Kingdom of Spain v. Odyssey Marine Exploration

James A. Goold José E. Arvelo Enrique Armijo

COVINGTON & BURLING LLP

BEIJING BRUSSELS LONDON NEW YORK SAN DIEGO SAN FRANCISCO SILICON VALLEY WASHINGTON

FRIENDSHIP AND GENERAL RELATIONS-JULY 3, 1902 633

SPAIN

cargo to any other port or ports of the same territory open to foreign conmerce, without paying other or higher toanage dues or port charges in such cases than would be paid by national vessels in like circumstances and they shall be permitted to load in like manner at different ports in the same voyage outward.

ASTICLE X

In cases of shipwreck, damages at sea, or forced putting in, each party shall afford to the venets of the other, whither belonging to the State or to individuals, the same assistance and protection and the same immunities which would have been granted to its own venets in similar cases.

ARTICLE XI

All vessels sailing under the flag of the United States, and furnished with such papers as their laws require, shall be regarded in Spain as United States vessels, and reciprocally, all vessels sailing under the flag of Spain and furnished with the papers which the laws of Spain require, shall be regarded in the United States as Spanish vessels.

Astrona XII

The High Contracting Parties desiring to avoid all inequality in their public communications and official intercourse agree to grant to the Envoya, Ambassadors, Ministers, Chargés d'affaires and other diplomatic agents of each other, the same favon, privileges, innutatives and exemptions which are granted or shall be granted to the agents of the most favored Nation, it being understood that the favors, privileges, humunities and exemptions granted by the one party to the Envoys, Ambassadors, Ministers, Chargés d'affaires, or any other diplomatic agents of the other party or to those of any other Nation, shall be reciprocally granted and extended to those of the other High Contracting Party.

ANTICLE XILL

Each of the High Contracting Parties pledges itself to admit the Consuls-General, Consuls, Vice-Consuls and Consular Agents of the other in all its ports, places and cities, except where it may not be convenient to recognize such functionaries.

This reservation, however, shall not be applied by one of the High Contracting Parties to the other unless in like meaner applied to all other Powers.

ARTICLE XIV

Consular officers shall receive, after preaenting their commissions, and ancording to the formalities established in the respective countries, the exequator required for the exercise of their functiona, which shall be furnished to them free of cost; and on presentation of this document, they shall be admitted to the enjoyment of the rights, privileges and immunities granted to \, them by this Treaty.

The Government granting the exequator shall be at library to withdraw the same on stating the reasons for which it has thought proper so to do. Notice shall be given, an producing the commission, of the extent of the district afforded to the consular officer, and subsequently of the changes that may be made in this district.

ARTHER XV.

All consular officers, citizens or subjects of the country which has appointed them, shall be exempted from military billetings and contributions, and shall enjoy personal immunity from arrest or imprisuoment, except for acts constituting entities or misdemeanors by the laws of the country to which they are commissioned. They shall also be exempt from all National, State, Provincial and Municipal taxes except on real entate shuated in, or rapital lawaned in the country to which they are commissioned. If, however, they are engaged in professional business, trade, manufacture or commerce, they shall not enjoy such exemption from taxes, but shall be subject to the same taxes as are paid under similar circumstances by foreigners of the must favored Nation, and shall not be entitled to plead their consular privilege to avoid professional or commercial liabilities.

ASTICLE XVI

If the testimony of a consular officer, who is a cliften or subject of the State by which he was appointed, and who is not cagaged in business, is needed before the Courts of clifter country, he shall be invited in writing to appear in Court, and if unable to do so, his testimony shall be requested in writing, or be taken orally at his dwelling or office.

To obtain the testimony of such consular officer before the Courts of the country where he may exercise his functions, the interested party in civil cases, of the accustd in criminal cases, shall apply to the competent judge, who shall invite the consular officer in the manner prescribed above, to give his testimony.

It shall be the duty of said consular officer to comply with this request, without any delay which can be avoided. Nothing in the foregoing part of this article, however, shall be construed to conflict with the provisions of the sixth article of the amendments to the Constitution of the United States, or with like provisions in the Constitutions of the several States, whereby the right is secured to persons charged with crimes, to obtain witnesses in their favor, and to be confronted with the witnesses against them.

ARTICLE XVII

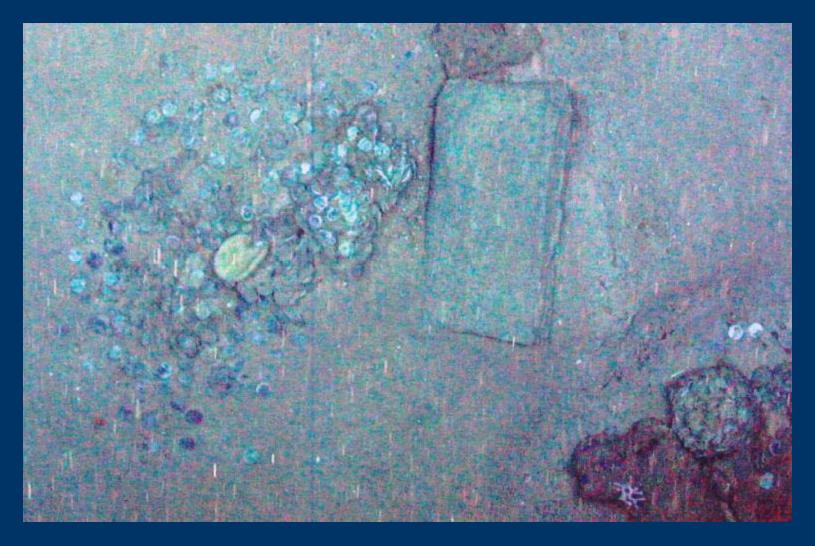
Consuls-General, Consuls, Vice-Consuls, and Consular Agents may place "över the outer door of their office the arms of their Nation with this instrip-

632





Coins





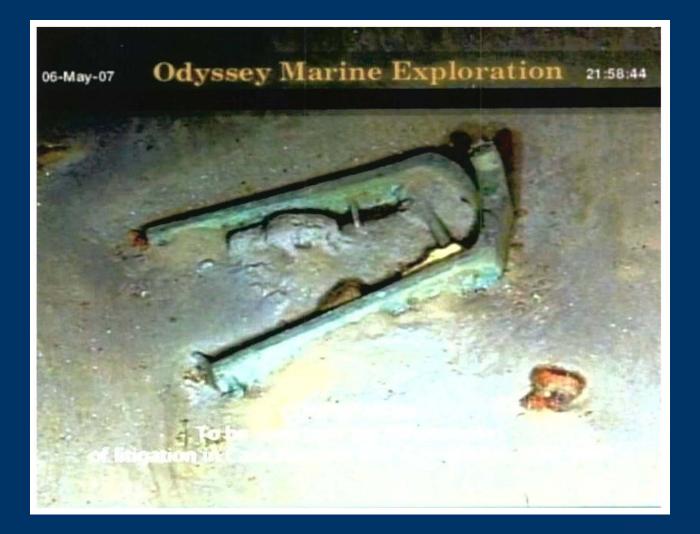


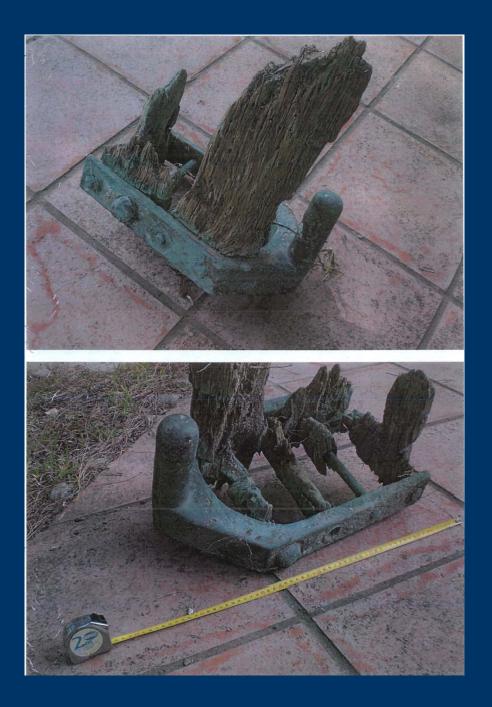
Cannon (from ship's artillery)



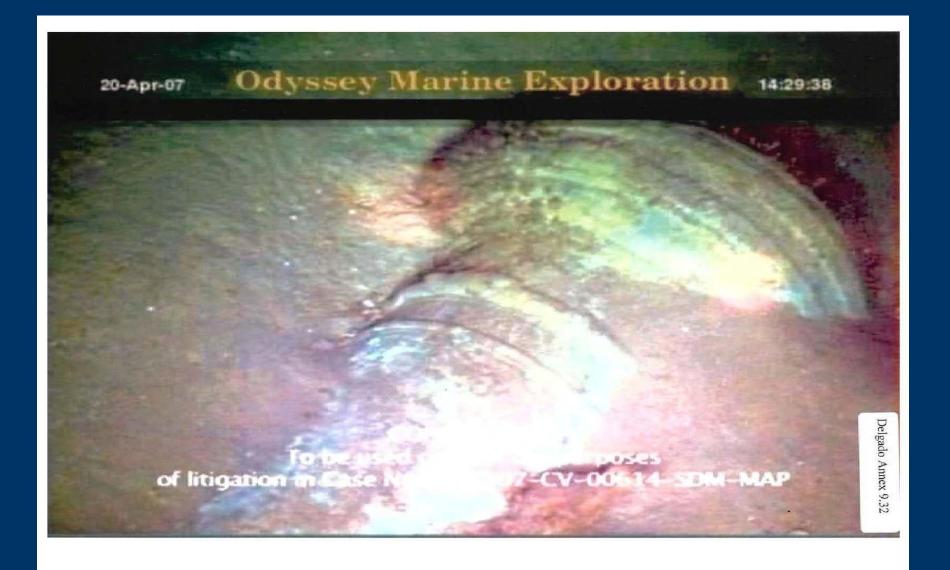


Vessel Remains

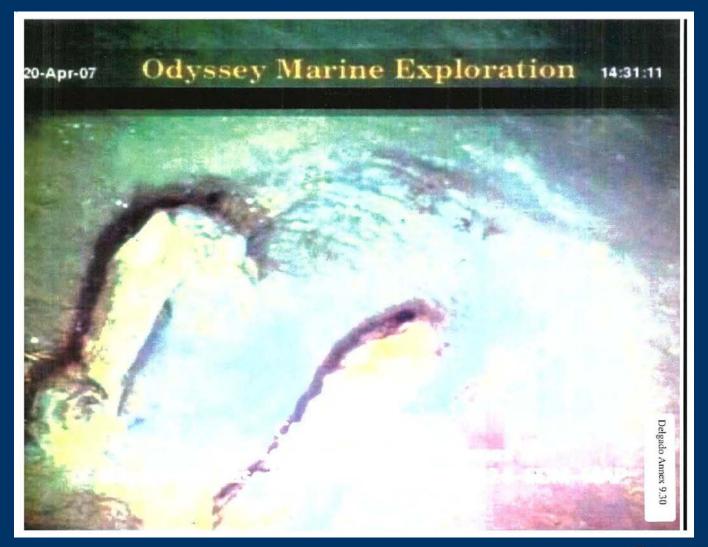








Other Cargo (*e.g.*, culverins)









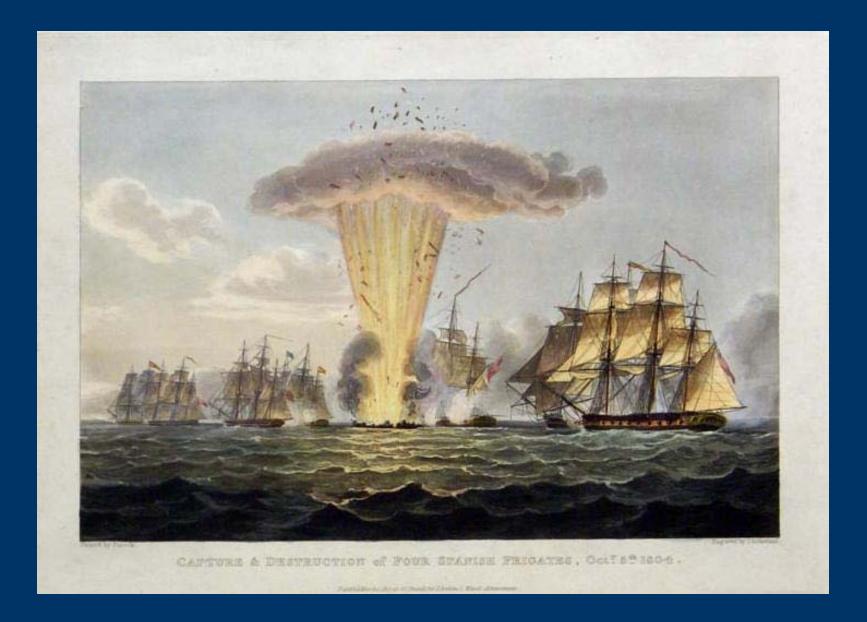






CUATRO FRAGATAS ESPAÑOLAS

vimiendo de America con ricos cargamentos, encuentran á la vista del cabo de Santa Maria, á otras



VERNES 9_1_2008 ABC **CULTURA** ESPECTÁCULOS

«Odyssey perderá porque hay certidumbre de que expoliaron "La Mercedes"»

España presenta sus conclusiones al tribunal de Tampa y espera sentar precedente y recuperar el tesoro

JESÚS GARCÍA CALERO MADRID. Grandes novedade

en el Caso Odyssey. El Goblero se mostró ayer seguro de que España va a gatar el caso tvil contra Odyssey Marine Exploration en el juzgado de Tampa (Florida), porque ha lie rado a la convicción -- «la total ertidumbres de que los caza esoros extrajeron las 500.000 monedas, de los restos de una ragata española. Se trata de «Nuestra Señora de las Merce dess, hundida tras un ataque inglés, en 1804, fronte a las costas de Portural.

Esta conclusión permite a España presentar —lo hizo ayer— un documento en el que exige la devoluciós complete del cargamento expoliado, nuesto que «La Memedea» era an buque de la Armada. En la rueda de prensa en la que se presentó este documento estu leron presentes d abogado que representa a España, James Goold, el director del Museo Naval, almiranie Teodoro de Leste; el director general de Bellas Artes, José Jiménez y otros cangos ministeriales. No estaba el ministro pero fue consulta lo sobre la respuesta a la progunta de si España aceptaria ahera un acuerdo con los cazatesoros: fue un no talante

Todo menos arqueología

La conclusión de que las monedas proceden de «La dercedese se basi en una investigación archivistica, algunos datos e contral de las opera cionies de los cazates aros n abril y mayo de 2007 y también en la visita que expertos españoles realizaon al lugar donde Cdyssey custodia el tesaro. Entre ellos staban la conservidora jefe do Normals mática dol Moreor, Arqueológico, Carmes Marcos quien affirmó que las monedas revisadas son compatibles con cargamento de a fragata reales de a ocho y doblones e oro de Carlos IV acunados en Lima en 1803-, y si director el Museo de Cartagens, Rafael Aguar.

Azum affrinö-ma, una vez de la Unesco y desde luego la isto el material quelos cazata-Lev de Patrimonio Histórico. soros mostraron a los experios por orden del juez -- tres horas abordado por José Jiménez y de videos del Robot athmarine James Goold, guienes enfatiza



El abogado James Goold, optimista ayer durante la rueda de prensa

(de un total de 60), fotomo

salcos del vacimiento y algu

nas monodas ..., la primera con

clusión es que Odvasey jamás

ha seguido ninguno de los pro-

tucolos acqueológicos conoci

dos y sus operaciones vulne-

ran cua quier recomendación

Este extremo fue también

Doblones de pre de Carlos IV y reales de a ocho, edentes de la ceca de Lima y acuñados en 1803. como los que Odyssey expolió en el Estrecho

ron en yue no hablamos de teso gal de que vamos a ganar. Nos ros o mercancias, sino de histoasiste la razón histórica y legal rta, parrimonio protegido y del suficiente para que el proceso cementerio de más de doorien pueds ser muy positivo para tos marinos españoles y sus falos lutereses del patrimonio milias que perecieron en el histórico españel» (Jiménez). asalto inglés a la fragata. «No «Esperamos que no hava comroy a dar medias tintas, tenepensación alguna a los cazate mos la convicción moral y lesoros-(Goold)

Y avor, la junta de accionistas

Tal voz por casualidad, aver también se celebraba la junta antial de actionistas de Odyssey, en la que presen tó algunos ruevos provec-R tos, uno de ellos la explotación de un pecio con tesoro en la costa Carelina del Norie por la empresa BDJDiscovery. James Goold afirmó ayer que España aún no so ha personado en este cano, uni es necesario lo estu-El ministro César Antonio Mo-Tina afirmó en una entrevista con ABC que España se personará sote la más minima sospe cha de un pecio hispano.

WORLD | EUROPE

'The mystery is over,' Spain tells explorers

By Victoria Barnett

MADRID: The Spanish government said Thursday that it had proof that a treasure recovered from an Atlantic shipwreck last year belonged to Spain, a claim that could spell victory for Madrid in its acrimonious battle to retrieve the booty from a U.S. salvage company.

Officials said that the valuable load of gold and silver coins found last year by Odyssey Marine Exploration, a treasure-hunting company in Florida, came from a Spanish naval ship and should be returned to Spain.

"The mystery is over," James Goold, a U.S. lawyer who is representing the Spanish government, said Thursday. "Odyssey stripped the grave site that is the Spanish warship Nuestra Señora de las Mercedes."

Goold said that the location of the shipwreck, the nature of the treasure and of other goods found at the site, and the way they were dispersed on the seabed proved that they had come from the naval frigate, which British ships sunk in 1804. The evidence was submitted to a Florida district court on Thursday he said.

Odyssey Marine Exploration announced in May that it had found the 17ton collection of coins, which one expert valued at as much as \$500 million. at the site of an unidentified wreck, code-named Black Swan. The company,

It says treasure came from 1804 warship from a warship

The company maintains that it had not been able to identify the ship, though Greg Stemm, its chief executive, told Reuters this week that the Mer-

cedes was one ship being considered as part of a "working hypothesis." Odyssey initially said it could not disclose the location of the site for security reasons, but it was obliged by the Florida court to share that information with Spain. Calls for comments from Odvssey

Marine Exploration were not immedi ately returned on Thursday.

José liménez, head of fine arts and cultural patrimony at the Culture Ministry, said that Spain had "absolutely no intention" of making any payment to Odyssey for finding the Mercedes and was confident it would retrieve the treasure.

"We have the moral and legal conviction that we are going to win," he said. Jiménez said that Spain would be

happy to "think about ways to share our historical patrimony," referring to Peru's arguments that it should have a share of the find; the coins were minted in Peru and the Mercedes set sail from Lima in 1804. The Mercedes was part of a squadron

of four frigates that was one day away from the Spanish port of Cádiz on Oct. 5, 1804, when it was attacked by a British fleet. The Mercedes blew apart in a huge explosion and the other three ships were seized by the British in a battle that prompted Spain to declare war on Britain two months later.

"The Mercedes is the Spanish equivalent of the U.S. battleship Arizona," Goold said, referring to one of the U.S. ships that were sunk by the Japanese at Pearl Harbor. "Stripping the site of this ship should be viewed as would be the stripping of the Arizona."

Carmen Marcos, a coin expert from the National Archeological Museum in Madrid, said that the government had reviewed part of the treasure taken from the shipwreck and established that the coins were Spanish currency, including "pieces of eight" minted in 1803. The court documents filed Thursday said the trove included ship fittings that corresponded to a Spanish naval vessel and copper and tin ingots that were logged in the Mercedes's cargo.

Stemm told Reuters that if the wreck was in fact that of the Mercedes, the Spanish government would still have to prove that it had not "abandoned" the site. Goold and Spanish naval officials dismissed that assertion Thursday, saying the ship remained state property.

International Herald Tribune Friday, May 9, 2008

COVINGTON



James Goold, representing Spain, said Thursday that the U.S. salvage team had found the Nuestra Señora de las Mercedes.



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ENGLISH EDITION WITH THE INTERNATIONAL HERALD TRIBUNE

46 World

Spain launches legal war on 'pirates' to reclaim sunken Armada treasure

Thomas Catán Madrid

Spain demanded the return of sunken reasure worth an estimated half a billion dollars yesterday, accusing Odyssey, the deep-sea exploration company that discovered it, of looting ts shinwrecks.

Spanish archaeologists said that they had determined "with complete certainty" that the record haul had come from the Spanish colonial-era galleon Nuestra Señora de las Mer-cedes, sunk by a British fieet off the southern coast of Portugal in 1804.

"The mystery is over," said James. Goold, a Washington-based lawyer for the Spanish Government. The treasure "belongs to the Spanish Armada". Since announcing in May 2007 that it had found 500,000 gold and silver coins somewhere "in inter-national waters in the Atlantic Ocean". Odyssey has fought hard to keep details of the hauf under wrans. The Florida-based company, which uses underwater robuts to search for shipwrecks, had refused to divulge the

exact location of the find that it endenamed "Black Swan". It also argued that because the hand included Span-ish coins, it did not necessarily mean it had come from a Springshalp mark h had come from a Springshalp However, Mark Puzzi, a 18 judge roled against Odyssey last month or-dering it to share information about the find with the Spanish. Yesterday

Spain said that coins from the haul were documented to have been on the Mercedes, while the location of the find also indicated that it came from the valleon

"The sinking of the Mercedes was a

pivotal event in Spanish and European history, and the site and its contents are the inalicnable historical fierce international tight between the Spanish Covernment and the small, publicly listed company, run by a flamborant former public relations exheritage and patrimony of Spain," the Government said in court papers due to be filed today as part of a continuecutive who once served as Rob-Hone's fixer. The Spanish Governing trial to determine who owns the treasure it added that it never authormont bas accused Odyssey of modero day piracy and plundering its apphaeological sites for profit sed Odyssey to disturb the "gravesite of bundrods of Spanish sailors and their family members" who died when Odyssey sites would never have been explored by the Spanish Government, which the ship sank had effectively abandoned the shin-

The haul has been at the centre of a



has responded that such

wreck. It claims that under the "find ers' keepers' provision of international maritime law, it has the right to the treasure.

Yesterday, however, Spain said that It was irrelevant that the ship sank in international waters. "We do not lose ownership by being in international waters if we're talking about a war-ship," MF Goold said, "The 14 tons of cours were not transported on a com-mercial ship "Spain's lawyer accused Odyssey of engeging in obstruction-

arrested the Odyssey Explorer's cap-tain, Sterling Vorus, for disobeying orders. He was released the following Odyssey has accused the Spanish Government of bullying its staff and is

ism and behaving in an "illegal and

immoral" manner. Odyssey had no

immediate comment on the allegations by the Spanish. The battle over what could be the

largest treasure trove yet found turned

particularly ugly last year, when the Spanish Government forced, Odys-

sey's two exploration ships into port

using warships as they tried to leave Gibraltar. In October Spanish police

claiming damages for losses relating to the case. Spanish experts said yesterday that the coins, held at an undisclosed location in Florida, inclusied gold doubloons, or "pieces of eight", minted

THE TIMES Friday May 9 2009

in 1803 in Peru - then the financial centre of Spain's Latin American colonies. That raises the possibility that the Peruvian state may want to make a claim of its own

Spain presses claim for booty from the warship 'Mercedes'

MARTIN DELFÍN, Madrid

Spain on Thursday said it had positively identified the shipwreck found in the Atlantic by a Florida salvaging firm as that of the 19th-century frigate Nuestra Señora de las Mercedes and vowed to fight for the return of 500,000 silver and gold coins that were secretly recovered from the site.

"Mercedes is a warship on the official register of the Royal Navy of Spain and is inalienable property and patrimony of the Kingdom of Spain," the government said in court papers filed with a US federal judge in Tampa. Florida, where its lawyers are battling Odyssey Marine Exploration over ownership of the treasure.

During a news conference in Madrid, the Culture Ministry director general, José Jiménez, said Spain would "definitely not" share the spoils with Odyssey if the government won the CASE

"This company has secretly stripped this ship of coins and other artifacts and then tried to hide this by claiming it did not ond shipwreck found by Odysknow the identity of the ship," said James Goold, the US lawyer hired by Spain.

For months, Odyssey had told a US judge it was still trying to identify the remains, but last month, after the court ordered the company to give a working

hypothesis, the salvage firm said the identity of the Mercedes "was under consideration."

Under a court order. Spain was allowed to inspect the coins Odyssey flew back to Tampa last year via Gibraltar. The government also inspected the wreck site, which is somewhere off the coast of Cádiz.

firm under international law.

The Spanish government also told the US court that a secsey was also believed to be the remains of the Merchant Royal, which was transporting funds of the monarchy to Flanders when it sank in the Atlantic in 1641, and whose ownership could also not be granted to the



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FROM: Godoy TO: Navy Minister September 13, 1802 ... one can see that there is much specie and precious produce in Lima for Spain; ... it is desirable that Your Excellency inform the King of how much still remains to be carried, so that His Majesty may determine if some warships ought to go collect them ...

U Rey ha resuelto que se despachen à la mayon bre. vedad derde es fuento al del Callao de Livra dos Fragatas de guerra con el obgeto de traen los caudales y efectos or R! Hazienda que hubiese provios en aquella America. Segun las ultimas noticias dadas por el Ingeniero gral resulta que se hallan prontas à animanse en ese Dépantamento las fragatas claxa y cuencedes y por tanto quiene S.M. que V.C. disponga con la mayor prestera la habilitas. de Thos buques con el concepto de la mavegación que de ven hacen, y en la inteligencia de que se ha senvido cor ferux su mando al Capitan de navio D. Tore Goycoa y al ce fragata D. Diego Aleson, à quienes se previen lo conveniente à finde que se présenten en ese De. panamento. Dios que à U.C. m. a. Bancelo na 6. oc Nobiembre v 1802.

of Dr. Telix or texada.

Dorn Bargana

FROM: Navy Minister TO: Navy Captain at El Ferrol November 6, 1802

"The King has resolved that two frigates of war be dispatched as early as possible from that port to the port of El Callao in Lima with the objective of bringing back the specie and effects of the Royal Treasury that are ready in **America**. According to the latest news provided by the Engineer General the Clara and the Mercedes are ready to be armed in that Department and therefore His Majesty wants your Excellency to provide for the preparation of said vessels as early as possible keeping in mind the voyage they have to complete, and with the knowledge that command has been given to Captain Don José Goycoa and to Frigate Captain Don Diego Aleson, whom have been advised as convenient so that they appear in that Department. God keep your Excellency safe for many years."

Núm. 100

GAZETA DE MADRID

DEL VIERNES 14 DE DICIEMBRE DE 1804.

RUSIA

Petersburgo 20 de Octubre. Tedavia no han calmado las turbaciones que agitan las fronteras de Persia desde la primavera próxima; y es notorio que la Rusia ha tomado Perité ditel la prinseven prósima; y se notorio que la Rush ha tomajo parte en ellas i cutais de la protección que tiene concelida da dos de fos Principes beligerantes. Las tropar regidais Russa y las Concesa en han lalda en mencho de aquello combates, en uno de los quales is apo-derarion los Rusca de la lorraleza de Gaesa. Los 30 hombres, encargador de la expedición, han recibido medilalas y 410 officiales es tela pre-misido con craesa de honori, semeiantes à las que se distribuyêron des-gines del atico de Orcchhafer, y del combate dado en el arrabid de Proga-pario a Vanovia. A los tolisados Conzeos y i sus Oficiales es tela pre-normada de glana y de oros, en las guellas tina errorien de las y 41 atició de la acción probos para el fomento de instructor pública. La canicial de aco8 rubios y ara el comento y perfeccion de las executas. El traniente Coronel Principe Punsofi ha registado a iguinario del go-biérno de Porcov una buena biblioteca y un gobiente de menteles fuer com portario de porcov sen se transento de instruction de las pro-biérno de Porcov en servante do a las recutas. El traniente Coronel Principe Punsofi ha registado a la guaratorio de las pro-biérno de Porcov una buena biblioteca y un gristente de instruction de las pro-biérno de Porcov sen servangentos, y una coloccion completa de

sos: un gabinere de minerales extrangeros, y una coleccion completa de mostycos é la Universidad de Moscow. S. M. I. le ha condecorado con la Orden de Wodomiro.

DINAMARCA.

Copenhague 5 de Noviemère. En muchatsquetas extrangeras se han publicado algones noticias, que amacian inducas en nuersa timación políticado algones noticias, que que no pueden laberse foriado sito con la mira de turbar la para del Nor-fe Para faisiteur y desimunto tran Joinnadas nucleas, hara conditerar la 4. Prayatainear y desmentr ran hundadas noticas, para conducera ra conducta. Fineme y consequences de la seconda en el sixtem de neu-tralidad que ha adoptado ta buena intelligencia que mantiene con todás las Portencias, que mas influyen hoy en la situación política de Euro-Pai la seprempulosidad con que se abstitene de entrometerse en los negoclos agenos; y por último, la actividad que es notoria en todos los ra-

rá mas manifiesto lo frregular de semejante próceder. Si hasta ahora ha habido esperanzas de concluir felizmente las negociaciones, deben habeese acabado con este suceso.

te actodado con este succeso. En vita de todo esto, y á pesar de los que dice el papel ministerial, que hemos eitado, consideránime semo clerta la guerra con España, que an empezado mestros Ministerio sul acelarización de guerra y sy milertas que nuestro Enviado ó Enacagado de Negocion negociaba con la Corte de Madrid. Quelençaira pesar hois mativos de queja o de jasta caus-as de guerra contra España, tempanos siempre presente que mada item-pirala, pueb en que tieme una catas nota, no por con les de peneri-do matemen una derechor, é exigir institacion, de un modo injusto ó Hezal.

HOLANDA. Be tal el frio que es tante dette ànres davres, que se han helado ya muchos canales y reperamo que esta mudanas de temperatura contri-buya à hicer cevar las

gunas partes de la Rej Para precaver las inundaciones, se recor licas en el departamén

Estado, y se harán los Se continúa exâmini tas presentado por el (de florines, y todas la por consiguiente el de plir este desfalco prop ico sobre tedes los di desestime este proyec El mártes, 20 del al Cuerpo Diplomátic domingo al Emperado Madama de la Rochefi las Marquesas de Sarit El Emperador ha to de clemencia, que

y es haber mandado p la Abadía de S. Germ: Ayer marchó el El dre. Las disposiciones des, y el laxo y la m visto en el siglo de Lu Día 25. Hoy, á l el Emperador, que h

que se acercaba el Santo Padre, fué á recibir á S. S.; y habiéndole eniontrado, echaron ámbos pie á tierra, se acercáron uno a otro, y se abrazáron. Entônces llegaron 5 cariozas de S. M., y el Emperador entró pri-mero en una de ellas para sentar á S. S. á la derecha, y llegaron al palamere en una da ella para sentar à S. S. i la derecha y llegiron al púla-ció de Fondinebleau, po entre la tropa que estuba tendida, y oydndo-réo des para de bai artilleria. S. Ema. el Cardenal Captrar, y los granders Oficiales ed a palació del Emperador los revisiónes en el suguese. El Emperador y ul Papa subbirco inonto por la seculera dorada; hasta la piera que tepara usa babircolose, en dondes S. Gado al Emperador, y les acompañado por el Gran Chambelan, el Gran Marical de pulació, y el Gran Mastro de Ceremonia; à la habitarion que te la tendi dispue-tra Ali descando un rato S. S., y largo fré à visitar al Emperador, y dor, acabada la vivitia; acompaña al Papa haven la esculera i Bampera Oficiales. Immediatemente paso S. S. al quatro de la Emperatria. El Dana de honor, que babis sello da recibir á S. S., elementar la establicate de la Emperatriz, quien acompaño lurgo a lavan las tas las distores de la Emperatriz, quien acompaño lurgo al Papa hava la tegenda pieza de

de tomar parte en los agravios y ofensas hechas á su Aliada. En estas circunstancias, fundado S. M. en los mas sólidos principios de una buena política, prefirió los subsidios pecuniarios al contingente de tropas y navios con que debia auxiliar á la Francia en sirtud del traue tropa y navio con que debia auxilitar a trancia en sprito del tra-tado de aliansa de 1750 y tanto por medio de su Ministro-en Lóndres, como por medio de los Agentes Ingleses en Madrid, dió á conneet del modo mas positivo al Gobierno, Británico, su decidida y firme resolucion de permanecer neutral durante la guerra; teniendo por elipronte el consuelo de ver que estas ingemais seguridades eran, al parecer, bien reci-bidas en la Corte de Lóndres.

bidas en la Corte de Lichártes. Pero aquel Gabietes, que de antemano debia haber retuelto en el si-lencio, por sus fines particulares, la renovacion de la guerra con Espa-fin, siempre que publices declaratas, no con la sistemida de soutentidader prescritas por el derecho de guettes, sino por medio de agresiones po-sitivas que le produzente utilidad, buscólos mas fiviolos prescritos para poner en duda la conducta verdaderamente neutral de la España, y pa-ra dar importancia al mismo tempo i los desceso del Rey Elivaisco de bierno Español, y manemiendo en la intervisión por la contendo al los de la nacion Indues, anbre sur memoditadea (intruste domunio, ente de la marcino Indues, anbre sur memoditadea (intruste domunio, ente de

the in a speak of the statements of a statement of the st

1113 pathles con la dignidad de tu corona, te ve ch la dura precision de ha-cer la querra al Rey de la Gran Brenia, á sus stúbilios y pueblos, omi-tendo las formalidade de etitico para una calomne declarazãos y publi-cicion, supmerto trac el Gabbiere Ingles ha principiado y continúa ha-ciendo ha supera de declarazón de la gaba de la ga

ciación, supuerto que el Gabinere Ingles ha principido y confinit ha-ciendo la guerra in deciarata. En consegüencia, despues de hiber dispuesto S. M. se embargasen por via de represalta nodas las propilsadas língüas en estes do minilor, y se circulases à los Vireyer, Capitanes Generalas y denias Meira de mar y tierra las dedense má convenientes termi la porticidade para este con tendo la despuesta de visional de la porticidade para este con tendo la Legelono Españalas, y no duda S. M. que, infainados to dos nas vasaltes de la justa fadiguación que deben inspirades los violen-tos procederes de la justa fadiguación que deben inspirades los violen-tos procederes de la la para fadiguación y de deben inspirades los violen-tos procederes de la la pabellon Español. A sere fin les convida à ar-mar en corso contra la Gran Enertan, y a la pabellon Español. A sere fin les convida à surver montantima y contrata de na brandes de en ma buques y propindad con Daran en la consela de la montante de la para face de la la pabellon Español. A sere fin les convida à ar-buques y propindad con Daran en la conselación de en montante de la montante de la para en corso contra la Gran Enertan, y a la pabellon Español. A sere fin les convida à ar-buques y propindad con Daran en en la consela de en la distribuirdad de en la distribuirdad de la la terresta de la la pabellon Español. A sere fin les convida à ar-

zon deloszmente stacadas, por órdenes que el Goblerno Ingles habia, firmada en el mismo momento en que engañosamente esigia condiciones pagala prolongación de la para, en que se le daban todas las regurida-des posibles, y en que sus mismos buques se proveias de vireres y re-

det politika y det que sus mines ouques se provesas au siteres y ter-Brossimos loques que sentaba diferizando la hospitalida mas completa, y experimentando la buena de con que la Ergana probaba á, L Inglaterer que experimentando la buena de con que la Ergana probaba de clones de mantener la neutralidad, estos mines buques abrigaban yas en el teno de sus Commindante, las órdenes intiques del Cabitore Ingles. cu el seno de sus comuncantes ins ordenes iniquis del ozitiete inigues para asaltar en el mar las propiedados Españolaris órdenes iniguas y pro-fusamente circuladas, pues que todos ses baques de guerra en los ma-tes de América y Europa estan ya deteniendo y llevando á sus puertos. quantos buques Españoles encuentrars sin respetar ni una los cargamentos de granos que vienen de todas partes à socorrer à una nacion fiel en el año mas calamitoso.

Too de grande que vienen de todas partes à socorrer à una acción de la quinte el año ma calamitoro. Ordener birbarra, pues que no mercen otro nombre, las de echar di fuer toda embraccion Exploito, euyo porte no llegate à no tonela-dar de quemar las que estuviern baradas en la costat y de apresar y la rat Malia nol ha que creacidant de cros tonela-dar de quemar las que estuviern baradas en la costat y de apresar plar de Malia nol ha que creacidant de cros tonela-dar de portes. Así lo la rate Malia nol ha que creacidant de costa de Caraba-rate a de la costa de la costa de la costa de Caraba-na, quando au buque fué cohado à ripeup per un navio logie, vayo Ca-pital le quino sua papeies y su bandera, y le informó de haber recibido las expresidad córtens de un cortes. Así quando sua llevar dedante na trocét, que proclam de alucimitationa-nou quier cen llevar dedante na perioda de la papeira de la distingar-pública, alegando para cilo que las fragatas Expañalas no han sido com-puesidas à los puercos legiteres en cuindo de apresadas, into como de sete-

ducidas á los puertos Ingleres en calidad de apresadas, sino como dete-nidas, hasta que la España de las seguridades que se desean de que observará la neurralidad mas estricta.

servaria la neutralidad mas estricta. 2 Y qué mayores seguridades puede ni debe dar la España 1 Qué na-ción civilizada ha suado hasta alora de unos mellios tan injustos y vio-tana puese calificación de la construcción de la la distorta nueves esta la puese calificación de la construcción de la construcción de la constru-un atropollamiento semajonte ? Qué satisfaccion podrá dar por la trita-predida de la fragata Marcedea con todo su exgumentos, su tripulacion, y el gran número de paragreso distringuidos, que han desparecido victi-mas inocente de una política tan deteratable ?

mas inocentes de una politica tan detestable? La Espain no cumplita con lo que se debe á si mlima, el czegria, poder mantener su bien conocido honor y decoro entre las demas poten-clas de Europa, si se mastrase por mas tempo insensible á unos ultra-jes tam maintiestos; y si no procutase vengarlos con la nobleza y energia propias de su caracter. Animado de estos sentimientes el magnánimo corazon del Ray, des-

pues de haber apurado, para conservar la paz, todos los recursos com-

1119 Poiel Pojol Jatro de la Iglesia Mitropolitane de la minue Dicessi, 4 Don Fran Dismiliones, Vicesto regundo que ha sido de la minue Parcoquita. Briga Compañía Americana del Real Cuerpo de Guardias de Corps de La Desco Cuerto de minue al Sociemento De Cuerto de Cuerto de Corpo de Corpo de Corpo de Cuerto de Minue al Sociemento De Cuerto de Corpo de Corpo de Corpo de Cuerto de Minue al Sociemento De Cuerto de Cuert

Francisco Caceres.

Francisco Ciceres. El Ray e ba servido promover á Teniente en el Regimiento de in-fantería de Soria al Subtexiente de granaderos D. Santiago Lobera; y á Subtenientes de bandera en el de Córdoba 4.D. Cayetuno Salarangue; y en el de Zaragoza á D. Benito Rie y D. Gerónimo Deigado , Cadetes de los mismos Cuerpos. S. M. se ha servido nombrar Capitan segundo en el Regimiento de

... The reestablishment of peace through the Treaty of Amiens ... was unfortunately of short duration ... since Spain ... allied [itself] with France in the Treaty of Amiens . . . it was very difficult for [it] ultimately to fail to take part in the insults and offenses done to [its] Ally. Under these circumstances, His Majesty . . . preferred the pecuniary subsidies to the contingent of troops and vessels with which he ought to aid France in virtue of the treaty of alliance of 1796; and ... he let it be known to the British government in the most positive way, his determined and firm resolution to stay neutral during the war: quickly having the consolation of seeing that these naïve confidences were, apparently, well received at the Court of London. But that Cabinet, which must have resolved in silence ahead of time, for its own ends, the resumption of war with Spain, while being able to declare it, not through the forms and solmenities prescribed by the law of nations, but rather through positive aggressions that would give it utility, looked for the most frivolous pretexts to put the true neutral conduct of Spain in doubt . . . [They mounted] the abominable surprise attack, combat, and capture of the four Spanish frigates, which, while navigating with the full safety that peace inspires, were maliciously attacked, by orders that had been signed by the British government at the same time that it deceitfully demanded conditions for the prolongation of peace, in which it was given all the confidences possible, and in which its own ships were provided with supplies and refreshments in the ports of Spain. [T]he King ... has reached the weighty decision of going to war with the King of Great Britain, his subjects and peoples, omitting the stylistic formalities of a solemn

declaration and publication, since the English Cabinet has commenced and continues to make war without declaring it.

Magistrate Judge's Report/Recommendation

E. Conclusion

More than two hundred years have passed since the *Mercedes* exploded. Her place of rest and all those who perished with her that fateful day remained undisturbed for the centuries – until recently. International law recognizes the solemnity of their memorial, and Spain's sovereign interests in preserving it. *Sea Hunt*, 221 F.3d at 647. This Court's adherence to those principles promotes reciprocal respect for our nation's dead at sea. *Id.* It is this comity of interests and mutual respect among nations, whether expressed as the *jus gentium* (an impetus to exercise judicial authority) or as sovereign immunity (an impetus for refraining from the exercise of judicial authority), that warrants granting Spain's motions to vacate the *Mercedes*'s arrest and to dismiss Odyssey's amended complaint. Accordingly, it is

RECOMMENDED:

1. Spain's motion to dismiss (Doc. 131) and motion to vacate the arrest warrant (Doc.

132) be granted.

2. Odyssey's amended complaint (Doc. 25) be dismissed and the warrant of arrest (Doc.

5) be vacated.

3. All claims against the res be denied without prejudice.

4. Odyssey, as the substitute custodian, be directed to return the res to Spain within ten

days or as mutually agreed.