISTRAR**: Thank you, Mr Avella. Please be seated. Mr President.

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THE PRESIDENT: I now give the floor to the Co-Agent of Saint Vincent and the Grenadines, Mr Weiland, to start the examination of the witness.

Examined by MR WEILAND

MR WEILAND: Mr Avella, would you please state your name for the Tribunal?

MR AVELLA: Yes, Mario Avella.

MR WEILAND: What nationality are you, sir?

MR AVELLA: I am a citizen of the United States of America.

MR WEILAND: Where do you live presently?

MR AVELLA: I presently live in Paris, France.

MR WEILAND: Tell us just before we start a little something about your family. We have met your daughter Alba Avella. Do you have other children?

MR AVELLA: As a matter of fact I have three daughters, one that is 32, another that is 30 years old and the youngest being Alba, 28.

MR WEILAND: We have asked you to come here today from Paris to discuss with us your experience with the *Louisa* and with the Spanish judicial system in general. Before we get to that point I would like to ask you a few questions about your work background. What are you doing for a living these days?

MR AVELLA: Currently a marine technician where I work on hydraulic systems on ships.

MR WEILAND: If your daughter described you as a marine engineer or a marine mechanic would those be descriptive terms that might fit some of the work you have done over the years?

MR AVELLA: Marine engineering, yes.

MR WEILAND: Where do you do most of your work – in Paris?

MR AVELLA: No, actually I work throughout the Mediterranean, mostly in the south of France in the shipyards in Marseilles.

MR WEILAND: What have you done in the past that would sum up your work career because we have heard some testimony that is quite varied?

MR AVELLA: I spent quite a bit of my career building boats in Florida – around fifteen years. Then I was also involved in many stages of my life in new home construction.

1 **MR WEILAND:** Did you do some of that in Colorado?
2
3 **MR AVELLA:** In Colorado and Texas, and specifically on the mechanical systems
4 that go into new home construction.
5
6 **MR WEILAND:** Do you use your marine engineering background in terms of
7 mechanical systems in residential applications?
8
9 **MR AVELLA:** That is correct.
10
11 **MR WEILAND:** Did you get involved in the ship-building business at an early age?
12
13 **MR AVELLA:** Would you repeat the question?
14
15 **MR WEILAND:** Did you get involved in ship construction and ship maintenance at a
16 relatively early age?
17
18 **MR AVELLA:** Yes, when I was a young man I started out as a fitter/welder in the
19 Brooklyn Shipyard in New York.
20
21 **MR WEILAND:** As a welder?
22
23 **MR AVELLA:** Fitter and welder, yes.
24
25 **MR WEILAND:** How old are you today, sir?
26
27 **MR AVELLA:** I am 54.
28
29 **MR WEILAND:** We know you spent time in Spain. Before you went to Spain had you
30 ever been involved in any oil or gas-related ventures?
31
32 **MR AVELLA:** Before I went to Spain I did some work in Guyana, South America, on
33 a project that had to do with methane gas recovery.
34
35 **MR WEILAND:** How did you come to work in Guyana?
36
37 **MR AVELLA:** I was working for an affiliate of Sage Maritime Research.
38
39 **MR WEILAND:** Sage is the same company that is the owner of the *Louisa* – is that
40 correct?
41
42 **MR AVELLA:** Yes.
43
44 **MR WEILAND:** And the *Gemini III*?
45
46 **MR AVELLA:** Yes, that is correct.
47
48 **MR WEILAND:** So this Guyana venture was an outgrowth of interests of the owner
49 of Sage?
50

1 **MR AVELLA:** That is correct.
2
3 **MR WEILAND:** Who is that?
4
5 **MR AVELLA:** That is Mr John Foster.
6
7 **MR WEILAND:** Based on your experience in Guyana and with Mr Foster in general
8 do you know whether he has a history of involvement with oil and gas-related
9 ventures?
10
11 **MR AVELLA:** Yes, it is my understanding that Sage has a long history of oil and gas
12 research in Texas and throughout the United States and other places in the world.
13
14 **MR WEILAND:** Had you worked overseas at all before making the trip down to
15 Guyana?
16
17 **MR AVELLA:** No.
18
19 **MR WEILAND:** Have you ever been involved in searching for shipwrecks or doing
20 anything related to treasure-hunting in your career?
21
22 **MR AVELLA:** No.
23
24 **MR WEILAND:** Tell the Tribunal, if you will, please, sir, why did Mr Foster and Sage
25 get involved with acquiring the *Louisa* and going to Spain? What is your
26 understanding?
27
28 **MR AVELLA:** My understanding of the project was that we were to map the sea floor
29 and do research for oil and gas exploration – geological survey and so forth.
30
31 **MR WEILAND:** Do you know how Sage got interested in prospecting in that area of
32 the world?
33
34 **MR AVELLA:** I believe that they had info that was brought to them - some research
35 or preliminary study that was done to ...
36
37 **MR WEILAND:** Let me show you Annex 31, page 30. This is a letter which is in
38 evidence. It has been submitted long ago from Nefco Exploration to Mr Foster dated
39 18 December 2003. Do you see that, sir?
40
41 **MR AVELLA:** Yes, I do.
42
43 **MR WEILAND:** Can you see in December of 2003 Mr Mark McAfee is proposing
44 equipment actually for hydrocarbon exploration in the Bay of Cádiz?
45
46 **MR AVELLA:** Yes.
47
48 **MR WEILAND:** Is this the type of proposal or preliminary information that you were
49 just referring to that interested Sage and Mr Foster in going to this area of Spain?
50

1 **MR AVELLA:** Clearly, yes.
2
3 **MR WEILAND:** Let me show you what Mr McAfee also provided to Mr Foster, which
4 is a map of the area. I know we have many maps in this case, and we will see,
5 probably, far better versions of the map, but this is Mr McAfee dealing with Mr Foster
6 as early as December 2003. Is that right?
7
8 **MR AVELLA:** I don't see a date on this map, but I am assuming it is the attachment
9 to the letter.
10
11 **MR WEILAND:** Yes, sir. Finally, McAfee was also providing Foster with some
12 preliminary gravity-related information with this letter. Do you see that, sir?
13
14 **MR AVELLA:** Yes.
15
16 **MR WEILAND:** This is not your area of expertise, is it?
17
18 **MR AVELLA:** Not at all.
19
20 **MR WEILAND:** But you became involved because of your ability to work on ships
21 and to handle some of the operational aspects of it – is that right?
22
23 **MR AVELLA:** That is correct.
24
25 **MR WEILAND:** Tell the Tribunal a little bit about the actual acquisition of the *Louisa*
26 and what your role in that was.
27
28 **MR AVELLA:** The *Louisa* was acquired in Jacksonville, Florida, as a general cargo
29 ship, and it was re-fitted at that time for the survey work necessary for research.
30
31 **MR WEILAND:** What had the ship been used for before that? What had it been
32 doing prior to the acquisition by Sage?
33
34 **MR AVELLA:** The ship, as I said, was berthed in Jacksonville, Florida, and it was in
35 good condition to get underway; so the re-fit consisted basically of installing the
36 equipment necessary for the survey work that we needed.
37
38 **MR WEILAND:** What kind of equipment was required? I am not asking you to give
39 us an inventory of everything that you put on the ship, but please give the members
40 of the Tribunal some information about how you re-fitted the ship.
41
42 **MR AVELLA:** Besides the general necessities of bringing it into compliance to get
43 underway, which are many, it was also fitted with diving equipment and sonar
44 equipment – and that is what I know of as far as the survey equipment is concerned.
45
46 **MR WEILAND:** We will come back to what some of the uses of this equipment were.
47 Did you become familiar with what sort of legal authorization Sage would have to go
48 into the Bay of Cádiz and conduct ops?
49

1 **MR AVELLA:** During the time I was working on the ship, preparing it, I was informed
2 that we had some sort of permits, authorization to work in the waters off the coast of
3 Spain.
4

5 **MR WEILAND:** Are you familiar with the fact that Mr Foster was approached by
6 someone who had a permit, who offered to joint-venture with him?
7

8 **MR AVELLA:** Yes, I am.
9

10 **MR WEILAND:** Eventually, are you familiar with the fact that the contract was signed
11 at the Spanish company called Tupet?
12

13 **MR AVELLA:** Yes, I am.
14

15 **MR WEILAND:** Do you recall some of the basic tenets of that contract?
16

17 **MR AVELLA:** I believe the contract gave us the right to work in that area because of
18 the permits that the Spanish company had, and that we would share all the data that
19 we collected during the time we worked there.
20

21 **MR WEILAND:** The principal behind Tupet was interested in wrecks and shipwrecks.
22 Is that your understanding?
23

24 **MR AVELLA:** That is my understanding, yes.
25

26 **MR WEILAND:** So the contract provided that if by happenstance some wreck was
27 discovered that Tupet would take further action?
28

29 **MR AVELLA:** That is my understanding, yes.
30

31 **MR WEILAND:** And they would require further permits?
32

33 **MR AVELLA:** That they would – you know, acquire whatever necessary for them to
34 continue their work.
35

36 **MR WEILAND:** So Foster was interested in fast prospecting and he signs up with
37 the Tupet company, which has a permit, and sends you to Spain to develop that for
38 him and his oil interests. Is that basically what happened here?
39

40 **MR AVELLA:** Yes, he sent the ship to Spain, and I accompanied the ship, as an
41 engineer on board.
42

43 **MR WEILAND:** Even before the *Louisa* sailed from Jacksonville, did Sage dispatch
44 some personnel to begin to collect data?
45

46 **MR AVELLA:** Prior to the arrival of the *Louisa* there was survey work conducted in
47 the Gulf of Cádiz.
48

49 **MR WEILAND:** That was Sage personnel. What kind of craft or boat did they use to
50 conduct that preliminary survey work?

1
2 **MR AVELLA:** I wasn't familiar with the boat itself, but I believe it was around an 11-
3 metre work-type vessel.
4
5 **MR WEILAND:** Did they tow something? *This* picture on our screen now is of the
6 *Gemini*, is it not?
7
8 **MR AVELLA:** Yes, it is.
9
10 **MR WEILAND:** To your knowledge was the boat that was used for some preliminary
11 survey work similar to the *Gemini*?
12
13 **MR AVELLA:** Yes, work-type platform, yes.
14
15 **MR WEILAND:** What sort of instruments were actually deployed?
16
17 **MR AVELLA:** The general instruments deployed would have been side scan sonar
18 and caesium magnetometers.
19
20 **MR WEILAND:** Are those the kinds of things that Mr McAfee was touting in his
21 original letter we saw in December 2003?
22
23 **MR AVELLA:** In that letter I just read, yes.
24
25 **MR WEILAND:** You are saying that some of this data had already been collected by
26 the time the *Louisa* arrived in Spain?
27
28 **MR AVELLA:** Yes, that is correct.
29
30 **MR WEILAND:** So what was the plan in terms of the use of the *Louisa* and your own
31 activity once you got there?
32
33 **MR AVELLA:** The plan was that the *Louisa* should conduct a follow-up survey and
34 research work based on the data that was collected prior to its arrival.
35
36 **MR WEILAND:** We have a facsimile of - this map was developed in 2004, I believe,
37 prior to the *Louisa*'s arrival. Do you recognize that?
38
39 **MR AVELLA:** Yes, I have seen this before.
40
41 **MR WEILAND:** You realize that the coordinates have been removed from this map
42 for confidentiality reasons.
43
44 **MR AVELLA:** Generally that is the practice.
45
46 **MR WEILAND:** Did you understand that Sage considered this map to be valuable?
47
48 **MR AVELLA:** Yes.
49

1 **MR WEILAND:** After you arrived on scene with the *Louisa* did you and the personnel
2 assigned by Sage do follow-up work to develop leads that this map represented?
3
4 **MR AVELLA:** Based on the initial data, which was depicted in this map, yes.
5
6 **MR WEILAND:** I am getting a little ahead of myself so let me ask you this. When did
7 the *Louisa* arrive on scene in the Cádiz area?
8
9 **MR AVELLA:** Middle of August 2004.
10
11 **MR WEILAND:** What did you do initially? You accompanied the ship over?
12
13 **MR AVELLA:** I did.
14
15 **MR WEILAND:** In terms of the equipping of the ship I did want to go back just for
16 one second and ask you about a very sensitive subject, and that is the fact that the
17 *Louisa* apparently had five rifles in some kind of a secure area – it has been
18 described as a safe. Can you tell the Tribunal anything about the acquisition of those
19 rifles and the reason therefor?
20
21 **MR AVELLA:** I know that in preparation for this voyage and in preparation of the
22 ship in general there were many audits that were conducted, one of them being a
23 security plan that was written for the ship. Therefore, in the security plan it spelled
24 out the acquisition, I think, and the storage of such things as rifles, yes.
25
26 **MR WEILAND:** In your experience with Sage and knowing Foster, had he ever
27 mounted a marine type expedition like this himself or through one of his companies
28 that you are aware of?
29
30 **MR AVELLA:** No, this seemed to be the first time that Sage would have been in a
31 maritime ---
32
33 **MR WEILAND:** He did not expect you to captain the ship?
34
35 **MR AVELLA:** No, I am not qualified.
36
37 **MR WEILAND:** You are not qualified. Back in December of 2010 the Respondent in
38 this case suggested that you were actually the captain of the ship and introduced
39 evidence that the captain of the ship had been captured in Lisbon. Was that a true
40 statement?
41
42 **MR AVELLA:** Well, no, that is mistaken.
43
44 **MR WEILAND:** Let me ask you this then: if you were not the captain of the ship, who
45 was and how did Sage go about crewing this vessel?
46
47 **MR AVELLA:** The vessel was crewed and managed by a ship's management
48 company called ASP SeaScott from Glasgow, Scotland. Their role was – as ship's
49 manager they do the safety systems, security systems, crew management and

1 provide the crew for the ship – and in this case they did, and they provided the ship
2 with a captain who was of Hungarian nationality, as was the other crew members.

3

4 **MR WEILAND:** How many crew members were there?

5

6 **MR AVELLA:** The minimum manning of the ship was seven. There was actually
7 eight Hungarian crewmen for the crossing.

8

9 **MR WEILAND:** Do you remember the name of the captain? I am not sure his name
10 is in the record of this case any more.

11

12 **MR AVELLA:** Well, I always knew him and called him “Captain Lazlo” but I didn’t
13 know his last name. It was hard, I think, to pronounce as well, so we all just called
14 him Captain Lazlo.

15

16 **MR WEILAND:** We have also heard testimony about two members of the crew who
17 happened to have the misfortune of being on board in February 2006, Mr Zsolt and
18 Mr Sandor. Did you become acquainted with them?

19

20 **MR AVELLA:** They were also Hungarian nationals that were actually part of the
21 original crew and had gone on rotation and came back, and they were provided to us
22 by the ship’s management company.

23

24 **MR WEILAND:** Did you help Sage acquire ASP SeaScot as a manager, a
25 recommendation in that regard?

26

27 **MR AVELLA:** I made initial contact, I believe, with ASP SeaScot and had to liaise
28 with them in a few areas of the technical management of the ship.

29

30 **MR WEILAND:** Why was this ASP SeaScot chosen?

31

32 **MR AVELLA:** They were chosen because they were a very reputable ship
33 management company and they in fact had experience with a vessel of the type that
34 the *Louisa* was.

35

36 **MR WEILAND:** What about classing of the ship? Was the ship classed after it was
37 acquired and before it sailed?

38

39 **MR AVELLA:** It was actually under class when it was acquired. Germanischer Lloyd
40 was the class society that did all the audits of the ship, and in fact it remained that
41 way and that is how she sailed, under GL class.

42

43 **MR WEILAND:** We have before us a facsimile of Annex 24 and this relates back to
44 the acquisition of the rifles that ended up on the ship. If I can ask you to home in on
45 the top of the form here, this form indicates that it is an official department of the
46 Treasury, the Bureau for Alcohol, Tobacco and Firearms. Are you familiar with this
47 particular document, Mr Avella?

48

49 **MR AVELLA:** Yes, this is a document that is used in the United States for the
50 acquisition of arms.

1
2 **MR WEILAND:** Who was your procurement officer during the time that you were
3 refitting the *Louisa*?
4
5 **MR AVELLA:** At the time of the refit in Florida, a gentleman named
6 Charles Fornabio was the procurement officer.
7
8 **MR WEILAND:** I see his name there and I see his signature at the bottom. So when
9 SeaScot indicated in its security plan that you were supposed to have rifles on board
10 – is that what happened?
11
12 **MR AVELLA:** Yes, correct.
13
14 **MR WEILAND:** The procurement officer went out and bought some rifles. Is that
15 what happened?
16
17 **MR AVELLA:** Yes.
18
19 **MR WEILAND:** Did that seem unusual to you or extraordinarily inappropriate?
20
21 **MR AVELLA:** Not to me, it was not. It was in the security plan so it did not seem
22 odd.
23
24 **MR WEILAND:** We see that this form accounts for three Bushmaster brand XM15
25 rifles being purchased here for placement on the *Louisa*, and it looks like, in July,
26 late July of 2004, shortly before you sailed. Is that correct?
27
28 **MR AVELLA:** That would be before we sailed, yes.
29
30 **MR WEILAND:** Were these automatic weapons or were these single shot, if you
31 know the difference?
32
33 **MR AVELLA:** It is not, again, my area of expertise but they certainly were not
34 automatic rifles, to my understanding.
35
36 **MR WEILAND:** Could we look at number 25? I do not want to labour this point. It is
37 late in the afternoon. This is another one of these forms, is it not, Mr Avella?
38
39 **MR AVELLA:** Yes.
40
41 **MR WEILAND:** If we go to page 2, we see that Mr Fornabio purchased the other two
42 Bushmaster XM15s for placement on the ship on the same day. Is that right?
43
44 **MR AVELLA:** Yes.
45
46 **MR WEILAND:** There is no secret that the *Louisa* sailed from Jacksonville, Florida in
47 August with these five rifles on board.
48
49 **MR AVELLA:** That is correct.
50

1 **MR WEILAND:** In fact, there was a shotgun involved too, was there not?
2
3 **MR AVELLA:** There was a shotgun on board when we acquired the vessel that we
4 found in the general clean-up of the ship.
5
6 **MR WEILAND:** Did that end up being stored with these rifles?
7
8 **MR AVELLA:** Yes.
9
10 **MR WEILAND:** We have heard a little testimony about the method by which the
11 rifles were stored, and again, I am somewhat reluctant to deal with minutiae but
12 since rifles apparently are a major part of the investigation in Cádiz which has been
13 going on for seven years, let us talk about the storage of the weapons on board the
14 ship. Could you tell the Tribunal exactly how these rifles and the one shotgun were
15 stored on the *Louisa*?
16
17 **MR AVELLA:** Certainly. Under direction of the ship's management company, they
18 said that any time a ship sails with any kind of arms, they needed to be locked up in
19 a secure locker. In fact, there was a safe installed on the ship and welded into a
20 bulkhead.
21
22 **MR WEILAND:** So you brought on a safe, welded it into the bulkhead of the ship?
23
24 **MR AVELLA:** That is correct.
25
26 **MR WEILAND:** Was the safe also behind some additional thing?
27
28 **MR AVELLA:** It was also in a steel locker with a padlock on the door.
29
30 **MR WEILAND:** So it was in a steel locker with a padlock and then inside the locker
31 one would find a safe with these rifles?
32
33 **MR AVELLA:** Inside the steel locker there was a safe and then inside the safe would
34 be the rifles, yes.
35
36 **MR WEILAND:** Who had access to the rifles while it was in port, most importantly, in
37 Puerto de Santa Maria?
38
39 **MR AVELLA:** Nobody but the Master would have access to that.
40
41 **MR WEILAND:** Did you ever have the combination to the lock of the locker in the
42 hold there?
43
44 **MR AVELLA:** No.
45
46 **MR WEILAND:** Were one or more of the rifles ever taken out and used while you
47 were in Spain?
48
49 **MR AVELLA:** No, absolutely not.
50

1 **MR WEILAND:** Do you remember whether any of them were ever taken out?
2
3 **MR AVELLA:** In Jacksonville, prior to the ship leaving the US, there was some
4 training exercises conducted, yes.
5
6 **MR WEILAND:** Let me return now to your arrival in the Cádiz area around the
7 middle of August 2004. Was the ship berthed or what happened with the *Louisa*
8 when you came on the scene?
9
10 **MR AVELLA:** When she arrived in August, she would have anchored offshore.
11
12 **MR WEILAND:** How long did she stay anchored offshore?
13
14 **MR AVELLA:** She stayed anchored until approximately October of that year. I do not
15 remember the exact date when she went into port but it was early October.
16
17 **MR WEILAND:** Did Lazlo, the captain, stay with you during the period of time it was
18 anchored in the bay?
19
20 **MR AVELLA:** Always.
21
22 **MR WEILAND:** He was always on board?
23
24 **MR AVELLA:** Yes, he was always the captain.
25
26 **MR WEILAND:** Did you move the ship from time to time?
27
28 **MR AVELLA:** It did move to different areas and anchor in various places offshore,
29 yes.
30
31 **MR WEILAND:** What was the purpose of that?
32
33 **MR AVELLA:** The purpose of that was for it to allow the tender to conduct some
34 follow-up survey work.
35
36 **MR WEILAND:** What kind of survey work? What do you mean by follow-up survey
37 work?
38
39 **MR AVELLA:** It is my understanding that the data that we had acquired prior to the
40 ship arriving also needed additional proofing and information that goes along with
41 that. Consequently, the tender would leave the *Louisa* in the general area where she
42 was anchored and divers would investigate the sea bottom.
43
44 **MR WEILAND:** The Spanish delegation in December 2010 was extraordinarily
45 interested in the fact that you had this dive gear on board. Only treasure hunters
46 have dive gear. Explain to the members of the Tribunal in a little more detail why it is
47 that people who are prospecting for oil and gas under water would actually dive and
48 take a look at the sea floor.
49

1 **MR AVELLA:** The purposes for diving in those instances are to observe the geology
2 on the sea floor, for one, and to record and observe different formations and prove
3 out what is seen on electronic equipment.
4

5 **MR WEILAND:** You have already testified that there was some kind of contract with
6 Tupet that if by happenstance you found a wreck or some evidence of a shipwreck,
7 that data would be given to Tupet and they would follow up on it. Do you recall that
8 testimony?
9

10 **MR AVELLA:** That is correct. Yes I do.
11

12 **MR WEILAND:** Did you ever find a shipwreck?
13

14 **MR AVELLA:** No.
15

16 **MR WEILAND:** We have seen some what you would call rocks that had holes drilled
17 in them. Do you know anything about those?
18

19 **MR AVELLA:** I know I have seen items like that on board, some rocks with holes in
20 them, as you describe, is all I know them as.
21

22 **MR WEILAND:** You know them as what?
23

24 **MR AVELLA:** As a rock with a hole in it. That is what it was. I do not know how else
25 to describe it.
26

27 **MR WEILAND:** Did you ever yourself go under water and bring up anything you
28 considered to be an artefact that might be related to the cultural heritage of Spain?
29

30 **MR AVELLA:** No, I did not.
31

32 **MR WEILAND:** Did you ever see any indication on board the ship that one of the
33 divers had perhaps brought something up that he found on the sandy bottom?
34

35 **MR AVELLA:** Yes. In fact, what is pictured there are some few rocks that the divers
36 collected and it appears to be some rusty cannonballs.
37

38 **MR WEILAND:** It is my understanding that you have previously said that you thought
39 you had seen at least one of these rocks with a hole in it at some point on the deck
40 of the ship.
41

42 **MR AVELLA:** That is correct, yes. I do not know if they are these rocks but I mean,
43 they looked like it.
44

45 **MR WEILAND:** You told me that you have an idea what these rocks are used for.
46 Tell the Tribunal what you have discovered while traversing the area offshore Cádiz
47 and the fishing operations that are conducted there.
48

49 **MR AVELLA:** Having spent some time there during that period, it was clear that the
50 type of fishing that is done in that area of the world is done with nets, the tuna

1 fishing, and those nets are stretched out in the ocean there and they were weighted
2 down, because they are quite long.

3

4 **MR WEILAND:** You are not saying that these are necessarily fishing net rocks, are
5 you?

6

7 **MR AVELLA:** I would not know if they were used for that purpose but it is pretty
8 logical to deduce that.

9

10 **MR WEILAND:** When you saw one on the deck of the ship, did it occur to you that
11 one of the divers must have brought up one of these fishing net weights?

12

13 **MR AVELLA:** Yes.

14

15 **MR WEILAND:** After you arrived offshore in 2004 you say that the ship was berthed
16 sometime in October?

17

18 **MR AVELLA:** Yes, in early October she went to port.

19

20 **MR WEILAND:** Did you stay on the ship during the winter?

21

22 **MR AVELLA:** Not all winter. I actually returned home for Christmas.

23

24 **MR WEILAND:** By the spring of 2005 what was happening in terms of the
25 relationship between Sage and this Tupet company?

26

27 **MR AVELLA:** Later, in the spring of 2005, it is my understanding that the various
28 permits expired, I believe some time in April 2005.

29

30 **MR WEILAND:** Their permit was expiring?

31

32 **MR AVELLA:** Yes.

33

34 **MR WEILAND:** What did the owner of Sage indicate to you that he wanted done with
35 the ship?

36

37 **MR AVELLA:** At that time he indicated that we should commence preparing the ship
38 to get under way and to go back to the United States.

39

40 **MR WEILAND:** Did that happen?

41

42 **MR AVELLA:** No, it did not.

43

44 **MR WEILAND:** Why not?

45

46 **MR AVELLA:** There was not a full crew on board. At the time we had only two
47 engineers on rotation because she was alongside, so we began preparations to get
48 everything in order to be able to make a crossing, which would mean unbunkering
49 fuel and crewing and various maintenance things, and some audits by the class
50 society.

1
2 **MR WEILAND:** What about the workboat known as the *Gemini*. Where was it at this
3 time? We are talking now about the time frame 2005 and the expiration of the permit.
4
5 **MR AVELLA:** The *Gemini* was usually berthed alongside the *Louisa* for various
6 reasons of maintenance and so forth, and there was another company that had
7 permits to also work in Spain and they expressed an interest in leasing the *Gemini*.
8
9 **MR WEILAND:** Another Spanish company expressed interest in leasing the *Gemini*
10 from Sage?
11
12 **MR AVELLA:** That is correct.
13
14 **MR WEILAND:** The *Gemini* was really just the property of Sage, was it not?
15
16 **MR AVELLA:** It was.
17
18 **MR WEILAND:** I think there is an outstanding question about the nationality of the
19 ship. Was the *Gemini* large enough to have a flag registration, or was it flagged, so
20 to speak?
21
22 **MR AVELLA:** It was not flagged. Personally I do not know where the break-off point
23 is between flags and whether it is necessary in size, but she was basically the tender
24 to the *Louisa*, so she did not have her own flag, so to speak.
25
26 **MR WEILAND:** Someone expresses an interest in leasing the *Gemini*, yet Sage is
27 about to close down its operations and bring the ship back. I take it that someone
28 decided that they would lease the *Gemini* to this other company. Is that right?
29
30 **MR AVELLA:** In fact, they did, yes.
31
32 **MR WEILAND:** Did you decide or were you asked to stay on and oversee the well-
33 being of the *Gemini* and the *Louisa*?
34
35 **MR AVELLA:** In a sense, yes. I was already there and my duties were to get the
36 *Louisa* ready to get under way, and that also included safeguarding and maintaining
37 the *Gemini* during the lease period.
38
39 **MR WEILAND:** Did you work at all with the lessee of the *Gemini* during the summer
40 of 2005?
41
42 **MR AVELLA:** I was on board at various times and went out on it as an engineer to
43 make sure that things were running right and so forth, and that the ship was handled
44 properly and was not abused.
45
46 **MR WEILAND:** Did this other Spanish company appear to have permits for whatever
47 operations it was undertaking?
48
49 **MR AVELLA:** Yes. I do not read Spanish, but the permits indicated that we had
50 authorization to work off the coast of Spain.

1
2 **MR WEILAND:** What were they supposed to be doing?
3
4 **MR AVELLA:** They were conducting ---
5
6 **MR WEILAND:** I know that you do not read Spanish, but how was it ---
7
8 **MR AVELLA:** It was my understanding, I was informed, that they were conducting
9 environmental studies and surveys of sand strata.
10
11 **MR WEILAND:** What was the name of the company, by the way?
12
13 **MR AVELLA:** Plangas.
14
15 **MR WEILAND:** Plangas has its own permit or permits and you stuck around to
16 oversee the well-being of the *Gemini* during that summer. Did Plangas find any
17 shipwrecks that you are aware of during that summer?
18
19 **MR AVELLA:** No.
20
21 **MR WEILAND:** Did you do any shipwreck searching yourself during the summer of
22 2005?
23
24 **MR AVELLA:** No, I did not have enough time for that.
25
26 **MR WEILAND:** We have talked about permits. Back in December 2010 we were
27 entering into the course of the hearing and apparently Sage and Tupet had the
28 wrong type of permit to do what they were doing. While you were there working on
29 the *Louisa* in 2004, were you ever advised that the permit was inadequate or
30 improper?
31
32 **MR AVELLA:** Nobody ever told me that, no.
33
34 **MR WEILAND:** Did you ever run into the federal police out on the water while you
35 were working with the *Louisa*?
36
37 **MR AVELLA:** Yes. Being in the coastal waters of Spain, we were obviously there, so
38 we were boarded by the Guardia Civil, I can remember, on quite a few occasions to
39 control our permits and documents and inspect what we were doing.
40
41 **MR WEILAND:** I take it that you are saying that the *Louisa* and the *Gemini* were just
42 operating out in the open?
43
44 **MR AVELLA:** Clearly, yes.
45
46 **MR WEILAND:** There was no secret about what they were doing?
47
48 **MR AVELLA:** No, there could not be. We were out in open water within seeing
49 distance to the shore.
50

1 **MR WEILAND:** Between the *Gemini* and the *Louisa*, how many times do you think
2 the federal police boarded the vessels and inspected your documents?
3
4 **MR AVELLA:** I would say a minimum of five times.
5
6 **MR WEILAND:** While the *Gemini* was being leased by Plangas, are you aware
7 whether the Guardia Civil stopped the *Gemini* to look at the Plangas permit?
8
9 **MR AVELLA:** Yes. I was on board twice when the Guardia Civil stopped the *Gemini*.
10
11 **MR WEILAND:** We have seen a picture of the *Gemini III* with these large aluminium
12 deflectors on the back of the ship. Were there ever any deflectors on the back of the
13 *Gemini* when it was stopped by the Guardia Civil?
14
15 **MR AVELLA:** Yes. I can say that on one occasion I was there when the Guardia
16 Civil stopped the *Gemini* and it had been fitted with ---
17
18 **MR WEILAND:** In fact, you said that these aluminium deflectors were actually the
19 successors and that before they were installed you had something else. Is that right?
20
21 **MR AVELLA:** Before these were installed there were some others that were on
22 board, yes.
23
24 **MR WEILAND:** That was during the time that it was leased by Plangas?
25
26 **MR AVELLA:** Yes, that is correct.
27
28 **MR WEILAND:** The fire deflectors were while it was leased by Plangas?
29
30 **MR AVELLA:** Yes.
31
32 **MR WEILAND:** You were on the *Gemini* at least once when these deflectors were
33 installed and the Guardia stopped you?
34
35 **MR AVELLA:** That is correct. They were not always on the ship. In other words, they
36 were removable, so consequently they were not always on the ---
37
38 **MR WEILAND:** I am asking you to search your recollection and tell the Tribunal
39 whether you can recall a time when they were actually installed when you were
40 stopped?
41
42 **MR AVELLA:** Absolutely.
43
44 **MR WEILAND:** There was at least one time that you can recall?
45
46 **MR AVELLA:** Yes.
47
48 **MR WEILAND:** Was the owner of Plangas arrested or hauled into court or anything
49 for having this mechanism on the back of its ---
50

1 **MR AVELLA:** No. We were sent on our way.

2

3 **MR WEILAND:** Mr President, I believe that we are at a point in the presentation by
4 Mr Mario Avella at which we are going to start to talk about the whole visit of Alba
5 Avella and related events, and I would respectfully suggest that perhaps this is a
6 natural time to break.

7

8 **THE PRESIDENT:** Thank you very much, Mr Weiland. We have reached the end of
9 this afternoon's sitting. The Pleadings will have to be continued tomorrow morning.
10 The Pleading will be resumed tomorrow at 10 a.m. The sitting is now closed.

11

12

(The sitting closed at 17.55 hours)