

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
IN ADMIRALTY**

ODYSSEY MARINE EXPLORATION, INC.,

Plaintiff,

CIVIL ACTION

v.

Case No. 8:07-cv-00614-SDM-MAP

THE UNIDENTIFIED SHIPWRECKED VESSEL,
If any, its apparel, tackle, appurtenances and
cargo located within a five mile radius of the
center point coordinates provided to the Court
under seal,

Defendant,
in rem

and

THE KINGDOM OF SPAIN, THE REPUBLIC OF PERU,
AND GONZALO DE ALIAGA (THE COUNT OF SAN
JUAN DE LURIGANCHO), *et al.*,

Claimants.

**REPLY DECLARATION OF
HUGO O'DONNELL Y DUQUE DE ESTRADA**

1. In my declaration dated September 12, 2008, I addressed historical matters concerning the Navy of Spain and its frigate *Nuestra Señora de las Mercedes* (“*Mercedes*”). My credentials and expertise on Spanish history, and Spanish naval history in particular, were submitted with that declaration. As I said in that declaration, the historical records presented with my declaration and that of Admiral de Leste (of the Spanish Navy’s Institute of Naval History and Culture, and Naval Museum) document comprehensively the identity and service of

the *Mercedes* as a frigate of war of the Spanish Navy engaged in military service at the time of its sinking in October 1804.

2. I have examined the reports and documents submitted by Odyssey Marine Exploration, Inc. (“Odyssey”), and specifically by Drs. Rodney Carlisle and William Flayhart, concerning the history and service of the *Mercedes*. I have prepared this declaration to address the considerable errors in these reports, and to reaffirm that the status of the *Mercedes* as a warship of the Spanish Navy is a matter of historical fact. This well-documented fact is in no way refuted by the flawed reports presented by Odyssey.

3. Before addressing the most important errors in Odyssey’s historical reports, it might be helpful to outline some facts of relevance that Odyssey does not dispute:

- The *Mercedes* was constructed as a frigate of war of the Spanish Navy in 1789, commissioned as such and entered on the official register of Spanish Navy vessels. The *Mercedes* had a distinguished career of naval service which included combat and transport missions carried out during the years before the orders for its last mission were issued in September and November of 1802. (De Leste ¶¶ 7, 11-13.)
- The period between 1802 and 1804 during which the orders for the last mission of the *Mercedes* were issued and executed were tumultuous years for Spain and in Europe. A tenuous peace between Britain and France ended in 1803, shortly after the Treaty of Amiens concluded years of hostilities between these two Powers in 1802. Spain claimed to be neutral in this renewed war to prevent being drawn back into it, weary after having fought against Britain alongside France prior to the Treaty of Amiens. To appease France, Spain agreed to a crippling monetary subsidy, which Britain deemed contrary to Spain’s claimed neutrality. There was therefore a real danger of Spain’s formal entry into the renewed war in Europe. (O’Donnell ¶¶ 20-23; De Leste ¶ 14; *see also* Carlisle ¶ 4; Flayhart at 9-12.)
- The orders for the final mission of the *Mercedes* were issued and carried out in this context. Concerned with bringing badly needed funds and strategic goods securely to peninsular Spain, the Spanish *Generalísimo* of sea and land forces — Manuel Godoy (known as the Prince of Peace) — instructed the Minister of the Navy — Domingo de Grandallana — that

“warships” (“*buques de guerra*”) be dispatched to El Callao for specie (“*caudales*”) and precious effects to be brought to peninsular Spain. Consequently, the Minister of the Navy ordered the dispatch of two “*fragatas de guerra*” (“frigates of war”) — the *Mercedes* and the *Clara* — to carry out this mission. (De Leste Annexes ¶¶ 11-12; O’Donnell ¶ 23.)¹

- The *Mercedes* sailed under the command of Captain (“*Capitán de Navío*”) José Goycoa, a long-serving and distinguished officer of the Spanish Navy, with the standard complement of “officers of war” (“*oficiales de guerra*”). The *Mercedes* flew the flag of naval warships and was armed with the standard and specified armament of Spanish frigates of war of that period. (De Leste ¶¶ 9, 22; *id.* Annex 15; O’Donnell ¶ 28.)
- When the *Mercedes* arrived in El Callao in August 1803, Spain had learned that war had resumed between Spain’s ally, France, and Great Britain. Instructions for “care and vigilance” were given to Spanish naval officers, anticipating the potential return of Spain to the renewed conflict in Europe. (De Leste ¶ 17; O’Donnell ¶ 24; *id.* Annex 3.)
- In view of the declared Anglo-French war and the recognized danger that Spain would be drawn into it, the *Mercedes* was assigned to a squadron of sister naval frigates commanded by Squadron Leader (“*Jefe de Escuadra*” or Rear-Admiral) José Bustamante y Guerra for its voyage from Montevideo to Cádiz. Before departing Montevideo, the squadron was put under the second command of Captain Diego de Alvear y Ponce de León, who — along with his family (placed on board the *Mercedes*) — was on his way back to peninsular Spain after years of government service in Río de la Plata. (O’Donnell ¶¶ 27-28; *id.* Annex 5; De Leste ¶ 19; *id.* Annexes 15-16.)
- Concerned about Spain’s payment of a subsidy to its enemy (France), Great Britain acted on intelligence of the Spanish squadron’s mission and dispatched a squadron of its Navy to detain “Spanish homeward-bound Ships of War” with “treasure on board.” (Delgado Annex 3, at 85.) Accordingly, the British squadron did not act against other ships — such as a Spanish *Correos Marítimos* vessel — but only against the squadron of Squadron Leader Bustamante. (De Leste Annex 16, at 394). When the Spanish and British squadrons met on October 5, 1804, a battle ensued and the *Mercedes* sank after a great explosion. (*E.g., id.* at 390.)

¹ The Spanish-language copy of the order by Minister of the Navy Grandallana refers to “*dos Fragatas de guerra*” (“two Frigates of war”). (De Leste Annex 12.) The translation of the order inadvertently omitted “of war” after “two Frigates.” (De Leste ¶ 16; *id.* Annex 12.)

- The Battle of Cape Saint Mary and the sinking of the *Mercedes* in this battle were of immense historical significance for Spain, as they precipitated Spain's decision to declare war on Great Britain in December 1804. (O'Donnell ¶ 33; *see also* Carlisle ¶¶ 5-6, 11.) Years of war ensued from which Spain emerged a much weaker State. (O'Donnell ¶¶ 33-36.)

I. Deficiencies in Odyssey's Reports

4. Odyssey and its declarants go out of their way to portray the *Mercedes* as a "commercial" vessel that served as a "pacquebot" [sic] of the Spanish "*Correos Marítimos*" ("Maritime Mails") when it sank. (*E.g.*, Carlisle ¶¶ 4, 12; Flayhart at 3-4.) They make the revisionist contention that the *Mercedes* was not a Spanish warship at the time of its sinking. (*E.g.*, Flayhart at 3-4; *see* Carlisle ¶¶ 4, 7, 12, 19.) Their contention is documented to be incorrect.

5. The conclusion that the *Mercedes* was not a warship of the Spanish Navy when it sank in 1804 is emphatically contradicted by numerous historical and other documents in which the *Mercedes* and its sister frigates are described as naval frigates or vessels "of war." (*E.g.*, O'Donnell Annex 6 ("Account of what happened to the four Spanish *war frigates* . . .") (emphasis added); De Leste Annex 2, at 186; *id.* Annex 30 ("War Frigate Named *Mercedes*").) Indeed, sources cited by Drs. Carlisle and Flayhart in their reports attest to the status of the *Mercedes* as a frigate of war, with documents describing the *Mercedes* and its sister frigates as warships and as forming part of a "squadron" when they were attacked in October 1804.² (*E.g.*, Carlisle Annex E-3, at 56 (containing an un-translated excerpt of my book in which I wrote "four

² An "*escuadra*" ("squadron") is defined in Spanish as a "numerous combination of warships [*buques de guerra*]' joined for certain tactical operations." (Real Academia de la Lengua Española, *Diccionario de la Lengua Española* (22d ed. 2001) (emphasis added) ([Annex 1](#))). The Oxford English Dictionary similarly defines the word "squadron" as a "division of a fleet forming one body under the command of a flag-officer; a *detachment of warships* told off for some particular duty." Oxford English Dictionary (2d ed. 1989) (emphasis added).

Spanish frigates *of war*, *Fama*, *Medea*, *Mercedes*, and *Clara* . . .”) (emphasis in “of war” added); *id.* ¶ 14, at 20 (quoting from Annex E-13); *id.* Annex E-31 (identifying the *Mercedes* as a “*Fragata de Guerra*” (“Frigate of War”)); Flayhart F-13, at 3; *id.* F-24, at 75.) It is therefore not, as Dr. Carlisle opines, “simplistic” to regard the *Mercedes* and its sister frigates as warships. Their status as such is simply documented history.

6. The historical record is definitive that the *Mercedes* was officially recognized by both Spanish and British officials as a Spanish frigate of war at the time of its sinking. As noted above, the highest naval authorities in Spain ordered the dispatch of warships to bring needed funds and materials of strategic importance from Spain’s American viceroyalties to peninsular Spain, and dispatched the “frigate[] of war” *Mercedes* of the Spanish Navy from its base at El Ferrol to carry out this sensitive mission. (De Leste Annexes 11-12; O’Donnell ¶ 23.) Fearing that funds would be transferred to France upon their arrival to peninsular Spain, Great Britain dispatched warships of its own to intercept only “Spanish homeward-bound Ships of War” transporting “treasure,” letting at least one “maritime [mail]” ship (“*un correo marítimo*”) go while they waited for the Spanish squadron. (Delgado Annex 3, at 85; De Leste Annex 16, at 394.) The British naval officers involved in the Battle of Cape Saint Mary therefore understood that the Spanish frigates they attacked were frigates of war. (*E.g.*, De Leste Annex 16, at 394 (“The English Commodore also said how sorry he had felt that he had been commissioned for such an expedition and mission in times of peace, knowing very well that *between warships*, it could not be carried out without the use of force and entrance into combat . . .”) (emphasis added).) So did Spanish diplomatic personnel in England, contrary to what Dr. Carlisle suggests

in his declaration.³ In a report to Spanish State Secretary Pedro Cevallos soon after learning of the Battle of Cape Saint Mary (attached as Annex 3), the Spanish Minister Plenipotentiary in London — José de Anduaga⁴ — makes clear that he understood the Spanish frigates to be warships, an opinion shared by the British Secretary for Foreign Affairs, Lord Harrowby.⁵

7. In contrast with the vast body of historical evidence that directly establishes the status of the *Mercedes* as a frigate of war of the Spanish Navy during its last voyage, Odyssey and its declarants offer no evidence identifying the *Mercedes* as a “*paquebot*,” “*buque-correo*,” “*fragata-correo*,” or the like (the terminology typically used at the time to denote that a vessel was dedicated to mail service and to the Spanish *Correos Marítimos*). Although Dr. Flayhart states that “one reference to the *Mercedes* termed her a *navio* [sic] *de correos*, or mail ship” (Flayhart at 8), the source upon which he apparently relies disproves this contention. Dr. Flayhart cites to Francisco Garay Unibaso’s *Correos Marítimos Españoles*, probably the leading treatise on the history of the Spanish *Correos Marítimos*. (*Id.* at 8, 22 n.22.) Yet, neither the

³ Dr. Carlisle cites a letter dated November 20, 1804 as purportedly referring to the four frigates in the Spanish squadron as a “merchant fleet” (Carlisle at 4, n.3), but this reading of the letter is incorrect. Nowhere does the letter — a transcription and accurate translation of which is attached as Annex 2 to this declaration — mention a “merchant fleet” (“*flota mercante*”), and the letter’s generic reference to “merchant vessels” (“*barcos mercantes*”) that might be taken as prizes or captured (“*apresados*”) does not relate to the “detained frigates of the King” (“*fragatas del Rey detenidas*”) mentioned in an earlier paragraph.

⁴ Dr. Carlisle mistakenly identifies the Spanish Minister in London as Joaquín de Anduaga. (Carlisle ¶ 8, at 9.)

⁵ Minister Anduaga says in his report that he “objected to Mylord [Harrowby]. . . that [the British] orders carried in themselves a hostile character because there is no commander of any navy who would let himself be detained with a *warship* without giving all possible resistance to prevent it” (Annex 3, at 3 (emphasis added).) Minister Anduaga also notes in his report that Lord Harrowby told him that the “frigates will remain in the class of detained, treating their officers with decorum, setting them free . . . proceeding in . . . the same manner previously executed with other *warships* in the same circumstances.” (*Id.* at 10 (emphasis added).) Lord Harrowby’s account is not to the contrary. (Flayhart Annex F-24, at 75-76.)

excerpted list from Unibaso's treatise which Dr. Flayhart attaches to his declaration nor any other list of mail ships in Unibaso's treatise identifies the *Mercedes* as a "navío de correos" or as any other mail ship (e.g., "paquebot," "fragata-correo," "buque-correo"). It should be noted that Unibaso's list of voyages by Spanish mail ships since the 1802 incorporation of the *Correos Marítimos* to the Spanish Navy does *not* include the *Mercedes* or any of the sister naval frigates in its 1804 squadron. Unibaso's relevant list is attached as Annex 4, at 188-91. It is noteworthy that the *Batidor*, which Captain Moore said he sighted, identified, and allowed to pass before engaging the Spanish squadron, is correctly identified as a mail vessel in Unibaso's list. (Annex 4, at 188-90.)

8. Given the lack of evidence supporting their contention that the *Mercedes* was a mails vessel in a "commercial" mission, Odyssey, Dr. Carlisle, and Dr. Flayhart can only infer that this is the case. They refer to a number of select factors that purportedly support their contention, including, *inter alia*, that the *Correos Marítimos* was incorporated into the Spanish Navy in 1802; that at least one officer on the *Mercedes* during its last voyage used to be part of the *Correos Marítimos*; that the last mission of the *Mercedes* was one to transport civilian passengers, funds and goods (some of which belonged to the government, but most of which belonged to "merchants"); that the *Mercedes* had "light armaments" and was "extremely undermanned" when it sank; and that the *Mercedes* sailed in a time of peace and was easily defeated by the British.

9. Before addressing further the misimpressions of Odyssey and its declarants concerning the *Mercedes* and the *Correos Marítimos*, it might be helpful to outline some relevant historical facts about the *Correos Marítimos*. The *Correos Marítimos* was the official entity of the Government of Spain dedicated to handling and transporting mail. This governmental

function was of critical importance at a time when transatlantic communications were slow and hazardous, even though the effective flow of such communications was fundamental to maintaining Spanish governance of its American and other overseas territories. Accordingly, the Government assigned a fleet of small, fast, and lightly armed vessels, such as brigantines and corvettes, for *Correos Marítimos* service. These government vessels embarked on regularly scheduled trips to Spain's overseas Viceroyalties, typically one vessel at a time from their home base of La Coruña, Spain, to follow set routes to Spanish ports in the Americas. In short, mails-ships were governmental vessels in the official service of the Spanish Government and its citizens; not "commercial" vessels, as Dr. Flayhart repeatedly asserts in his report.

10. On April 6, 1802, the Spanish *Generalísimo* — commander in chief of sea and land forces ("*Generalísimo de todas las armas de mar y tierra*") —, Manuel Godoy (the Prince of Peace), ordered that the *Correos Marítimos* be incorporated to the Spanish Navy but remain under the control of the Ministry of State, which could request that certain naval vessels be added to the mails-service fleet, provided this request was made one year in advance. In practice, however, the mails fleet continued to consist principally of brigantines and corvettes setting sail in regular intervals and specified routes. In addition, Godoy's 1802 order resulted in the incorporation of former officers and sailors of the *Correos Marítimos* to the Spanish Navy, where it was hoped they would become more adept at seafaring by working alongside seasoned naval officers and sailors. (E.g., Carlisle Annex 18 (containing an English translation of Godoy's 1802 order, the Spanish original and accurate translation of which are attached to this declaration as Annex 5); Francisco Garay Unibaso, *I Correos Marítimos españoles 175-78* (1987) (attached as Annex 4); Antonia Heredia Herrera, *Los fondos documentales de los 'Correos Marítimos': Una sección del Archivo General de Indias* [*The Documentary Collection*

of ‘*Correos Marítimos*’: A Section of the General Archive of the Indies], 5o Coloquio de Historia Canario-Americana, vol. IV (1982) (attached with translations of excerpts in [Annex 6](#).)

11. Regarding the factors upon which Drs. Carlisle and Flayhart rely to infer that the *Mercedes* became a mails-vessel after Godoy’s 1802 order, it is noteworthy that neither Dr. Carlisle nor Dr. Flayhart provides documentation establishing that the Spanish Ministry of State requested the Navy for the *Mercedes* to serve as a mails-ship, even though Article 2 of Godoy’s 1802 order requires such a request for any conventional Navy ship to be assigned to this function. ([Annex 5](#); see Carlisle ¶ 13, at 16-17; Flayart at 3-4.) My research has identified no such request as to the *Mercedes*, which — as has been conceded — served as a frigate of the Spanish Navy, not as a *Correos Marítimos* ship, before 1802. In fact, the 1802 sailing orders of the *Mercedes* for its last mission did *not* come from the Ministry of State or — in Dr. Carlisle’s words — “the civilian government” (Carlisle ¶ 13), but rather from the Spanish military (specifically, from the *Generalísimo* and from the Minister of the Navy, as noted above).⁶ (De Leste ¶¶ 15-16; *id.* Annexes 11-12.)

12. Other factors highlighted by Drs. Carlisle and Flayhart as supporting their conclusion do not support their conclusion. For example, they rely on the fact that Ensign [“*Alférez de Fragata*”] Luis Abello was assigned to the *Mercedes* for its last mission as evidence that the *Mercedes* was on assignment as a mails-ship. (Carlisle ¶ 13, at 17-18; Flayhart at 6-7.) However, this fact and the documentation submitted in relation to it readily show the opposite: that the *Mercedes* was *not* a mails-ship. To begin with, Dr. Carlisle correctly identifies Ensign

⁶ The Official General Registry of the Navy of 1802 confirms that Manuel Godoy (the Prince of Peace) was the commander in chief of the Spanish Navy in 1802. A copy of this registry is attached as [Annex 7](#).

Abello as “a former *Correos Marítimos* [sic] officer.” (Carlisle ¶ 13, at 18 (emphasis of “former” added).) The 1802 order incorporated the *Correos Marítimos* to the Spanish Navy, not the other way around. As a result of this order, former lieutenant Abello of the *Correos Marítimos* became Ensign Abello of the Spanish Navy and could serve alongside seasoned naval officers of higher rank, such as Captain Goycoa and the other “officers of war” (“*oficiales de guerra*”) who served above Ensign Abello on the *Mercedes*. (De Leste Annex 15.) As all but one of his fellow officers on the *Mercedes*, Ensign Abello died in the Battle of Cape Saint Mary. (See the last page in the translation of Abello’s file in Annex 8, containing the order granting a life pension to Ensign Abello’s widow.)

13. What is indicated by the fact that Ensign Abello was no longer a *Correos Marítimos* officer when he was commissioned to serve on the *Mercedes* is explicitly confirmed by the exchange between Ensign Abello and his superiors, cited by Dr. Carlisle. The original documents of this exchange (omitted from Dr. Carlisle’s submission) and an accurate translation of them are attached to this declaration as Annex 8. The exchange begins with the request made in February 1803 by “Ensign Abello of the Royal Navy and former Lieutenant of *Correos Marítimos*” to receive the same payment as his naval colleagues of same rank, given the special character of the expedition he was about to embark upon, which he specifically contrasts with the character of *Correos Marítimos* expeditions.⁷ (Annex 8.) Ensign Abello’s request was sent to the Navy’s commander and Captain General of El Ferrol, Félix de Tejada, who agreed with

⁷ Godoy’s order of April 6, 1802 provides in Article 6 that the individuals being incorporated from *Correos Marítimos* to the Navy would “maintain[] their salaries if the[se salaries] were higher than those of the rank they are to obtain.” (Annex 5.)

Abello, explicitly distinguishing the mission of the *Mercedes* from that of mails-ships.⁸ Captain General Tejada forwarded the request to the Minister of the Navy — Domingo de Grandallana — recommending its approval, and the Minister of the Navy concurred. (*Id.*) This exchange among naval officers who specifically set the mission of the *Mercedes* apart from the mission of mails-ships provides further proof that the *Mercedes* was a conventional frigate of war in the regular service of the Spanish Navy in 1802-1804.

14. Drs. Carlisle and Flayhart also emphasize the fact that the *Mercedes* and its sister frigates were tasked with transporting funds and valuables, a majority of which — they insist — were registered on account of “*particulares*,” a term they mistakenly translate as “merchants.”⁹ (Carlisle ¶¶ 6, 7, 10; Flayhart 4, 7.) As is abundantly documented, however, the transportation of specie (“*caudales*”) (including specie of “*particulares*”) and strategically important goods from Spain’s vast overseas territories to the Spanish Peninsula was part of the functions of frigates of war of the Spanish Navy at the time of the *Mercedes* (even before 1802). (*E.g.*, De Leste ¶¶ 11, 16; *id.* Annexes 6, 10.) Indeed, warships of the British and U.S. Navies also transported funds of private individuals at about the same time. (Delgado ¶ 16.) Drs. Carlisle and Flayhart ignore these facts in their analysis.

⁸ Tejada notes in his letter that “the nature of [the *Mercedes*’s] voyage [is] different from others in which the Maritime Mails are used” and highlights the clearly “different consideration” given to the upcoming voyage of the *Mercedes* vis-à-vis those of *Correos Marítimos*. (Annex 8.) Since the *Mercedes* was not part of the *Correos Marítimos* fleet when the Godoy order was issued in April 1802 and did not become a mails-ship through the requisite request of the Ministry of State, Tejada was clearly distinguishing the *Mercedes* from mails-ships to justify paying Ensign Abello as a regular naval officer serving on a regular naval mission.

⁹ The term “*particulares*” simply means “individuals” or “particulars”; not “merchants,” which translates as “*comerciantes*” or “*mercaderes*.”

15. Regarding the last mission of the *Mercedes* specifically, the transport of specie and other valuables was not only authorized, it was directed by instructions issued at the highest levels of authority within the Spanish Navy. (De Leste Annexes 11-12; *see id.* Annex 15 (June 1804 letter from Squadron Leader Ugarte in Montevideo to the Minister of the Navy referring to a Royal resolution, and notifying the Minister of the specie and goods on board the *Mercedes* and its sister frigates).) This fact contradicts Dr. Flayhart’s assertion that the Spanish Navy prohibited the transport of specie and goods on board its warships; an assertion that in any event is not supported by the naval regulations upon which Dr. Flayhart relies. (Flayhart at 4, 6; Annex 5 (attaching select articles of the Naval Ordinance of 1793).) These regulations (a more complete copy and accurate translation of which are attached as Annex 9) prohibited naval personnel from using Navy ships for private gain (Article 74) and recognized that naval ships could carry specie (“*caudales*”) and other goods in accordance with specific naval orders (*e.g.*, Articles 32, 38).¹⁰

16. Drs. Flayhart and Carlisle also suggest that the *Mercedes* was a “commercial” mails-ship when it sank because some private citizens were on board as passengers. (Flayhart 4-5, 8-9; Carlisle ¶¶ 4, 6, 12.). Dr. Flayhart goes so far as to suggest that the transport of passengers was prohibited by naval regulations. (Flayhart at 4, 8-9.) Once again, the naval

¹⁰ Other analytical errors about the cargo of the *Mercedes* in the declarations of Drs. Carlisle and Flayhart include, for example, the incorrect assertion that the funds of “*particulares*” on board the *Mercedes* were funds of “merchants” (*e.g.*, Carlisle ¶ 10) (for instance, over 140,000 *pesos* of “*particulares*” on the *Mercedes* were the payments and savings of the naval crew on board (the “*caja de soldadas*”) (De Leste Annexes 15, 30), and the suggestion that funds “on account of His Majesty” (“*de cuenta de Su Majestad*”) included private property of the King (Carlisle ¶ 4, at 3; *id.* ¶ 6) (under the monarchical regime of Spain at the time, the property of the State was considered to be the property of the King, and references to property “on account of His Majesty” were construed as referring to property of the Spanish Government).

regulations upon which Dr. Flayhart relies do not support his contention, as they prohibit only the *unauthorized* transport of passengers in naval vessels and nothing he submits shows that the passengers on board the *Mercedes* were unauthorized. (See *id.* Annex 5, art. 64 (attached to this declaration in Annex 9.) Indeed, historical records indicate that the passengers who were on the *Mercedes* when it sank were authorized by the Viceroy of Buenos Aires or by the Governor of Montevideo and Squadron Leader José de Bustamante. (See Annex 9, art. 64 (allowing “Viceroys and Governors” to permit individual passengers on board naval vessels).)

17. At the time of the *Mercedes* it was common for frigates of war to provide military transport to high-ranking government and naval officials, as well as their families. (E.g., Annex 10 contains official registers of the *Mercedes* showing that it transported this type of passengers before 1802-1804.) Historical records show that the passengers on board the *Mercedes* during its last voyage came on board in the summer of 1804 at Montevideo.¹¹ The only named individuals specifically known to have boarded the *Mercedes* as passengers consisted of the family and servants of a naval captain and high-ranking government official, Diego de Alvear y Ponce de León, who — upon the illness and death of Squadron Leader Tomás de Ugarte — was named by Governor and Squadron Leader Bustamante as the second in command of the Spanish squadron to which the *Mercedes* belonged. (De Leste ¶ 19; *id.* Annex 16, at 104-05; *but see* Flayhart at 8 (suggesting that Captain Alvear was a mere passenger).) As noted by a 19th-Century biography of Captain Alvear, he and his family embarked on the *Mercedes* after having “received the order for his return” to peninsular Spain, but Alvear “had to transfer to the *Medea*” after Bustamante

¹¹ The official registry of the *Mercedes* upon entry at Montevideo on June 5, 1804 does not mention any passengers being transported from El Callao. (De Leste Annex 15.) This omission contrasts with the official registers prepared by naval captains in instances when the *Mercedes* did carry passengers. (Annex 10.)

“asked Alvear, in accordance with the rules of the Naval Ordinance, to substitute for [Ugarte] in the General Staff and second hand of the division” (De Leste Annex 16, at 104-05 (emphasis added).) The historical documentary record therefore indicates that the *Mercedes* was a naval frigate of war in which the family and servants of a naval officer (and reportedly of other naval or government officials) were permitted to board in accordance with naval regulations. The historical record simply does not support Drs. Carlisle’s and Flayhart’s contention that the *Mercedes* was a commercial-passenger transport vessel.

18. A final example that further illustrates the error in the conclusions of Drs. Carlisle and Flayhart relates to their discussion of the crew and armaments of the *Mercedes*, as well as its squadron’s defeat in the Battle of Cape Saint Mary on October 5, 1804. Dr. Carlisle asserts that the *Mercedes* was “severely” and “extremely” undermanned when it sank, a purported fact that indicates its “commercial mission” as a mails-ship. (Carlisle ¶ 6, at 5; *id.* ¶ 14, at 21; *see also* Flayhart at 16-17.) What Dr. Carlisle ignores is that the official crew register of the *Mercedes* immediately before its departure from Montevideo to Cádiz documents a complement of 8 “officers of war” (“*oficiales de guerra*”) (including Captain Goycoa) plus over 319 navymen, including 63 Marines and 69 gunners of various ranks. (De Leste ¶ 21; *id.* Annex 15.) This figure is far from a “severe” or “extreme” shortage of personnel, even under the figure that Dr. Carlisle claims is the typical contingent of frigates of war. (Carlisle ¶ 6, at 5 (affirming that the “full complement” of “this vessel as a warship was 348”).) By contrast, according to Dr. Carlisle’s own sources, the typical crew of *Correos Marítimos* vessels ran from “38 to 118 men.”

(Heredia Herrera, *Los fondos documentales de los ‘Correos Marítimos’*, Annex 6, at 870.)¹²

Hence, even if the crew of the *Mercedes* totaled 280 as Carlisle asserts, the frigate would not have been “severely undermanned” so as to indicate its status as a “*fragata-correo*” (“*mail-frigate*”). In addition, having a marine detachment on board was customary for warships of the Spanish Navy in times of war or threatened war, and neither *Correos Marítimos* vessels nor merchant ships carried Marines.

19. Regarding the armaments on the *Mercedes* and the defeat of its squadron, Dr. Carlisle states that the “light” weaponry of the *Mercedes* indicates it was not a warship but rather a mails-ship. (Carlisle ¶ 12, at 15.) This conclusion ignores the fact that the *Mercedes* was armed with precisely the weaponry required of frigates of war of the Spanish Navy at the time.¹³ (De Leste ¶ 22; *see id.* Annex 15.) Similarly, Dr. Carlisle’s discussion of the British defeat of the squadron is misleading. He highlights that a “somewhat equal” military engagement between four Spanish frigates and four British frigates “might have been expected,” but that the Spanish frigates were defeated rapidly because of “the conversion of gundecks to passenger and cargo space,” the “obstruction of passengers and cargo,” and the fact that the *Mercedes* was “extremely

¹² Perhaps Dr. Carlisle overlooked this fact because he was provided an incomplete translation of Heredia Herrera’s article, which he attaches to his declaration without the Spanish original. (Carlisle Annex E-13.)

¹³ On this subject, Dr. Carlisle misrepresents as fact what is clearly speculation in another source. (*See* Carlisle ¶ 12, at 16.) Quoting from Agustín Rodríguez González’s book, Dr. Carlisle asserts that “the Spanish *had* ‘removed the principal pieces of its battery in all or in part to make space for cargo and passengers.’” (*Id.* (emphasis added).) But Rodríguez González makes clear that his statement is not factual: “data about the artillery of the Spanish frigates are *theoretical* and correspond to their size, since *we have not been able to find the official ship registers* [“*estados de Fuerza y vida*”] of this voyage.” (*Id.* Annex E-16 (translation from the untranslated Spanish original) (emphasis added).) Admiral de Leste submitted the official register of the *Mercedes* upon its entry in Montevideo from El Callao (with the bulk of its cargo) in June 1804 and concluded that the *Mercedes* had the artillery it was supposed to have during the last part of its voyage. (De Leste Annex 15; *id.* ¶ 22.)

undermanned.” (*Id.* ¶ 14.) First of all, as discussed above, the *Mercedes* was not “extremely undermanned” and was armed with precisely the artillery required by the regulations of the Spanish Navy. Furthermore, the four British ships were *not* “somewhat equal” to the Spanish ships: the British ships were larger and readied with superior artillery to guarantee their victory.¹⁴ As Federico Gravina, Spain’s Minister Plenipotentiary in Paris, told the Prince of Peace in November 1804, the British ships were “frigates of double [the] strength than ours,” with two of them being “cropped ships of the line [*navíos rasos*] that had been of 74 [cannons] before, thus conserving their battery of 32, and as a consequence their size and broad side, hence the battle of our frigates is glorious by those who have sustained it” (Letter of Federico Gravina to Prince of Peace, November 2, 1804, Royal Academy of History (Pérez de Guzmán Collection, 11/8304, fol. 2) (attached as Annex 11).)

II. Other Observations

20. Having discussed examples of the substantive errors in the declarations of Drs. Carlisle and Flayhart, I would like to conclude by pointing out technical problems with these reports and by addressing Dr. Carlisle’s comments about my declaration of September 12, 2008.

21. Several misrepresentations of cited sources in the reports of Drs. Carlisle and Flayhart (*e.g.*, n.13 *supra*) may have been due to mistranslations and incomplete documentation (*e.g.*, n.12 *supra*).¹⁵ For example, in Dr. Carlisle’s declaration, an excerpt of the Spanish

¹⁴ As I state in my book, “[t]he frigates selected were the *Indefatigable*, the *Lively*, the *Amphion*, and the *Medusa*. Only the first one, or any two of the others, had the same firepower than all the Spanish frigates combined, counting with, in addition to the cannons of regulation, modern carronades of wide caliber and dreadful effects against personnel and with the advantage of having spark holes with pans to fire them.” (Annex 13, at 56.)

¹⁵ It is unclear whether Drs. Carlisle and Flayhart are fluent in Spanish or can read and understand Spanish texts. Spanish is my native language, and I am competent in English.

declaration of war of December 1804 is quoted as saying that the British attack was made “without consideration for the *financical* cargo coming to help a faithful nation in its hour of need.” (Carlisle ¶ 11, at 14 (emphasis added).) The correct translation reads: “without even respecting the cargo of *grain* that comes from everywhere to help a loyal nation in the most disastrous year” [“*sin respetar ni aun los cargamentos de granos que vienen de todas partes a socorrer á una nacion [sic] fiel en el año mas [sic] calamitoso*”]. (De Leste Annex 20, at 1117 (emphasis added).) Another obvious translation error is Dr. Carlisle’s assertion that documents in Spanish archives “indicate that the [*Mercedes*] was not only destroyed, but that it ‘vanished.’” (Carlisle ¶ 15, at 21.) The sources cited for this proposition, however, do not say that the *Mercedes* “vanished”; they say simply that the *Mercedes* “blew up” [“*voló*”] or was “blown” [“*volada*”]. The Spanish originals and correct translations of these sources are attached as Annex 12. The substantial errors in Drs. Carlisle’s and Flayhart’s opinions might be attributable to these and other mistranslations, as well as the failure to consider the fuller historical record.

22. In his declaration, Dr. Carlisle suggests that I distort or color historical facts in my declaration, which he alleges has “several discrepancies” from my published work. I have attached the relevant chapter of my recent book on the Battle of Trafalgar — which Dr. Carlisle cited in several occasions but failed to attach in full and with a translation — to dispel this surprising suggestion. (HUGO O’DONNELL, *LA CAMPAÑA DE TRAFALGAR: TRES NACIONES EN PUGNA POR EL DOMINIO DEL MAR* (1805) [THE TRAFALGAR CAMPAIGN: THREE NATIONS IN CONFLICT FOR THE DOMINION OF THE SEA (1805)] 48-63 (2005) (attached as Annex 13).)

23. Of the “several discrepancies” that Dr. Carlisle claims to perceive, he focuses on two. First, he says that I suggest in my declaration that Spain and Britain were at war during the last voyage of the *Mercedes*. (Carlisle ¶¶ 7.) I do nothing of the sort: as Dr. Carlisle himself

notes (Carlisle ¶ 7, at 5-6 (speaking of a “close reading” of my report)), my declaration clearly states that the Spanish-British war started after the *Mercedes* sank in the Battle of Cape Saint Mary, with Spain’s declaration of war against Britain having been issued in December 1804. (O’Donnell ¶ 33.) It is also clear, however, that, before issuing this declaration of war, Spain was under the real possibility of entering the French-British war that re-started in 1803 (O’Donnell ¶¶ 19-24, 27; O’DONNELL, LA CAMPAÑA DE TRAFALGAR, Annex 13, at 51-61), a fact supported by the discussions of Spain’s precarious neutrality in the declarations of Drs. Carlisle and Flayhart (Carlisle ¶ 4; Flayhart at 9-12).

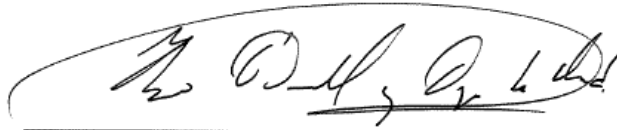
24. Second, Dr. Carlisle says that I “make clear [in my book] that the *Mercedes* was entirely unprepared for war because of her cargo-carrying function.” (Carlisle ¶ 7, at 6.) This is a gross misrepresentation of what I say in my book, where I simply discuss the significant disadvantages of the Spanish vis-à-vis the British squadron, including the fact — overlooked by Dr. Carlisle — that the British had specific intelligence of the Spanish mission and dispatched a stronger force to guarantee victory. (O’DONNELL, LA CAMPAÑA DE TRAFALGAR, Annex 13, at 56-58.) This discussion in no way implies that the Spanish squadron was “entirely unprepared for war” (*id.* at 57 (quoted in Carlisle at 6, n.7)), let alone that the Spanish squadron was on a “commercial” mails mission.

III. Conclusion

25. The status of the *Mercedes* as a warship of the Spanish Navy is comprehensively and definitely documented in historical records. The novel conclusion that the *Mercedes* was a “commercial” mails-ship when it sank is patently incorrect.

In testimony hereof, for all necessary purposes and under penalty of perjury, I declare that the above declaration is true and correct.

Executed at Madrid this 23rd day of January 2009.

A handwritten signature in black ink, enclosed within a large, hand-drawn oval. The signature is cursive and appears to read "Hugo O'Donnell y Duque de Estrada".

Hugo O'Donnell y Duque de Estrada

**ANNEX 1
TO EXHIBIT B
(O'Donnell Reply Declaration)**

CERTIFICATE OF ACCURACY

I, José E. Arvelo, hereby certify that I am fluent in Spanish and English and that the following is, to the best of my knowledge and belief, a true and accurate translation of the accompanying document "Spanish dictionary definition of 'escuadra'" from Spanish to English.

A handwritten signature in black ink, reading "José E. Arvelo", written over a horizontal line.

José E. Arvelo

squadron

[. . .]

1. f. Numerous combination of warships [*'buques de guerra'*] joined for certain tactical operations.

[. . .]

escuadra.

(De *escuadrar*).

1. f. Conjunto numeroso de buques de guerra reunido para ciertas operaciones tácticas.
2. f. Corto número de soldados a las órdenes de un cabo. Es la unidad menor en las fuerzas militares.
3. f. Plaza o puesto de cabo de este número de soldados.
4. f. Cuadrilla que se forma de algún concurso de gente.
5. f. Plantilla de madera, plástico u otro material, en forma de triángulo rectángulo isósceles, que se utiliza en delineación.
6. f. Pieza de hierro u otro metal, con dos ramas en ángulo recto, con que se aseguran las ensambladuras de las maderas.
7. f. Escuadría de la pieza de madera que ha de ser labrada.

~ de agrimensor.

1. f. Instrumento de topografía, origen del cartabón, que constaba de cuatro alidadas, con que se podían señalar en el terreno alineaciones en ángulos rectos y semirectos.

~ falsa.

1. f. Instrumento que se compone de dos reglas movibles alrededor de un eje y con el cual se trazan ángulos de diferentes aberturas.

~ sutil.

1. f. Conjunto de buques de guerra, generalmente pequeños, destinados a la vigilancia, policía y defensa de puertos y costas.

falsa ~.

1. f. escuadra falsa.

a ~.

1. loc. adv. En forma de **escuadra** o en ángulo recto. *Cortar una piedra,*

una plancha, a escuadra.

a ~ viva.

1. loc. adv. Dicho de labrar las vigas y maderos: Con sierra o hacha, dejándoles ángulos rectos y aristas bien rectas.

fuera de ~.

1. loc. adv. En ángulo oblicuo.

□ **V.**

[cabo de escuadra](#)

[jefe de escuadra](#)

[mozo de escuadra](#)

[Mozos de Escuadra](#)

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**ANNEX 2
TO EXHIBIT B
(O'Donnell Reply Declaration)**

CERTIFICATE OF ACCURACY

I, José E. Arvelo, hereby certify that I am fluent in Spanish and English and that the following is, to the best of my knowledge and belief, a true and accurate translation of the accompanying document "Letter of Nov. 20, 1804" from Spanish to English.



José E. Arvelo

Tuesday, 20 of November

Dear Sir: I was counting on having gone to the house of y[our]h[onor] [*v.m.*” or *vuestra merced*”] this evening, but it has not been possible due to the great rain and for not being able to get a coach. As I certainly leave for Portsmouth tomorrow, I hope that y[our]h[onor,] continuing to attend with zeal as so far [has been done] to all these Misters [“Spaniards” crossed over] of the detained frigates of the King, you will procure for everyone the relief and assistance they are due given their situation and merit. In addition y[our]h[onor] shall endeavor [“procure” crossed over] to request without delay that the coined silver of the Mr. General which he has in his cabin of the frigate, and that which he brings from Mr. Ugarte, be delivered to him, exercising for this in Customs, or where appropriate, every diligence that [“is convenient” crossed over] may be necessary[,] giving notice of everything to the Mr. General and telling me of the results, so that, if it were necessary that some steps be taken in London for it by the Mr. Minister of His Majesty, [the steps] could be taken with full knowledge. But if it is necessary that it be before my return [*regreso*”] [*retorno*” crossed over] to that capital, y[our]e[xcellency] shall go or write to D. Fermin de Tastet for this on my behalf, who shall do so with all efficacy.

I also recommend the Lieutenant, only surviving officer who escaped so injured from the frigate *Mercedes*, to the care and attention of y[our]h[onor], since he has so requested to me, although I have seen that y[our]h[onor] has procured for him all the relief and comforts that he can have in his current state.

Finally I hope that you will admit [“y[our]h[onor] will attend” crossed over] captured Spanish merchant vessels and will procure that each one of the captains make a declaration [“equal” crossed over] in conformity with the form that I [“should” crossed over] delivered to y[our]h[onor] yesterday [“at your house” crossed over], which shall be copied, and y[our]h[onor] will send it to me to London, observing the same method with all those that go captured. And so that time is not wasted in my claim, y[our]h[onor] shall notify D. Fermin de Tastet [“of London” crossed over] of all their details and of those that arrive subsequently, since I authorize y[our]h[onor] for everything.

I value the attention that y[our]h[onor] has granted me. And God save y[our]h[onor] many years. From [“Plymouth” crossed over] Stone House, at 20 of November of 1804.

Mr. D. Robert Jayet

Martes, 20 de noviembre

Muy Sr. mío: Contaba con haber ido a su casa de v.m. (vuestra merced) esta noche, pero no ha podido ser por causa de la gran lluvia y por no haber podido tener un coche.

Como yo parto mañana sin falta a Portsmouth, espero que v.m. siguiendo en atender con el zelo que hasta aquí a todos estos Sres. (tachado: españoles) de las fragatas del Rey detenidas, les procurará a todos los alivios y auxilios a que su situación y mérito los hace acreedores. Por de contado se esmerará v.m. en (tachado: procurar) solicitar sin pérdida que al Sr. General se le entregue su plata labrada que tiene en el camarote de la fragata, y la que trae del Sr. Ugarte, practicando para ello en la Aduana, o donde convenga, todas las diligencias que (tachado: convengan) sean menester dando parte de todo al Sr. General y avisándome de las resultas, para que, si es menester que en Londres se den algunos pasos sobre ello por el Sr. Ministro de Su Majestad o por mí, pueda hacerse con todo conocimiento. Pero si es preciso que sea antes de mi regreso (tachado: retorno) a aquella capital, se dirigirá v.m. o escribirá para ello de parte mía a D. Fermín de Tastet, quien lo hará con toda eficacia.

También recomiendo al cuidado y atención de v.m. al teniente de navío, único oficial que escapó tan maltratado de la fragata Mercedes, pues me lo ha pedido así, aunque he visto que v.m. le ha procurado hasta ahora todos los alivios y comodidad que puede tener en su actual estado.

Por último, espero que admitirá (tachado: v.m. atenderá) a los barcos merchantes españoles apresados y que procurará que cada uno de los capitanes haga una declaración (tachado: igual) a tenor del formulario que ayer (tachado: debe) entregué a v.m. (tachado: en su casa), que deberá ser duplicada, y me la enviará v.m. a Londres, observando con todos los que vayan apresados el mismo método. Y para que no se pierda tiempo en mi reclamación, avisará v.m. a D. Fermín de Tastet (tachado: de Londres) de todas las particularidades de éstos y de quantos puedan llegar en lo sucesivo, pues para todo le autorizo a v.m.

Estimo la atención que v.m. ha usado conmigo. Y Dios guarde a v.m. muchos años. De (tachado: Plymouth) Stone House, a 20 de noviembre de 1804.

Sr. D. Robert Jayet

copy 2: 1



AGS
F. 8882

Quartel 20. de noviembre

~~Al Sr. D. José~~ ~~Comandante~~
Cuenta con haber ido a un capiteo en esta noche, pero no ha podido ser por causa de la gran lluvia, y por no haber podido tener un coche.

Como yo parto mañana sin falta a Portsmouth, espero que me liquiendo en atender con el todo que hasta aquí á todos estos días. ^{de la marina del Rey}
Espero de usted que me hará á todos los alivios y auxilios á que la situación y mérito lo hace acreedores. Por recomendarle se enmerará un. en ^{esta causa} ~~el~~ que al Sr. General se le entregue su plata labrada que tiene en el camarote de la fragata, y la que trae del Sr. Viziente ^{para el Sr. Viziente} ~~para el Sr. Viziente~~ para ello en la ^{1.ª de los Comandantes} ~~Admirante~~ ^{de la Marina} ~~Admirante~~ todas las diligencias que ^{sean necesarias} ~~sean necesarias~~ y así mismo se le ^{de las rentas} ~~de las rentas~~ para que si es menester que en

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+ por Londres seden algunos puntos ^{solucella} pueden
elir. hacerse con todo conocimiento. Esos
cuinno del. au si es preciso que sea antes ca. un
o p. un ^{chero} ~~rele~~ a aquella Capital se
dirijirá un d. escribirá para ello
del parte mia a d. fernin detalles
quien lo hará con toda eficacia.

Tambien recomiendo alabado
y atencion a un. al teniente de
navio ^{unico oficial} que ^{en} ~~esta~~ ^{cap.} ~~esta~~ maltravado
de la fragata ~~encabez~~, pues me
vo ha perdido así, aunque ^{he} ~~esto~~
que un. le ha procurado hasta
ahora todos los alivios y comodidad
que puede tener en su actual estado.

Por último espero que ^{ambos} ~~un~~
~~atenciones~~ a los bancos mercantes
Españoles apremiados y que procurasen
que cada uno de los capitanes
haga una declaracion igual
del tenor del formulario que
ayen ^{un} ~~de~~ a un. ~~en~~ ~~su~~ ~~caro~~ que
deben ser duplicadas y una
enviada un. a Londres, observando
con todos los que van a ser apremiados
el mismo método. Y para que no se

pierda tiempo en la redencion
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de ~~los~~ ~~en~~ ~~toda~~ ~~las~~ ~~particulari-~~
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todo le autorizo a un.

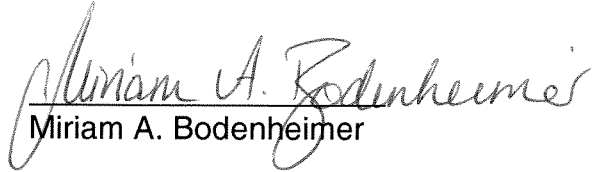
Quiero la atencion que
un. ha usado con unigo, y Dios
que. a un. ~~nd.~~ ~~de~~ ~~Robinson~~ ^{Robinson House}
a 20. de nov. de 1776.

N. de Robinson Jones

**ANNEX 3
TO EXHIBIT B
(O'Donnell Reply Declaration)**

CERTIFICATE OF ACCURACY

I, Miriam A. Bodenheimer, hereby certify that I am fluent in Spanish and English and that the following is, to the best of my knowledge and belief, a true and accurate translation of the accompanying document "Letter from Anduaga to Cevallos" from Spanish to English.


Miriam A. Bodenheimer

[Cover Page]

London October 21, 1804

The Envoy Extraordinaire and Minister Plenipotentiary of H[is]
]M[ajesty].

N. 145

Alerts through means of an extraordinary [letter]
dispatched by that Ministry of what happened regarding
the battle of October 5 close to the Cape of Saint Mary
between 4 Spanish frigates of war and 4 English ones, and
its results until this day: conferences with that Minister and
the state of the matter.

[Page 1]

Most Excellent Sir

N. 145

Dear Sir. In the morning of the 18th I learned that at two of that morning Captain Hammond had arrived from Portsmouth to the Admiralty with news of a battle that occurred on the 5th close to the cape of Saint Mary between the frigates of H[is]M[ajesty] *Fama*, *Clara*, *Medea*, and *Mercedes*, and the English *Indefatigable*, *Medusa*, *Lively*, and *Amphion*, as a result of which the *Mercedes* blew up, and the other three Spanish [frigates] surrendered to the English. The *Fama* entered Portsmouth on the 17th escorted by the *Lively*, and the other two should equally arrive to the same port.

[. . .]

[Pages 2-3]

[. . .]

As a result of this first step I presented myself on the next day, the 19th, at the State Secretariat to see if Mylord were there. Indeed he received me, and we had a long conversation. I started by expressing to Mylord the surprise that it had caused me, and should cause in general, the fact that the battle between the 4 Spanish frigates and the 4 English ones should occur in full peace, informing him of the gravity of the attack upon issuing orders that necessarily would produce and had produced such a nefarious effect, and that could give rise to even more disastrous consequences. He responded to me that he could not deny that the Ministry had given orders to detain the Spanish ships that came with money to Spain, and that this had been done as a matter of precaution given the rearming that was being carried out in the ports of Spain. I objected to Mylord, like I did with Mr. Hammond, that the royal orders carried in themselves a hostile character because there is no commander of any navy who would let himself be detained with a warship without giving all possible resistance to prevent it [. . .].

[Pages 10-11 (second to last and last pages)]

[. . .]

The frigates will remain in the class of detained, treating their officers with decorum, setting them free; and the crew will be considered in the same situation, respectively, the crews: proceeding in this in the same manner previously executed with other warships in the same circumstances.

In the attached letter I inform Your Excellency of the steps that have been taken to relieve the officers and crew of the frigate *Fama* that arrived in Portsmouth on the 17th. This morning we have also found out that on the 18th, the *Clara* and the *Medea* entered Plymouth, and that they were in quarantine according to what our Vice-Consul has written to the General Consul

don Miguel de Larrea, who will probably pass through that port to inform himself of the state of the two frigates, and what should be done to relieve these officers and crews, the Vice-Consul having agreed to taking care of their assistance.

This is what

has happened up until this moment at which point the mail leaves, and renewing to Your Excellency my respects [*illegible*]

Most Excellent D. Pedro Cevallos

Londres 21 de Octubre de 1804

El Sr. D. Rodrigo de Mendoza

N. 145

Atavia por medio de un extradi-
nario que despacha a aquel Ministro
todo lo ocurrido acerca del combate
del 5. de Octubre cerca del Cabo de
San Matias entre 4 fragatas de
la guerra Española y 4 Inglesas,
y sus resultas hasta aquel día,
conferencias con aquel Ministerio
y estado del asunto.

(8)

Como Señor



N. 145

Muy Señor mio. El día 18 por la mañana supe que a las 20 de ella habia llegado de Portsmouth al Almirantazgo el Capitan Hammond con la noticia de un combate ocurrido el día 5. cerca del cabo de Santa Maria entre las fragatas de S. M. La Fama, Clara, Medea, y Mercedes, y las Inglesas Indefatigable, Medusa, Livety, y Amphion, de cuyas resultas ^{se} voló la Mercedes, y se rindieron las otras tres españolas a los Ingleses. De ella la Fama entró en Portsmouth el 17 con ~~ella~~ ^{ella} decidida por la Livety, y las otras dos debian igualmente ~~llegar al Portsmouth~~ ^{llegar al mismo puerto.}

Aquella misma mañana ~~me~~ ^{me} fui a ver a Mylord Harrowby, pero no hallandole en la Secretaria, hablé con el Sub-Secretario Mr Hammond. Este me dijo que Mylord habia estado malo el día anterior y ~~que~~ ^{que} habia anunciado que si el 18 no estaba a las tres en la Ciudad, seria señal de que no venia aquel día, y se quedaria en el campo. Expresé a Mr Hammond ^{mi indignación} la sorpresa que me habia causado el vacar de las fragatas, y al mismo tiempo el deseo de saber la causa. Me respondió que habia sido la falta de ~~armamentos~~ ^{armamentos} los quales aun ~~no~~ ^{no} continuaban todavia segun avisos recientes que habia recibido el Ministerio, y que ~~no teniendo noticia del~~ ^{no teniendo noticia del} por via de ~~representacion~~ ^{representacion} habia mandado el Gobierno de tener las embarcaciones españolas que ~~se~~ ^{se} encontrasen con ~~los~~ ^{los} ~~ingleses~~ ^{ingleses} ~~en~~ ^{en} ~~el~~ ^{el} ~~combate~~ ^{combate}. Le repliqué en quanto a los armamentos, ~~que~~ ^{que} sabia porrrramente como ~~los~~ ^{los} ~~ingleses~~ ^{ingleses} ~~los~~ ^{los} ~~habia~~ ^{habia} ~~dicho~~ ^{dicho}

anteriormente, que los navios que se equipaban para llevar tropas a Bilbao habian vuelto a la Jaraena, y se habia mandado que las tropas ~~partiesen~~ ^{Vizcaya} por tierra a ~~Bilbao~~; y no podia yo creer que hubiese mas armamento; a que replico' no haberse despedido aun la gente y que podian los navios salir al mar muy en breve. En quanto a la conducta del ~~Comodoro~~ Gobierno ~~ingles~~ le dije que al dar las ordenes para detener los buques debia considerar que ningun oficial de marina se dexaria detener sin haver ~~resistencia~~; por confiante que la providencia en si misma llevaba el caracter de hostil: que por tanto decia yo saber qual era el concepto en que el Gobierno consideraba el procedimiento, pues si habia todavia algun medio de conciliacion, era menester que se explicase quanto antes ^a que yo pudiese informar sin dilacion a mi Consejo. Conserto Mr. Hammond que no podia decirme mas por su parte, y que el Mylord me responderia con mas expresion. Quando dije tambien a Mr. Hammond que mientras veia a Mylord iba a enviar alguna persona a Portsmouth para asistir a los oficiales y tripulacion de la fragata Tama, en lo qual Mr. Hammond me ensaño dificultad. Quedo Mr. Hammond en que informaria a Mylord de mi anhelo de verle quanto pronto; pero, ademas, a mi regreso a casa puse a Mylord el papel cuya copia incluyo pidiendole una audiencia.

En consecuencia de este primer paso me presente' el dia siguiente a la Secretaria de Estado por si hallaba a Mylord en ella. En efecto me recibio, y tuvimos una larga conversacion. Empese por manifestar a Mylord la estraniera que me habia causado, y debia causar generalmente el que en plena paz hubiese

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ocurrido el combate ~~entre~~ entre las ~~fragatas~~ **A** fragatas es-
pañolas y las **A** Inglesas, representandole la gravedad
del asensado en expedir ~~una~~ ^{debián necesariamente producir y} ordenes que habian pro-
ducido un efecto tan funesto, y que podia ocasionar
consecuencias aun mas funestas. Me respondió
que no podia negar que el Ministerio habia dado
las ordenes para detener las embarcaciones ~~que~~ ~~et~~
Españolas que viniesen con dinero a España, y que
esto lo habia hecho por via de precaucion en
asencion á los armamentos que se haian en lo
puerto de España. Ofreció a Mylord ~~que~~, como lo
hizo con Mr. Hanimond, que las tales ordenes lleva-
ban en si mismas el caracter de hostiles porque
no habia ^{Comandante} ~~oficial~~ de ninguna marina que se de-
biera detener con un buque de guerra sin ~~haber~~
hecho toda la resistencia posible ~~para~~ ^{para}
evitarlo: que este auto de hostilidad ~~era~~ ^{era} tanto ma-
yor ~~cuanto~~ ^{cuanto} los armamentos que se suponian
hacia la España, ~~no~~ ^{eran} ~~en~~ ^{el} sentido en q-
ue se representaba este Ministerio, pues no solo
no tenian el objeto de ofender á la Inglaterra
sino que ~~era~~ ^{ya} conocido de todo el mundo el verdadero
objeto, esto es, el de conducir tropas a Virreya desde
el mismo Puerto en donde no habia otros buques
en que se pudiesen conducir; objeto cuya necesidad
y urgencia, como tan notorias ^á ~~eran~~ ^{eran} ~~de~~ ^{de} Virreya,
debián poner al
Gobierno Español al abrigo de toda sospecha en
orden al destino de los ~~Barcos~~ ~~de~~ ~~los~~ ~~Puertos~~ ~~de~~ ~~esto~~
respondió Mylord que los navios que ademas
de esto se supo aqui poco despues, y comunicó ~~que~~
al mismo Mylord, que se habian mandado reti-

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Español había ocasionado luego el desgra-
 cado combate de las quatro fragatas de su na-
 vacion. No pude menos de recordar a Mylord
 lo que te acababa de decir acerca de la causa pro-
 videncia que había producido esta catástrofe;
 y así me acordaba que había visto
 en ^{la} ~~una~~ ~~gaceta~~ Times, ~~que se tenia~~ cierta que
 el Ministerio me había prevenido acerca de
 las 4 fragatas y del dinero que conducian, y que
 era regular que no habría yo cuidado de co-
 municar a la Coma. de Asis. debía decir a
 Mylord que jamás ~~me~~ ~~había~~ nombrado ni tal
 fragatas ni dinero, ~~pero~~ ~~como~~ ~~que~~ en realidad
 no era posible que se reputase como una
 violación de neutralidad el que se tubiesen ~~las~~
~~las~~ ~~fragatas~~ armadas ~~que~~ empleasen en la
 conducción de los caudales españoles. Respon-
 dió Mylord que así ^{era} que él ~~lo~~ ~~que~~ me debía
 de los ~~armamentos~~ no había ~~entendido~~ ~~hablar~~
 de las fragatas ~~del~~ ~~combate~~.

Viendo que Mylord no me hablaba de
 lo que pensaba el Ministerio hacer de nuevas fra-
 gatas, le pregunté bajo qué concepto ~~lo~~ ~~conside-~~
 raba; y me dijo que ^{consta} ~~de tenerlas~~ hasta ver si la
 España ~~le~~ ~~correspondia~~ ~~de~~ un nuevo satel-
 itario de las explicaciones ~~padidas~~ que se la habían
 pedido sobre armamentos, ^{como} ~~de~~ también sobre los
 subditos, y ~~de~~ ~~tenia~~ en una palabra sobre

mientras relaciones con Francia, y nuestra
conducta ^{futura} ~~subordinada~~, pues no había habido for-
ma de que nro Gobierno se explicase abiertamente
sobre esto, y mientras tanto evaba sumas tran-
do a la Francia sumas exorbitantes de dinero. Ne-
que efecto de Rose a Mylord ^{que} ~~era~~ una
suposición ^{equivocada} del Ministerio Ingles, pues ignorando
el mismo Ministerio qual era la suma de nuestros
subsidios no podia asegurar si había ó no ex-
ceso en ella: que por el contrario el Gobierno es-
pañol había declarado haber fijado ~~los~~ ^{los} sub-
dios ~~según~~ ^{con arreglo a} lo que ~~la España~~ ^{habían} ~~de~~
~~pagar~~ ~~los~~ socorros entropas y buques:
que además de ser era una declaración que debía
satisfacer a la Inglaterra, había hecho otras
varias, ~~para~~ ^{para} conveniencia de su sinceridad
y buena fe, como eran la de que nada consentía
nro tratado con Francia que fuese perjudicial a la
Inglaterra, que no consentía tampoco ~~los~~ puntos
de comercio, y otras semejantes, siendo consi-
guiente a ellas ~~la~~ ^{la} conducta en las prohibiciones
de ~~codicilos~~ ^{de} ordenes ~~las~~ ^{las} provisiones y terminaciones
que había expedido
sobre la observancia puntual de la neutralidad,
~~de~~ ^{sobre} prohibición de la venta de presas en
los puertos españoles, y de prestar el menor
auxilio de municiones ~~per~~ ^{per} ~~trechos~~ ^{trechos} y demás a los
beligerantes, &c. Como Mylord había oído de
tratado y de los subsidios que dábamos a la Francia

Finalmente dije a Mylord que,
pues se hallaban las cosas en un estado tan irri-
tico deaba yo que si el Ministerio Britanico
se persuadia que todavia podia haber un medio
de conciliacion, se explicase en terminos que pu-
diesen contribuir a ese fin. Le pedi al mismo
tiempo mediese esta explicacion por escrito, por
que aunque podia yaver por la disposicion del
Ministerio por lo que Mylord me decia, sentiria
equivocarme en el modo de tratarla a mi
Corte, y que para evitar toda equivocacion, me
parecia seria oportuno que pidiendo yo a My-
lord una nota ~~de~~ pidiendo la dicha explica-
cion, se fuese ~~concretamente~~ darla en res-
puesta, por ser necesario que mi Corte
supiese de un modo positivo el modo de pensar
de este Ministerio. Medíase Mylord que no
podia asegurarme entonces si me daria a mi
misma ~~la~~ explicacion, y me enviaria el
Ministerio ~~de~~ Madrid; pero que me lo diria
el primer dia que nos viésemos. Quedé pues
en quietud por la nota, y se la puse ~~en~~
misma noche el 19. Mylord la recibió el 20.
la mañana que fue ayer; y habiendo ~~me di-~~
tado esta mañana temprano para las ~~10~~ y media
de la tarde; me ha dicho que esta noche ~~me~~
enviaba un correo a Madrid explicando el
modo en que ^{aquí} considera el estado actual de
las cosas, y las disposiciones del Ministerio.

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y que para que yo me enterase de todo me
leeria lo que me iba en un despacho que tenia
expedida para Mr. Frere. Hicilo asi, y vi
que contenia la relacion de la conversacion que
habia tenido conmigo antes de ayer, la qual,
aunque varia, en algunos incidentes, de lo que
dixo escrito en esta carta, está bastante acor-
dado principal, habiendo el uno y el otro expla-
yado ~~en~~ ^{en} uno u otro ~~punto~~ ^{punto}. En el ^{à V.E.}
armamento cita Mylord la nota que prefiero,
el Ministro Mr. Frere el 18. de Febrero ultimo
para probar que ya desde entonces se habia
delarado el Ministerio de un modo muy ter-
minado sobre dicho punto, y dice que
viendo ahora que al armamento de Ferrol
se añadia la venta de caudales, y se aumen-
taban de esta manera los recursos de la Francia,
se habia determinado el Ministerio à las dos
providencias, de no permitir el que saliesen
de Ferrol ni entrasen buques de guerra, y mandar
detener las embarcaciones españolas con cau-
dales: que los efectos de la primera de las pro-
videncias dependia de la España el comercio, si
queria, desde el momento que fuese la
orden que para ello se daba al Almirante
Colbrand; pero que en la otra habia sido pre-
ciso dexar correr la fuerza en la ejecución,
pues si como habian venido juras las fra-

gatas, hubiesen llegado separadas, podría haberse evitado el combate, rindiéndose de luego cada una á fuerzas muy superiores sin efusion de sangre. Por lo que toca al tesoro se pondrá en parage seguro hasta que se cierran las dos partes sobre los puntos pendientes. Las fragatas quedaran en la clase de desarmadas, ~~tratando~~ a los oficiales con decoro, dexandolos en libertad; y se considerara en la misma situacion, respectivamente, a las tripulaciones: procediendose en esto del mismo modo que se ha executado anteriormente con otros buques de guerra, en iguales circunstancias.

En la carta adjunta informo a V. E. de lo que se ha mandado para aliviar a los oficiales y tripulacion de la fragata Tama que llego el 17 a Portsmouth. Esta mañana hemos sabido tambien que el dia 19 entraron en Plymouth la Clara y la Medea, y que estaban en quarentena segun ha escrito aquel vicelconsul nuevo al Consul General Don Miquel de Larrea, quien probablemente pasara a aquel puerto para informarse del estado de las dos fragatas, y de lo que haya que hacer en alivio de los oficiales y tripulaciones, habiendo quedado ya el vicelconsul en cuidar de su asistencia. Esto es quanto

