

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



2010

Public sitting

held on Saturday, 11 December 2010, at 3.30 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President José Luís Jesus presiding

THE M/V “LOUISA” CASE

(Request for provisional measures)

(Saint Vincent and the Grenadines v. Spain)

Verbatim Record

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



Saint Vincent and the Grenadines is represented by:

Mr S. Cass Weiland, Esq.

as Co-Agent and Advocate;

Mr William H. Weiland, Esq.

as Advocate;

Mr Christoph Hasche

as Counsel.

Spain is represented by:

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

as Agent, Counsel and Advocate;

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

as Counsel and Advocate;

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

as Adviser;

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

as Technical Adviser.

1 *The sitting was called to order at 3.35 p.m.*

2

3 **MR PRESIDENT:** I will now give the floor to the Co-Agent of Saint Vincent and the
4 Grenadines.

5

6 **MR WEILAND:** Thank you, Mr President. I would say at the outset that we much
7 appreciate the Tribunal for its ability to respond rapidly to our request for the
8 prescription of provisional measures and for the courtesy and the patience that the
9 Members of the Tribunal have shown over the course of the last two days.

10

11 I heard this morning that the Applicant has “constantly endeavoured to confound the
12 rulings of the Tribunal”. I was not aware of that before this morning and assure you
13 that it has not been our intent to confound the Rules of the Tribunal. I – probably just
14 me and not the members of my delegation – was accused of making statements that
15 were wholly out of place in this environment. In fact, I believe the Agent of Spain
16 mentioned I was “absolutely ignorant in matters of diplomatic transactions”. I would
17 say that I have heard that before – usually from my wife – but not about diplomatic
18 transactions, so if I have offended any Members of the Tribunal in addition to the
19 Spanish delegation, I certainly apologize.

20

21 But I am a lawyer and advocate. I am not a politician – and, obviously, I am not
22 a diplomat. My role is to enforce the rights of Saint Vincent and the Grenadines to
23 the best of my ability. This afternoon I am going to take on many of the comments
24 that have been made by the Spanish delegation today and in the papers that were
25 filed earlier. I hope that I can do so with sufficient diplomacy so as not to draw their
26 ire to a greater extent.

27

28 Let me say that we are disappointed with many of the factual assertions made by the
29 Spanish representatives. We know that they have had a short time to prepare for
30 this hearing and we are confident that none of those were made intentionally, but
31 I do plan to advise you of some of those factual misstatements as we go along here.

32

33 I want to address, first, a couple of the more common complaints of respondents
34 who have appeared here before you in other cases and again in this proceeding.
35 You frequently hear the complaint that the Applicant has not exhausted its remedies.
36 We certainly have heard that from Spain. I would say that from a practical or
37 commonsense standpoint, you cannot listen to the evidence and the arguments and
38 believe that there is anything else that Saint Vincent and the Grenadines should
39 have done before bringing this matter to Hamburg. There are always things that
40 they could do. For any applicant there are always things that the applicant *could* do:
41 another meeting, another phone call, another diplomatic note. But if you are going to
42 insist that the parties negotiate everything to death, then there is no reason for a
43 Tribunal such as this. As I said, from a commonsense standpoint you cannot read
44 those letters to the Ambassador of Spain, the missive from the Marine Administration
45 of Saint Vincent, and consider the numerous visits and meetings with the officials
46 and colleagues, and think that there should have been more antecedents.

47

48 We heard from both members of the Spanish delegation: “the owners have made no
49 effort to obtain a release of the vessel. They complained about their innocence in
50 their letters but they never filed anything in court”. Really the “exhaustion” argument

1 of Spain is at two levels: the owners of the ships have not exhausted their remedies
2 in the courts of Spain and the diplomats of Saint Vincent have not exhausted their
3 remedies on other planes.

4
5 I would say that the Spanish delegation may not be aware of some things that have
6 been filed in the courthouse in Cadiz over the years, because in fact the
7 representatives of the shipowner have requested specifically that the ship be
8 released. After hearing that today, therefore, we have put together a couple of
9 additional annexes for you which have been forwarded to the Registrar.

10
11 I would like to ask my colleague to explain the pleading of 22 February 2008
12 (annex 26) that was filed by lawyers representing the shipowners. The pleading has
13 been submitted in Spanish and translated into English. I would like to read a portion
14 of this. Isabel Gómez, for your information, has served as a local counsel in Cadiz in
15 addition to the Spanish lawyers in Madrid who have been retained. This particular
16 letter is signed by both Ms Gómez and also by José Antonio Lopez, the principal
17 attorney in Madrid. The letter says:

18
19 Despite being legitimate owners of these ships, my clients suffer complete
20 ignorance of their current situation.

21
22 During a visit carried out by some of their representatives to the port of Santa
23 Maria they were able to confirm the presence there of the ship *Louise* in quite a
24 deplorable state of conservation and the whole information they obtained from
25 the port authorities was that the ship had been quarantined by the Court to
26 which I have the honour to present this.

27
28 They [the representatives] were unable to find out anything about the ship
29 *Gemini III* which was not in the port.

30
31 It is easy to understand that the situation of neglect in which these two ships
32 presumably find themselves produces very serious economic prejudice to their
33 owners, both from the point of view of their permanent deterioration as because
34 of their administrative situation before the port authorities.

35
36 For these reasons and without prejudice to what Your Lordship may decide with
37 respect to the legal representation that we have requested ...

38
39 - and that is a reference to what I hate to call "the battle", but the great difficulty that
40 these Madrid lawyers were having obtaining an order from the Court allowing them
41 to represent Sage –

42
43 ... we respectfully come to request that we may be informed as soon as
44 possible of the current situation of the above-mentioned ships; or alternatively,
45 if were possible, that you order the lifting of the ship's quarantine so that we
46 may take the appropriate measures for their maintenance and conservation, in
47 order to avoid economic prejudices which could become extremely serious.

48
49 I would represent to you that they have become extremely serious. Hundreds of
50 thousands of euro of insurance and lawyer fees and other administrative costs the

1 owners of these ships have endured since they were improperly quarantined or
2 detained by the judge in Cadiz.

3
4 We would also mention once again that although Spain has referred repeatedly to
5 the fact that the ships are supposedly evidence of crime, Spain has yet to produce
6 an order from a Spanish Court detaining the ships. There is nothing in the record
7 where the judge has ordered the quarantine of the ships, except the message which
8 you heard about from our expert, who said that in reading the file he saw a letter
9 from the police that said the judge had ordered the ships sealed or quarantine. But
10 there is no public order in the record to that effect.

11
12 Spain would point you to an order of 29 July 2010, which was neither served on
13 Saint Vincent and the Grenadines nor the lawyers for the shipowners where the
14 judge is making some oblique reference to asking the owners how they want to
15 maintain the ships. You heard Mr Moscoso say, "That was a very appropriate order.
16 It just should have come four years ago". We would say that the ships are not
17 necessary to make a criminal case. The crude analogies that they have made to
18 some drug trafficking fishing boat is, we would say, merely an appeal, no doubt, to
19 your concern that by invoking article 290, we are going to start a problem with
20 coastal States' arrest of drug traffickers. This is not that kind of a case. With a
21 normal drug trafficking case around the world, the ships would be seized and their
22 sale ordered long before this kind of event takes place. These ships are still sitting
23 there because the judicial establishment in Cadiz does not know what to do with
24 them.

25
26 I said in the early stages of this hearing yesterday that our suspicion was – and still
27 is – that the judge thought this operation was another treasure-hunting expedition
28 like the *Odyssey Explorer*, which made international news. It turned out that it was
29 not. It was a few pieces of pottery that some divers picked up off the sand at the
30 bottom of the bay.

31
32 They are trapped. What do we do with this case? Let us do nothing. Let us try
33 doing nothing and just leave the ships at anchor on the dock or pull *Gemini III* out of
34 the water and leave it there to dry rot.

35
36 Speaking of some pieces of pottery and some treasure hunting implements, they
37 showed you some metal detectors, some large aluminum sand blasters, and there is
38 a reference in their papers to compartments for storage and maintenance, no doubt
39 of pieces excavated from the seabed. That is what they found on the *Louisa* –
40 compartments, empty compartments but compartments for pieces of pottery and
41 artefacts that are excavated from the seabed.

42
43 In response to that, we have brought you the official report the judge ordered from
44 the National Museum of Marine Archeology. This is from the Court file in Cadiz. We
45 have submitted it to the Registrar as a document this afternoon, which I hope you
46 have. For the purpose of completeness, we have given you the entire report but for
47 the purpose of practicality, given the time involved, we have only translated a portion
48 of it. That portion is right at the end of the report, under paragraph 4, where the
49 museum administration is summing up its findings about these pieces of pottery that
50 were turned into it by the police. They say:

1 It is not possible to evaluate that any of the objects belong to a shipwreck
2 since the museum does not know their origin. The frequency of striations on
3 the objects and the abundance of accretions on them suggest that they were
4 found on the surface of the sea floor and were not buried, since the striations
5 are produced from the friction with the sea floor and the movement of the sea,
6 and the accretions appear when the object is found on the surface of the sea
7 floor and can be colonized by fauna. Therefore, from the objects deposited
8 with the museum, it can only be inferred that they were not buried beneath the
9 seafloor and therefore it was not necessary to remove earth to recover them.
10 Additionally, they remained in that state for sufficient time to be striated,
11 severely in some cases, by the friction of the pieces against the seafloor and
12 the movement of the sea.
13

14 We present that to you not in an effort to persuade you to look even more deeply at
15 the merits of the case – we will have another opportunity for that – but to counter
16 specifically the allegations that were made this morning about all of this
17 treasure-hunting gear that was supposedly on board and what the purposes were.
18

19 I would also comment in passing that the objects that were identified by the
20 delegation of Spain this morning in pictures were not necessarily taken from the
21 *Louisa*. There was this investigation that went on for months and people's homes
22 were searched, et cetera. I do not believe they are here today claiming that those
23 objects came off the *Louisa* necessarily. Why is that important? That is because if
24 you are judging the equities involved here, it is appropriate for you to look at just
25 what have the Spanish come up with after almost five years. As we enter into year
26 six, what could the Court expect the Spanish to find as new evidence of possible
27 criminal activity? I would suggest to you the answer is "nothing". There is not going
28 to be any new evidence, so what you have are some antiquities, the value of which
29 is stated in this report, less than 3,000 euro total, and some weapons that were
30 recommended to be put on the ship by the shipping agent at a time now, with the
31 passage of time, when we see more and more piracy, and we know that Spain has
32 authorized the arming of its own merchant ships now. Perhaps that is one of the
33 reasons they have not pursued the arms case that they referred to.
34

35 Another critical element in your provisional release cases is urgency and I would like
36 to address the matter of urgency for a few moments because I know several of you
37 have written about that in your opinions and have expressed concern that a
38 provisional measure application should be accompanied by some urgency
39 requirement. We would say that article 290, paragraph 1, does not mention urgency.
40 The word "urgency" or "urgent" is not in paragraph 1; it is in paragraph 5. So by
41 means of elementary statutory construction, I would think that you would attribute
42 some meaning to the fact that the treaty parties inserted the word "urgency" in
43 paragraph 5 and not in paragraph 1. It does have some meaning but we would not
44 concede, of course that the matter is not urgent or that urgency is not an important
45 factor here. The question is: when does the arrest of ships whose environmental
46 threat is real, as we showed with our report from the Hamburg expert yesterday,
47 become an urgent matter that deserves your attention, and we would say that that
48 time is now.
49

50 I know that Judge [Chandrasekhara] Rao and Judge Treves have suggested that this

1 is something that really must be considered in any request under article 290, but I
2 think that if they analyze, and all of you, their colleagues, analyze the facts and the
3 law that we presented, you can easily conclude the matter is sufficiently urgent to
4 warrant some relief.

5
6 In some ways, the Spanish delegation presented evidence in an effort to refute our
7 papers that were filed initially that just went too far. In trying to disprove our
8 contentions, they ended up contributing to the actual proof of the matter, which was
9 that our contentions were well-founded. Let me give you some examples of that.
10 One of them I just mentioned: they talked about the compartments on the ship; these
11 empty compartments were meant for artefacts that were excavated from the floor of
12 the bay. Well, they have not brought any excavated artefacts yet. They were very
13 proud of their *note verbale* that was sent supposedly to Saint Vincent on 15 March of
14 2006 – that is their exhibit 5, I believe – and yet that is the missive that uses the
15 terms “for entry and registration of the Louisa for any necessary procedures”. Our
16 contention is: thank you very much, that is the kind of document that proves nothing
17 for Spain. If I am a clerk, or a diplomat even in Saint Vincent, reading this that came
18 over the wire, I would conclude: “Oh, one of our ships has docked in Cadiz and duly
19 registered with the authorities there”. If they are going to send a message
20 diplomatically to Saint Vincent, it would be useful if they spelled out what they have
21 actually done, but that certainly does not do that.

22
23 On the other hand, they criticize us for not dealing properly and completely with the
24 courts and for delays. There are statements made both this morning and in their
25 papers about the shipowner actually causing a lot of these delays because he has
26 appealed each and every order of the Court. The poor judge in Cadiz is afflicted by
27 the delaying tactics of this shipowner who will not come to Spain to testify.

28
29 I would like you just to consider that claim for a moment. There is a mutual
30 assistance treaty for criminal matters between Spain and the United States; it is used
31 frequently. It should be well known to the Spanish delegation and to the Spanish
32 criminal authorities. Many of the countries from which you hail have similar treaties
33 with the United States and that allows criminal authorities in country A to take
34 testimony in the United States and receive the full cooperation of the United States
35 Department of Justice and FBI if necessary, et cetera.

36
37 So what the shipowner suggested to the judge in Cadiz was: there is a treaty for this.
38 I am not going to travel to Cadiz. After all, my consultant spent nine months in jail
39 when he came back to Spain, but we would be happy to be interviewed. One of the
40 letters is included in our initial submission; it is annex 5 (*indicating*). That is part B.
41 There are two letters in that exhibit. On page 2 of this letter, there is a statement that
42 Mr Foster would be happy to be interviewed. In the first paragraph it says: “There is
43 a treaty between the United States and the Kingdom of Spain which provides for this.
44 However, in this instance since Mr Foster is voluntarily appearing, we would suggest
45 that the testimony can take place sooner if we have a simple agreement about the
46 time and place”. The shipowner and Mr Foster and his wife, who own the stock of
47 Sage Maritime, have never been unavailable or unwilling to testify in this matter and
48 have never repeated the process but when a judge orders his presence in Spain
49 without legal justification, yes, he appeals that order and the Court of Appeal

1 says,"Judge there is a treaty. You cannot order a foreign citizen to travel to Spain".
2 Unfortunately, Mr Foster had to do that twice.

3
4 Let me just touch on a couple of other issues that have been brought up by Spain
5 today. There is some confusion, I think, about the permit that was granted to the
6 commercial partner of Sage Maritime, this TUPE or Tupet Society.

7
8 I would encourage you to read the description of the permit experience that the
9 Spanish have supplied in their pleadings. The *Louisa* shipowner was unaware that
10 there even were prior permits, but this is an example of Spain providing some extra
11 information, which we appreciate, perhaps thinking that it refuted our position. The
12 fact is, as they have conceded, that permits were granted repeatedly. This permit
13 that Sage Maritime relied on was just another in a series of permits. Today, for the
14 first time, we hear that the permit was really not the correct one; it did not allow the
15 kind of exploration that Sage thought it was entitled to do; but that is in the face of
16 numerous incidents where the Spanish maritime police stopped the boats out in the
17 bay and inspected - but never a word, "You are operating with the wrong permit
18 here".

19
20 So we find in an awfully delayed argument, an overdue argument, they come here
21 and say today that the permit was wrong. If the permit was wrong, it is a traffic ticket
22 situation and somebody should have received a fine and been able to go on their
23 way.

24
25 They also have suggested that the people who were applying for the succession of
26 permits were really interested in sunken treasure and shipwrecks, but then they go
27 on to say in their pleadings that one of them, a man by the name of Beteta, had a
28 company called Plangas. What was Plangas? According to Spain's pleading,
29 Plangas's main and unique business activity was the installation of gas supply to
30 private houses and buildings in the surrounding area. They go on to say at
31 paragraph 19 of their pleadings that this same company, Plangas, filed another
32 application for a permit after hours; it was granted and I believe they were going to
33 lease the *Gemini* when it could not be sold by Sage. They were going to lease the
34 boat and go out in it and prospect themselves. So here you have another company
35 involved in the natural gas business, and yet the Spanish are saying we had the
36 wrong kind of permit. It is a technical defence to our claims at best.

37
38 With that, I would ask you to just indulge me one additional moment. *(Pause)*
39 I would note for the record that in our submission today, with the cover letter to the
40 Registrar, we have again submitted the expert opinion of Mr Bernd Holst, whose
41 letter we supplied yesterday about the potential grave consequences of continuing to
42 have the *Louisa* laid up the way it is.

43
44 If I could have one moment, Mr President? *(Pause)* My colleague has reminded me
45 that we received a note relating to article 287. I would say, Mr President, that we
46 were not aware that the Spanish delegation was actually complaining about the
47 contents of our submission under article 287, but rather the timing: that the
48 submission or the declaration jurisdiction came too late. We certainly think that
49 substantively it was proper, and the Rules specify a time when it needs to be filed.
50 I think that Saint Vincent and the Grenadines, after deciding to pursue this action,

1 realized that although it had taken advantage of the Convention already on occasion,
2 it did not have a declaration on file with the Treaty Section of the UN which was
3 sufficient to cover this proceedings, so they put one together and filed it. As I said
4 yesterday, they actually submitted it some time before that via a signature of the
5 Attorney General. The Treaty Section informed us that we had to obtain the
6 signature of the Foreign Minister or the Prime Minister, so it was resubmitted.
7

8 I do not think there is anything else to be said about that. In all other respects, the
9 declaration is adequate.
10

11 Later today, we will read into the record our final submission. For now, I would just
12 say that the Tribunal has at its disposal a very valuable piece of legislation in
13 Article 290. It is a resource that can be used for the benefit of flag States around the
14 world, when it is exercised in the proper case. We think that this is that case and we
15 would urge you to consider that it is time to free the *Louisa* and its tender.
16

17 **THE PRESIDENT:** Thank you very much. Mr Weiland, as I said this morning, at the
18 close of the statement there is a formality to be complied with. It is referred to in
19 article 75, paragraph 2, of the Rules of the Tribunal, which I quoted this morning, in
20 which I said:

21
22 At the conclusion of the last statement made by a party at the hearing, its
23 agent, without recapitulation of the arguments, shall read that party's final
24 submissions. A copy of the written text of these, signed by the agent, shall be
25 communicated to the Tribunal and transmitted to the other party.
26

27 Your last statement is now, so I would ask you to be kind enough to present your
28 petition at this stage in accordance with article 75, paragraph 2. Thank you.
29

30 **MR WEILAND:** Thank you, Mr President. I am sorry about the confusion. I was
31 under the impression that it was the very last item of business for the Tribunal.
32

33 In accordance with article 72, paragraph 2, of the Rules of the International Tribunal
34 for the Law of the Sea, Applicant Saint Vincent and the Grenadines makes the
35 following final submissions.
36

37 The Applicant requests the Tribunal, by means of provisional relief, to:

38
39 (a) declare that the Tribunal has jurisdiction under Articles 287 and 290 of the
40 Convention to hear the Request for Provisional Measures concerning the
41 detention of the vessel, the *M.V. Louisa*;

42
43 (b) declare that the Request is admissible, that the allegations of the Applicant
44 are well founded and that the Respondent has breached its obligations under
45 the Convention;

46
47 (c) order the Respondent to release the vessel *Louisa* and its tender, the
48 *Gemini III*, upon such terms and conditions as the Tribunal shall consider
49 reasonable, but without bond or other further economic hardship;
50

- 1 (d) order the return of scientific research, information, and property held since
2 2006;
3
4 (e) prescribe such other provisional measures as may be appropriate such as
5 issuing an order requiring the Spanish Agent to meet with the Applicant's Agent
6 or representatives to resolve the matter, or other important measures; and
7
8 (f) order the Respondent pay the costs incurred by the Applicant in connection
9 with this Request, including but not limited to Agents' fees, attorneys' fees,
10 experts' fees, transportation, lodging and subsistence.

11
12 Respectfully submitted, G. Grahame Bollers, Agent.

13
14 It is signed by myself, as Co-Agent, and it also indicates Mr Christoph Hasche as
15 local counsel.

16
17 Thank you, Mr President.

18
19 **THE PRESIDENT:** Thank you, Mr Weiland.

20
21 The proceedings will resume at 7 p.m. today. The sitting is now closed.

22
23 *(Adjournment)*