[Translation by the Registry]

Grand Duchy of Luxembourg

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

THE "ZHENG HE" (No. 2) CASE

Grand Duchy of Luxembourg / United Mexican States

Memorial of Luxembourg

Volume I

24 March 2025

CONTENTS

GENERAL INTRODUCTION

1.- The Grand Duchy of Luxembourg (hereinafter "Luxembourg") requests the International Tribunal for the Law of the Sea (hereinafter "the Tribunal") to consider the present Memorial submitted in the context of the dispute between Luxembourg and the United Mexican States (hereinafter "Mexico") in the case of the *"Zheng He"*.

2.- The dispute arose following the detention of the *"Zheng He"* on 1 November 2023. This Luxembourg-flagged dredger was in the Port of Tampico, Mexico, where it had been duly authorized to moor at berth No. 3 for a purely nautical call. After being subject to an onboard customs inspection and a precautionary seizure on the pretext that it had been illegally imported into Mexican territory from the moment it entered the territorial sea, the vessel was confiscated in favour of the Mexican Treasury and the company that owns it was forced to pay a disproportionate fine. The vessel is still detained today.

3.- After immediately seeking to make contact with the Mexican authorities with a view to reaching a diplomatic solution, the Luxembourg authorities, faced with the inaction and then the rejection by the Mexican authorities, had no choice but to file an application to institute proceedings before the Tribunal on 3 June 2024.

4.- Luxembourg considers that its own rights as the flag State of the *"Zheng He"*, as recognized by the United Nations Convention on the Law of the Sea (hereinafter "the Convention"), have been and continue to be violated by Mexico. In particular, Luxembourg considers that Mexico did not respect the right of innocent passage enjoyed by its vessel, did not respect its jurisdiction as the flag State, did not accord equal treatment to its vessel, and acted in bad faith and abusively in the implementation of the rights and jurisdiction recognized by the Convention.

5.- On 7 June 2024, Luxembourg decided to submit to the Tribunal a request for the prescription of provisional measures under article 209, paragraph 1, of the Convention. Luxembourg considered that the Tribunal had *prima facie* jurisdiction and that there was a real and imminent risk of irreparable prejudice to the crew's basic rights and freedoms and to its own rights as the flag State. The *"Zheng He"* was already under direct threat of confiscation by the Mexican authorities and therefore of having its flag called into question. All of the rights that Luxembourg wished to claim in the proceedings were therefore directly threatened, as Mexico could, at any time, deprive Luxembourg of its interest in taking action before the Tribunal. Moreover, the prolonged detention of the vessel in the Port of Tampico made it particularly difficult for Luxembourg to exercise its jurisdiction, not least its control over administrative, technical and social matters, since it was subject to the goodwill of Mexico as the port State. Luxembourg also wished to avoid aggravating the damage suffered by it and its vessel on account of the detention as well as extending the dispute to other vessels of the Luxembourg fleet.

6.- In its Order of 27 July 2024, the Tribunal accepted *prima facie* that the dispute between the two Parties concerned the interpretation or application of the Convention[1] and that the conduct of Mexico "could reasonably lead Luxembourg to conclude that all possibilities of reaching agreement were exhausted."[2] The Tribunal also acknowledged that Luxembourg was claiming plausible rights, at least under article 131 of the Convention.[3] However, taking into

[1] Order of 27 July 2024, paras. 84 and 85.
[2] Order of 27 July 2024, para. 100.
[3] Order of 27 July 2024, para. 125.

account the assurances given by Mexico at the hearing – the aim of which was manifestly to pre-empt the prescription of provisional measures – the Tribunal considered that there was no urgency at that time.[4]

7.- Luxembourg has since asked Mexico to duly acknowledge those assurances, in the hopes of a diplomatic solution. Since the delivery of the Tribunal's Order on the Request for the prescription of provisional measures, Luxembourg has been in constant communication with Mexico in an attempt to organize the exercise of its jurisdiction over the *"Zheng He"* and to enter into negotiations to resolve the dispute. Unfortunately, as will be further demonstrated below, Luxembourg has encountered a lack of cooperation, bordering on bad faith, on the part of Mexico.

8.- During the proceedings on the Request for the prescription of prescriptive measures, Luxembourg had submitted a set of claims under the Convention, the facts in support of which are set out in this Memorial.

9.- In accordance with article 62, paragraph 1, of the Rules of the Tribunal, this Memorial is structured as follows: it contains a statement of the facts on which the application is based (Chapter I), followed by a statement of law detailing Luxembourg's allegations (Chapters II to VII), and lastly, the final submissions of Luxembourg.

10.- In law, Luxembourg's claims can be divided as follows: the Tribunal has jurisdiction and Luxembourg's application is admissible (Chapter II); Mexico has violated the right of innocent passage enjoyed by the *"Zheng He"* (Chapter III); Mexico has infringed Luxembourg's jurisdiction over the *"Zheng He"* (Chapter IV); Mexico has not accorded equal treatment to the *"Zheng He"* which flies the flag of a landlocked State (Chapter V); Mexico has not fulfilled its obligations in good faith and has abused the rights and jurisdiction recognized in the Convention (Chapter VI); the totality of the violations of the Convention ascribable to Mexico has caused injury to Luxembourg and to the unit constituted by the *"Zheng He"* (Chapter VII).

[4] Order of 27 July 2024, paras. 143 and 144.

CHAPTER I. STATEMENT OF FACTS

11.- After presenting the characteristics, affiliation and operation of the *"Zheng He"*, Luxembourg will recall the purely factual chronology of the vessel's admission into the Port of Tampico (**I**), its detention and the procedures aimed at its expropriation (**II**).

I. Characteristics, affiliation and operation of the *"Zheng He"*

12.- To fully understand the claims of the Grand Duchy of Luxembourg, it is necessary to be familiar with the nautical and technical characteristics of the *"Zheng He"* (**A**), to acknowledge its registration in the Luxembourg register and its Luxembourg nationality (**B**), to introduce the context of its operation on the dredging market (**C**) and to specify its firm appointment for works contracts between the end of November 2023 and the end of May 2024 (**D**).

A. Nautical and technical characteristics of the vessel

13.- The *"Zheng He"* is a vessel with gross tonnage of 8,015 and a length of 110 metres (138.5 metres overall), built in 2010 by the Croatian shipyard Uljanik. It is equipped with a 7000 kW electric propulsion system powered by three MAN engines, supplemented by one auxiliary engine and an emergency engine. Its statutory certification and classification are carried out by Bureau Veritas, the oldest (founded in 1828), and one of the 12 members of the International Association of Classification Societies.

14.- As indicated by Bureau Veritas (**Document L1.1**), certificate LBN0/PVS/20210108161413 for the *"Zheng He"* (**Document L1.2**) is valid from 8 January 2021 to 21 October 2025. It certifies that the vessel is seaworthy. The certificate bears the main marks confirming its seaworthiness on the high seas. First, the *"Zheng He"* bears the **Maltese cross** ✠ as a *construction symbol* attesting that it was built under special supervision of the classification society in accordance with the Classification Rules with regard to the hull, machinery and other installations necessary for navigation. Furthermore, the *main characters of class*, **represented by the Roman numeral I**, indicate the quality of the vessel: the construction, the sampling of the hull, the essential elements ensuring the propulsion and the safety of the vessel are in accordance with the Classification Rules. Lastly, the service notations indicate that the vessel is not subject to any distance restrictions (*unrestricted navigation*).

15.- The *"Zheng He"* also bears the **CLEANSHIP 7+** additional notation, indicating the vessel's good environmental performance. The vessel complies with the requirements of the International Maritime Organization under the *MARPOL Convention*, the *International Convention for the Control and Management of Ships' Ballast Water and Sediments (known as BWM)* and the *International Convention on the Control of Harmful Anti-fouling Systems on Ships (known as anti-fouling)*.

16.- The *"Zheng He"* is neither a cargo vessel nor a passenger vessel. It is a *service vessel*, more specifically a *self-propelled cutter suction dredger*, equipped with a cutting disc and powerful pumps. Although the draught of the vessel is only 6.5 metres, it can dredge a depth of up to 35 metres. The *"Zheng He"* belongs to the category of "jumbo" dredgers because of its large tonnage for a dredger and its engine power.

17.- According to the latest data published by the International Association of Dredging Companies,[5] in 2023, the *"Zheng He"* belonged to a global fleet of 52 vessels in its category. It is among the 20 per cent of the most modern *suction dredgers*, with the oldest built in 1975. It is below the average age in this category, which is 20 years (**Document L2**).

18.- The technical features and equipment of the *"Zheng He"* (**Document L3**) make it a more expensive and sophisticated vessel than an ordinary cargo ship. Suction dredgers are equipped with a ladder[6] that descends underwater through a ladder well. An underwater pump is placed in the ladder (ladder-mounted underwater pump) with a cutter head at the end of the ladder. The dredger must be held in place by a swing pile. Dredge pumps are used to remove the sediment. The dimensions of the ladder and the physical forces exerted on the hull by the dredging process require a crew of highly qualified seafarers to operate the vessel.

19.- From a nautical point of view, the technical characteristics of the *"Zheng He"* distinguish it from cargo ships of comparable size, making it harder to manoeuvre in poor sea conditions. This is mainly because of the following:

- A ***lower freeboard*** than usual, which ***allows the ingress of water*** onto the deck; this green water then stagnates until it is evacuated;
- The ***bulbous bow***, which ***increases the vessel's vulnerability to slamming***, i.e., the impact of waves on the vessel's bow;
- The presence of equipment and superstructures on the deck, which makes the vessel ***more prone to rolling***.

B. Affiliation of the *"Zheng He"* to the Luxembourg nationality and flag

20.- The *"Zheng He"* was so named in honour of the admiral of the Chinese imperial fleet who carried out open-sea explorations between 1405 and 1433. Like the other service vessels operated by the shipowner, it bears the name of a great explorer, since the function of its ships is to open or maintain maritime communication routes. Since its construction and christening, the *"Zheng He"* has belonged to the Jan de Nul group and has always flown the Luxembourg flag.

21.- The *"Zheng He"* belongs to the Luxembourg company European Dredging Company SA, whose head office is located at the following address:

European Dredging Company SA
34-36, parc d'Activités Capellen
L8308 CAPELLEN
LUXEMBOURG

European Dredging Company owns 12 other vessels also flying the Luxembourg flag: it is controlled by the Luxembourg parent company SOFIDRA, whose subsidiaries operate a total of 69 Luxembourg-flagged vessels under the Jan De Nul brand (**Document L4**). The *"Zheng*

[5] IADC, *Fleet List IADC,* 2023, CSD (Cutter Suction Dredgers) tab.
[6] According to the *Dictionnaire Littré*, a ladder is a "*Bras articulé qui équipe un navire de dragage et sur lequel passe une chaîne sans fin de godets allant racler le fond de la mer. Une élinde de drague. Conduite d'une drague suceuse qui aspire les sédiments au fond de la mer afin de les remonter vers la cale du navire. Un bec d'élinde*" [Articulated arm fitted to a dredger, along which a continuous chain of buckets scrapes the seabed. A dredging ladder. Suction pipe that sucks up sediment from the seabed and pumps it up to the ship's hold. A dredge drag head]. See the diagram in A. Bruno, C. Mouilleron-Bécar, *Dictionnaire maritime thématique anglais et français*, 5th ed., Paris, Infomer, 2008, p. 200, V° "Cutter Suction Dredger".

He" is effectively operated from Luxembourg by its Luxembourg owner, which is the shipowner. The ship manager, the ISM manager and the MLC manager are also based in Luxembourg. The employees of Dredging and Maritime Management SA are effectively present at the head office in Luxembourg (**Document L1.1, Owner/Manager information section**).

22.- As the Continuous Synopsis Record (CSR, **Document L5**) shows, the *"Zheng He"* has continuously been registered in the register of the Grand Duchy of Luxembourg since 22 October 2010. It also flies the Luxembourg flag, which it displays in all circumstances when sailing on the high seas, in territorial seas and in maritime ports. From the start of the detention in Tampico, the Grand Duchy of Luxembourg has confirmed to Mexico, since its first note verbale of 7 November 2023, that the *"Zheng He"* is a Luxembourg-flagged vessel (**Document L6**). In its third note verbale, dated 17 January 2024, the Grand Duchy attached a document certifying that the ship is indeed registered in Luxembourg (**Document L7**).

23.- The Grand Duchy of Luxembourg, as the flag State, effectively carries out the controls and verifications incumbent upon it by virtue of the obligations it derives from the international conventions to which it is party. With regard to the crew, it issued the Minimum Safe Manning Document on 30 August 2023 indicating the minimum crew composition to ensure safe navigation (**Document L8**); it also issued the Maritime Labour Certificate on 30 August 2023 (**Document L9**). With regard to the safety of the vessel, it carries out statutory surveys or has them carried out by delegation to Bureau Veritas (**Document L1.1**); it issues safety certificates such as the Short Term Cargo Ship Safety Equipment Certificate (**Document L10**).

24.- The Luxembourg nationality of the *"Zheng He"* is therefore neither disputable nor disputed. It is not disputable because of the genuine link between this vessel and its crew and the Grand Duchy of Luxembourg. At no time has it been challenged by either the port authorities[7] or the customs authorities[8] of Mexico. Nor has it been challenged by the United Mexican States, either in its note verbale of 20 March 2024 or during the proceedings on the Request for the prescription of provisional measures.

C. Context of the *"Zheng He"*'s operation on the dredging market

25.- The *"Zheng He"* belongs to a category of *service vessels* that includes only about 50 vessels for the entire global fleet and operates on the niche market of recent self-propelled cutter suction dredgers. Self-propelled cutter suction dredgers are mainly used for the development and maintenance of waterways and port infrastructures for maritime or river-sea navigation. They are used to dredge channels and develop fairways and oil, cargo or passenger terminals. Suction dredgers are therefore service vessels whose activity primarily concerns works in connection with the development of maritime communications and navigation.

26.- Unlike cargo ships, which are chartered on the spot market for short-term transport operations, dredgers generally operate within the complex and structured framework of works contracts, which requires a high degree of forward planning. For instance, the use of a dredger is always preceded by engineering studies; it is then integrated into a whole series of other

[7] SEMAR, Permit for entry of vessels or major naval craft in open-sea navigation No. 514873, 10 October 2023 (**Document L28**); SEMAR, Tampico Harbour Master's Office, Authorization to enter the port, 21 October 2023 (**Document L35**); SEMAR, Tampico Harbour Master's Office, Authorization to shift position No. 521010 of 31 October 2023 (**Document L42**).

[8] SAT, first customs fine (**Document L29)**; Record of initiation and precautionary seizure (**Document L49)**; Determination of the fine (**Document L50).**

works with which it must be phased and coordinated according to a critical path. These works, which can last from tens to hundreds of days, must be planned and carried out taking into account decisions to close the sea to maritime navigation or to commercial use of the infrastructure in question. Activities can be hampered by swell or current conditions. The operator of the dredger must also provide for the provisioning, bunkering and maintenance of the vessel and dredging equipment. It is therefore only occasionally that the shipowner's service vessels can be used for short-term work that does not require a great deal of planning.

27.- The legal framework is also complex for dredging operators. Works contracts are sometimes public and sometimes private; they are organized pursuant to various contractual arrangements, most often determined unilaterally by the works organizer who defines the specifications according to the applicable national law. A dredger is therefore not generally assigned to a works contract once a simple last-minute contract has quickly been concluded on the spot market, unlike the market for the chartering of bulk carriers and tankers for transport purposes. The contractual processes involved in the establishment of public or private works contracts thus often entail organizing calls for tenders, selecting the successful bidder from among the bidders and sometimes even conducting bilateral renegotiations with the successful bidder. In light of the extreme complexity of public and private maritime dredging contracts, the professional association of dredging companies, the Central Dredging Association, publishes *guidelines*[9] to assist its members.

28.- The complexity of the works contracts requiring dredging entails a division of roles. The shipowner – in this case, European Dredging Company for the *"Zheng He"* – equips and operates the vessel, thus carrying out the technical dredging operations. It makes its vessel, its crew and its know-how available to the bidding company coordinating the entirety of the work covered by the contract. For example, European Dredging Company has made the *"Zheng He"* available to the company JDN Central Americas Ltd, which has won several contracts in Central and North America.

D. The commercial operation of the *"Zheng He"* as of autumn 2023

29.- When the *"Zheng He"* made its nautical call in Tampico, it had already been assigned for the imminent execution of several dredging contracts planned in The Bahamas between December 2023 and June 2024. These were definite contracts, not merely expected.

30.- *First,* the *"Zheng He"* was booked with the service vessel *"DN 205"*, also flying the Luxembourg flag, for dredging work in Ocean Cay in The Bahamas. The aim of the overall works contract was to complete the development of an islet housing a former factory into a maritime reserve accessible to passengers of the cruise company MSC. The dredging contract was awarded to Jan de Nul Central Americas following a three-stage contracting process: first proposal in April 2023, submission by Jan De Nul Central Americas Ltd to the call for tenders in July 2023 and formulation of the best offer on 27 September 2023 (**Document L11**). On 6 October 2023, the contract was made official by a letter sent by Ocean Cay Ltd, the works organizer, to Jan de Nul Central Americas (**Document L12**), designating it as the "Preferred bidder". By returning this letter with its countersignature, Jan de Nul Central Americas Ltd confirmed the conclusion of the contract *("We acknowledge receipt of the letter of which this is a copy and confirm that we are in agreement with its terms and agree to proceed accordingly."*). The critical path of the dredging contract was 307 days, with an expected execution period between 8 April 2024 and 22 May 2024.

[9] CEDA, *Effective Contract-Type Selection in the Dredging Industry, A CEDA Guidance Paper*, 2019, 15 p.

31.- *Second*, the *"Zheng He"* was reserved for a works contract involving the dry dock at the Freeport shipyard in The Bahamas. This contract was awarded to the company Orion, which subcontracted the dredging. Jan De Nul Central Americas Ltd had submitted its subcontracting bid on 5 October 2023, making explicit reference to the *"Zheng He"* (**Document L13**, p. 7), to which Orion responded favourably on 13 October 2023 (**Document L14**). The dredging was to be carried out over a period starting from the end of the hurricane season in late November 2023 *("Start dredging after Hurricane Season November 2023"*) to March 2024.

32.- *Third,* the *"Zheng He"* was also scheduled to dredge the container terminal in the Port of Freeport in The Bahamas between December 2023 and February 2024. This contract stipulated the use of the vessel and other equipment for a period of four weeks. Jan De Nul Central Americas had submitted a bid on 5 October 2023 (**Document L15.1**), drawing the attention of the Port of Freeport which then requested clarification on 6 November 2023. In response to this request, Jan De Nul Central Americas provided the necessary clarification on 17 November 2023 (**Document L15.2**), and it was on the basis of this letter of clarification that the award of the contract to Jan De Nul was finally confirmed on 21 February 2024 (**Document L15.3**).

33.- These three works contracts would have generated revenue of between USD 55,000,000 and USD 63,000,000.

34.- Thus, when the *"Zheng He"* entered the territorial sea at the Tampico roadstead, intending to call for about one month, it had already been appointed to be employed in two firm contracts in The Bahamas starting in December 2023; a third contract concerning The Bahamas was about to be concluded. The one-month call in Tampico was to allow for provisioning and maintenance operations. If an opportunity for a short dredging project of a few days had arisen in Mexico, the shipowner would have likely considered it, given that, in any event, the vessel had to be ready to set sail for The Bahamas at the end of November to honour its contractual commitments.

II. Chronology of the admission into the Port of Tampico, the detention and the procedures to expropriate the *"Zheng He"*

35.- The purposes of and the preparation for the nautical call in Tampico will first be presented **(A)** before the circumstances under which the vessel was voluntarily admitted into the Port of Tampico by the Mexican authorities as part of a duly authorized nautical call are elaborated **(B)**. The steps that led to the contrived fabrication of conditions to facilitate the detention of the *"Zheng He"* will then be set out **(C)**, as will Mexico's subsequent initiatives to expropriate the vessel **(D)**. Lastly, the pressure exerted on the shipowner to force it to make a dubious payment into the hands of a Mexican intermediary, a payment it refused to settle, will be explained **(E)**.

A. Purposes of and preparation for the *"Zheng He"*'s nautical call in Tampico

36.- Expected in The Bahamas in November 2023 to execute works, at the end of the hurricane season, the *"Zheng He"* first had to make a nautical call for perfectly documented and verifiable reasons.

37.- *First*, according to a study carried out by a marine meteorology operator, October is the peak of hurricane season; 2023 was one of the most active seasons on record, with 23 episodes of hurricanes and low-pressure systems (**Document L16**). These high-intensity climatic events are part of an overall climatic evolution (**Document L17**). It should be noted, however, that the intensity of hurricanes varies significantly from one place to another. According to data collected by the National Oceanic and Atmospheric Administration of the United States of America, the climatic episodes affecting Freeport in The Bahamas are comparatively more intense and more frequent than those affecting Tampico (**Document L18**): there are more episodes with an intensity of 150 newton metres in The Bahamas.

Yet the authorities of The Bahamas do not allow ships to shelter in port when severe weather occurs. This is especially problematic for a dredger such as the *"Zheng He"* with the specific nautical characteristics mentioned above (**Document L3**), in particular the lower freeboards, the greater exposure to rolling and the configuration of the bulbous bow. It should be noted that on the bow of the vessel, there is a mobile piece of equipment called a "dummy" which can be used to deploy dredging equipment during operations (**Document L19**). Even when folded away, the dummy makes the bow of the vessel more vulnerable to slamming.

On 5 October 2023, the shipowner of the *"Zheng He"* received a notice from the marine meteorology operator indicating the arrival six days later of Hurricane Philippe (**Document L20**), with an increase in wind and waves from 11 October 2023. Thus, from a strictly nautical point of view, it was reasonable for the shipowner of the *"Zheng He"* to seek to call in Tampico at that time, especially as this vessel and other vessels of the same shipowner had already called in Mexican ports in the past.

38.- *Second*, the scheduled maintenance, provisioning, waste disposal and crew change operations of the *"Zheng He"* had to be carried out in order to be able to return to sea and fulfil the contracts to be executed from 1 December 2023 onwards. Correspondence between the captain of the *"Zheng He"* and the agent JVV reveals that on 17 October 2023, the situation on board was critical owing to the accumulation of waste (**Document L21**) exceeding the on-board storage capacity.

39.- *Third,* the choice of the Port of Tampico was reasonable since it is a maritime port open to open-sea traffic, the draught of the *"Zheng He"* is sufficient and the waiting time at the roadstead is shorter.

Firstly, the maritime port of Tampico is open to open-sea traffic and at no time did Mexico challenge this fact in its pleadings during the proceedings on the Request for the prescription of provisional measures. Public navigation information confirms that the Port of Tampico is open to open-sea navigation. That is also confirmed, for example, in the Admiralty Sailing Directions Pilot Book NP-69A (**Document L22**) published by the British Admiralty. This reference document is available on board in both paper and electronic formats. It states that the Port of Tampico is open to commercial and oil traffic. It also indicates, under port services, that *"[m]ost types of repairs can be undertaken*" (p. 147), using a dry dock if necessary. Where repairs do not require dry docking, and for provisioning, maintenance and servicing operations, the vessel need only to be berthed.

Secondly, the Admiralty Sailing Directions Pilot Book NP-69A states that berth Nos. 1 to 9 together are 1586 m in length and that the water depth along these berths is 10 metres, which is perfectly suitable for the *"Zheng He"* with its draught of 6.5 metres. The berths are listed as "*Fiscal Nos 1-9*" (p. 147). The *Master Development Programme of Tampico Port 2016-2021*, freely accessible on the website of the Port of Tampico (**Document L23**), confirms (p. 9) that berth No. 3 is open both to open-sea traffic and to cabotage: *Muelle Fiscal Tramo* No. 3, map location OA 55, length: 145 m, depth: -10.3 m, "*Altura y Cabotaje*"). The Port of Tampico Operating Rules (**Document L24***)* also confirm that berth No. 3 is open to deep-sea traffic.

Finally, the Port of Tampico is in the same rank as Altamira, the fifth largest port in Mexico, but has less maritime traffic and generally shorter roadstead waiting times.

40.**- On 5 October 2023**, after preparing for the nautical call, the vessel left The Bahamas and was issued, in accordance with local regulations, a *Certificate of Clearance Outwards* **(Document L25)**. This certificate is issued by the customs authorities of the State of departure upon declaration of exit and authorizes the vessel to sail. In maritime practice, the destination appearing after the adverb "for" designates an indicative foreign destination outside the State of departure ("outwards"). It does not in any way characterize the nautical or commercial purpose of the intended call nor does it oblige the vessel to actually call at that destination. Under no circumstances does this reference determine the final destination of the open-seas voyage. Moreover, Luxembourg emphasizes that the Mexican authorities themselves understood that the Port of Tampico was a port of call and not the final destination. The document entitled "Vessel scheduling record of the port of Tampico" (**Document L26**) dated 30 October 2023, prepared by Mexico, shows that the vessel came from The Bahamas and that its final destination was the Netherlands ("Holland").

B. The arrival of the *"Zheng He"* at the roadstead and the authorization to call issued to the *"Zheng He"* by the Mexican authorities

41.- In accordance with the provisions of Mexican law, JVV LOGISTICS S.A. DE C.V. (hereinafter "JVV") had been appointed as the consigning ship agent for the *"Zheng He"* for the sole purpose of completing the arrival formalities, without being conferred any power of representation of either the vessel itself or the shipowner.

42.- **On 9 October 2023**, before the *"Zheng He"* arrived at the Tampico roadstead, JVV took the initiative of sending **a notice of the arrival of an open-seas vessel** to the Tampico Maritime Customs Office (**Document L27**). This notice, sent in paper format, is provided as a

matter of course by the ship agent. After first indicating the imperative nautical purpose of the call (crew change and refuelling), the agent also stated that the vessel could then, if necessary, initiate a temporary import procedure. However, such a procedure is conditional on the conclusion of a contract in Mexico. The shipowner therefore could not have had any immediate intention to proceed with a temporary importation. Moreover, the Customs Office itself later acknowledged that what it described as a "spontaneous document" did not equate to a customs declaration in due form: "*In that sense, although it is true that on 9 October 2023, the Shipping Agency JVV LOGISTICS, S.A. DE C.V., submitted to the Management Control Unit of this Tampico Customs Office a document signed by Captain Alejandro Rosas Duque ..., the declarations of the taxpayer, JVV LOGISTICS, S.A. DE C.V., are not sufficient to consider the aforementioned obligation fulfilled*" (**Document L40**).

43.- **On 10 October 2023 at 2.50 p.m.**, even before the *"Zheng He"* entered the Mexican territorial sea, the Tampico harbour master's office (SEMAR) issued the vessel a ***Permit for entry of vessels or major naval craft in open-sea navigation*** (**Document L28**).

44.- **On 10 October 2023 at 23.49 p.m. UTC**, the *"Zheng He"* entered the Mexican territorial sea (**Document L30**).

45.- On **11 October 2023 at 7.30 a.m.**, equipped with the entry permit, the *"Zheng He"* **entered the Tampico roadstead**, in the Mexican territorial sea, awaiting instructions from the harbour master's office. No administrative or health inspection was ordered or carried out by the Mexican authorities.

46.- **On 17 October 2023**, while the vessel was still waiting at the roadstead and had not entered port, **JVV sent the port authorities a request for authorization to dock**: it notified the Mexican port authorities that the sole purpose of the call in Tampico was to receive the services necessary for the continuation of the maritime voyage, namely, a crew change, refuelling, wastewater removal and preventive maintenance (**Document L31**). The request made no mention whatsoever of a contract for the provision of dredging services in Tamaulipas or in Mexico, nor of any request for temporary importation. It explicitly referred to a strictly nautical call as part of an open-seas voyage. Luxembourg would learn much later that, on the same day, the ***harbour master's office of the Port of Tampico*** **had submitted an *ad hoc* request to the *General Directorate of Ports of the Secretariat of the Navy* for a temporary change of purpose of berth No. 3 of the Port of Tampico** (**Document L32**) **in order to allow the *"Zheng He"* to make its purely nautical call**. This letter, which was unknown to the captain and to the Luxembourg flag, shows that the harbour master's office had duly noted that the *"Zheng He"*'s call was to last only until 30 November for the purpose of carrying out operations related to a crew change, provisioning, wastewater and sludge disposal, issuance of a gas-free certificate and preventive maintenance. The harbour master's office noted that this temporary change of purpose of berth No. 3 would present no inconvenience.

47.- **On 20 October 2023 at 10.57 a.m.,** the agent for the *"Zheng He"* recontacted an agent of the National Port System Administration (ASIPONA) in Tampico, Mr Hector Romero, via a WhatsApp message, in order to speed up the vessel's entry ("*OK we've got the pressure on*", in the words of the ship agent). Informal contact was therefore made with ASIPONA. The ship agent informed ASIPONA that berth No. 11, operated by Portum 21, was immediately available (**Document L33**). **He reiterated that the ship had been waiting for a long time** *(*"*El buque ya quiere entrar desde hace dias*"). The conversation continued but ASIPONA did not authorize the *"Zheng He"* to move to berth No. 11 as requested by the shipowner. The shipowner was directed to berth No. 3.

48.- **On 20 October 2023**, the Tampico harbour master's office issued a **warning notice** (**Document L34**) regarding the occurrence of a local weather event called "surada" as of the night of 22 October 2023.

49.- **On 21 October 2023,** the **harbour master's office then granted the *"Zheng He"* permission to enter the port and to moor at berth No. 3** (**Document L35**). Luxembourg would learn significantly later that this authorization had come about **following discussions between the stakeholders of the *Port of Tampico Operating Committee*, which included customs authorities**. This Committee ordinarily meets three times a week to decide on the allocation of berths; there are also extraordinary meetings. On 21 October 2023, precisely, there was an extraordinary meeting at which the entry of the *"Zheng He"* was on the agenda (**Document L36**). This document explicitly states that the *"Zheng He"* was authorized to stay in port for exclusively nautical purposes.

50.**- On 21 October 2023 at 2.30 p.m.**, **the vessel arrived at berth No. 3 to moor**. In a letter dated 23 October 2023, the ship agent confirmed to the Mexican customs authorities that the port call was made "*for the sole purpose of bunkering, changing the crew and carrying out preventive maintenance, while it, in addition, awaited instructions* (**Document L37**). This important document, deliberately ignored by Mexico, establishes that JVV, acting on the express orders of the shipowner, unequivocally excluded any commercial purpose of the call.

51.- **On 24 October 2023** (**Document L38**), by letter in reply to the Tampico harbour master's office, the General Director of Ports of Mexico, Captain Abarca Hernandez, explicitly authorized the temporary change of purpose of berth No. 3 for eight weeks to allow the purely nautical call of the *"Zheng He"*. Throughout the proceedings, Mexico has sought to conceal the existence of this crucial piece of evidence, failing to respond to the request made by Luxembourg in its note verbale of 27 September 2024 (**Document L39**).

C. The contrived fabrication of conditions to detain the *"Zheng He"*

52.- Although the *"Zheng He"* entered port with the authorization of the harbour master's office and was duly moored at berth No. 3, which is suitable for open-seas vessels (including for a nautical call by decision of the *National Director of Ports of SEMAR*), some local officials attempted to fabricate conditions to detain the vessel. The process was organized in four stages.

53.- *First,* **on 24 October 2023**, the *Tampico Customs Office* set the wheels in motion by issuing an initial fine of a relatively modest amount (USD 570 at the exchange rate on the day it was imposed) but on a completely erroneous basis (**Document L40**). Although the Port Rules explicitly state that the use of berth No. 3 is for open-sea navigation, the *Customs Office* decided, contrary to the public use of the berth, that the *"Zheng He"* could not dock there because it was engaged in open-sea navigation. In an effort to bring this procedure to a swift conclusion, the shipowner's Mexican agent took the unilateral initiative to make the payment to the customs authorities as quickly as possible on 31 October 2023 (**Document L41**). The payment made by the vessel's agent without consulting the shipowner triggered the detention process.

54.**-** As a precaution, the vessel then tried to draw conclusions from the record, asking to regularize its situation by changing berths. The *"Zheng He"* therefore requested from the Tampico harbour master's office an order to move to the *Terminal of Multiple Uses II, F-6*, for 1 November 2023 at 6.15 a.m., where it could moor and carry out the scheduled provisioning, maintenance and crew change operations. The authorization to shift position was issued to the

"Zheng He" by the harbour master's office on 31 October 2023 (**Document L42**) to allow it to move the following morning.

55.- *Second,* **on 31 October 2023**, the day before the *"Zheng He"* was due to move, the SAT (*Servicio de Administración Tributaria*), which reports to the Ministry of Finance of Mexico (**Document L29**), hastily initiated a new stage in the detention process by taking a preparatory decision to authorize an onboard inspection of the vessel (**Document L43)**. In order to preserve the element of surprise, the preparatory decision was not notified to the shipowner or even to the legal representative of the operator of berth No. 3 where the vessel was moored (**Document L44**).

56.**-** *Third,* **on 1 November 2023 at 6.45 a.m.**, in accordance with the shipowner's request, a port pilot was received on board the *"Zheng He"* to carry out the move scheduled the previous day in order to regularize the vessel's position, if necessary. But at **7 a.m.**, **the harbour master's office gave *ex abrupto,* by VHF radio and without leaving a written trace, an order to the pilots not to proceed with the vessel's move** on the grounds that traffic in the port would be prohibited (**Document L45, questions 5 and 6**). This is reported by the pilots themselves. The pretext was the alleged closure of the port since 31 October 2023 by warning notice No. 038/2023 (**Document L46**). However, this was in no way a notice of the port's closure but rather a mere warning notice "*to take precautionary measures and continue to check local weather conditions*". Moreover, the logbook of the *"Zheng He"*, which testifies to its statements, indicates that the sea was calm on 31 October and 1 November 2023 (**Document L47: "Sea Calm"**). The *"Zheng He"* was therefore abusively prevented from moving to another berth. Warning notice No. 39/2023, issued on 1 November, confirms this, "*in light of the ... favourable weather conditions*" at 10 a.m. (**Document L48**). It should be emphasized that the start of the onboard inspection coincided precisely with the issuance of warning notice No. 039/2023. It should also be noted that warning notice No. 039/2023 cannot be construed as a notice to reopen the port, since the port was never closed by warning notice No. 038/2023.

57.**-** *Fourth,* **on 1 November 2023 at 10.05 a.m.**, with the *"Zheng He"* detained at berth No. 3, two customs agents and five agents of the General Administration of Foreign Trade Audit (AGACE) boarded the vessel. The record indicating the start of the visit (**Document L49**) at 10.30 a.m. does not reflect the reality of the situation as recorded by the vessel's surveillance cameras. The onboard inspection lasted until 4 p.m. The AGACE agents decided to detain the *"Zheng He"* on the grounds that the vessel itself had to be seen as merchandise whose entry into Mexican territory would be considered an import, making its owner liable for the payment of customs duties proportional to the value of the vessel. The record of detention was presented for countersignature not to the captain of the *"Zheng He"* but to the Mexican company Agencia Consignaria de Buques JVV Logistics JVA.

58.- Lastly, it should be noted that the measure to detain the vessel was not notified to its owner European Dredging Company until a month later, on 28 November 2023, which was a violation of its rights.

D. The procedures to expropriate the *"Zheng He"*

59.**-** The detention of the *"Zheng He"* is already, in itself, a measure with far-reaching consequences, since it precludes its operation in the same way as a precautionary seizure: it constraints the vessel and prevents it, until such time as the detention is lifted, from reaching The Bahamas to fulfil the dredging contracts for which it was to be employed. This is why the shipowner immediately availed itself of the legal remedies available under local law, i.e., first with an administrative appeal before AGACE and then a judicial appeal before Mexican courts.

60.- **On 15 February 2024**, while the appeals under local law were pending, AGACE issued an administrative decision referred to as "*Orden CVD6000037/23*" (**Document L50**), by which it set the alleged customs debt of European Dredging Company at 1,616,462,343.62 Mexican pesos, or approximately USD 96,230,000. This decision led, in addition and cumulatively, to the definitive confiscation (subject only to appeal) of the *"Zheng He"*, the ownership of which is now claimed by Mexico ("*dicha mercancía pasa a propriedad del fisco federal*").

61.- **On 22 March 2024**, the Tampico District Court handed down a decision declaring that the procedure initiated against the *"Zheng He"* was null and void (**Document L51**). The judges noted that the AGACE auditors were not properly identified when they began the onboard inspection and ordered the detention of the vessel; they noted that the *"Zheng He"* had been allowed to enter Mexican territory by the authorization given by the Tampico harbour master's office on 10 October 2023. This judgment strips the onboard inspection, the fines and the expropriation of the vessel of all legal effect. The Mexican authorities, parties to the procedure and duly informed, did not lodge an appeal within the time limit prescribed by Mexican law, which expired on 15 April 2024. As the decision ordering the cancellation of the customs procedure had become final, the shipowner referred the matter to the Mexican courts to obtain a public instrument conferring enforceability on the judgment that had become final in the absence of any appeal.

62.- **On 18 April 2024**, the instrument ordering the enforcement of the judgment was obtained (**Document L52**).

63.- **On 19 April 2024**, upon presentation of this legally binding instrument from the Mexican legal authorities (**Document L53**), the port authorities refused to clear the vessel. At the same time, although Mexico had abstained – within the time limits provided for by Mexican law – from challenging the decision declaring the onboard inspection procedure null and void, it finally sought to bring an appeal after the deadline had passed.

E. The pressure exerted on the shipowner in order to obtain an unlawful payment

64.**- On 5 December 2023**, while the *"Zheng He"* had been detained for one calendar month, the representative of European Dredging Company in Mexico received a telephone call from a Mexican intermediary, asking him to make an immediate payment of a USD 550,000 fee to secure the release of the vessel within two to three weeks. This Mexican intermediary claimed to have relations with "*Maestro Erick*", head of AGACE (**Document L29**), with whom he reportedly had been in a meeting recently, and vouched for the rapid release of the vessel. He likewise indicated that if the shipowner failed to pay the requested amount, it would be liable to pay a fine of 7 per cent of the vessel's value and other additional penalties.

65.- **On 6 December 2023**, following on directly from the telephone conversation, the Mexican intermediary sent the shipowner's representative a "*proposal of services*", drawn up on the letterhead of the "*Grupo Consultor de Comercio Exterior*" (**Document L54**). In the signature block, he presented himself as the managing partner of a consultancy firm, indicating only the university degree of *Licenciado en Derecho (Lic.)*, which is commonly used by legal professionals. However, he did not state that he was acting as a lawyer nor did he provide a professional registration number (*cédula profesional*). A search on a social network revealed that the Mexican intermediary described himself on that platform as a specialist in "*government*

relations". He is also listed in an electronic legal directory with a practice authorization number (*cédula profesional tipo C1*) which appears to be still valid.[10]

66.- The shipowner viewed the "*proposal of services*" from the "*Grupo Consultor de Comercio Exterior*" as a red flag, leading it to presume that it was an invitation to conclude a corruption pact involving Mexican officials engaging in abusive practices of power. It is well known[11] that most corruption pacts are sham contracts that take on the appearance of an intermediary contract through which the payment of bribes behind alleged fees can be disguised. Considering the proposal to be contrary both to the *United Nations Convention against Corruption* ratified by Luxembourg and to its own compliance rules, the shipowner did not follow up and did not contact the Mexican intermediary again, preferring to exercise the legal remedies provided under Mexican law despite the difficulties encountered.

67.- **On 21 February 2024**, the Mexican intermediary contacted the local representative of the shipowner anew with a veiled threat: "*Se está complicando tu asunto ... signo a sus órdenes para ver cómo atenderlos par buscar una salida*" (**Document L55**). In fact, AGACE had just issued resolution 110-10-01-00-00-2024-0583 confiscating the *"Zheng He"* and imposing the customs fine (of which the shipowner was still unaware as it had not been notified). The Mexican intermediary therefore had close internal contacts within AGACE, since he was advised of the measures decided even before the shipowner.

68.- Pressure was exerted on the shipowner of the *"Zheng He"* through a process similar to that described in the Mexican press by journalists reporting on several investigations. An initial investigation was published in 2023[12] following extortion charges filed against AGACE officials by Mexican import/export businessmen who wished to remain anonymous for fear of reprisals (**Document L89.1 to L89.4**). Another investigation was published in February 2024 (**Document L81**) denouncing the practice of certain AGACE officials[13] of arbitrarily overestimating taxpayers' tax and customs debts in order to put pressure on their victims before the term of office of the President of the United Mexican States ended on 30 September 2024.

[10] https://www.cedulaprofesional.sep.gob.mx/cedula/presidencia/indexAvanzada.action

[11] Abdulhay Sayed, *Corruption in International Trade and Commercial Arbitration* (2004).

[12] Salvador García Soto, "Acusan empresarios corrupción en el SAT", El Universal, 15 June 2024; Francisco Resendiz, "PRD: Crisis, extinción, nacimiento", *La Razón de Mexico*, 18 June 2023; Alberto Aguirre "Y el sexto magistrado?", *El Economista*, 20 June 2023; Eduardo Ruiz Healy, "Corrupción en el SAT pese a que asegura AMLO?"

[13] Martes, Elisa de Anda Madrazo, "A la sombra", *El Sol de México*, 27 February 2024.

CHAPTER II. JURISDICTION OF THE TRIBUNAL AND ADMISSIBILITY OF THE APPLICATION

69.- In its Order of 27 July 2024 on the Request for the prescription of provisional measures, the Tribunal considered "*that a dispute over the interpretation or application of the Convention appears* prima facie *to have existed between the Parties on the date of the institution of proceedings on the merits*."[14] The Tribunal also "*concludes that* prima facie *it has jurisdiction over the dispute submitted to it*."[15]

70.- Having affirmed its *prima facie* jurisdiction with regard to the prescription of provisional measures under article 290, paragraph 1, of the Convention, the Tribunal is now invited to carry its reasoning to its conclusion and to find that its jurisdiction over the merits of the case is established. Such jurisdiction extends, in accordance with article 288, paragraph 1, of the Convention, to "*any dispute concerning the interpretation or application of the Convention submitted to it in accordance with this Part*."

71.- As a preliminary matter, Luxembourg draws the Tribunal's attention to the possibility offered to parties by article 97, paragraph 1, of its Rules of Procedure. By virtue of this provision, and in the interest of the sound administration of justice, Mexico could have requested in writing, within 90 days from the institution of proceedings by Luxembourg, that the Tribunal rule separately on any objection to the jurisdiction of the Tribunal or to the admissibility of the application. Mexico decided not to avail itself of this option, from which the Tribunal must draw all the conclusions: Mexico is well aware that there is no objection to jurisdiction or to the admissibility of the application that would preclude the Tribunal from ruling on the merits of the present case. If it were now to challenge the Tribunal's jurisdiction, Mexico would be demonstrating its dilatory strategy even more clearly, which will be discussed later.

72.- Even if Mexico were to claim in its Counter-Memorial that the Tribunal did not have jurisdiction or that Luxembourg's application was not admissible, the Tribunal would not be able to accept its arguments. All the conditions of jurisdiction and admissibility required by the Convention were already satisfied when Luxembourg instituted proceedings on 3 June 2024. *A fortiori*, all of these conditions are still currently satisfied.

73.- During the provisional measures phase, Luxembourg advanced some of the points that will be examined in this Memorial, in particular those relating to the jurisdiction of the Tribunal in the present case. In the interest of complying as fully as possible with guideline No. 2 concerning the preparation and presentation of cases before the Tribunal ("A pleading should be as short as possible."), Luxembourg will endeavour in this Memorial to avoid repetition and to focus on the main facts and legal arguments demonstrating both the jurisdiction of the Tribunal **(I)** and the admissibility of the application (**II**).

[14] Order of 27 July 2024, para. 84.
[15] Order of 27 July 2024, para. 106.

I. The Tribunal has jurisdiction to entertain the dispute between Luxembourg and Mexico

74.- The dispute concerning the situation of the *"Zheng He"* between Luxembourg and Mexico, two States Parties to the Convention that have made broad written declarations accepting the jurisdiction of this Tribunal under article 287, has crystallized at least as of April 2024. There is no doubt that this dispute concerns the interpretation and application of the Convention (**A**). Despite Luxembourg's repeated efforts to find a diplomatic solution, including after its Request for the prescription of provisional measures, the exchanges of views have not been fruitful (**B**).

A. The crystallization of a dispute concerning the interpretation and application of the Convention

75.- As Luxembourg has already had occasion to demonstrate in its Application instituting proceedings of 3 June 2024 (paragraph 3) and in its Request for the prescription of provisional measures of 7 June 2024 (paragraphs 34, 43 and 44), it very quickly sent notes verbales to alert Mexico to the situation of the *"Zheng He"*, to remind it that it was a vessel flying the Luxembourg flag, and to notify it of Luxembourg's willingness to find a solution in accordance with international law.

76.- At a meeting on 23 February 2024 between a delegation from Luxembourg and the Ambassador of Mexico to Luxembourg, minutes of which were drawn up by Luxembourg and submitted for discussion during the provisional measures phase (**Document L58**), the situation of the vessel and the possible contravention of the right of innocent passage were addressed. Following this meeting, two new notes verbales sent by Luxembourg on 29 March 2024 (**Document L59**) and 29 April 2024 (**Document L60**) informed Mexico that it would imminently be seeking an international remedy, including before this Tribunal. Mexico then decided to remain silent, which effectively led Luxembourg to file its Application on 3 June 2024.

77.- The written and oral pleadings of both Parties during the phase relating to Luxembourg's Request for the prescription of provisional measures confirmed their dispute on both the factual and legal circumstances surrounding the detention of the *"Zheng He"* in the Port of Tampico since 1 November 2023.

78.- Luxembourg, for its part, maintains that the *"Zheng He"* was lawfully availing itself of the rights and freedoms enshrined in the Convention, most notably the right of innocent passage, when Mexico exercised its sovereign powers over it in its territorial sea and maritime ports in a manner inconsistent with several specific provisions of the Convention. As for Mexico, it submits that the *"Zheng He"* cannot invoke the right of innocent passage, that the coastal State has absolute power over its internal waters, that Luxembourg's exercise of jurisdiction over its vessel is not threatened, and that no discriminatory or abusive treatment of the Luxembourg flag can be identified.

79.- It is irrelevant that no proceedings thus far have required the Tribunal to interpret and apply the provisions of the Convention relating to the sovereignty of the State over its internal waters and territorial sea (article 2), the right of innocent passage (articles 17 to 26), the equal treatment of land-locked States (article 131), combined with the obligation of good faith and the prohibition of abuse of rights (article 300): Luxembourg's claims, based on these specific provisions and which have met with clear opposition from Mexico, do indeed fall

within the scope of the Convention. The Tribunal may note that all these legal grounds were already mentioned in Luxembourg's Application of 3 June 2024 instituting proceedings.

For each of these allegations, Luxembourg will demonstrate precisely that the provisions of the Convention invoked are germane to the situation of the *"Zheng He"*. Luxembourg wishes to refer the Tribunal to the following arguments on the applicability of the right of innocent passage,[16] on the abusive infringement of Luxembourg's jurisdiction,[17] on the applicability of equal treatment in maritime ports[18] and on the applicability of article 300 of the Convention.[19]

To put it another way, and to borrow a phrase from the International Court of Justice,[20] the facts of the case and the violations alleged by Luxembourg fall within the provisions of the Convention. Mexico cannot deny the fact that the *"Zheng He"* flies the flag of a landlocked State Party and that it sailed in the Mexican territorial sea to reach a Mexican maritime port, where it had been authorized to call for nautical purposes and where it was detained for having contravened, upon entering the territorial sea, the provisions of Mexican customs and tax legislation relating to the importation of goods. Nor can Mexico deny that the vessel's detention and the continuation of its detention, the confiscation of the vessel, and the imposition of a fine of a value close to that of the vessel, fall under the scope of Mexico's exercise of its sovereign powers over its internal waters, its maritime ports and its territorial sea, all of which are powers recognized and governed by the Convention.

80.- Accordingly, Mexico cannot reasonably challenge the jurisdiction of the Tribunal, especially since the prior attempts at an exchange of views, required by article 283, paragraph 1, of the Convention, have proved futile.

B. The failure of the exchange of views

81.- Luxembourg has repeatedly invited Mexico to join in seeking a solution in accordance with international law, as of its first note verbale of 7 November 2023 (**Document L6**).

82.- Luxembourg will not reiterate here all of its attempts leading up to the institution of proceedings before this Tribunal on 3 June 2024. The Tribunal itself recalled and took note of them in its Order of 27 July 2024 on the Request for the prescription of provisional measures.[21] Recalling in particular the notes verbales of 29 March and 29 April 2024 (**Documents L59 and L60**) which remained unanswered by Mexico, the Tribunal then noted that "*these considerations are sufficient at this stage to find that the requirements of article 283 of the Convention are satisfied*."[22]

83.- However, Luxembourg wishes to emphasize that, since the Tribunal's delivery of its Order of 27 July 2024 on the Request for the prescription of provisional measures, it has persistently sought to enter into negotiations with Mexico and to obtain the effective implementation of the assurances that Mexico had given at the hearing. Luxembourg sent notes verbales to Mexico on 8 August 2024 (**Document L61**), 26 August 2024 (**Document L62**),

[16] Chapter III, paragraph I, of this Memorial.
[17] Chapter IV of this Memorial.
[18] Chapter V, paragraph I, of this Memorial.
[19] Chapter VI, paragraph I, of this Memorial.
[20] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996*, p. 803, para. 16.
[21] Order of 27 July 2024, paras. 96 and 97.
[22] Order of 27 July 2024, para. 101.

27 September 2024 (**Document L63**), 23 December 2024 (**Document L64**) and 16 January 2025 (**Document L65**), in addition to numerous emails.

84.- Moreover, Mr Xavier Bettel, Deputy Prime Minister, Minister for Foreign Affairs and Foreign Trade of Luxembourg, and Mr Enrique Ochoa, Undersecretary for Multilateral Affairs and Human Rights of Mexico, had the opportunity to discuss the very disputes concerning the *"Zheng He"* and the current situation of the vessel during a meeting held in Berlin on 17 December 2024.

85.- Following this high-level meeting, Luxembourg sent a note verbale to Mexico on 23 December 2024 in which it proposed organizing bilateral negotiations in January 2025 in New York to find a "comprehensive and final resolution" to all the disputes concerning the *"Zheng He"*, including the international dispute brought before this Tribunal. Luxembourg attached to this note verbale a proposed framework for the bilateral negotiations (**Document L64**).

86.- In order to demonstrate its good faith and genuine willingness to seek a non-contentious solution, this note verbale was intentionally transmitted by Luxembourg several weeks before the scheduled date for the filing of this Memorial with the Tribunal. The proposed framework for the bilateral negotiations also included the proposal made to Mexico that the Tribunal be requested to postpone the filing date of the Memorial by Luxembourg. This postponement was finally requested by a joint letter from the Parties sent to the Registry of the Tribunal on 29 January 2025 in order to give bilateral negotiations every chance of success, since Mexico had agreed to hold a meeting in Washington on 22 January 2025.

Regrettably, Luxembourg has had to face the facts: without breaching the confidentiality of diplomatic negotiations, it must be admitted that no conclusive progress has been made since the Order of 27 July 2024.

87.- Luxembourg has therefore done everything in its power to seek a non-contentious solution to the dispute submitted to this Tribunal. As the *"Zheng He"* has been detained for more than 17 months, Luxembourg can but conclude that the exchange of views with Mexico has come to an impasse.

II. Luxembourg's application is admissible

88.- Mexico cannot challenge the Luxembourg flag of the *"Zheng He"* (**A**). Furthermore, Luxembourg's submission of its application on the merits before this Tribunal is in no way premature (**B**).

A. Luxembourg's status as the flag State is indisputable

89.- Since the notice given by the Mexican agent of the *"Zheng He"* of the vessel's arrival at the Tampico roadstead on 9 October 2023 (**Document L27**), the Mexican authorities have never challenged its Luxembourg flag. The diplomatic authorities of Luxembourg reiterated in their successive notes verbales to Mexico that the *"Zheng He"* flies the Luxembourg flag, even attaching a document certifying the registration of the vessel in the Luxembourg register in the note verbale of 17 January 2024 (**Document L7**). Moreover, the Mexican authorities themselves continue to state that the *"Zheng He"* flies the Luxembourg flag (paragraph 51 of the Order of 27 July 2024 on the Request for the prescription of provisional measures).

90.- Luxembourg has consistently sought to effectively exercise its prerogatives as the flag State vis-à-vis the *"Zheng He"*. This was also the reason for some of its requests for provisional measures before the Tribunal. Relying on article 94 of the Convention, Luxembourg recalled that it had a duty to exercise its jurisdiction and control in administrative, technical and social matters. That is precisely why it had requested the Tribunal to *"[o]rder Mexico to allow Luxembourg to effectively exercise its jurisdiction and control in administrative, technical and social matters over the vessel, and to enable any measures necessary for the preventive and corrective maintenance of the* Zheng He *in order to ensure its compliance with the national, European and international standards applicable to vessels flying the flag of Luxembourg*" (Final submissions of Luxembourg of 12 July 2024, second paragraph).

91.- At the hearing on 11 and 12 July 2024 on Luxembourg's Request for provisional measures, Mexico acknowledged that "*it [is] important to safeguard the integrity of the vessel, thus allowing maintenance work on the Zheng He, as requested by the agency contracted by the owners of the vessel. In this regard, … Mexico wishes to voluntarily offer periodic reports reflecting the treatment provided to both the crew and the vessel, as well as their current status*." This undertaking was reproduced *in extenso* by the Tribunal in its Order of 27 July 2024.[23]

92.- The purpose of Luxembourg's notes verbales of 8 August (**Document L61**) and 26 August 2024 (**Document L62**) was thus to hasten the issuance of authorizations by Mexico so that the inspections of the vessel, especially of the hull and the functioning of the lifeboats (**Documents L66.1 to L66.4**), could finally be carried out before the validity of the *"Zheng He"*'s certificates was called into question owing to the impossibility for Bureau Veritas to perform the necessary inspections. It should also be noted that on 23 and 24 October 2024, Luxembourg arranged for an inspection of the vessel as part of its prerogatives as the flag State. A new inspection will have to take place in 2025 (**Document L67**).

93.- Therefore, Mexico cannot, in good faith, allege that Luxembourg no longer effectively exercises its jurisdiction and control in administrative, technical and social matters over the *"Zheng He"*. Such an allegation would reveal Mexico's lack of cooperation, in breach of its undertaking made publicly before the Tribunal and which was likely the reason for which Tribunal did not prescribe provisional measures.

[23] Paragraph 145 of the Order of 27 July 2024.

94.- The existence and effectivity of the *"Zheng He"*'s Luxembourg flag therefore cannot be cast into doubt by Mexico with the aim of challenging Luxembourg's right to act as the flag State before this Tribunal.

B. The rule of exhaustion of local remedies is irrelevant to Luxembourg's application

95.- Article 295 of the Convention provides: "*Any dispute between States Parties concerning the interpretation or application of this Convention may be submitted to the procedures provided for in this section only after local remedies have been exhausted where this is required by international law*" (emphasis added).

96.- It is well established in international law, and in the case law of this Tribunal, that the rule of exhaustion of local remedies applies only where "*obligations concerning the treatment to be accorded to aliens*" are in question.[24]

97.- However, Luxembourg is not acting in the instant case in diplomatic protection of the *"Zheng He"*. On the contrary, Luxembourg is asserting ***its own rights***, as the flag State, that it derives directly from the Convention. It is in this capacity that Luxembourg has directly suffered injury as a result of the unlawful measures of the Mexican authorities and is seeking reparation.

98.- It is neither disputable nor disputed by Mexico that Luxembourg has the right to grant its nationality and to authorize vessels to fly its flag, in accordance with article 91 of the Convention, to be able to access the world's oceans despite its status as a landlocked State, and to take advantage of various lawful maritime activities, certainly one of which is dredging.

99.- At the crux of the case brought by Luxembourg is its right of innocent passage, its right to see the coastal State comply with articles 2, 92, 131 and 300 of the Convention, and to enable it to fulfil its obligations as a flag State under article 94 of the Convention. These are rights conferred on each State Party to the Convention, and not least for landlocked States Parties. These rights are akin to the freedom of navigation and other internationally lawful uses of the sea in a State's exclusive economic zone or the freedom of navigation on the high seas. For instance, in the *M/V "Norstar"* case,[25] this Tribunal already had occasion to recognize that the failure to exhaust local remedies could not preclude the admissibility of claims relating to freedom of navigation on the high seas or freedom of navigation and other internationally lawful uses of the sea in the exclusive economic zone and the right to see compliance of the coastal State with article 73 of the Convention.[26]

100.- That the rights enshrined in the Convention also extend to vessels flying the flag of States Parties does not necessarily reduce them to individual rights whose enjoyment should be sought first and foremost through local remedies.

101.- The proceedings instituted by Luxembourg entitle it to allege violations of its rights under the Convention and to claim reparation for all injury arising from these violations,

[24] *M/V "SAIGA" (No. 2) (Saint-Vincent-and-the-Grenadines* v. *Guinea), Judgment*, *ITLOS Reports 1999*, p. 45 and p. 46, para. 98)
[25] *M/V "Norstar" (Panama* v. *Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 103, para. 270.
[26] *M/V "Virginia G" (Panama/Guinea-Bissau), Judgment*, *ITLOS Reports 2014*, p. 54, para. 157.

including injury suffered by persons involved in the vessel's activity, irrespective of their nationality, as is clear from the Tribunal's consistent case law.[27]

102.- Luxembourg would add that Mexico itself has attempted to seek remedy, such as through the appeal lodged **out of time** against the decision of the Tampico District Court annulling the customs procedures initiated against the *"Zheng He"* (**Document L75.1**) and those brought before the Supreme Court on two occasions (**Documents L68.1 and L68.3**). Luxembourg would like to draw attention to the surprising – to put it mildly – nature of AGACE's conduct: after an initial denial, for lack of *locus standi*, of its request for the Supreme Court to exercise its "attraction power" in the case (**Document L68.2**), AGACE reiterated its request (**Document L68.3**), aware that the possible referral of the case would delay its processing by the Mexican courts by several months. This second request for the exercise of the "power of attraction" was submitted by the same applicant as for the first request (**Document L68.1**), and whose lack of *locus standi* had already been established by the Supreme Court. The grounds for this second request merely reiterated the need for the Supreme Court to hear the case since Luxembourg had brought proceedings against Mexico before your Tribunal. Yet the situation had not changed since the first request was filed on 18 June 2024. In other words, the Mexican authorities seemed determined to multiply the appeals, even when they appeared manifestly futile, as the applicant did not advance any new facts and had not suddenly acquired an interest in taking action.

Luxembourg notes in passing that at the time of this second request for the exercise of the "power of attraction", Mexico had informed Luxembourg that it was willing to participate in a conciliation meeting between AGACE and the shipowner of the *"Zheng He"*. However, Mexico was careful not to notify Luxembourg of these various requests to refer the case to the Supreme Court or of their progress, despite Luxembourg's requests for information to that end, in particular in the notes verbales of 27 September 2024 (**Document L63**) and 16 January 2025 (**Document L65**). It was only in January 2025 that Luxembourg learned, through its own means, that the first request for the exercise of the "power of attraction" had been rejected, even though this rejection dated back to 6 November 2024.

Given these circumstances, allowing Mexico to claim that local remedies had not been exhausted would be tantamount to allowing it to derive advantage from its own turpitude. Such appeals, and the associated time limits, are being used only to maintain the illusion of an initial customs offence fraudulently imputed to the *"Zheng He"* by the Mexican authorities and to continue casting doubt over the non-exhaustion of local remedies. It should be added that in recent months, there have been major strikes within the Mexican judiciary in response to the constitutional amendment reforming the process for the appointment judges, which has caused delays in the processing of court cases (**Documents L69.1 and L69.2**).[28]

Above all, it should be recalled that remedies under the Mexican system have already been exhausted and provided satisfaction to the shipowner of the *"Zheng He"*, as it had obtained the annulment by the Tampico District Court of the customs procedure against it (**Document L51**) as well as a certificate of non-appeal valid as a binding decision of the District Court to be implemented **within three days** (**Document L52**). Even though the Tampico harbour master's office was notified of that decision, it did not lead to the release of the *"Zheng He"* (**Document**

[27] *M/V "SAIGA (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, pp. 45 and 46, para. 98; *M/V "Norstar" (Panama* v. *Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 103, para. 271; *M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 55, para. 158.
[28] https://www.bbc.com/news/articles/cy4y9q74j2ko and https://www.reuters.com/world/americas/mexican-judicial-workers-launch-strike-ahead-vote-overhaul-branch-2024-08-19/)

L53). In this situation, Mexico cannot now claim that local remedies are still pending and that they may provide an effective resolution to the dispute.

103.- Moreover, Mexico claims that it is able to prohibit Luxembourg from taking action to protect its own rights as the flag State, rights which are not at issue before Mexican courts since Mexico has consistently stated that the situation of the *"Zheng He"* involves only a domestic and customs dispute between the shipowner and the Mexican customs authorities. Although the note verbale sent by Mexico on 20 March 2024 refers to "*any other party that considers itself aggrieved*" and "*third parties*", these phrases so couched are particularly imprecise and cannot reasonably be understood as referring to a foreign sovereign State. In addition, this same note verbale makes no reference to international law of the sea (**Document L70**).

104.- In other words, even supposing that local remedies in Mexico were available and effective, which is questionable, they would not enable a comprehensive solution to the dispute before the Tribunal to be found and would only create additional delays, increasingly amplifying the injury suffered by Luxembourg and the unit constituted by the *"Zheng He"*.

In this regard, Luxembourg wishes to emphasize that the discussions seeking to conclude a transaction between the shipowner of the *"Zheng He"* and the SAT to regularize the customs and tax situation of the vessel under Mexican law, possibly at the expense of the shipowner's acknowledgement of an initial offence, in no way affect the present proceedings. Quite the contrary – the violations of the flag State's own rights and the injury suffered as a result of those violations would remain intact and preponderant.[29]

[29] *The Duzgit Integrity Arbitration (Malta v. São Tomé and Príncipe), Award of 5 September 2016*, paras. 155-157.

CHAPTER III. MEXICO'S INFRINGEMENT OF THE *"ZHENG HE"*'S RIGHT OF INNOCENT PASSAGE IN THE TERRITORIAL SEA

105.- In accordance with article 2, paragraph 3, of the Convention, "*(t)he sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law*." The main limitation, established in customary international law and the Convention, to the coastal State's exercise of its sovereignty over the territorial sea is the existence of a right of innocent passage accorded to all other States and their ships. The right of innocent passage is governed by articles 17 to 32 of the Convention.

106.- By detaining the *"Zheng He"* on the basis of a non-existent customs offence in its territorial sea – despite having recognized that the vessel was on an open-seas voyage and having authorized the vessel to make a nautical call in the Port of Tampico – Mexico infringed Luxembourg's right of innocent passage and exercised its sovereign powers as a coastal State in a manner contrary to the Convention. In this chapter, Luxembourg will seek to successively demonstrate to the Tribunal the following:

(I) Luxembourg, as a landlocked State, and the *"Zheng He"* are entitled to the right of innocent passage in the territorial sea of Mexico; the application by Mexico of its customs legislation to the *"Zheng He"* by reason of its entry into the territorial sea and the resulting enforcement measures cast doubt on this right of innocent passage (article 17 of the Convention).

(II) When it entered Mexico's territorial sea in October 2023, the *"Zheng He"* was exercising the right of innocent passage towards the internal waters of the Port of Tampico; the *"Zheng He"* intended to re-exercise its right of innocent passage on completion of its nautical call in the Port of Tampico to return to The Bahamas where dredging contracts were awaiting (article 18 of the Convention).

(III) When it entered Mexico's territorial sea in October 2023, the *"Zheng He"* had no other intention than to call in the Port of Tampico for nautical purposes; it cannot be accused of any activity in Mexico's territorial sea rendering its passage *not innocent*, nor has it been accused of such by the Mexican authorities (article 19 of the Convention).

(IV) By applying its customs legislation to the *"Zheng He"* by reason only of the vessel's entry into the territorial sea in October 2023, Mexico hampered the right of innocent passage of Luxembourg, the flag State. This right was again hampered in April 2024, when the authorities of the Port of Tampico did not allow the vessel to be cleared even though there was no longer any legal basis under Mexican law to keep the *"Zheng He"* in the internal waters (article 24, paragraph 1, of the Convention).

(V) By applying its customs legislation to the *"Zheng He"* by reason only of its entry into the territorial sea, deeming that the vessel itself was imported foreign merchandise, Mexico intended to levy charges by reason only of the vessel's passage (article 26, paragraph 1, of the Convention).

(VI) None of the enforcement measures taken by Mexico in respect of the *"Zheng He"* were based on the rights of protection accorded to the coastal State, since all such measures were taken in Mexico's internal waters to which the *"Zheng He"* had been authorized to proceed (article 25 of the Convention).

I. The indisputable applicability of the *right of innocent passage* of Luxembourg, the flag State, to the disputed measures of the *"Zheng He"*'s detention, taxation and confiscation

107.- After showing that the *"Zheng He"*, as a vessel flying the flag of a landlocked State, enjoys a right of innocent passage (**A**), Luxembourg will demonstrate that this *right of innocent passage* is applicable to the measures taken against the *"Zheng He"* which Luxembourg is contesting in these proceedings (**B**).

A. The *"Zheng He"*, a vessel flying the flag of a landlocked State, enjoys the right of innocent passage

108.- Article 17 of the Convention states: "*Subject to this Convention, ships **of all States, whether coastal or land-locked**, enjoy the right of innocent passage through the territorial sea*" (emphasis added).

109.- The States Parties to the Convention deliberately adopted broad and partially redundant language.[30] Pursuant to this article 17, it is not just the ships of States Parties but those "*of all States*" that enjoy the right of innocent passage. Moreover, for greater certainty, it specifies that all States include both "*coastal*" and "*land-locked*" States, as Luxembourg indisputably is. Article 17 merely reiterates the existence of a customary right[31] binding on all coastal States Parties in their territorial sea and for the benefit of ships flying the flag of any State without distinction.

110.- In this respect, Luxembourg would point out three factors reinforcing the importance for the *"Zheng He"* to enjoy the right of innocent passage.

111.- *First,* as there is no home port physically accessible, it is imperative for the *"Zheng He",* like all vessels flying the flag of Luxembourg, to be able to make a nautical call in the internal waters and at the port facilities of coastal States Parties to the Convention. The right of innocent passage to and from the internal waters and port facilities of coastal States Parties to the Convention is crucial to preserving the effectivity of Luxembourg's right to sail vessels flying its flag on the high seas, as enshrined in article 90 of the Convention.

112.- *Second,* the *"Zheng He"* is a dredger, performing an essential activity to enable all other vessels to access and leave the port facilities of any State. By their very nature, dredging activities are mainly carried out in ports and their access channels, with such ports and access channels being accessible only by proceeding through the territorial sea of the relevant coastal States.

113.- *Third*, Luxembourg notes that the nature of the vessel does not pose any specific problems to the applicability of the right of innocent passage. The *"Zheng He"* is a vessel capable of sailing across the high seas and, as a dredger, the *"Zheng He"* is a merchant vessel which sells its services wherever they are needed. It is therefore not a warship within the meaning of article 29 of the Convention nor a nuclear-powered ship nor a ship carrying nuclear

[30] A. Proelss (ed.), *United Nations Convention on the Law of the Sea*, *A Commentary*, Beck-Hart, Nomos, 2017, p. 181.
[31] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment of 27 June 1986, I.C.J. Reports 1986*, p. 111, para. 214.

or other inherently dangerous or noxious substances or materials within the meaning of article 23.

B. The *right of innocent passage* is applicable to the measures taken against the *"Zheng He"* which Luxembourg is contesting in these proceedings

114.- From the outset, Luxembourg intends to rule out the notion that the right of innocent passage is inapplicable because the disputed measures were taken against the *"Zheng He"* when it was already in the Port of Tampico, in Mexico's internal waters. In this respect, Luxembourg recalls that in the *M/V "Norstar"* case, the Tribunal found that the criterion of the locus of enforcement cannot alone dictate whether a provision of the Convention – and the right or corresponding freedom of navigation – is applicable or inapplicable. The case concerned the freedom of the high seas laid down in article 87, paragraph 1, of the Convention. The Tribunal found that the provision was indeed applicable and had been breached by Italy, in that Italy had extended the application of its customs and criminal laws to a vessel flying a foreign flag for its activities on the high seas even though the enforcement measures had been taken in internal waters. In this connection, it is worth quoting paragraph 226 of the Tribunal's judgment *in extenso*, which could not be clearer:

> *Italy's central argument in this case is that, since the Decree of Seizure was enforced not on the high seas but in internal waters, article 87 of the Convention is not applicable, let alone breached. The Tribunal does not find this argument convincing. The Tribunal acknowledges that the locus of enforcement matters in assessing the applicability or breach of article 87. It does not follow, however, that the locus of enforcement is the sole criterion in this regard. Contrary to Italy's argument, even when enforcement is carried out in internal waters, article 87 may still be applicable and be breached if a State extends its criminal and customs laws extraterritorially to activities of foreign ships on the high seas and criminalizes them. This is precisely what Italy did in the present case. The Tribunal, therefore, finds that article 87, paragraph 1, of the Convention is applicable in the present case and that Italy, by extending its criminal and customs laws to the high seas, by issuing the Decree of Seizure, and by requesting the Spanish authorities to execute it – which they subsequently did – breached the freedom of navigation which Panama, as the flag State of the* M/V "Norstar"*, enjoyed under that provision*.[32]

115.- In the present case, the provisions relating to the right of innocent passage are indeed relevant and applicable, since Mexico intended to apply provisions of its Customs Law to the *"Zheng He"* as soon as it entered the territorial sea. The offence of which the *"Zheng He"* was accused and which led to all the disputed enforcement measures allegedly took place as soon as the vessel entered the territorial sea. The offence in question is clearly identified in the decision of 15 February 2024 as being the illegal importation of the vessel into Mexican territory (**Document L50.1**), with this importation having taken place on 11 October 2023, the date on which the *"Zheng He"* entered Mexico's territorial sea (**Document L50.3**). That is logical since the territorial sea is already Mexican territory according to article 42(V) of the Mexican Constitution: "*National land territory is composed by: … V. The waters of the territorial seas in the extension and under the terms established by the International Law.*"[33]

---

[32] *M/V "Norstar" (Panama* v. *Italy), Judgment, ITLOS Reports 2018-2019*, p. 75, para. 226.

[33] An English translation of the Mexican Constitution is available on the website of the Mexican Supreme Court of Justice of the Nation: https://www.scjn.gob.mx/sites/default/files/pagina/documentos/2016-12/CONSTI%20INGLES%20SEPT%202010.pdf

The precise provisions applied by the Mexican authorities all derive from its Customs Law (**Document L71**, specifically pp. 3-4).

116.- In particular, article 146, section I, lays down the requirement to prove the legal importation of any foreign merchandise at any time: "*The possession, transport or handling of merchandise of foreign origin, except for those of personal use, must be protected* ***at all times****, with any of the following documents: Customs documentation proving its legal importation …*" (emphasis added). With regard to article 176, sections I and X of which gave reason to the confiscation of the vessel by the Mexican Treasury and the exorbitant fine, reference is indeed made to the introduction of merchandise into national territory: "*Any person* ***who introduces*** *or removes* ***merchandise into*** *or from* ***the country*** *commits an offence related to import or export in any of the following cases …*" (emphasis added). That is confirmed by extracts from the decision of 15 February which Mexico itself submitted (**Document L50.2**).

117.- If Mexico waited for the vessel to be in port, in its internal waters, before imposing measures of constraint against it in accordance with the above provisions, the likely explanation for that is the difficulty in justifying, with respect to the Convention, any enforcement measure in the territorial sea. Luxembourg will furthermore seek to demonstrate below that article 25 is of no assistance to Mexico. However, the fact that these enforcement measures took place in the port, in Mexico's internal waters, does not shield them from any scrutiny under international law and the Convention.

II. By navigating to call in Tampico, the *"Zheng He"* exercised and intended to exercise its *right of passage* through the Mexican territorial sea in accordance with the Convention

118.- It will first be demonstrated that the navigation of the *"Zheng He"* through the territorial sea of Mexico meets the conditions of the right of passage (**A**) within the meaning of article 18, paragraph 1(b), of the Convention, without the continuity of its passage being cast into doubt by the vessel's anchoring at the Tampico roadstead pending authorization to enter the port (**B**) within the meaning of article 18, paragraph 2, of the Convention. The duration of the planned nautical call in Tampico was proportionate to the requirements of this category of technical vessel (**C**) and the vessel was to re-exercise its right of passage outwards (**D**) at the end of November 2023 to fulfil a number of dredging contracts in The Bahamas for which the vessel had been booked.

A. Navigation with a view to calling in Tampico meets the conditions of article 18, paragraph 1(b), of the Convention

119.- Article 18 of the Convention defines *passage* purely in terms of navigation, without considering reasons which could then lead to a characterization of this innocent passage. Paragraph 1 provides:

1. *Passage means navigation through the territorial sea for the purpose of:*

(a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or
(b) proceeding to or from internal waters or a call at such roadstead or port facility.

While subparagraph (a) governs passage "*without entering internal waters*" (sometimes referred to as *lateral* or *horizontal* for this reason), subparagraph (b) in turn governs passage "*for the purpose of: … (b) proceeding to or from internal waters or a call at such roadstead or port facility*" (sometimes referred to as *vertical* for this reason). This right of passage for the purpose of calling in a maritime port is not a new feature of the Convention. The concept was already starting to emerge in 1930 in article 3 of the preparatory draft of The Hague Codification Conference and was enshrined in article 14 of the draft of the *Convention on the Territorial Sea and Contiguous Zone* of 1958.

120.- To be recognized, the right of passage implies navigation in the territorial sea of a coastal State to a port which is open to international maritime traffic in which the vessel may be allowed to call. All these conditions were clearly satisfied by the *"Zheng He"*.

121.- First, it is established that the *"Zheng He"* was coming from the internal waters of The Bahamas from where it departed on 5 October 2023 after receiving the *Certificate of Clearance Outwards* (**Document L25**) to proceed to the Port de Tampico. On 9 October 2023, before the *"Zheng He"* had even arrived at the roadstead of the Port of Tampico, the ship agent sent the Tampico Maritime Customs Office a notice of arrival of an open-seas vessel (**Document L27**). The *"Zheng He"* was therefore navigating in the territorial sea of Mexico, of which the Mexican authorities were fully aware, for the purpose of calling in Tampico.

122.- Second, it is not disputed that the Port of Tampico is a maritime port open to open-sea traffic, in which it is possible to call. Mexico has never disputed this fact in its pleadings relating to the Request for the prescription of provisional measures. Public navigation

information confirms that the Port of Tampico is open to open-sea maritime navigation. In particular, the *Admiralty Sailing Directions Pilot Book NP-69A* **(Document L22**) published by the British Admiralty as well as the *Port of Tampico Operating Rules* state that berth No. 3 is indeed open to open-sea traffic (**Documents L23 and L24**).

123.- Lastly, on 21 October 2023**,** the harbour master's office finally gave permission to the *"Zheng He"* to moor at berth No. 3 (**Document L35**) for exclusively nautical purposes which had been confirmed by the vessel on 17 October 2023 (**Document L31**) and duly understood as such by the harbour master's office (**Document L32**). Whether by its point of departure (outside the territorial sea of Mexico), its navigation in the territorial sea of Mexico or by its point of arrival for an authorized call in a Mexican maritime port open to open-sea traffic, the right of passage of the *"Zheng He"* was thus acquired within the meaning of article 18, paragraph 1(b).

B. Navigation with a view to calling in Tampico meets the conditions of article 18, paragraph 2, of the Convention

124.- Article 18, paragraph 2, of the Convention supplements the characteristics of passage. It states:

> *2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by* force majeure *or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.*

Examination of the *travaux préparatoires* of the Convention shows that the first sentence, requiring continuous and expeditious passage, was included to address the concern that foreign warships might hover in the territorial sea of the coastal State under the pretext of right of passage.[34] In no way does this sentence require a ship to be sailing at full speed. It should navigate at an appropriate operational speed in respect of weather and hydrographic conditions, and even with a view to reducing its carbon footprint (*slow steaming*).

The second sentence, starting with the adverb "however", does not impose continuity of navigation as a requisite condition for the right of passage. A ship may, in fact, interrupt its navigation without that rendering a break in the continuity of passage. "*However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation*". Stopping and anchoring are permitted. The phrase *incidental to ordinary navigation* sets a fairly broad standard. According to the authors of a reference commentary,[35] "*[t]ypically, this would include anchoring in bad weather, stoppage due to mechanical failure, temporary anchorage outside a port while awaiting a berth, anchorage pending pilotage and other navigational assistance, and anchorage under direction from coastal state.*" Along the same lines, another author observes: "***Obviously, stopping and anchoring at a roadstead*** *or a deepwater port outside internal waters, anchoring outside ports just waiting for a free berth or lying clear of a busy channel or waterway as required by Vessel Traffic Services (VTS) system* ***may well fall under the category as conceived in art. 18(2). In other words, they are seen as***

[34] *Virginia Commentary,* Art. 18, pp. 162-163: "*It meets the concerns that foreign warships might hover in the territorial sea of a coastal State. The use of 'However' to introduce the second sentence indicates that it contains exceptions to the rule that passage is to be 'continuous and expeditious'*."

[35] A. Proelss (ed.), *United Nations Convention on the Law of the Sea*, *A Commentary*, Beck-Hart, Nomos, 2017, p. 185.

'incidental to ordinary navigation'."[36] These examples include *port congestion* which, throughout the world, forces vessels waiting to enter a port to anchor at the roadstead. Roadstead waiting times vary greatly and depend on various factors such as maritime traffic, functionality of port facilities and productivity of handling operators, weather and environmental rules.

125.- In the present case, in line with the estimated time of arrival (ETA) indicated by the ship agent on 9 October 2023 (**Document L27**), the *"Zheng He"* arrived in an anchorage area known as "*Area de fondeo de Tampico*" in the territorial sea at 7.30 a.m. on 11 October 2023. To that end, it had received the *Permit for entry of vessels No. 514873* (**Document L28**), issued by the Tampico harbour master's office on 10 October. Moreover, the Tampico District Court would later rule that the permit was valid authorization to enter Mexican territory **(Document L51**). Authorization to shift position to berth No. 3 was then granted by the harbour master's office on 21 October 2023 (**Document L35**) and the vessel immediately proceeded to berth No. 3 at 2.40 p.m. that same day.

126.- During this 10-day period at the roadstead before it entered the port, the *"Zheng He"* was preparing to carry out its call and waiting for authorization to moor to be issued. As set out above, the shipowner was starting to lose patience, mainly because waste was accumulating on board the vessel; JVV had made contact via WhatsApp with an agent from ASIPONA operating a number of terminals at Tampico (**Document L33**). The ship agent had suggested entering berth No. 11 which was free, but access to that berth was refused in favour of berth No. 3. Authorization was issued following a meeting of the *Port of Tampico Operating Committee* held on 21 October 2023*,* attended by all Mexican stakeholders and authorities, including customs and AGACE (**Document L36**).

127.- It should also be noted that while the *"Zheng He"* was waiting at the roadstead, it did not conduct any commercial prospecting activities or any technical dredging activities. Nor did the vessel proceed with provisioning, preventive maintenance or crew change operations, which – for various, mainly technical, reasons – were preferably to be carried out on shore.

128.- This anchorage period outside the Port of Tampico was therefore part of its ordinary course of navigation to Tampico. To repeat the wording used in the above commentary on the Convention, this was a typical case of *"temporary anchorage outside a port while awaiting a berth".*

129.- It should also be noted that the climatic conditions in the Gulf of Mexico at that time of year led the shipowner to seek the safest solution for its vessel. In that period of increased climatic activity, anchorage at the roadstead was already preferable to waiting on the high seas. And when the weather conditions deteriorated, with warning of a *surada* event issued by the harbour master's office on 20 October 2023 entailing gusts of 25 to 30 knots (**Document L34**), the *"Zheng He"* entered the port as soon as it received authorization to do so the very next day.

C. The planned duration of the nautical call was proportionate to the requirements of this type of vessel

130.- To use the terminology of the Convention, the *"Zheng He"* therefore navigated in Mexico's territorial sea for the purpose of temporarily entering the internal waters of the

[36] Haijiang Yang, *Jurisdiction of the Coastal State over Foreign Merchant Ships in Internal Waters and the Territorial Sea,* Hamburg Studies on Maritime Affairs Volume 4, Springer, 2006, p. 153 (emphasis added).

maritime port of Tampico for a nautical call, before – at least as was hoped at the time – returning to the sea to navigate to The Bahamas.

131.- The *"Zheng He"*'s call was indeed a nautical call, as had been notified by the ship agent to the port authorities in his letter of 17 October 2023 (**Document L31**):

Some of the services likely to be required include:

- *Crew changeover*
- *Refuelling: boat supplier: Avimar S.A. de C.V.*
- *Sewage / sludge / waste removal: Lacavex S.A.*
- *Delta – Iossif Dutsini – inputs and waste removal*
- *Gas-free certificate: Taller MASI*
- *Preventive maintenance: Electromex Mantenimiento Industrial Marino, S.A. DE C.V.*

The agent had requested this nautical call "*for a period of approximately three to four weeks*". This period was proportional to the type of vessel in two respects. First, the specific technical features of the dredger *"Zheng He"* with its technical equipment entailed such a period of time, mainly because of the use of cranes. Second, the vessel was not subject to the tight schedule relevant to transport vessels serving a route; the *"Zheng He"* had to be ready to set sail again at the end of November to fulfil its next dredging contract in The Bahamas.

132.- Even the Mexican authorities endorsed such a duration, having been duly notified of the exclusively nautical purpose of the call. *Initially,* on 17 October 2023, the Port of Tampico harbour master's office requested from the General Directorate of Ports of Mexico **a temporary change of purpose of berth No. 3** (**Document L32**), **until 30 November 2023**, so that the *"Zheng He"* could call in the berth where it could carry out all its provisioning, sewage and waste removal, crew changeover and preventive maintenance operations. *Then*, on 21 October 2023, the harbour master's office issued the *"Zheng He"* authorization to moor at berth No. 3, without specifying a duration (**Document L35**). *Subsequently*, on 24 October 2023, the General Director of Ports notified the Director of ASIPONA Tampico of the temporary change of purpose of berth No. 3 **until 30 November 2023** so that the *"Zheng He"* could carry out its maintenance operations there, as requested (**Document L38**). The maritime authorities were therefore fully aware of the nautical nature of the call and the duration required to complete the listed operations.

D. At the end of the nautical call, the *"Zheng He"* was to leave the internal waters of the maritime port of Tampico and cross the territorial sea to proceed to The Bahamas

133.- After effectively exercising its right of passage to enter the internal waters of the Port of Tampico, the shipowner planned for the *"Zheng He"* to exercise its right of passage through Mexico's territorial sea to navigate to The Bahamas where it was expected for employment under a works contract. This *right of passage outwards* is not a hypothetical supposition: it is documented in the evidence confirming it as a fact.

134.- First, the *"Zheng He"* had been booked and designated, together with the service vessel *"DN 205"*, for dredging works in Ocean Cay in The Bahamas with a planned execution period between 8 April 2024 and 22 May 2024 (**Document L12**). Second, still with service vessel *"DN 205",* the *"Zheng He"* had been designated to be assigned to a works contract concerning the Freeport shipyard dry dock in The Bahamas (**Documents L13 and L14**). The

dredging was to be completed over a period from the end of the hurricane season (at the end of November 2023) ("*Start dredging after Hurricane Season November 2023*") to March 2024. The *"Zheng He"* was also expected to be deployed in The Bahamas over a four-week period between December 2023 and January 2024 to dredge the container terminal of the Port of Freeport.

135.- That explains why the shipowner never settled for the detention of its vessel, instead exploring legal remedies to seek the vessel's release. After managing to have the customs procedure (serving as the basis for the vessel's detention) annulled by a decision of 22 March 2024 of the Tampico District Court (**Document L51**), the shipowner obtained, on 18 April 2024, at the expiry of the legal time limit, a certificate of non-appeal against this decision in its favour (**Document L52**). It promptly notified the Port of Tampico harbour master's office of the ruling on 19 April 2024 with the aim of having it executed and the vessel cleared (**Document L53**) so that it could resume navigation to The Bahamas.

III. The right of passage exercised by the *"Zheng He"* when navigating to call in Tampico was *innocent* in nature

136.- The detention and decision imposing the exorbitant fine and triggering the procedure to expropriate the *"Zheng He"* are based on the grounds of a supposed customs offence which was allegedly committed as soon as the vessel entered the territorial sea of Mexico; they are also the reason why, to date, the *"Zheng He"* has been prevented from resuming its navigation in the territorial sea. After recalling the definition of the *innocent* nature of passage (**A**), Luxembourg will demonstrate that Mexico has unsuccessfully discharged its burden of allegation and burden of proof that the navigation of the *"Zheng He"* was not *innocent* (**B**). The customs offences of which the *"Zheng He"* is accused are completely inconsistent with the prejudicial activities listed in article 19, paragraph 2(g), of the Convention (**C**).

A. Definition of the innocent nature of passage

137.- In international law (**1**), the definition of the *innocent* nature of passage in territorial seas is set out in article 19 of the Convention, which gives concrete expression to the general definition in paragraph 1 by listing, in paragraph 2, activities which are not innocent. In Mexican law (**2**), no enforceable national rule restricting the right of innocent passage has been given due publicity, within the meaning of article 21, paragraph 3.

1) Definition in international law

138.- The definition of the innocent nature of the right of passage exercised by a ship in territorial seas is not left to the subjective discretion of the coastal State. Instead, article 19 of the Convention, entitled "*Meaning of innocent passage*", provides a positive definition in paragraph 1, which is then specified in more detail in a numbered list of activities which are *not innocent*.

139.- The positive definition of innocent passage set out in article 19, paragraph 1, of the Convention refers to the absence of anything "*prejudicial to the peace, good order or security of the coastal State*". This wording, which was originally used in *The Hague draft* of 1930 and in the *1958 Convention*, is not explicitly defined by the Convention. However, the

generally accepted meaning of the text is that whether something is "*prejudicial to the peace, good order or security of the coastal State"* must be assessed in accordance with international law and not in accordance with the national law of the coastal State. The second sentence of article 19 stipulates that innocent passage "*shall take place in conformity with this Convention and with other rules of international law*". Furthermore, reference to the coastal State's national laws and regulations is possible only within the scope of article 21, paragraph 1, of the Convention "*in conformity with the provisions of this Convention and other rules of international law*". The criteria of the *innocent* or *not innocent* nature of the *"Zheng He"* must therefore be sought in the Convention itself.

140.- Article 19, paragraph 2, starts with an introductory text followed by 12 activities listed from (a) to (l). The introductory text states: "*Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities*". This introductory text does not include any explicit grammatical indicators (e.g., *in particular*, *for example* or *such as*[37]*)*, which could lead to the conclusion that the list from (a) to (l) is provided for illustrative purposes only. On the contrary, international practice considers the list of non-innocent activities in article 19, paragraph 2, to be restrictive. For instance, in the *Uniform Interpretation of the Rules of International Law Governing Innocent Passage* adopted by the United States of America and the Soviet Union, attached to a joint statement published in Jackson Hole (Wyoming) on 23 September 1989 and signed by the foreign ministers of these two major naval powers,[38] the US Government and the USSR Government agreed the following:

> 3. *Article 19 of the Convention of 1982 sets out in paragraph 2 an exhaustive list of activities that would render passage not innocent. A ship passing through the territorial sea that does not engage in any of those activities is in innocent passage*.
>
> 4. *A coastal State which questions whether the particular passage of a ship through its territorial sea is innocent shall inform the ship of the reason why it questions the innocence of the passage, and provide the ship an opportunity to clarify its intentions or correct its conduct in a reasonably short period of time*.

Other examples can be seen in the national legislations adopted by many coastal States in accordance with article 21 of the Convention. These laws either reproduce *expressis verbis* the list[39] in article 19, paragraph 2, or they add nothing,[40] with some referring directly to the Convention.[41]

141.- Article 21, entitled "*Laws and regulations of the coastal State relating to innocent passage*", states the conditions under which coastal States may adopt laws and regulations relating to innocent passage through their territorial sea and the conditions under which they may enforce them on foreign ships exercising the right of innocent passage. With respect to the adoption of national laws and regulations, this must first be done "*in conformity with the provisions of this Convention and other rules of international law*"; such laws and regulations may then relate only to the matters listed in subparagraphs (a) to (h) of paragraph 1. With respect to the enforceability of such laws and regulations on foreign vessels, this requires that "*[t]he coastal State shall give due publicity to all such laws and regulations*". An examination

[37] The expression "*such as*" which appeared in a draft issued during the second conference was not retained. See *Virginia Commentary*, art. 19, para. 19.4, p. 169.
[38] *Int. Legal Materials,* vol. 28, 1989, p. 1444; *BDM,* No. 14, December 1989, p. 12.
[39] See Bulgarian Law of 8 July 1987 *(LOSCDII,* pp. 3 ss., art. 20); Law No. 45 of 1977 of the Democratic Republic of Yemen (Smith, *EEZ Claims,* p. 493, art. 6).
[40] Law of 1989 of Tanzania, *LOSCDII,* p. 74.
[41] Law of Ghana of 1986, *LDMEP,* p. 35, art. 2, para. 1; Law No. 85-14 of 1985 of Senegal, art. 5; United States of America Presidential Proclamation of 27 December 1988, *LOSCDII,* p. 83.

will now be carried out of the position of the Mexican legislator vis-à-vis the right of innocent passage.

2) Lack of textual restrictions on the right of innocent passage in Mexican law

142.- The Constitution of the United Mexican States does not include any definition or regime for *innocent passage* or *non-innocent passage* through the Mexican territorial sea. The Mexican Constitution states only that the territorial sea forms part of Mexican territory and that Mexico exercises its sovereignty over these waters under the terms set forth by international law, in accordance with article 27, paragraph 4. The Mexican Constitution therefore acknowledges the applicability of international law in its territorial sea and does not lay down any constitutional regime for the right of innocent passage applicable thereto.

143.- With reference to article 42, section V, of the Constitution, it is now necessary to examine whether there is a specific definition or regime for the right of innocent passage in Mexican federal law. The *Ley de navegación y comercio maritimos* published in the official journal on 1 February 2006 and adopted on 7 December 2020 does not lay down any rules on the right of innocent passage through the Mexican territorial sea. The *Ley federal del mar*, published on 8 January 2006, includes a chapter of 11 articles on the territorial sea (arts. 23 to 33). Only article 29 refers to the right of innocent passage, using similar terms as in article 17 of the Convention, without adding any restrictions. ***Thus, neither of the two federal acts governing navigation in the territorial sea of Mexico sets out any national rules restricting the innocent passage referred to in article 21 of the Convention.*** To our knowledge, no other special or sectoral federal act specifically governs the right of innocent passage.

144.- Even supposing that Mexico now intends to rely on other special federal legislation which it deems restricts the right of innocent passage, any such legislation would still need to meet the condition of due publicity referred to in article 21, paragraph 3, of the Convention: "*The coastal State shall give due publicity to all such laws and regulations*." ***However, Mexico has not notified the United Nations of any national rules on the conditions governing innocent passage in its territorial sea. It has given notification[42] only of the adoption of three national rules which are unrelated to innocent passage***: *the Decree of 28 August 1968 delimiting the Mexican Territorial Sea within the Gulf of California, the General Act of 31 December 1941 on National Property as amended in January 1982* and the *Federal Act relating to the Sea of 8 January 1986*. It has also given notification of the *Federal Criminal Code* under the heading of Piracy. As no other rules have been duly published in accordance with article 21, paragraph 3, Mexico cannot enforce on Luxembourg, on the matter of innocent passage, any legislation other than the *Federal Act relating to the Sea of 8 January 1986*.

B. Lack of allegations or proof that the nature of the *"Zheng He"*'s passage was *not innocent*

145.- When the Mexican authorities detained the *"Zheng He"* and then initiated an expropriation procedure, they did not advance any allegations (**1**) or discharge the burden of proof (**2**) that the *"Zheng He"* had exercised its right of passage in a *non-innocent* way.

[42] https://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/MEX.htm

1) Mexico did not advance any allegations that the right of passage exercised by the **"Zheng He"** *was not innocent in nature*

146.- When the first customs fine was imposed on 24 October 2023 (**Document L40**), even though the *"Zheng He"* had been received at the berth, the Tampico Customs Office did not advance any allegations that the right of passage exercised by the Luxembourg vessel in its territorial sea was not of an innocent nature. The legal texts cited in the fine do not refer to the Convention or to the *Ley federal del mar.* They advert to other legal sources, including the *Customs Law* and the *Internal Regulations of the Ministry of Finance and Public Credit*. The offence of which the *"Zheng He"* is accused concerns its mooring at berth No. 3 in internal waters, without any reference to its activities in the territorial sea when it was at the roadstead.

147.- The onboard inspection order issued on 31 October 2023 (**Document L43**) by AGACE does not contain any allegations that the right of passage exercised by the *"Zheng He"* in the territorial sea was not innocent in nature. It sets out preparations for an onboard inspection at berth No. 3 of the Port of Tampico ("*Recinto Portuario, tramo 3, entre BITA 17 a 22*") and potentially of all vessels moored there.

148.- The record of the precautionary seizure issued on 3 November 2023 by ADACEN (**Document L49**) ***likewise does not contain any allegations that the right of passage exercised by the* "Zheng He"** ***in the territorial sea was not innocent in nature***. It refers to articles 36, 146, 176 and 178 of the Customs Law, which relate to illegal importations.

149.- It was not until the confiscation order of the *"Zheng He"*, delivered by ADACEN on 15 February 2024 (**Document L50**), that notification was explicitly given, for the first time, of what the shipowner and its agent were accused of, namely, not having demonstrated the legal importation, possession and/or stay of the *"Zheng He"* "*in national territory*", which includes the territorial sea under the Mexican Constitution. The *"Zheng He"* was now being accused of a customs offence from the time it entered the territorial sea, thus calling into question the innocent nature of its passage.

150.- The *"Zheng He"* had arrived at the Tampico roadstead on 11 October 2023 after obtaining a permit for entry from the harbour master's office (**Document L28**); it was then duly received at berth No. 3 on 21 October 2023 on the authorization of the harbour master's office (**Document L35**). ***At no point were any allegations raised claiming a violation of the innocent nature of the vessel's passage through the territorial sea***. The allegation of a customs offence based on a vessel's entry into the territorial sea without evidence of temporary importation was made only belatedly *ex post*, on 15 February 2024. Here again, **this customs offence was alleged without explicit reference to the right of innocent passage and without referring to the *Ley federal del mar*, the only Mexican text relating to innocent passage to have been duly published**. Contrary to paragraph 3 of the recommendations in the *Uniform Interpretation of the Rules of International Law Governing Innocent Passage,* the Mexican authorities did not offer the *"Zheng He"* any option to clarify or regularize the situation.

2) The burden of proof that the right of passage exercised by the **"Zheng He"** *was not innocent in nature lay with Mexico*

151.- The right of innocent passage of a foreign ship in the territorial sea of a coastal State would be deprived of all practical effect if it were up to the coastal State to determine what was and was not *innocent* according to its own national law criteria and at its own discretion. The actual substance of the right of innocent passage enshrined in customary international law would then be exclusively dependent upon the national rules and decisions of

the coastal State, which would be unacceptable in terms either of legal certainty or of primacy of international law. That is why the wording of article 19 of the Convention is much more precise than that of article 14, paragraphs 4 and 5, of the *Convention on the Territorial Sea and Contiguous Zone* of 1958. From the *travaux préparatoires* it can be seen that a number of delegations, in particular Fiji and the United Kingdom, wished to propose an objective test that could establish situations in which the passage of a foreign ship was no longer innocent. Consensus was reached as of the third session of negotiations, in 1975, on the need to produce a list of activities considered to be non-innocent in nature.[43]

152.- Hence, from the way in which article 19 is structured in two paragraphs – with the first providing a general definition of the innocent nature of passage and the second listing activities which are not innocent – ***the onus lies on the coastal State to present the allegation and prove that the conduct of the foreign ship exercising its right of passage is not innocent and corresponds to one of the prejudicial activities listed restrictively in article 19, paragraph 2***.

153.- Yet at no point did Mexico allege or prove that the right of innocent passage inwards exercised by the *"Zheng He"* as it proceeded to Tampico, to which it had requested admission, was not contrary to one of the prejudicial activities set out in article 19, paragraph 2.

C. The discrepancy between the customs offences alleged against the *"Zheng He"* and the prejudicial activities listed in article 19, paragraph 2(g)

154.- If Mexico had alleged a violation of the innocent nature of the *"Zheng He"*'s passage, it would have had difficulty in doing so without an element of absurdity, since none of the prejudicial activities set out in article 19, paragraph 2, bore any factual or legal connection to the activities of the Luxembourg dredger when it was exercising its right of passage. However, because Mexico relied on the alleged customs offences to detain the *"Zheng He"* and initiate an expropriation procedure, it will be demonstrated, in particular, that the conditions of the prejudicial activity set out in article 19, paragraph 2(g), are patently unlikely to be satisfied in the present case. Subparagraph (g) must be cited verbatim in English, French and Spanish:

> In French: *"(g) embarquement ou débarquement de marchandises, de fonds ou de personnes en contravention aux lois et règlements douaniers, fiscaux, sanitaires ou d'immigration de l'État côtier"*;
>
> In English: "*(g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State";*
>
> In Spanish: "*el embarco o desembarco de cualquier producto, moneda o persona, en contravención de las leyes y reglamentos aduaneros, fiscales, de inmigración o sanitarios del Estado ribereño*".

155.- To characterize the non-innocent nature of passage, this prejudicial activity under the Convention calls for a factual assumption and a legal assumption together to be satisfied. The factual assumption is the "*loading or unloading of any commodity, currency or person"*, while the legal assumption is such act being *"contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State".* However, in the instant case, the activity of innocent passage of the Luxembourg dredger in the territorial sea of Mexico for the purpose of making a nautical call does not satisfy either the factual or legal assumption.

[43] See *Virginia Commentary*, art. 19, para. 19.5, pp. 169-170.

1) Failure to substantiate the factual assumption of article 19, paragraph 2(g)

156.- From the time of the notice of arrival of an open-seas vessel sent by the ship agent on 9 October 2023 (**Document L27**), followed by the actual request to enter the port sent on 17 October 2023 (**Document L31**), the Mexican authorities were notified that the *"Zheng He"* was a service vessel, not a merchant or passenger vessel. The Luxembourg dredger was sailing in ballast from The Bahamas. Moreover, this fact was also noted by the port authorities (SEMAR) as well as the customs authorities (Customs Office) and tax authorities (AGACE) in their various letters and decisions. The record of initiation and precautionary seizure issued on 1 November by AGACE (**Document L49**) describes the vessel as "*a self-propelled cutter suction dredger*", which corresponds exactly to the technical description of the *"Zheng He"*. It does not report the presence on board of merchandise, passengers or persons other than the crew.

157.- In fundamental denial of its status as a foreign-flagged service vessel, the Mexican authorities classified the vessel itself as merchandise in accordance with its national law. This erroneous classification as merchandise assigned to the *"Zheng He"*, which will be discussed later (below, under article 90), is in any event incapable of triggering the applicability of article 19, paragraph 2(g), since this article refers to the process of *loading or unloading* on board the vessel – "*el embarco o desembarco*" / "*embarquement ou le débarquement*".

158.- These terms must be understood according to their ordinary meaning. The dictionary *Trésor de la langue française* defines "*embarquement*" as the "*[a]ction de faire monter (des personnes) ou de charger (des choses) à bord d'un moyen de transport quelconque*", thus making it a synonym for "*chargement*", defined as the "*[a]ction de mettre une charge sur un animal, un véhicule, un navire*". In turn, the same dictionary defines "*débarquement*" as the "*[a]ction de débarquer des passagers ou une cargaison sur le quai d'un port ou d'une gare*", thus making it a synonym for "*déchargement*", defined as the "*[a]ction de décharger un véhicule, un navire, un animal qui a effectué un transport*". The terms "*embarquement*"[44] or "*chargement*"[45] and "*débarquement*"[46] or "*déchargement*"[47] are used in this way in international conventions on the international maritime transport of goods and passengers under a contract of carriage.

159.- Similarly, in Spanish, according to the reference dictionary compiled by the Royal Spanish Academy, the word "*embarco*" refers to the "*(a)cción y efecto de embarcar (introducir personas u objetos en un medio de transporte)*", thus making it a synonym for "*embarque*" or, using more contemporary terminology, "*operacíones de carga*". In turn, "*desembarco*" is defined as the "*(a)cción de desembarcar (salir de una embarcación*)" and has the following synonyms: "*desembarcación*", "*desembarque*", "*salida*", or, using more contemporary

[44] For example, art. 1(8) of the consolidated text of the French version of the *1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea* and the Protocol of 2002 to the Athens Convention; articles 3 and 4 of the French version of the *Brussels Convention of 25 August 1924 for the Unification of Certain Rules of Law relating to Bills of Lading* (*The Hague Rules*).

[45] Art. 19(1)(b), art. 27 and art. 36(2)(c) of the French version of the *United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea ("Rotterdam Rules").*

[46] Art. 1(8) of the consolidated text of the French version of the *1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea* and the Protocol of 2002 to the Athens Convention.

[47] For example, art. 1(e), art. 2 or art. 4(6) of the Spanish version of the *International Convention for the Unification of Certain Rules of Law relating to Bills of Lading* (*The Hague Rules*) and art. 1(6), art. 1(7) and art. 12(3)(b) of the Spanish version of the *United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea ("Rotterdam Rules").*

terminology, "*operacíones de descarga*". The terms "*embarco*[48] or "*operacíones de carga*,[49] and "*desembarco*"[50] or "*operacíones de descarga*"[51] are used in this way in international conventions on the international maritime transport of goods and passengers under a contract of carriage.

160.- And likewise in English – in both UK and US English – the term *loading* (which synonymous with *embarkation* for passengers) and the term *unloading* (synonymous with *discharge* for merchandise and *disembarkation* for passengers) mean the act of placing them on board a means of transport, in particular a vessel under maritime law, and then taking them off again. These terms are in widespread use in international conventions relating to the maritime carriage of goods[52] and passengers.[53]

The principle of *unius inclusio, alterius exclusio* must guide the interpretation of article 19, paragraph 2(g). As one author notes in this respect: "*Under Para. 2(g), the embarking or disembarking of any goods, currency or person by a foreign ship in the territorial sea in contravention of such laws and regulations would result in the ship being considered as no longer in innocent passage. To this point two more observations may be added. At the first place, not all such activities in the territorial sea are meant here. For instance, trans-shipment at a roadstead or deepwater port located in the territorial sea will not deprive passage of its innocence, as long as it is allowed by the relevant laws and regulations. Secondly,* ***other contraventions apart from than loading or unloading of goods, currency or persons****, such as faults regarding packaging, stowage or marking of goods,* ***cannot render the passage of a foreign ship non-innocent. Para. 2(g) embodies the desire of the drafters to optimally protect the right of innocent passage in these particular fields***."[54]

161.- Therefore, given the fact that the *"Zheng He"* is a service vessel, with no merchandise or passengers being conveyed under any maritime carriage contract, there clearly could not have been any loading or unloading activities within the ordinary meaning of the terms of article 19, paragraph 2(g). With no merchandise being unloaded and no passengers being disembarked in the Mexican territorial sea, the factual assumption of article 19, paragraph 2(g), is quite simply not substantiated. Thus, the allegation of a customs offence under Mexican law pertaining to the vessel itself, whether or not it is founded in local law, is ineffective to deprive the *"Zheng He"*'s right of passage of its innocent nature.

---

[48] For example, art. 1(8) of the consolidated text of the Spanish version of the *1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea* and the Protocol of 2002 to the Athens Convention; articles 3 and 4(5) of the Spanish version of the *Brussels Convention of 25 August 1924 for the Unification of Certain Rules of Law relating to Bills of Lading* (*The Hague Rules*).

[49] Art. 19(1)(b), art. 27 and art. 36(2)(c) of the Spanish version of the *United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea ("Rotterdam Rules")* (New York, 2008).

[50] Art. 1(8) of the consolidated text of the Spanish version of the 1974 *Athens Convention relating to the Carriage of Passengers and their Luggage by Sea* and the Protocol of 2002 to the Athens Convention.

[51] For example, art. 1(e), art. 2 or art. 4(6) of the Spanish version of the *Brussels Convention of 25 August 1924 for the Unification of Certain Rules of Law relating to Bills of Lading* (*The Hague Rules*) and art. 1(6), art. 1(7), art. 12(3)(b) of the Spanish version of the *United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea ("Rotterdam Rules")* (New York, 2008).

[52] Art. 2, art. 3(3)(a), art. 6, art. 7 of the English version of the *International Convention for the Unification of Certain Rules of Law relating to Bills of Lading ("Hague Rules")*; art. 1(6), art. 12(b), art. 13(2), art. 15, art. 17(3)(i), art. 27(1) of the English version of the *United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea ("Rotterdam Rules")*.

[53] Art. 1(8)(a); art. 15(1)(a) and (b), *Athens Convention relating to the Carriage of Passengers and their Luggage by Sea,* 1974.

[54] Haijiang Yang, *Jurisdiction of the Coastal State over Foreign Merchant Ships in Internal Waters and the Territorial Sea,* Hamburg Studies on Maritime Affairs Volume 4, Springer, 2006, p. 165 (emphasis added).

2) Failure to substantiate the legal assumption of article 19, paragraph 2(g)

162.- The legal assumption of acts being "*contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State*" is not substantiated because Mexico never directly or indirectly alleged that the relevant federal laws had been violated. In terms of sanitary laws and regulations, it did not refer to the *Ley general de salud* or the *Reglamento de la ley general de salud en materia de sanidad internacional* which, in any event, do not govern the right of passage but the reception of vessels in port. In terms of immigration laws and regulations, Mexico did not refer to the *Ley de migración* or the *Reglamento de la ley general de población* which do not govern the right of innocent passage either.

163.- As demonstrated above, the legal assumption of acts being "*contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State"* has not been substantiated, as it is moot on the grounds that Mexico cannot accuse the *"Zheng He",* a *"non-passenger vessel"* and a "*non-cargo vessel*" of any customs offence entailing the illegal disembarking of passengers or the illegal discharging of merchandise.

IV. Mexico, the coastal State, has failed in its duty, under article 24, paragraph 1, to "not hamper the innocent passage of foreign ships through the territorial sea except in accordance with this Convention"

164.- Even though Mexico, as a coastal State, was entitled to regulate the right of innocent passage through its territorial sea, in particular with the aim of preventing any infringement of its customs laws and regulations under article 21, paragraph 1(h), of the Convention, Luxembourg has demonstrated above that it did not do so.

165.- Thus, article 21, paragraph 4, of the Convention – which provides that "*[f]oreign ships exercising the right of innocent passage through the territorial sea shall comply with* ***all such*** *laws and regulations*" (emphasis added) – is inapplicable. As indicated by the determiner "all such", the only laws and regulations referred to are those addressed in article 21, i.e., the laws and regulations "relating to" innocent passage in accordance with the very title of article 21 ("*relatifs au*" in the French version and "*relativos a*" in the Spanish version). According to the dictionary *Le Robert*, "*relatif à*" means "*se rapportant à*" [pertaining to] or "*concernant*" [concerning], and the adjective "*relatif*" means "*qui présente une relation avec*" [having a relationship with]. According to the *Larousse* dictionary, the adjective "*relatif*" means *"[q]ui se rapporte à quelqu'un, à quelque chose, qui les concerne*" [pertaining to someone or something, or concerning them]. The adjective clearly indicates that article 21 refers only to those laws and regulations having the specific purpose of regulating the right of innocent passage.

166.- However, Luxembourg is not contesting Mexico's ability to extend the applicability of its customs laws and regulations to its territorial sea, since these waters are subject to its sovereignty, as explicitly laid down in article 2, paragraph 1, of the Convention. ***Nevertheless, such prescriptive jurisdiction must comply with the provisions of the Convention, in particular those relating to the right of innocent passage, and more generally, to the rules of international law***. This is to ensure a balance between the rights of the coastal State and those of the navigating State. Again, that is expressly set forth in the Convention (article 2, paragraph 3): **"*The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.*"**

167.- Specifically, beyond those laws and regulations referred to in article 21, article 24 of the Convention creates duties incumbent on the coastal State where it intends to exercise its prescriptive jurisdiction in respect of foreign-flagged ships.

Article 24, paragraph 1, provides:

> *1. The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea except in accordance with this Convention. In particular, in the application of this Convention or of any laws or regulations adopted in conformity with this Convention, the coastal State shall not:*
>
> > *(a) impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage; or*
> >
> > *(b) discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State.*

After a brief analysis of article 24, paragraph 1 (**A**), Luxembourg will seek to demonstrate that Mexico has violated this provision (**B**).

A. Content of article 24, paragraph 1, of the Convention

168.- Article 24, paragraph 1, starts by stating the general principle – not hampering innocent passage except in cases provided for under the Convention. Such a general duty incumbent on the coastal State was already included in the draft articles of The Hague Codification Conference of 1930 on the legal status of the territorial sea[55] and then in the Geneva Convention on the Territorial Sea and Contiguous Zone of 1958.[56]

169.- Article 24, paragraph 1, goes on to state two specific instances in which the coastal State would be violating the general duty. Use of the phrase "*In particular*" ("*En particulier*" in the French version and "*En especial*" in the Spanish version) to introduce these two scenarios clearly indicates that they are provided to elucidate the general principle of not hampering innocent passage and to illustrate two series of instances of inadmissible hampering; but there are instances of inadmissible hampering other than those referred to in subparagraphs (a) and (b). ***The instances referred to in subparagraphs (a) and (b) are therefore not an exhaustive list of the possible ways of violating the general principle of not hampering innocent passage. That is further reinforced by the context of article 24, paragraph 1***: the general duty of not hampering innocent passage is reiterated in article 44 (incumbent on States bordering straits) and article 54 (incumbent on archipelagic States) of the Convention, albeit without mentioning the two specific instances.

170.- According to the ordinary meaning of the word in French, an "*entrave*" is "*[c]e qui retient, gêne, embarrasse*"; a synonym would be "*obstacle*".[57] In Spanish, the term "*dificultades*" is used, which means "*[e]mbarazo, inconveniente, oposición o contrariedad que impide conseguir, ejecutar o entender algo bien y pronto*"; synonyms include "*complicación, problema, obstáculo, impedimento, inconveniente"*.[58] In English, the verb "*hamper*" is used, meaning "*to impede or obstruct in action*"[59] and "*to prevent someone doing something*

[55] Article 4 of the draft provided: "*A coastal State may put no obstacles in the way of the innocent passage of foreign vessels in the territorial sea*."
[56] Article 15, paragraph 1, of the Convention provided: "*The coastal State must not hamper innocent passage through the territorial sea."*
[57] Definition from the *Larousse* dictionary, which is identical to the definition in *Le Robert*.
[58] Definition from the *Diccionario de la lengua española*.
[59] Definition from the *Oxford English Dictionary*.

easily".[60] ***Article 24, paragraph 1, therefore prohibits a coastal State from exercising its prescriptive jurisdiction in respect of foreign-flagged ships proceeding through its territorial sea in such a way that impedes the innocent passage of such ships or makes the enjoyment of this right more difficult or even impossible***.

171.- Luxembourg draws the Tribunal's attention to the "objective" nature of hampering: no malicious intent or bad faith on the part of the coastal State is required for article 24, paragraph 1, to be violated. It is necessary and sufficient for the enjoyment of the right of innocent passage to be rendered difficult or even impossible, irrespective of the reasons prompting the coastal State. Otherwise, article 300 of the Convention, in conjunction with article 2, paragraph 3, would prove redundant because of article 24, paragraph 1. The key factor is the specific practical effect of the exercise by the coastal State of its prescriptive jurisdiction over innocent passage, not the intention of the coastal State. Legal literature further addresses the extremely casuistic nature of assessing the hampering of the right of innocent passage: "*[T]he answer to the crucial question of how much discretion coastal States may enjoy in duly exercising their jurisdiction in the territorial sea without incapacitating the right of innocent passage of foreign ships may well turn on careful investigation of the concrete measures undertaken by the coastal State concerned, taking into account the given circumstances.*"[61]

B. Violation of article 24, article 1, of the Convention by Mexico

172.- Luxembourg reiterates that Mexico's application of its customs legislation to the *"Zheng He"* was not based on article 21, paragraph 1(h), and, as it will demonstrate below, the enforcement of this legislation is not in line with any of the rights of protection provided for in article 25 of the Convention. If innocent passage was hampered, it was not done so in any scenario provided for in the Convention.

173.- And yet, the *"Zheng He"*'s right of innocent passage was indeed hampered – in more than one respect. Luxembourg notes that the two specific instances provided for in subparagraphs (a) and (b) of article 24, paragraph 1, refer to examples in which the coastal State acts in "*application of this Convention or of any laws or regulations adopted in conformity with this Convention*". Mexico certainly applied its legislation to the *Zheng He*, in particular provisions of its Customs Law. However, Mexico's application of its customs legislation proves to be contrary to the two specific instances referred to in article 24, paragraph 1. Moreover, Mexico also hampered Luxembourg's right of innocent passage by not releasing the *"Zheng He"* despite there being no legal basis justifying the vessel's detention in its legal order.

1) Mexico violated article 24, paragraph 1(a)

174.- In violation of article 24, paragraph 1(a), Mexico infringed the rights of the *"Zheng He"* and of Luxembourg through its conduct to *"impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage".* In the present case, ***Mexico imposed a requirement on the* "Zheng He": *to prove that it was legally imported from the time it entered Mexican territory, as if it were foreign merchandise***. The decision of 15 February 2024 clearly states that, for the authorities, the vessel *was obliged at all times, upon entering the national territory, to prove its legal stay in the country* (**Document**

[60] Definition from the *Cambridge Dictionary*.

[61] Haijiang Yang, *Jurisdiction of the Coastal State over Foreign Merchant Ships in Internal Waters and the Territorial Sea,* Hamburg Studies on Maritime Affairs Volume 4, Springer, 2006, p. 268.

L50). ***However, the* "Zheng He" *could not have met such an obligation without completely waiving its right to innocent passage***.

175.- As recalled by Luxembourg, when the *"Zheng He"* was detained, it was engaged in open-seas navigation and its passage through the Mexican territorial sea had no other purpose than to carry out a nautical call in the Port of Tampico before returning to The Bahamas where it was to execute dredging works. The *"Zheng He"* was not carrying any merchandise or passengers. No contract of sale of the vessel or contract for the provision of dredging services had been concluded with Mexico. In this respect, the *"Zheng He"* requested (on 17 October 2023) and obtained (on 21 October 2023) authorization from the harbour master to dock at berth No. 3 purely for the purposes of a crew changeover, refuelling, waste removal and preventive maintenance (**Documents L31 and L35**). The customs authorities were themselves notified of the authorization issued by the harbour master and of the purely nautical nature of the call *upstream* at the meeting of the Port Operating Committee, at which they were present (**Document L36**), and *downstream* by the ship agent once the vessel had docked (**Document L37**).

176.- However, in this respect, the Mexican authorities (AGACE) decided, on 31 October 2023, to authorize an onboard inspection to verify the legal importation of merchandise (**Document L43**). On 1 November 2023, this inspection culminated in the precautionary seizure of the vessel since the legal importation of this "foreign good" could not be documented (**Document L49**). Subsequently, the decision of 15 February 2024 imposed a fine and the confiscation of the vessel "*for having introduced into the country the goods consisting of the SELF-PROPELLED CUTTER SUCTION DREDGER VESSEL ZHENG HE*" (**Document L50**). Throughout the disputed customs procedure, the authorities therefore considered the actual vessel foreign merchandise, the legal importation of which into Mexican territory had to be evidenced at all times.

177.- However, such evidence proved to be impossible since the *"Zheng He"* had never claimed to have entered Mexican territory for temporary importation purposes. Above all, such evidence would imply that the *"Zheng He"* was waiving its right to a mere innocent passage through the Mexican territorial sea, with no intention of conducting any activity other than that of proceeding to a port facility to make a call for nautical purposes. ***The obligation imposed on the* "Zheng He" *to prove its legal importation into Mexican territory, from the time of its entry into the territorial sea, therefore amounts not only to "restricting" but also to "denying" the right of innocent passage.***

178.- The scope of the penalties imposed in application of the Mexican Customs Law, namely, a fine close to the value of the vessel and its expropriation, reinforces the characterization of hampering the right of innocent passage. The *"Zheng He"* would have had to waive its right to navigate through the Mexican territorial sea since it was unable to request temporary importation for lack of any pending contracts in Mexico. Moreover, these penalties preclude any exercise of the right of innocent passage in the future. To date, the *"Zheng He"* still has not been able to leave the Port of Tampico. The crippling effect of the obligation imposed on the vessel has indeed materialized.

179.- Additionally, the analysis provided by a customs law specialist (**Document L72.1**) confirms that, under Mexican law, the Customs Law should not have been applied to the *"Zheng He"*, since the vessel had not formally requested its temporary or definitive importation. According to this analysis, a foreign vessel in Mexican waters is not obliged to request temporary importation. Instead, temporary importation is simply a facility provided for foreign vessels planning to conduct infrastructural works in Mexico.

180.- In the same vein, Luxembourg notes that the *Mexican Customs Law Regulations* (**Document L73**) specifically refer to open-sea traffic in its articles 16 to 22. In accordance with article 16, "open-sea traffic" encompasses both the transportation of goods arriving in the country or being shipped abroad **and** navigation between a national port and a foreign port: "*Se entiende por tráfico marítimo de altura: a) El transporte de Mercancías que lleguen al país o se remitan al extranjero, y b) La navegación entre un puerto nacional y otro extranjero o viceversa*." ***The applicable customs texts therefore acknowledge the possibility that a vessel in open-sea traffic may not be transporting any goods intended for importation or exportation***. The other relevant provisions of the *Customs Law Regulations* impose obligations only on the captain of the vessel in relation to the cargo or passengers carried and not in relation to the vessel itself. **Thus, none of the provisions refer to the actual vessel as imported merchandise.**

181.- For example, in accordance with article 18 of the Regulations: "*The captain of the vessel* ***that receives cargo or passengers abroad to transport them to the country****, shall transmit to the Customs Authority in Electronic or Digital Document, under the terms and conditions established by the SAT ... the following documents: ...*"[62] (emphasis added).

182.- According to article 22 of the Regulations: "*The captains of foreign flag vessels that are going to remain at any point of the territorial sea or of the exclusive economic zone shall,* ***prior to any manoeuvre of loading or unloading of Goods****, anchor in the corresponding national port for the fulfillment of their fiscal obligations*"[63] (emphasis added).

183.- ***In other words, Mexican customs rules allow for a simple nautical call to be made without requiring foreign vessels passing through the territorial sea to be imported***. Therefore, what is unlawful is the interpretation and application made in our case of Mexican customs legislation considering the vessel itself illegally imported merchandise.

184.- Obliging the *"Zheng He"* itself, a service vessel, to be compliant with legislation normally applicable to merchandise ***transported by*** a vessel resulted in its being denied its right of innocent passage.

2) Mexico also violated article 24, paragraph 1(b)

185.- In violation of article 24, paragraph 1(b), Mexico infringed the rights of the *"Zheng He"* and of Luxembourg through its conduct to *"discriminate in form or in fact against the ships of any State"*.

186.- Mexico's application of its customs legislation against the *"Zheng He"* is discriminatory in fact since it constitutes an exceptional situation to which no equivalent vessel flying the flag of another State has been subject. The exceptional nature of the case is underscored by the Mexican authorities themselves in their request for the exercise of the "power of attraction" before the Supreme Court of Justice of the Nation (**Document L68.1**): "*The intervention of the Supreme Court of Justice of the Nation (SCJN) in a case involving the seizure of a foreign ship for a significant amount ... due to non-compliance with tax obligations in national waters is of utmost importance for several reasons, both legal and economic. Firstly,*

[62] Spanish version: "*El capitán de la embarcación que reciba en el extranjero carga o pasajeros para transportarlos al país, deberá transmitir a la Autoridad Aduanera en Documento Electrónico o Digital, en los términos y condiciones que establezca el SAT mediante Reglas, los siguientes documentos : ....*"

[63] Spanish version: "*Los capitanes de las embarcaciones de bandera extranjera que vayan a permanecer en algún punto del mar territorial o de la zona económica exclusiva deberán, previamente a cualquier maniobra de carga o descarga de mercancías, fondear en el puerto nacional correspondiente para el cumplimiento de sus obligaciones fiscales."*

the case raises important issues of maritime and tax law that require the highest and most authoritative interpretation in the country. Additionally, the amount involved in the seizure is considerably high."

187.- Luxembourg would point out that the discriminatory nature of the treatment suffered by the *"Zheng He"* is not limited to the hampering of its right of innocent passage; it also extends to the vessel's access to the Port of Tampico and the treatment it received there. This argument will also be elaborated in respect of article 131 of the Convention. ***Indeed, Luxembourg cannot but note that, regrettably, the only factor that could have explained the prejudicial treatment received by the* "Zheng He"*, is its flag – the flag of a "small" maritime State, which is landlocked and therefore not in a position to ensure reciprocal treatment to Mexican-flagged vessels***. In this respect, Luxembourg would remind the Tribunal that article 10 of the *Federal Act relating to the Sea* of 8 January 1986 provides: "*The enjoyment of the rights that this Act grants to foreign ships* ***shall depend upon reciprocal treatment of national ships by the flag State****, subject to the provisions of the Political Constitution of the United Mexican States and international law*" (emphasis added).

3) By refusing to release the vessel even though there was no longer any internal legal basis for its detention, Mexico violated the general obligation of article 24, paragraph 1

188.- As already recalled, the port authorities did not authorize the release of the *"Zheng He"*, even though the customs procedure initiated against it had been annulled by the Tampico District Court on 22 March 2024 (**Document L51**), an enforceable certificate of non-appeal had been obtained on 18 April 2024 (**Document L52)** and authorization for the clearance of the vessel had been submitted to the port authorities on 19 April 2024 (**Document L53**). The certificate obtained on 18 April 2024 was nevertheless deemed formal notice to enforce the District Court's decision **within three days**.

189.- Mexico may still argue, unconvincingly, that an appeal was in fact filed by the authorities against the decision to annul the proceedings but, very surprisingly, received by post 40 days after the time limit (**Document L75.1**). The Tribunal should observe that this evidently backdated appeal was opportunistically declared admissible and regularized on 12 June 2024 (**Document L75.2**), after the initiation of the present proceedings by Luxembourg. ***During this period, it was clear that the detention of the vessel no longer had any legal basis under Mexican law – as evidenced by the issuance of an enforceable certificate of non-appeal and the formal notice – thereby making the act of State apparent.*** In other words, although the exercise by Mexico of its prescriptive jurisdiction had led to the annulment of the contested procedure, there was no concrete effect resulting from that annulment. There is therefore no other way of describing the refusal to release the vessel in April 2024 – despite being expected in The Bahamas to perform dredging services – than as a hampering of its right of innocent passage.

190.- Luxembourg would like to stress here that this case differs – in fact and in law – from two other cases which the Tribunal has already dealt with in the past.

191.- The first case is that of the *M/V "Louisa"*, in which the Tribunal noted that "*[a]rticle 87 cannot be interpreted in such a way as to grant [a vessel] a right to leave the port and gain access to the high seas notwithstanding its detention in the context of legal*

proceedings against it."[64] The *M/V* "*Louisa*" had been detained in a Spanish port, where it remained voluntarily for over a year, in the context of criminal proceedings relating to alleged violations of Spanish laws on the protection of underwater cultural heritage and for the possession and handling of weapons of war in Spanish territory. Before being detained, the *M/V* "*Louisa*" had been conducting activities for two months in the internal waters and territorial sea of Spain, which it claimed were activities surveying the sea floor with a view to locating oil and gas deposits, on the basis of a permit issued by the Spanish authorities. The right of innocent passage was therefore not challenged and the applicant directly availed itself of the freedom of the high seas. Moreover, when the Tribunal delivered its judgment, the *M/V "Louisa"* was still detained owing to the criminal proceedings initiated against it. At no point had the vessel received an enforceable Spanish decision leading to its release.

192.- The second case is that of the *M/V "Norstar"*, in which the Tribunal noted: "*To interpret the freedom of navigation as encompassing a right to leave port and gain access to the high seas would be inconsistent with the legal regime of internal waters*."[65] For over four years, the *M/V "Norstar"* had been carrying out gasoil bunkering activities on the high seas, which were suspected of being in violation of Italian legislation. Criminal proceedings were instituted. The vessel was seized in a Spanish port further to a decree issued by the Italian public prosecutor and a request for international judicial assistance. In the course of the proceedings, the Italian public prosecutor had offered to release the vessel upon payment of a reasonable bail, which the shipowner did not pay. A criminal court in Italy then ordered the release of the vessel. However, once the shipowner had been notified, it decided not to take back possession of the vessel, which was sold to a third party and removed from the port as scrap.

193.- Thus, ***neither of these two cases challenged the right of innocent passage through the territorial sea***, which, to reiterate, includes the vessel's passage out of internal waters, but instead concerned the freedom of the high seas. The offences which the national authorities alleged against ***the detained vessels – which were both engaged in activities other than navigation for months, even years – were not the same in nature and were not for the same duration as the offence alleged against the*** **"Zheng He"**. Above all, the national proceedings did not result in an annulment decision equating to an order to release the vessel, which the shipowner had unsuccessfully invoked before the port authorities. What is more, the vessels were not in the same condition as the *"Zheng He"* in April 2024.

194.- Luxembourg does not dispute that internal waters fall under the sovereignty of the coastal State, as recognized by article 2, paragraph 1, of the Convention, and that the right of innocent passage does not directly apply to internal waters. However, that does not mean that a coastal State may detain in port a vessel flying a foreign flag, and thereby preventing it from enjoying the right of innocent passage, **when there is no legal basis in its own internal legal order for doing so**. The coastal State cannot invoke the exercise of its sovereignty to keep the vessel in its internal waters when it is precisely in the exercise of its sovereignty that the State determined that the vessel had to be released within a period of three days. This constitutes a material and physical hampering of the right of innocent passage.

[64] *M/V "Louisa" (Saint Vincent and the Grenadines* v. *Kingdom of Spain*)*, Judgment, ITLOS Reports 2013*, p. 36, para. 109.
[65] *M/V "Norstar" (Panama* v. *Italy*), *Judgment, ITLOS Reports 2018-2019*, p. 74, para. 221.

V. Mexico, the coastal State, failed in its duty, under article 26, paragraph 1, of the Convention, to not levy any charge on foreign ships by reason only of their passage

195.- The baseless application of Customs Law provisions to the *"Zheng He"* not only constituted a "hampering" of Luxembourg's right of innocent passage, it also led Mexico to claim charges by reason only of the vessel's passage. In doing so, Mexico violated article 26, paragraph 1, of the Convention which provides: "*No charge may be levied upon foreign ships by reason only of their passage through the territorial sea*."

196.- The conditions for the applicability of this article are met.

197.- *First,* contrary to what Mexico asserts, as demonstrated by Luxembourg above, the *"Zheng He"* exercised and intended to re-exercise its right of innocent passage when it reached the Port of Tampico in October 2023, as it had dredging contracts awaiting in The Bahamas. At no point did the vessel officially request importation with the customs authorities, which the customs authorities themselves acknowledge (**Document L40**). It duly obtained authorization from the harbour master to call, for purely nautical reasons, at the roadstead and then, once an available berth was allocated to it, in the port. Therefore, when the *"Zheng He"* was in Mexico's territorial sea, it was there "*by reason only of [its] passage*", within the meaning of article 26, paragraph 1. What is more, Luxembourg notes that article 26, paragraph 1, refers only to "passage" in the territorial sea and not "innocent passage". It can therefore be argued that, even supposing the Mexican authorities deemed the *"Zheng He"*'s passage to be not innocent, which they never explicitly stated at the time of the onboard inspection and precautionary seizure of the vessel, there was still no basis for levying charges.

198.- *Second,* it was within this context – with which the authorities were perfectly familiar, as they had been given advance notification by the ship agent himself (**Document L37**) and had been involved in the allocation of berth No. 3 to the *"Zheng He"* by the Tampico Port Operating Committee (**Document L36**) – that the authorities decided to find that the vessel was required to prove its legal importation into Mexican territory.

199.- Luxembourg recalls that under the customs provisions which had been wrongly applied, the legal importation into Mexican territory was required to be proved as soon as the vessel entered the territorial sea, **making it liable for tax**. In this respect, article 176, Section I, of the *Customs Law*, which was applied to the *"Zheng He"*, provides: "*Any person who introduces or removes merchandise into or from the country commits an offence related to import or export in any of the following cases: I. By failing to pay all or part of the foreign trade taxes and, where applicable, the compensatory quotas that must be covered. ....*"[66]

200.- De facto, the only reason for the levying of tax on the *"Zheng He"*, according to the relevant authorities themselves, was the vessel's entry into Mexican territory. The vessel and its shipowner became liable for taxes applicable to the importation of foreign merchandise as soon as they entered the territorial sea. Here too, it suffices to refer to the precautionary seizure of 1 November 2023 and the decision of 15 February 2024 to ascertain this. That means that Mexico claimed to be levying charges on the *"Zheng He"* by reason only of its passage through the territorial sea, in violation of article 26, paragraph 1, of the Convention.

[66] Spanish version: "*Comete las infracciones relacionadas con la importación o exportación, quien introduzca al país o extraiga de él mercancías, en cualquiera de los siguientes casos: I. Omitiendo el pago total o parcial de los impuestos al comercio exterior y, en su caso, de las cuotas compensatorias, que deban cubrirse.*"

201.- The decision of 15 February 2024 (**Document L50**) sets out how the amount of the fine imposed as a penalty was calculated, with the taxes applied likewise being irrelevant to the mere passage of the *"Zheng He"* since the taxable event should have been the importation of foreign merchandise and not of a vessel: "*Customs Processing Fees*", "*Value Added Tax*", "*Customs Processing Fee Surcharges*", "*Value Added Tax Surcharges*", "*Penalty related to the unpaid customs processing fees*", "*Penalty related to the unpaid value added tax*", "*Penalty related to the illegal importation of merchandise into Mexican territory*" (**Document L71**, summary table).

Luxembourg would draw the Tribunal's attention at this point to the *Duzgit Integrity* arbitration, in which the arbitrators noted:

> *Customs fines apply to goods that are intended for import. Here there was no question of importation or even of an economic transaction. ... In the circumstances, the heavy Custom Directorates fine of more than EUR 1,000,000 imposed by São Tomé appears to be misplaced and disproportionate*.[67]

With respect to our case, the shipowner of the *"Zheng He"* was imposed an immense fine of 1,616,462,343.52 Mexican pesos, an amount of more than 70 times greater than the amount in question in the *Duzgit Integrity* case, even though, more so than in that case, there was no question of importation or even of an economic transaction, or a repeat offence. These charges therefore appear to be "misplaced" and in violation of article 26, paragraph 1, of the Convention.

202.- It is clear that the charges levied on the vessel were not "*as payment only for specific services rendered to the ship*". Nothing indicating this is included in the precautionary seizure or in the final decision on the confiscation and fine. Mexico therefore cannot reasonably rely on article 26, paragraph 2.

VI. Mexico, the coastal State, cannot rely on article 25 which recognizes a number of rights of protection

203.- Luxembourg will now seek to demonstrate that none of the rights of protection set out in article 25 in favour of the coastal State were applicable in the present case. For that purpose, Luxembourg would like to remind the Tribunal of the various measures imposed by Mexico, which it contests in these proceedings, namely, the onboard inspection, the precautionary seizure, the confiscation, the exorbitant fine and the refusal to release the *"Zheng He"*.

204.- Article 25 governs the exercise by the coastal State of its enforcement power in its territorial sea.[68] In other words, article 25 recognizes and restricts the coastal State's right to adopt measures of constraint against foreign-flagged vessels in its territorial sea, such as boarding or seizing the vessel.

205.- By adopting the various disputed measures, while the vessel was already at berth No. 3 in the Port of Tampico for a nautical call, in accordance with the authorization issued on 23 October 2023, Mexico cannot claim its actions find support in the rights of protection set out in the various paragraphs of article 25.

---

[67] *The Duzgit Integrity Arbitration (Malta* v. *São Tomé and Príncipe), Award of 5 September 2016*, para. 257.

[68] In this respect, see Haijiang Yang, *Jurisdiction of the Coastal State over Foreign Merchant Ships in Internal Waters and the Territorial Sea,* Hamburg Studies on Maritime Affairs Volume 4, Springer, 2006, p. 191.

A. Mexico cannot rely on article 25, paragraph 1, or on article 25, paragraph 3

206.- *First,* article 25, paragraph 1, authorizes the coastal State to take "*the necessary steps* ***in its territorial sea*** *to prevent passage which is not innocent*" (emphasis added). It is apparent from the facts of the present case that the conditions for the application of this article are not met. Luxembourg recognizes – as consistently confirmed by Mexico since the beginning of this case – that the disputed coercive measures were all adopted while the vessel was no longer in the territorial sea but already in the internal waters of the Port of Tampico.

207.- *Second,* none of the disputed measures adopted by Mexico had the purpose of temporarily suspending, subsequent to their publication, the exercise of the right of innocent passage through specific areas of its territorial sea to protect the security of Mexico. Mexico cannot therefore argue that it was acting in accordance with article 25, paragraph 3, of the Convention, which provides: "*The coastal State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published.*"

B. Mexico cannot rely on article 25, paragraph 2

208.- *Third,* Mexico has the option offered by article 25, paragraph 2, which allows the coastal State "*[i]n the case of ships proceeding to internal waters … to take the* ***necessary*** *steps to prevent any breach of the* ***conditions to which admission of those ships to internal waters*** *or such a call is subject*" (emphasis added). But again, the conditions for the applicability of this provision are not met in the present case.

1) The enforcement measures taken by Mexico were not necessary

209.- As a first point, the measures adopted by the Mexican authorities in respect of the *"Zheng He"* were not at all "necessary". Necessity is defined in law, in French, as the "*[f]orce des circonstances"; situation critique qui, abolissant en fait le choix des moyens, dicte et justifie une solution même exorbitante comme étant, raisonnablement, dans le cas, la seule de nature à sauvegarder un intérêt légitime; situation plus déterminante que l'utilité, la commodité ou l'opportunité"* [69] [force of circumstances; a critical situation which, by eliminating in effect the choice of means, dictates and justifies even an extreme solution as being, reasonably, the only one capable of safeguarding a legitimate interest; a situation that is more decisive than usefulness, convenience or expediency]. In international trade law, which – in the same way as international law of the sea – seeks to find a balance between free trade and the legitimate interests of States, the analysis of the necessity of a measure involves a process of weighing and balancing a series of factors, taking into consideration the relative importance of the interests or values furthered by the challenged measure, the contribution of the challenged measure to the realization of the ends pursued by it, and the restrictive impact of the measure on international commerce.[70] Necessity also involves "*comparing the measure with its possible alternatives, which may be less trade restrictive while providing an equivalent contribution to the achievement of the objective pursued*."[71] Transposing this definition into the context of a coastal State adopting a measure to protect itself aims to ensure that the adopted measure allows

[69] First definition of "*necessité*" *in* Gérard CORNU (Ed.), *Vocabulaire juridique*, 8th ed., 2008, p. 609.
[70] WTO, *United States – Gambling*, DS285, Report of the Appellate Body of 20 April 2005, para. 306.
[71] WTO, *Brazil – Retreaded Tyres*, DS332, Report of the Appellate Body of 3 December 2007, para. 156.

the State to protect itself while being as non-prejudicial as possible to the right of innocent passage.

210.- The Tribunal itself had the occasion to point out that whether or not an enforcement measure adopted by a coastal State in its exclusive economic zone is necessary "*depends on the facts and circumstances*" of a given case.[72] In the *M/V "Virginia G"* case, the circumstances taken into account by the Tribunal to assess whether or not an enforcement measure was necessary included the severity of the violation (para. 257 of the Judgment), the possibility of recourse (para. 257), the fact that the vessel was later released (para. 258), the fact that the vessel did not have written authorization and had not paid the fee prescribed as required by the applicable legislation (para. 266), the fact that the ship agent had informed the authorities of the operations performed (para. 268), the fact that other vessels were neither arrested nor fined (para. 268), and the non-intentional nature of the violation by the vessel (para. 269).

211.- The assessment of whether or not enforcement measures adopted by a coastal State are necessary thus embraces a factual assessment of the specific circumstances of the case. In this respect, Luxembourg recalls a number of circumstances: apart from the aforementioned fact that the vessel was made subject to legislation not applicable to it, the precautionary seizure decision of 1 November 2023 was issued further to an unannounced onboard inspection conducted hastily, in the midst of a weather warning, while the vessel was at the roadstead available to the customs authorities from 11 October 2023 onwards. The conditions in which the inspection and precautionary seizure were carried out imply that the vessel was not given the opportunity to explain its situation and defend the innocent nature of its passage before these initial measures of constraint were adopted. And yet, as one commentator notes: "*At any rate, in practice foreign ships should be allowed to explain their operations on being suspected prior to the confirmation of non-innocence*."[73]

212.- This detention, which continued for a number of weeks, prevented the vessel from proceeding to The Bahamas where major dredging contracts were awaiting. The penalty eventually imposed on 15 February 2024 appears disproportionate in that it entails not only the transfer of ownership of the *"Zheng He"* but also a fine close to the value of the vessel. Furthermore, the vessel and the shipowner did not have any means of regularizing the situation: they had never claimed to be carrying out a temporary importation because there was no dredging contract awaiting them in Mexico, which the Mexican authorities themselves confirmed (**Document L76**); therefore, they could not *a fortiori* supply such contracts when the vessel was *detained* and subject to a transfer of ownership to the Mexican Treasury. The bad faith or malicious intent of the shipowner cannot be argued: the vessel had the necessary authorization to dock at berth No. 3 for the purposes of a nautical call and had duly notified the customs authorities (**Document L37**). Lastly, the refusal to release the vessel – even though there was a court decision annulling the customs procedure against it **(Document L51**), with that decision becoming final and enforceable (**Document L52**) and was notified to the harbour master's office (**Document L53**) – cannot in any way be considered necessary.

2) Mexico's enforcement measures were not intended to prevent a breach of the conditions for admission to the port or internal waters

213.- As a second point, and above all, none of the disputed enforcement measures were explained by the Mexican authorities as being a means of preventing the *"Zheng He"* from

[72] *M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 80, para. 257.
[73] Haijiang Yang, *Jurisdiction of the Coastal State over Foreign Merchant Ships in Internal Waters and the Territorial Sea,* Hamburg Studies on Maritime Affairs Volume 4, Springer, 2006, p. 216.

breaching the conditions for admission to the internal waters or the Port of Tampico. The necessity of the measures depends on their contribution to the objective pursued. That is the only objective the coastal State may pursue under article 25, paragraph 2, of the Convention.

214.- In the instant case, the conditions for admission to the port were met, since authorization from the harbour master's office had been obtained. This authorization is the only requirement to enter the port in accordance with article 453 of the Navigation and Maritime Commerce Law Regulations (**Document L72.1**). That was moreover confirmed by the annulment decision of the Tamaulipas District Court of 22 March 2024 (**Document L51**).

215.- It is self-evident that an enforcement measure that is adopted when the vessel is already in the internal waters or in the port of the coastal State cannot in any way be justified by article 25, article 2, of the Convention which authorizes only **preventive** measures.

CHAPTER IV. VIOLATION BY MEXICO OF THE RIGHTS, POWERS AND PREROGATIVES OF LUXEMBOURG AS THE FLAG STATE

216.- It is neither disputable nor disputed that, pursuant to article 91 of the Convention, the *"Zheng He"* is registered in the register of the Grand Duchy of Luxembourg and that it enjoys Luxembourg nationality, flying the Luxembourg flag. The registration and Luxembourg nationality have been granted to the *"Zheng He"* continuously by the Grand Duchy since 22 October 2010; they had already been granted when the vessel was detained on 1 November 2023, they were granted when the expropriation procedure was initiated on 15 February 2024, and they are still granted today (**Document L5)**.

217.- In the case of a ship with gross tonnage of more than 200 engaged in commercial operations, there is no reason to dissociate nationality and registration in the Luxembourg register under article 1.1.1-1 of the amended Law of 9 November 1990 on the creation of a Luxembourg public register of ships: "*A ship shall be deemed to have Luxembourg nationality if it has been entered in the Luxembourg shipping register and has been authorized to fly the Luxembourg flag*."

218.- By virtue of the grant of its nationality and its registration in the register of ships, the Grand Duchy of Luxembourg derives rights over its vessel from the Convention. However, through actions by a number of its bodies, Mexico has infringed the rights of Luxembourg. First, by detaining the *"Zheng He"* for an extended period – 509 days on 24 March 2025 – Mexico has infringed the rights, powers and prerogatives of Luxembourg (**I**). Second, by initiating and pursuing an expropriation procedure in respect of the vessel despite diplomatic requests from Luxembourg and the submission of an application before this Tribunal, Mexico has harmed the Luxembourg fleet and flag (**II**).

I. By detaining the *"Zheng He"* for an extended period, Mexico has infringed the rights, powers and prerogatives of Luxembourg

219.- The domestic detention procedure conducted by Mexico in respect of the *"Zheng He"* constitutes an *act of State* (**A**). Luxembourg, as the flag State, is entitled to request protection of its powers and prerogatives over the *"Zheng He"* (**B**). The Convention incorporates by reference "*generally accepted international regulations, procedures and practices*" in matters of maritime safety, pollution and protection of seafarers (**C**). Because of the abusive detention of the vessel, the exercise by Luxembourg of its powers and prerogatives over the vessel is completely at the discretion of Mexico (**D**). Luxembourg, as the flag State, is entitled to seek reparation for all injury suffered by its ship (**E**), including by natural and legal persons who have interests in connection with its activity.

A. The domestic detention procedure in respect of the *"Zheng He"* constitutes an *act of State*

220.- The detention of the *"Zheng He"* by Mexico since 1 November 2023 is not based on an international convention (**1**) but constitutes an *act of State* (**2**).

1) The detention of the "Zheng He" by Mexico since 1 November 2023 is not based on an international convention

221.- First of all, *Orden No. CVD6000037/73 of 1 November 2023 establishing a record of initiation and precautionary seizure of the Zheng He* **(Document L49)** does not have any basis in the Convention in relation to Port State Control. Even though the detention was carried out when the *"Zheng He"* was in internal maritime waters in the Port of Tampico, Mexico certainly did not take action there in a capacity as a port State, exercising prerogatives in relation to Port State Control. Although Part XII of the Convention, which is dedicated to *Protection and preservation of the marine environment*, confers certain prerogatives on the coastal State, this is within the clearly defined framework of the protection of the environment. Within that framework, the coastal State may make access by foreign vessels subject to compliance with certain pollution prevention standards (e.g., article 211, paragraph 3) and monitor the seaworthiness of vessels in order to avoid pollution (e.g., article 219), preventing vessels from sailing or ordering the detention of the vessel following an inspection (article 220, paragraph 2) where "*there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during its passage therein, violated laws and regulations of that State adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels*". That was not the situation here. Nor did Mexico take action pursuant to article 218, paragraph 1, of the Convention: "*When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may undertake investigations and, where the evidence so warrants, institute proceedings in respect of any discharge from that vessel outside the internal waters, territorial sea or exclusive economic zone of that State in violation of applicable international rules and standards*". That was not the situation here.

222.- Since the United Mexican States is not party to the *Maritime Labour Convention* adopted under the auspices of the International Labour Organization in 2006, the detention could not have any basis in the supervisory prerogatives in respect of seafarers which that instrument accords to port States.

223.- *Orden No. CVD6000037/73 of 1 November 2023 establishing a record of initiation and precautionary seizure of the Zheng He* is also not based on the *Convention of 10 May 1952 Relating to the Arrest of Sea-Going Ships*, as the procedure followed in detaining the *"Zheng He"* was a unilateral internal administrative procedure and not a judicial process within the meaning of article 1, paragraph 2, of the *Convention of 10 May 1952 Relating to the Arrest of Sea-Going Ships*.

2) The arbitrary detention of the "Zheng He" by Mexico since 1 November constitutes an act of State and downgrades the vessel to simple merchandise

224.- The detention of the *"Zheng He"* by AGACE agents was carried out in factual circumstances characterized by arbitrariness in the exercise of an *act of State*. That detention was made possible only by the denial of the status which international law confers on the vessel.

225.- As far as arbitrariness is concerned, the factual circumstances will be mentioned only briefly. First, the AGACE onboard inspection order (**Document L43**) was not notified to the legal representative of ASIPONA responsible for berth No. 3 under the port concession certificate, even though that is required by Mexican law (**Document L44, responses 5, 6 and 7**). Second, at the time of the onboard inspection, it was also not served on the captain, but only on the vessel's Mexican agent (**Document L49**). This led the Tampico District Court to find, on 22 March 2024, the irregularity vitiating the customs procedure upon its commencement and to annul the procedure (**Document L51**). Lastly, a mere *warning notice* issued by the harbour master's office on the evening of 31 October 2023 (**Document L46**) was used as a pretext to prevent the execution of the manoeuvre of the *"Zheng He"* to fiscal berth No. 6 (**Document L42**), scheduled for the morning of 1 November under the direction of the port pilots. As it was a *warning notice* and not a closure notice, there was nothing *in law* to prevent the port pilots from completing the planned manoeuvre on 1 November in order to moor the vessel at berth No. 6 (as scheduled and authorized by the harbour master's office (**Document L42**)). However, that shift of berth, requested in good faith by the shipowner without any knowledge that an onboard inspection was about to be conducted, would have resulted in rendering null and void the onboard inspection order (which did not refer to the *"Zheng He"* by name, but to "*Recinto Portuario, tramo 3, entre BITA 17 a 22*"). The pilots, after introducing themselves, refused to move the vessel, stating as a reason a radio instruction given by the harbour master's office.

226.- Before your Tribunal, Luxembourg will set out the allegations advanced by the Mexican administration in support of the vessel's detention solely from the point of view of the law of the sea. The *"Zheng He"*, flying the flag of Luxembourg, was denied *classification as a vessel* and downgraded to simple merchandise; it is its *entry into Mexican territory*, that is to say, into its territorial sea, that consummates the offence and not its mooring at a certain berth in internal waters.

227.- Luxembourg will begin with the downgrading of the vessel to simple merchandise. The form used by AGACE (**Document L49**) to order the detention of the *"Zheng He"* is clearly designed for merchandise, possibly for trailers used for road transport, but certainly not for foreign-flagged ships, as is shown by the format of the table:

- There is no heading *Name of ship*, while the name *Zheng He* is placed in the column **Brand**;
- There is no heading *IMO No.*, while the number is placed in the column **Serial No.**;
- There is no heading *flag or nationality*, while the name Luxembourg is placed in the column **Origin**;
- There is no heading *year of manufacture* or *year of registration*, while the year 2010 is placed in the column **Model**.

As for the heading *Care and Custody* in the record, it also shows that the form was not designed for the seizure of vessels but rather for the seizure of merchandise. It mentions: "*It is hereby stated for the record that the seized goods described in Case number 1 of this document shall be held at the Tampico Customs Office, Tamaulipas, located at Calzada Blanca S/N Interior Recinto Fiscal, Col Morelos, C.P. 89290, Tampico, Tamaulipas*". It is in fact impossible to "hold" a vessel with gross tonnage of 8,015 at the Customs Office.

228.- The record does not refer explicitly at any point to the Luxembourg flag or the Luxembourg nationality of the *"Zheng He"*. Its classification as a ship is ignored in order to force it into the category of *merchandise*, in contravention of the major conventions of international law.

229.- As is well known, in international law the criteria for classification as a ship may vary depending on the purpose of maritime law conventions, and there is no uniform definition. However, there is never the slightest confusion in international law between a *ship*, on the one hand, and *mere merchandise*, on the other. The distinction exists even where it is the ship itself that is put up for sale.

230.- The *Vienna Convention on Contracts for the International Sale of Goods* (CISG), which is ratified by 97 States (including Mexico and Luxembourg), provides a uniform regime for the international sale of goods. Its article 2 clearly excludes *ships* from the material scope of that instrument governing *goods*: "*This Convention does not apply to sales: (...) (e) of ships, vessels, hovercraft or aircraft*". When a ship already in operation is transferred to a new owner under the applicable national law, it is already individualized and registered and flies a flag: it is not mere merchandise. In addition, when a new ship is manufactured with a view to being delivered to its first purchaser, it is not merchandise either. Even before receipt by the purchaser, at the sea trials stage, the ship will already have had to be provisionally individualized and registered.

231.- Similarly, the international community recognizes that the *judicial sale of ships* is subject to its own regime, which is distinct from that for the sale of ordinary merchandise. For example, the *United Nations Convention on the International Effects of Judicial Sales of Ships*, known as the Beijing Convention, was signed in Beijing on 5 September 2023. Under article 2(b) of that Convention, on definitions, "ship" means "*any ship or other vessel registered in a register that is open to public inspection that may be the subject of an arrest or other similar measure capable of leading to a judicial sale under the law of the State of judicial sale*".

The distinction between mere merchandise and a ship also exists in international trade law. It is notable that article V, paragraph 1, of the *General Agreement on Tariffs and Trade* (GATT), on freedom of transit, expressly makes that distinction, placing ships not in the category of goods, but in the category of means of transport: "*Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party (...)*". The use of the conjunction phrase "and also" demonstrates that the drafters of the GATT did not consider ships to come under the same type as goods.

232.- In conclusion, the *"Zheng He"*, sailing in ballast, had exercised its right of innocent passage in Mexico's territorial sea in order to make a technical call in Tampico and then proceed to The Bahamas, without transporting any merchandise at all. The vessel was neither offered for sale to Mexican purchasers nor intended to provide services in Mexico; that being so, the classification of the vessel as merchandise by *Orden n°CVD6000037/73* is based on the clear intention to undermine the status of the vessel.

B. Luxembourg, as the flag State, may request protection of its powers and prerogatives over the *"Zheng He"*

233.- The conferral of Luxembourg nationality on the *"Zheng He"* is the basis for the personal jurisdiction of the State of Luxembourg over its vessel. Such flag State jurisdiction is permanent and follows the vessel wherever it is located, including in the internal maritime waters of the coastal State. From that personal jurisdiction enshrined in the Convention, the Grand Duchy of Luxembourg, as the flag State, derives rights, obligations and powers that are closely linked.

234.- As the flag State, Luxembourg derives from the Convention, in particular, the *right to define the conditions for the grant of its nationality* (article 91), the *right of navigation* for

its ships on the high seas (article 90), their *right of innocent passage* (articles 17 to 21) and, more generally, the *right to protect them* in accordance with the settled jurisprudence of the Tribunal. Those rights are a counterpart to the *obligations* which the flag State derives from the Convention. As regards "*Protection and preservation of the marine environment*", to which Luxembourg is very committed, Part XII of the Convention imposes various obligations on States. Some apply to all States, including the flag State, but others apply more specifically to flag States, such as those in articles 211, 216(b), or 217 of the Convention. The *rights* and *obligations* of the flag State thus form a system under which, where necessary, international responsibility can be engaged.

235.- As a counterpart to this system of *international rights* and *duties*, the flag State is explicitly granted *pouvoirs* (in the French title of article 217) or *enforcement* (in the English title of article 217). Those *pouvoirs* imply being able effectively to "*prendre les mesures appropriées*" (article 217, paragraph 2) or "*prendre les mesures nécessaires pour assurer la sécurité en mer*" (article 94, paragraph 3), some of which are then specified (article 94, paragraph 4). In English, such *enforcement* consists, for the flag State, in taking measures, to "*take appropriate measures*" (article 217, paragraph 2) or "*shall take appropriate measures for ships flying its flag as are necessary so as to ensure safety at sea*" (article 94, paragraph 3).

236.- The possibility of the effective exercise by the flag State of its *powers* and *prerogatives* is therefore necessary in two respects. Insofar as the international responsibility of the flag State can be engaged if it fails to exercise the *powers* conferred on it by the Convention, the flag State is already entitled to request protection of its *powers* and *prerogatives* from the Tribunal. Furthermore, insofar as the exercise of those *powers* and *prerogatives* characterizes the genuine link between the flag State and its ship, their protection can also be requested by the flag State on that basis. If the coastal State were to make it temporarily or definitively impossible for it to exercise its prerogatives, the flag State would have to deplore the weakening of the genuine link with its ship.

237.- In paragraph 83 of the *M/V "SAIGA" (No. 2)* judgment, the Tribunal recalled that "*the purpose of the provisions of the Convention on the need for a genuine link between a ship and its flag State is to secure more effective implementation of the duties of the flag State*".[74] In paragraph 113 of the *M/V "Virginia G"* judgment,[75] the Tribunal confirmed its analysis: "*In the view of the Tribunal, once a ship is registered, the flag State is required, under article 94 of the Convention, to exercise effective jurisdiction and control over that ship in order to ensure that it operates in accordance with generally accepted international regulations, procedures and practices. This is the meaning of 'genuine link'*." The protection of the *powers* and *prerogatives* of the flag State therefore contributes to the protection of its genuine link with its ship.

238.- Going beyond the protection of the *powers* and *prerogatives* of the flag State alone, it is also a matter of protecting the system of the Convention by encouraging the effective responsibility of flag States, in the face of open registry flags and flags of convenience. As one author asserts, *it must also be stated that matters relating to the international powers and obligations of the flag State are, in fact, the most important factor for responsible shipping and an optimal order of the seas*.[76] The flag State is thus fully entitled to request protection of the rights which it derives from the *Convention*, inseparably from the *prerogatives* and *powers* over its own ships which the Convention confers on it.

---

[74] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999,* p. 10, para. 83.

[75] *M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 4, para. 113.

[76] N. Aloupi, "La jurisprudence du Tribunal international du droit de la mer et l'Etat du pavillon", in G. Le Floch, *Les 20 ans du Tribunal international du droit de la mer*, Paris, Pedone, 2018, in particular p. 225.

C. The Convention incorporates by reference generally accepted international regulations, procedures and practices in matters of maritime safety, pollution and protection of seafarers

239.- In the proceedings on the Request for the prescription of provisional measures, Mexico claimed that the jurisdiction of the Tribunal was limited to the application and interpretation of the Convention *stricto sensu* alone, to the exclusion of the conventions and technical standards adopted pursuant to the SOLAS Convention, the MARPOL Convention and the ILO Conventions on which Luxembourg had already relied. Luxembourg maintained then and still maintains that compliance with those conventions and technical standards is required by reference to the Convention itself. The fact that Mexico undermined the possibility for Luxembourg to exercise its *prerogatives* and *powers* as a flag State under those agreements and standards manifestly falls within the jurisdiction of the Tribunal.

240.- Article 94, paragraph 1, of the Convention provides: "*Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag*." This means that the flag State must take various measures in connection with the inspection and supervision of the ship, its equipment and its crew under article 94, paragraph 3, and article 94, paragraph 4, of the Convention. With regard to those measures, article 94, paragraph 5, refers explicitly to international conventions and external technical standards which it incorporates by reference to the Convention:

> *5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to* ***generally accepted international regulations, procedures and practices*** *and to take any steps which may be necessary to secure their observance. (****Emphasis added****)*

International conventions concerning the safety of the ship and its seaworthiness are therefore incorporated by reference, with the result that the inspection prerogatives which they confer on flag States may be applied by Luxembourg vis-à-vis any coastal State, and specifically Mexico. That holds for the SOLAS Convention and its Annexes as well as for the MARPOL Convention. In 1956, in its commentary on draft article 34, the International Law Commission was already explicit as regards the incorporation by reference into the law of the sea not only of treaties but also of technical standards which were a product of international cooperation:

> *This expression also covers regulations which are a product of international cooperation, without necessarily having been confirmed by formal treaties.*[77]

Therefore, the SOLAS Convention, all its Annexes and the recommendations resulting from the institutional work of the IMO can also be invoked by Luxembourg in the context of its claim based on the Convention.

241.- Article 94, paragraph 3(b), further stipulates:

> *Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard,* inter alia*, to: (...)*
>
> *(b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments.*

It is thus clear from the text of the Convention that, under the Convention, the flag State, like other States, must take into consideration the rules and standards adopted by the *International*

[77] Report of the International Law Commission covering the work of its eighth session *(Al3159),* article 34, *Commentary,* para. (4), II YB ILC 1956, at 253, 281.

Labour Organization with regard to safety of seafarers.[78] Thus, even though Mexico is not party to the *Maritime Labour Convention* (MLC), Luxembourg may invoke the MLC adopted under the auspices of the ILO vis-à-vis Mexico and rely on the *powers* and *prerogatives* which it confers on it as a flag State.

D. Because of the abusive detention of the vessel, the exercise by Luxembourg of its powers and prerogatives over the vessel is at the complete discretion of Mexico

242.- As the flag State, Luxembourg has always exercised "*its jurisdiction and control in administrative, technical and social matters*" over the *"Zheng He"* and intends to continue to exercise them even after its detention.

243.- As regards control in administrative and technical matters, the Office of the Luxembourg Maritime Administration routinely carries out control and monitoring operations to ensure compliance by its ships with the technical requirements necessary for *statutory certification* and *ship classification*. The statutory certification and classification of the *"Zheng He"* were entrusted to Bureau Veritas, in accordance with Luxembourg law, because of the technical expertise of the inspectors of this founding member of IACS. Nevertheless, the State of Luxembourg still guarantees inspections and surveys internationally as the flag State: under the regulation 6 *in fine* of Chapter 1 of Part B to the SOLAS Convention, "*[i]n every case the Government concerned fully guarantees the completeness and efficiency of the inspection and survey.*"

244.- However, the prolonged detention of the vessel at the berth in Tampico has persistently hindered the completion of the inspections necessary maintain its class and certification. The Tampico Customs Office ordered the movement of the *"Zheng He"* to berth No. 11, to be placed under the guard and custody of *Tampico Terminal Maritima* SA ("*se ordena guardia y custodia de la embarcacion que se indica*", **Document L77**). The operator Portum 21 carries out, on behalf of the customs authorities, not only controls on terminal entries and departures but also controls on ship boardings (**Document L78**).

245.- Thus, the ***inspections necessary for maintenance of class and statutory certification of the ship*** **(Document L1)**, which were due to be performed in January 2024, ***could not be performed before the cut-off dates for the periods prescribed by the*** **Classification Rules as a result of the continued detention of the vessel**. Given the complete lack of cooperation on the part of Mexico before the present proceedings were instituted, ***Luxembourg was faced with the dilemma of either having to extend the inspection periods three times or having to establish that the certificates had lapsed***.

246.- That was the situation, first of all, with the hull inspection called "*Bottom Survey in Dry Dock or Afloat*", which had to be performed within 36 months of the previous inspection, that is, by 8 January 2024. This vital inspection for the seaworthiness of the vessel required either dry docking or an examination by divers in reasonably clear waters in order to ensure good visibility of the hull. Neither of those possibilities was available because the *"Zheng He"* was detained at the dock on the *Rio Panuco*, in an estuary whose waters are known to be laden with alluvion. Contrary to the claim made by Mexico, the turbidity of the waters of the Rio Panuco offered the divers almost zero visibility, at less than 20 cm. The first inspection conducted by divers on 20 December 2023 was therefore unsuccessful (**Document L79**), which

[78] *Virginia Commentary*, para. 94.8(f), p. 147.

put an end to the hull inspection and did not allow the inspection to be carried out within the prescribed period.

247.- That was also the situation with the inspection of the lifeboats on the port and starboard sides, which had to be conducted by 18 April 2024 at the latest (**Document L1.1)** by a launch in real conditions, which was impossible as long as the *"Zheng He"* was held at dock.

248.- Awaiting the release of the vessel and hoping for an amicable solution, the flag State granted the *"Zheng He"* a further extension until 7 June 2024 to carry out the inspections. This was in vain, as the movement of the vessel was not authorized before that date.

249.- Despite the assurances given at the hearing by Mexico under pressure from the Request for the prescription of provisional measures made by Luxembourg, the inspections could not actually be carried out until 31 August 2024, at the very end of the last time extension acceptable to Luxembourg and the classification society. Even under the supervision of the Tribunal, the process allowing Luxembourg to conduct inspections of the *"Zheng He"* proved to be complex: Luxembourg was compelled to issue notes verbales on two occasions, on 8 August (**Document L61**) and on 26 August 2024 (**Document L62**).

In order for inspections to actually be conducted, it was also necessary for the shipowner to request, within a few days, various authorizations in around 10 letters to several Mexican authorities, such as:

- Authorization to move the *"Zheng He"*; requested unsuccessfully a first time on 19 August (**Document L66.1**) and a second time (**Document L66.2**) on 26 August 2024;
- Authorization to use three speedboats to transport divers and inspectors from Bureau Veritas (**Document L66.3);**
- The temporary work permit for personnel from Techdiving Services so that they could carry out the hull examination;
- Once the inspection had been conducted, authorization to re-moor the *"Zheng He"* in one of the terminals of the Port of Tampico following the refusal by the operator Portum 21 to receive the vessel for regulatory reasons (**Document L66.4**).

The process is therefore far from having been as fluid as Mexico has stated with a degree of self-satisfaction in the implementation reports which it believed it was required to submit *sua sponte* to the Tribunal.

E. The abusive detention of the *"Zheng He"* has caused injury to the ship considered as a unit

250.- The detention of the vessel over such a long period has caused multiple types of injury to the *"Zheng He"*, whose flag State now intends to seek reparation. Such injury, which will be detailed below (Chapter VII below), has affected the shipowner, the seafarers engaged in the operation of the vessel and the companies of the JDN group which have interests in connection with the dredging activity. Luxembourg is fully entitled to seek reparation irrespective of the nationality of the natural or legal persons who have had to suffer as a result of the prolonged detention of the Luxembourg vessel.

251.- In its judgment in the *M/V "SAIGA" (No. 2)* case,[79] the Tribunal ruled:

> *The provisions referred to in the preceding paragraph indicate that the Convention considers a ship as a unit, as regards the obligations of the flag State with respect to the ship and the right of a flag State to seek reparation for loss or damage caused to the ship by acts of other States and to institute proceedings under article 292 of the Convention. Thus the ship, every thing on it, and every person involved or interested in its operations are treated as an entity linked to the flag State. The nationalities of these persons are not relevant.*

II. By continuing a unilateral procedure to expropriate the *"Zheng He"*, Mexico harms the Luxembourg fleet and flag

252.- The procedure conducted by the Mexican authorities with a view to expropriating the *"Zheng He"* constitutes an arbitrary act which can be characterized as an *act of State* (**A**). This *act of State* seeks to dispute the nationality and the registration of the vessel in Luxembourg in order to link it to Mexican nationality and the Mexican register (**B**). It blatantly infringes the rights which Luxembourg derives from the Convention (**C**).

A. The procedure with a view to expropriating the *"Zheng He"* constitutes an *act of State*

253.- When the *"Zheng He"* had been detained for 106 days, a unilateral decision to expropriate the vessel was taken on 15 February 2024 by Mr Sergio Galaviz Carillo, an official from the General Administration of Foreign Trade Audit (AGACE) (**Document L50**). This was a non-adversarial administrative act adopted in the absence of the shipowner, which was not invited to present its defence. The operative part of that act orders the expropriation of the *"Zheng He":* "*Dicha mercancía pasa a propriedad del fisco federal*". Even though the administrative act includes a mandatory reference to the legal remedies in Mexican law, the shipowner was informed only belatedly of the decision concerning it. Shortly afterwards, by official letter of 20 March 2024, AGACE contacted the Mexican agency responsible for confiscated assets, INDEP (*Instituto Nacional para Devolver al Pueblo lo Robado*), in order to transfer custody of the vessel to it (**Document L80**). That expropriation was the first arbitrary act by the Mexican administration constituting an *act of State* against the vessel flying the Luxembourg flag. It should also be recalled that the reason given was the illegal importation of the *"Zheng He"* into Mexican territory, denying its status as a ship and the right of innocent passage.

254.- The shipowner exercised all the legal remedies available in Mexican law to prevent the expropriation of the vessel. As was stated above, the shipowner first, on 22 March 2024, obtained from Tampico District Court a decision annulling both the onboard inspection order of 31 October and the subsequent detention of the vessel (**Document L51**), the customs procedure being fundamentally flawed. Consequently, on 3 and 5 April 2024, the shipowner immediately lodged an administrative application for review against the expropriation order in respect of the *"Zheng He"*. AGACE granted a stay of the proceedings for the application for review on the ground that legal remedies were pending before Mexican courts.

[79] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10, para. 106.

255.- Rather than seizing the opportunity provided by the *amparo indirecto* decision taken by the Tampico District Court on 22 March 2024 and withdrawing their uniliteral decision, the Mexican authorities sought to continue unabated the arbitrary process of expropriating the vessel under dubious procedural conditions.

256.- The decision of the Tampico District Court annulling the customs procedure had become final on 12 April 2024, including for AGACE,[80] because, on that date and in accordance with Mexican law, the clerk could confirm that no appeal had been registered at the registry in the electronic records in which documents are time-stamped. Against all likelihood, AGACE then claimed to have filed an appeal on the last effective day of the time limit, 12 April 2024. Rather than using the official electronic system that time-stamps notifications, AGACE notified its appeal by a simple postal letter, which arrived at the registry on 24 May 2024, i.e., **42 days** after the time limit for appeals had expired. It is therefore unlikely that AGACE complied with the procedural time limits in national law; it reacted belatedly, after the registry had issued the certificate of non-appeal (**Document L52**) and after the request for the clearance of the vessel had been made to the port authorities on 19 April 2024 (**Document L53**). The use of a franking machine controlled by the Mexican administration to backdate the letter notifying the appeal is more than likely. Despite all this, the Mexican courts declared the appeal to be admissible by a decision of 12 June 2024, a few days after Luxembourg had instituted the present proceedings. Lastly, on 19 June 2024, at the behest of AGACE, a direct request for the exercise of the "power of attraction" was made to the Supreme Court of Mexico (**Document L68.1**). When that request was rejected by the Supreme Court on 6 November 2024 for lack of *locus standi* (**Document L68.2**), AGACE persisted and in January 2025 submitted a second request for the exercise of the "power of attraction" before the Supreme Court (**Document L68.3**). According to the Mexican authorities, which are clearly seeking to maintain the expropriation of the *"Zheng He"*, the case is therefore still pending before the Supreme Court. Luxembourg has already highlighted the fact that this second request for the exercise of the "power of attraction" is surprising, to say the least.[81]

257.- At present, the decision to expropriate the *"Zheng He"* is not yet final, but the Mexican administration is using every resource available under its national law to have the decision confirmed, within a time frame that exceeds the expectations of the shipowner and lies in the hands of the Mexican institutions. This persistence on the part of Mexico in seeking to have the expropriation confirmed, in the name of Mexican sovereignty and even though the matter has been brought before your Tribunal, constitutes a second manifestation of an *act of State*.

258.- In any event, the decision of the Mexican courts will arrive too late, after the Memorial is submitted on 24 March 2025, thereby preventing Luxembourg from presenting its observations before the Tribunal. Luxembourg wishes forthwith to inform the Tribunal that it will respectfully request the right to reply to Mexico if the expropriation is confirmed.

[80] See *Statement in response of the United Mexican States to the Request for the prescription of provisional measures of the Grand Duchy of Luxembourg*, 3 July 2024, p. 13, para. 54.
[81] See Chapter II, Section II, B above.

B. The expropriation procedure seeks to infringe the rights of the Luxembourg owner and, consequently, the vessel's link to the Luxembourg flag

259.- If successful, the procedure conducted by the Mexican State to expropriate the *"Zheng He"* will have irreversible consequences in the Mexican legal order. Under article 13 V. of the *Navigation and Maritime Commerce Law*, ships which are the property of the Mexican State must be awarded Mexican nationality and are automatically registered in the register of Mexico.

> *Artículo 13.- Se considerarán embarcaciones de nacionalidad mexicana:*
> *I.- Las abanderadas y matriculadas conforme a la presente Ley;*
> *II.- Las que causen abandono en aguas de jurisdicción nacional;*
> *III.- Las decomisadas por las autoridades mexicanas;*
> *IV.- Las capturadas a enemigos y consideradas como buena presa; y*
> ***V.- Las que sean propiedad del Estado mexicano***
> ***Las embarcaciones comprendidas en las fracciones II a V de este artículo, serán matriculadas de oficio***

As the condition for appropriation by Mexico is substantiated in local law, INDEP will then be able to place the *"Zheng He"* (**Document L80**) under the Mexican flag; it will be able to claim, in accordance with its own national procedures, that the vessel may be assigned to another owner under Mexican law, whether that be an authority or a private-law entity.

260.- The unilateral administrative decision to expropriate the *"Zheng He"*, if confirmed by the Mexican courts, cannot be recognized in Luxembourg. The dual registration of the vessel in Mexico would be ineffective from that point of view. Under article 20 of the *Law of 9 November 1990 on the creation of a Luxembourg register of ships:*

> *Registration of a Luxembourg-registered ship under a foreign flag shall be deemed invalid for such time as the entry in the Luxembourg register has not been cancelled….*

However, even confined to the domestic legal order of Mexico, AGACE's claim to expropriate the *"Zheng He"* and to transfer it to INDEP blatantly infringes the rights of the Grand Duchy of Luxembourg.

C. Infringement of the sovereign rights of Luxembourg

261.- By seeking the expropriation of the *"Zheng He"*, which will necessarily result in its automatic registration in the Mexican register, the United Mexican States infringes the rights which Luxembourg derives from articles 90, 91 and 92 of the Convention.

262.- Article 92 of the Convention, entitled "*Status of ships*", provides (emphasis added):

> *1.* ***Ships shall sail under the flag of one State only*** *and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.*
>
> *2.* ***A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality****.*

263.- The appropriation of the *"Zheng He"* claimed by the United Mexican States and the attribution of Mexican nationality to the *"Zheng He"* will have the effect of conferring

"*dual nationality*" on it, which is not permitted by the Convention and will therefore result in the *"Zheng He"*'s being assimilated to a ship without nationality. It is immaterial in this regard whether, with the assistance of Mexican law enforcement, purported Mexican owners take physical control of the ship and have it fly the Mexican flag only. On account of its dual registration – the first, legitimate registration in Luxembourg and the second, illegitimate registration in Mexico – the *"Zheng He"* will come under the provisions of article 92, paragraph 2. According to one reference commentary on the Convention: "*Paragraph 2 addresses the situation in which a ship sails under the flags of two or more States –* ***a situation which can occur through the absence of uniformity in the national legislation of States regarding the registration of ships and the grant of nationality to ships.*** *With regard to any other State, a ship in that position may not claim any of the nationalities in question, and 'may be assimilated to a ship without nationality'.*"[82] Mexico's claim to expropriate the vessel and to grant it its nationality will therefore have the effect, under the Convention, of challenging the enforceability of its Luxembourg nationality and depriving the Grand Duchy of Luxembourg of its rights and prerogatives over the vessel, in particular its right of navigation under article 90 of the Convention and its jurisdiction.

264.- It should also be noted that the appropriation of the *"Zheng He"* and its registration by Mexico are unlawful in accordance with the second sentence of article 92, paragraph 1, of the Convention:

> *A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.*

As has already been amply demonstrated, the *"Zheng He"* was detained while making a *nautical call* in Tampico, thereby satisfying the temporal criterion for a port of call under the Convention. The *Virginia Commentary* confirms the meaning of the term "*port of call*": "*The expression 'port of call' refers to a port at which a ship stops while on a voyage*".[83] The procedures for the expropriation of the *"Zheng He"* therefore breach the clear prohibition on changing the flag during a voyage or while in a port of call.

265.- In the present case, the expropriation procedures do not fall under either exception of a real transfer of ownership or of a change of registry.

First of all, there has not been a "*transfert réel*" within the meaning of the French version of the Convention nor a "*real transfer of ownership*" within the meaning of the English version of the Convention. The ordinary meaning of the word "*transfert*" implies transmission from one person to another or from one sovereignty to another, excluding situations where two competing claims are asserted. In law, "*transfert*" generally means the "*acte par lequel on transmet un droit d'une personne à une autre*" [act by which a right is transmitted from one person to another]; in international law, transfer of sovereignty means "*substitution d'une souveraineté à une autre*" [substitution of one sovereignty for another].[84] In the case at hand, whatever may be decided by the Mexican authorities, ***European Dredging Company is still the owner of the vessel under Luxembourg law and still acts as the owner by exercising possession over its vessel with*** **animus*****, through a continued presence of its crew on board, even though the vessel can no longer be operated***. Above all, the transfer of real rights of a registered movable asset must be assessed on the basis of the law of the flag, namely, the law of Luxembourg.

---

[82] *Virginia Commentary*, para. 92.6(e), p. 127.
[83] *Virginia Commentary*, para. 92.6(e), p. 127.
[84] *Trésor de la langue française* [online], see *transfert*, meaning B 1° and B 4°.

Additionally, there has been no "*change of registry*" within the meaning of the Convention, as the vessel continues to be registered in the register of the Grand Duchy of Luxembourg and will remain so under article 20 of the *Law of 9 November 1990 on the creation of a Luxembourg register of ships*, even in the event of a second registration in Mexico. That second registration will be deemed null and void.

266.- Ultimately, Mexico's persistence in obtaining an order for the expropriation of the *"Zheng He"*, using all legal avenues and legal remedies in its domestic legal order, characterizes a refusal to recognize the Luxembourg nationality of the vessel and therefore infringes the rights of the Grand Duchy of Luxembourg, in violation of articles 90, 91 and 92 of the Convention.

CHAPTER V. INFRINGEMENT BY MEXICO OF LUXEMBOURG'S RIGHT TO EQUAL TREATMENT AS A LANDLOCKED STATE

267.- Article 131 of the Convention provides: "*Ships flying the flag of land-locked States shall enjoy treatment equal to that accorded to other foreign ships in maritime ports.*"

268.- Article 131 is binding on all coastal States Parties to the Convention, not only transit States, for the benefit of landlocked States.[85] Luxembourg will demonstrate that the unprecedented treatment received by the *"Zheng He"* in the Port of Tampico constitutes a violation of article 131 by Mexico.

269.- The conditions for the applicability of article 131 are met (**I**) and, despite the evidentiary difficulties and the lack of cooperation on the part of Mexico, Luxembourg is able to demonstrate objective discrimination against the *"Zheng He"*, which can be attributed only to Luxembourg's status as a landlocked State (**II**).

I. The conditions for the applicability of article 131 are satisfied

270.- The Tribunal has already recognized in its Order of 27 July 2024 on the Request for the prescription of provisional measures that "*Luxembourg is a landlocked State as defined in article 124 of the Convention and … its flagged vessel "Zheng He" is detained in the Port of Tampico, Mexico.*"[86]

271.- The parties are in agreement that the *"Zheng He"* flies the flag of Luxembourg, a landlocked State (**A**), and that the measures at issue were taken by Mexico in the Port of Tampico, a port open to international maritime traffic (**B**).

A. The *"Zheng He"* is a vessel flying the flag of a landlocked State, namely, Luxembourg

272.- Luxembourg's status as a landlocked State within the meaning of article 124 of the Convention cannot be disputed. It has no sea coast, only land boundaries with three States: Germany,[87] Belgium[88] and France.[89]

The *"Zheng He"* has been registered in the register of Luxembourg since 22 October 2010 (**Document L5**) and is authorized to fly the flag of Luxembourg. As has already been stated,[90]

---

[85] A. Proelss (ed.), *United Nations Convention on the Law of the Sea*, *A Commentary*, Beck-Hart, Nomos, 2017, p. 930.

[86] *The "Zheng He" Case (Luxembourg* v. *Mexico), Provisional Measures, Order of 27 July 2024, ITLOS Reports 2024*, para. 122.

[87] Treaty between the Grand Duchy of Luxembourg and the Federal Republic of Germany on the demarcation of the border between the two States and Exchange of letters, signed in Luxembourg on 19 December 1984.

[88] Treaty between Belgium and Holland relative to the Separation of their Respective Territories, signed in London on 19 April 1839.

[89] Boundary Treaty between France and the Netherlands, signed in Kortrijk on 28 March 1820, and Convention between the Government of the Grand Duchy of Luxembourg and the Government of the French Republic rectifying the France-Luxembourg border, signed in Senningen on 20 January 2006.

[90] See Chapter I.I. B and Chapter II.II.A above.

Luxembourg effectively exercises the controls and checks incumbent on it as the flag State of the *"Zheng He"*.

273.- When the *"Zheng He"* contacted the Mexican authorities regarding its nautical call in the Port of Tampico, it clearly indicated its Luxembourg flag. The Mexican authorities took note of this and did not contest it. The Luxembourg flag of the *"Zheng He"* was thus clearly indicated in the request for authorization to moor at berth No. 3 sent by the ship agent on 17 October 2023 (**Document L31**), then in the authorization issued by the harbour master on 21 October 2023 (**Document L35**).

274.- Lastly, even if ownership of the vessel had changed pursuant to the contested resolution of 15 February 2024, that did not affect the flag. Luxembourg does not recognize that resolution or the transfer of ownership of the vessel to the Mexican Federal Treasury which the resolution claims to have decided, since they are, in Luxembourg's view, internationally wrongful. Any possible change of ownership of the vessel pursuant to that contested resolution is therefore ineffective vis-à-vis Luxembourg and cannot give rise to a loss of registration or of the Luxembourg flag of the *"Zheng He"*. It is evident that no deregistration procedure has been carried out. Furthermore, Mexico itself asserts that ownership of the *"Zheng He"* has not yet been effectively claimed by the Federal Treasury (**Document L80**).

B. The Port of Tampico is a maritime port of another State Party to the Convention, namely, Mexico

275.- The Convention does not contain a definition of the terms "port" ("*port*" in French, "*puerto*" in Spanish) and "maritime ports" ("*ports de mer*", "*puertos marítimos*"). Recourse must therefore be had to the ordinary meaning of the terms in their context and in light of the object and purpose of the Convention, in accordance with the general rule of interpretation set out in article 31, paragraph 1, of the Vienna Convention on the Law of Treaties. The Tribunal has already had occasion to refer to this rule of interpretation,[91] which is customary in nature.

276.- Non-specialized dictionaries define port as an "*abri naturel ou artificiel aménagé pour recevoir les navires, pour l'embarquement et le débarquement de leur chargement*";[92] a "*lugar en la costa o en las orillas de un río que por sus características, naturales o artificiales, sirve para que las embarcaciones realicen operaciones de carga y descarga, embarque y desembarco, etc.*";[93] or "*an area of water in a coastal city where boats and ships come in from the ocean*".[94] "*Port de mer*" or "*port maritime*" is defined as a "*port formé par les eaux de mer ou situé sur un fleuve et pouvant recevoir des navires de mer*" [port formed by seawaters or located on a river and capable of receiving seagoing vessels].[95]

277.- An international law dictionary defines "*port*", in French, as a "*lieu qui par sa configuration physique (port naturel) complété par des aménagements de la main de l'homme ou par ses seuls aménagements (port artificiel) permet d'abriter les navires de mer ou les bateaux de navigation intérieure, de les entretenir ou de les réparer, de faciliter leurs opérations d'embarquement et de débarquement de passagers, de chargement ou de déchargement des marchandises, etc.*" [place which, by its physical configuration (natural port) supplemented by

[91] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 98, para. 372.
[92] Definition from the *Le Robert* dictionary.
[93] Definition from the *Diccionario de la lengua española*.
[94] Definition from the *Cambridge Dictionary*.
[95] Definition from the *Larousse* dictionary.

human-made amenities or by its own amenities alone (artificial port), allows seagoing vessels or inland waterway vessels to shelter, to be maintained or repaired, to facilitate the embarkation and disembarkation of passengers, loading or unloading of goods, etc.].[96] As for maritime ports, article 1 of the Statute of 9 December 1923 on the International Régime of Maritime Ports defines them as "*ports which are normally frequented by seagoing vessels and used for foreign trade*". Along similar lines, at the negotiations for the 1958 Convention on the High Seas, Czechoslovakia had proposed the following definition of maritime ports: "*ports receiving naval vessels, and serving international economic relations or the transit of a land-locked State*".[97]

278.- It is clear from all these definitions that clarify its ordinary meaning that the term "maritime port" refers to a place within a coastal State where seagoing vessels usually travel to in order to carry out nautical and/or economic activities. In other words, a maritime port is a port open to international maritime traffic. This is, moreover, consistent with the object and purpose of the Convention, which, according to its fourth preambular paragraph, is to establish "*a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans* ...." Lastly, for context, article 131 of the Convention comes under Part X, which, by setting out their access to and from the sea, gives concrete expression to the right of landlocked States to sail ships flying their flag on the high seas, as enshrined in article 90 of the Convention.

279.- It must therefore be determined that the Port of Tampico is indeed a "maritime port", that is to say, a port open to international maritime traffic. Article 9 of the *Ley de Puertos* of Mexico makes a distinction between ports which are open to open-sea navigation and ports which are reserved for cabotage. It provides:

> *Ports and terminals are classified:*
> *I. By navigation:*
> *a) Open-sea, when they serve vessels, people and goods in navigation between national and international ports or points, and*
> *b) Coastal, when they only serve vessels, people and goods in navigation between national ports or points*.[98]

280.- According to Mexico's domestic classification, it must therefore be determined that the Port of Tampico is a open-sea port. To that end, reference need be made only to the *Reglas de operación del puerto de Tampico*, and in particular rule 29, which confirms that the port can accommodate both cabotage vessels and open-sea navigation vessels and indicates the documents to be provided to the port authorities in both cases (**Document L24**).

281.- The type of navigation that is possible to and from the Port of Tampico confirms that it is indeed a maritime port and not merely a port of registration or a port reserved solely for inland navigation. On the contrary, it is a port capable of receiving ships heading to or from foreign ports. This was precisely the situation of the *"Zheng He"*, which had come from The Bahamas and intended to return there when it arrived in Tampico in October 2023. This is clearly confirmed by the *Permit for entry of vessels or major naval craft in open-sea navigation No. 514873* issued to the *"Zheng He"* by the harbour master of the Port of Tampico on 10 October 2023 (**Document L28**).

---

[96] Definition from Jean SALMON (ed.), *Dictionnaire de droit international public,* Brussels, Bruylant/AUF, 2001.
[97] Cited by A. Proelss (ed.), *United Nations Convention on the Law of the Sea*, *A Commentary*, Beck-Hart, Nomos, 2017, p. 933.
[98] Original version: "*Los puertos y terminales se clasifican: I. Por su navegación en: a) De altura, cuando atiendan embarcaciones, personas y bienes en navegación entre puertos o puntos nacionales e internacionales, y b) De cabotaje, cuando sólo atiendan embarcaciones, personas y bienes en navegación entre puertos o puntos nacionales*."

282.- Since the conditions for the applicability of article 131 are met, Luxembourg will now show that Mexico has violated that provision.

II. Mexico has violated article 131 of the Convention by failing to accord to the *"Zheng He"* treatment equal to that received by other foreign ships in its maritime ports

283.- Luxembourg will first make a few general remarks on the notion of "equal treatment" in article 131 (**A**) before demonstrating that, in the present case, such "equal treatment" was not accorded to the *"Zheng He"* by Mexico (**B**).

A. The notion of "equal treatment" within the meaning of article 131

284.- Article 131 requires coastal States such as Mexico to accord equal treatment to foreign ships, including ships flying the flag of a landlocked State such as Luxembourg. It is therefore necessary to clarify what is covered by "treatment" of a foreign ship in a maritime port. Treatment can be defined, in French, as the "*manière de se comporter à l'égard d'un sujet de droit*" [manner of behaving towards a subject of law].[99] Treatment therefore refers to the exercise by the coastal State of its jurisdiction over foreign ships located in its maritime ports, whether that be its prescriptive jurisdiction or its enforcement power. In that respect, while recognizing that the coastal State is sovereign in its maritime ports in accordance with article 2, paragraph 1, of the Convention, article 131 places a limit on the exercise of that sovereignty over foreign ships. The coastal State is not obliged to accord precisely defined treatment to foreign ships but "only" to accord them all equal treatment.

285.- Luxembourg draws the Tribunal's attention to the use in article 131 of the generic term "treatment", rather than other more precise terms. This marks a change from article 3, paragraph 1(b), of the Convention on the High Seas concluded in Geneva in 1958, which required equal treatment for ships flying the flag of States having no sea-coast "*as regards access to seaports and the use of such ports*".

286.- Although there is no doubt that the "treatment" referred to in article 131 of the Convention includes access to maritime ports and the use of such ports, it is not limited to that. Article 131 can therefore be violated by a coastal State where access to a maritime port is made more difficult or even impossible for the ships of a landlocked State. However, more generally, all the actions of the coastal State vis-à-vis foreign ships in its maritime ports must satisfy the requirement of equal treatment. Article 131 clearly states that foreign ships "*shall enjoy [equal treatment] … **in** maritime ports*" and not just shall enjoy equal treatment "as regards access to seaports and the use of such ports".

287.- Article 2 of the Statute of 9 December 1923 on the International Régime of Maritime Ports, to which Mexico has been party since 5 March 1934, gives an idea of what is covered by "*equality of treatment … in … maritime ports*". That article provides:

> *Subject to the principle of reciprocity and to the reservation set out in the first paragraph of Article 8, every Contracting State undertakes to grant the vessels of every other Contracting State equality of treatment with its own vessels, or those of any other State whatsoever, in the maritime ports situated under its sovereignty or authority, as regards freedom of access to the*

[99] Definition from Jean SALMON (ed.), *Dictionnaire de droit international public,* Brussels, Bruylant/AUF, 2001.

port, the use of the port, and the full enjoyment of the benefits as regards navigation and commercial operations which it affords to vessels, their cargoes and passengers.

The equality of treatment thus established shall cover facilities of all kinds, such as allocation of berths, loading and unloading facilities, as well as dues and charges of all kinds levied in the name or for the account of the Government, public authorities, concessionaries or undertakings of any kind. (emphasis added)

Going beyond the broad scope of the "treatment" received in maritime ports, Luxembourg wishes to emphasize that article 131 cannot be interpreted as requiring only that the applicable rules be the same for all foreign ships. ***Going beyond the general nature of the rules applicable to foreign ships, it is the result of the practical application of those rules that is important and which must ensure equal treatment for foreign ships of landlocked States***. In other words, "equal" treatment cannot be limited to rules applicable to foreign ships which may not make a differentiation depending on whether the foreign ship flies the flag of a landlocked State: that would be *de jure* unequal treatment. To avoid being deprived of all practical effect, the "equal" treatment required by article 131 must also include the manner in which those rules are actually applied by the coastal State, which must not be to the detriment of the ship of a landlocked State: that would be *de facto* unequal treatment.

288.- To that effect, the Permanent Court of International Justice had already held: "*It should be remarked in this connection that* ***the prohibition against discrimination, in order to be effective, must ensure the absence of discrimination in fact as well as in law****. A measure which in terms is of general application, but in fact is directed against Polish nationals and other persons of Polish origin or speech, constitutes a violation of the prohibition. A similar view has already been expressed by the Court in its Advisory Opinion No. 6 relating to German settlers in Poland.*"[100] Dealing with an equal treatment clause in the Treaty of Friendship, Commerce and Navigation concluded between the United States of America and Italy in 1948, the International Court of Justice also ruled that "*[t]he essential question is whether the local law, either* ***in its terms or its application****, has treated United States nationals less well than Italian nationals*"[101] (emphasis added).

289.- Furthermore, article 131 of the Convention clearly identifies the reference third parties, namely, "*other* ***foreign*** *ships*" (emphasis added). Equal treatment must therefore be ensured by the coastal State between foreign ships and not between foreign ships and national ships. In that respect, article 131 is different from and marks a change from article 3, paragraph 1(b), of the Convention on the High Seas concluded in Geneva in 1958. The treatment received in law or in fact by ships flying the Mexican flag is therefore irrelevant. To put it another way, article 131 is more in the nature of a most favoured nation clause than a national treatment clause.

290.- Luxembourg further wishes to add that equal treatment is never absolute but applies as between situations which are considered similar. One author, for instance, notes that *the most widespread judicial formula for equality is as follows: what is essentially similar must be treated the same*.[102] By way of example, the Court of Justice of the European Union has long held that "*[t]he Community legislature infringes the non-discrimination rule when it treats comparable situations differently*"[103] and that "*the general principle of equality, of which the*

---

[100] *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, Advisory Opinion, 1932 P.C.I.J., Series A/B, No. 44*, p. 28.
[101] *Elettronica Sicula S.P.A. (ELSI), Judgment, I.C.J. Reports 1989*, p. 15, in particular para. 108.
[102] O. Jouanjan, "Egalité", *in* D. Alland and S. Rials (eds.), *Dictionnaire de la culture juridique*, Quadrige Lamy PUF, 2003, in particular p. 586.
[103] Judgment of 27 October 1971, *Rheinmühlen-Düsseldorf / Einfuhr- und Vorratsstelle für Getreide und Futtermittel* (C-6/71: ECR 1971 p. 00823).

prohibition of discrimination on grounds of nationality is merely a specific expression, is one of the fundamental principles of Community law. That principle requires that comparable situations should not be treated differently unless such differentiation is objectively justified."[104] It would be placing too onerous of an obligation on coastal States to require them to treat all foreign ships equally in all circumstances regardless of their specific situations. Mexico itself seems to have acknowledged this during the Request for the prescription of provisional measures phase, as it stated that article 131 needed account to be taken of "*... the set of facts that encompass the treatment given to a foreign ship flying the flag of a landlocked State – Luxembourg in this case*".[105] Along similar lines, the tribunal hearing the *Duzgit Integrity* arbitration held that the differences between two situations were important in concluding whether or not there was unequal treatment: "*The Tribunal does not consider the case of the Lefkoniko to be relevant given that she never attempted to make an unauthorised STS transfer within the archipelagic waters of São Tomé. The different circumstances in the settlement process in the case of the Marida Melissa may explain the later difference in treatment between the two vessels.*"[106]

291.- Lastly, in accordance with article 300 of the Convention, a State Party may not invoke its own turpitude: the "equal" treatment accorded to all foreign ships, including ships flying the flag of a landlocked State, must be consistent with the Convention. Any unlawful acts committed against another foreign ship, for example in violation of its flag State's right of innocent passage, may not under any circumstances legitimize the same violations vis-à-vis the *"Zheng He"*. Otherwise, the State Party would not be fulfilling in good faith its obligations under the Convention, in particular under article 131, and would thereby be violating article 300.

B. Proof of treatment contrary to article 131

292.- After clarifying the distribution of the burden of proof between the Parties (**1**), Luxembourg will show that it has discharged the burden upon it without a credible rebuttal by Mexico (**2**). On that basis, a finding by the Tribunal of treatment contrary to article 131 to the detriment of the *"Zheng He"* and Luxembourg is inevitable.

1) Distribution of the burden of proof between the Parties

293.- In accordance with the "well-established principle of *onus probandi incumbit actori*",[107] the burden of proof for unequal treatment rests on Luxembourg, which is making the claim. However, while Luxembourg is required to substantiate its allegation by means of evidence, Mexico cannot claim to have no responsibility in establishing the truth before the Tribunal, in particular by refusing to disclose documents. Before an international judicial body like this Tribunal, each party has a duty to contribute in good faith to establishing the truth. The International Court of Justice has had occasion to recall that principle: "*It is of course to be expected that the Applicant should, in the first instance, submit the relevant evidence to substantiate its claims. This does not, however, mean that the Respondent should not co-operate*

[104] Judgment of 16 October 1980, *René Hochstrass* / *Court of Justice* (147/79, *ECR 1980* p. 03019), para. 7.
[105] Cited by the Tribunal in the Order of 27 July 2024 on the Request for the prescription of provisional measures by Luxembourg, para. 79.
[106] *The Duzgit Integrity Arbitration (Malta* v. *São Tomé and Príncipe), Award of 5 September 2016*, para. 277.
[107] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010*, p. 14, in particular para. 162.

in the provision of such evidence as may be in its possession that could assist the Court in resolving the dispute submitted to it."[108]

294.- It should be added that the evidence available to Luxembourg is limited, as it does not have access, generally and specifically, to the way in which Mexico, a sovereign State, treats foreign ships located in its own maritime ports. The International Court of Justice has recognized that exclusive territorial control exercised by a State within its territory made it more difficult to prove an internationally wrongful act by another State and that it was therefore necessary not to modify the burden of proof but to admit indirect evidence, in particular inferences: "*[T]he fact of this exclusive territorial control exercised by a State within its frontiers has a bearing upon the methods of proof available … . By reason of this exclusive control, the other State, the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such a State should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognized by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion.*"[109]

295.- Luxembourg is therefore able to rely on factual inferences, which Mexico is free to refute, in order to demonstrate the unequal treatment suffered by its vessel.

296.- To that effect, Luxembourg will show that the *"Zheng He"* has received differential and prejudicial treatment and, in light of the information available to Luxembourg, no other foreign ship in a similar situation has received such treatment. Consequently, the existence of unequal treatment in violation of article 131 of the Convention must be inferred and the burden of proof now rests on Mexico. As Judge Tanaka noted in his opinion in the *South West Africa* case: "*Equality being a principle and different treatment an exception, those who refer to the different treatment must prove its raison d'être and its reasonableness*."[110]

297.- Of course, it will be for the Tribunal to assess the relevance and probative value of the evidence furnished by the Parties.

2) Luxembourg has demonstrated that the "Zheng He" *had received exceptional treatment without Mexico producing any credible refuting evidence*

298.- Luxembourg would like to remind the Tribunal, first of all, that the customs treatment received by the *"Zheng He"* does not comply with the rules normally applicable and is unprecedented in the Mexican legal order.

299.- To that effect, Luxembourg draws the Tribunal's attention again to two legal opinions. These are expert reports and not merely opinions on the reality of facts or events. The first opinion is from Ms Leticia Garcia Moreno, a specialist in Mexican customs law, who notes that the *"Zheng He"* had the only authorization necessary under Mexican law to enter the Port of Tampico – the authorization from the harbour master; that the temporary import procedure is a facility granted to ships that have infrastructure works planned in Mexico, which is not at all compulsory, and that it was not requested in this case by the *"Zheng He"*; that, moreover, such a temporary import procedure for a vessel like the *"Zheng He"* requires, under Mexican

[108] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010*, p. 14, in particular para. 163.
[109] *Corfu Channel, Merits, Judgment of 9 April 1949, I.C.J. Reports* 1949, in particular p. 18.
[110] *South West Africa, Second Phase, Judgment, I.C.J. Reports 1966,* p. 6, Dissenting Opinion of Judge Tanaka, p. 309.

law, that the ship already be on national territory in order to be inspected by the customs authorities and not that the ship have proof of its lawful importation upon its entry into the territorial sea (**Document L72.1)**.

300.- The second legal opinion is provided by *Jones Day Mexico*, a firm that belongs to a renowned international group with 39 offices worldwide. That opinion emphasizes that the decision to apply to the *"Zheng He"* the customs rules relating to illegal importation of merchandise, considering the vessel itself to be merchandise for customs purposes, has no legal precedent (**Document L71**).

301.- In addition to this evidence indicating the exceptional nature of the treatment received by the *"Zheng He"* and showing that it is not consistent with the standard practice of the Mexican authorities, Luxembourg has already had occasion to demonstrate, with regard to the hampering of the right of innocent passage and the levying of exorbitant charges by reason only of passage, that the treatment received was **to the detriment** of the *"Zheng He"* and its flag State. Although the *"Zheng He"* complied with Mexican rules on access to the port and the nautical call by obtaining authorization from the harbour master to call into berth No. 3, it was subject to a coercive procedure by the Mexican customs authorities, which led to its detention and the imposition of a disproportionate fine.

302.- The order of magnitude speaks for itself: the charges for services provided at the port (estimated at 30 Mexican pesos per hour, based on the rate of the Portum 21 terminal on 15 November 2023 (**Document L84**)), or even the duties due for temporary importation (744 Mexican pesos in spring 2023 (**Document L82**)), and the fine of 1,616,462,343.52 Mexican pesos imposed on the *"Zheng He"* by the decision of 15 February 2024 are entirely disproportionate.

303.- However, Mexico has not rebutted the presumption of unequal treatment. When asked by Luxembourg to provide examples of other foreign ships that had received treatment equal to that accorded to the *"Zheng He"*, at the hearing for the Request for the prescription of provisional measures, Mexico submitted its **Annex No. 51** (**Document L83**). This document consists of several tables, including summary statistical tables, none of which is accompanied by a legend that really makes it possible to understand its meaning, then a longer table that purportedly contains all the cases similar to that of the *"Zheng He"*, which is itself mentioned in that long table. Luxembourg wishes, first, to underline the limited probative value of such a document, drawn up unilaterally by the Mexican authorities – whose conduct is at issue in these proceedings – after the proceedings were instituted. Furthermore, this document lacks precision: the flag States are for the most part unknown and half of the situations covered only have the comment "*no observation*". Lastly, this document contains omissions and translation errors: in the original Spanish version, the *"Zheng He"* is referred to as representing "1" unit, the date of "16/02/2024" is given as the procedure completion date and the status is described as "*Orden Terminada*". In the English translation, however, the *"Zheng He"* strangely appears as "2" units, the procedure completion date has disappeared and the case is now described as "*Order in Process*". We can see here that Mexico is seeking by any means, solely for the purposes of the present proceedings, to maintain doubt in the mind of the Tribunal as to the finality of the confiscation of the vessel.

304.- Aware of the burden of proof incumbent on it, Luxembourg has attempted, through the Luxembourg shipowner of the *"Zheng He"*, to obtain further information by availing itself of the legal avenues provided for in Mexican law. A request for access to the 77 resolutions listed in Annex 51 (**Document L83**) was submitted on 7 August 2024 to the *Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales* (INAI). In a decision of 24 October 2024, INAI ordered the Tax Administration Service (SAT) to provide,

within a maximum period of 10 working days, a public version of the 77 resolutions listed in Annex 51, which were to make clear the methodology employed by the authorities to determine the tax situation of the taxpayers in question (**Document L85**). After requesting and obtaining an extension, Mexico granted access on 4 December 2024 to a set of incomplete and redacted documents, some of which are almost entirely illegible. Moreover, only 75 of the 77 resolutions mentioned in Annex 51 were produced. Crucial information such as the type of vessel concerned, the flag, the offence alleged by the customs authorities and the legal basis cannot be identified.

305.- By note verbale dated 16 January 2025 (**Document L65**), Luxembourg therefore requested further information on that Annex 51, having in mind the statement made by Mexico before the Tribunal at the provisional measures hearings: "*I would like to take the opportunity to assure this Tribunal and to our learned colleagues of Luxembourg that any request for information, strictly related to this case, will be duly assessed and answered – of course, having due regard to the rights of Luxembourg in the present proceedings.*"[111]

306.- Specifically, Luxembourg requested to *receive in full the 77 resolutions listed in the extract produced in Annex 51.* Maliciously, in an email dated 17 January 2025 (**Document L86**), Mexico then stated that it was prepared to discuss that request for additional information during diplomatic negotiations, which are subject to confidentiality and subsequent non-disclosure of documents under point 5 of the Framework Agreement annexed to the note verbale of 23 December 2024 (**Document L64**).

307.- It is against this background of non-cooperation by Mexico, despite the undertaking given before the Tribunal and despite the order made by its own authority responsible for transparency, that Luxembourg asserts, on the basis of the limited information which it has been able to access, that among the cases highlighted by Mexico in Annex 51 (**Document L83**) there are no situations similar to that of the *"Zheng He"*; and even if the situations highlighted by Mexico in Annex 51 had been similar to that of the *"Zheng He"*, the differential treatment received by it confirms the unequal treatment.

308.- It should be recalled that under article 131, only treatment received by a **foreign ship** in a **similar situation** to the *"Zheng He"*'s is relevant. The *"Zheng He"* a special service ship, a dredging vessel, which entered Mexico's territorial sea without transporting cargo or passengers and without having works contracts planned in Mexican territory. It did not carry out and did not intend to carry out any economic activities from the time it arrived at the Tampico roadstead. Furthermore, the *"Zheng He"* is a motorized, seaworthy vessel. Luxembourg refers here to the technical characteristics of the ship which have been recalled.[112]

309.- In this regard, Luxembourg observes that article 131 of the Convention refers to "ships" ("*navires*" in French, "*buques*" in Spanish). Small boats, including sailing boats, pleasure boats and jet skis, which are not meant to be engaged on international voyages and thus to avail themselves of the rights and freedoms enshrined in the Convention, could therefore be considered to be excluded from the scope of article 131. To that effect, a number of international conventions which also use term "ships" apply only to self-propelled seagoing vessels engaged on international voyages, excluding small vessels, pleasure yachts not engaged in trade, ships primarily propelled by sail or ships which navigate exclusively in inland waters,

[111] Statement by the Agent of Mexico cited by the Tribunal in the Order of 27 July 2024 on the Request for the prescription of provisional measures, para. 145.
[112] See Chapter I.I.A above.

sheltered waters or port waters.[113] Luxembourg further notes that article 94, paragraph 2(a), of the Convention recognizes that certain ships are not included on the register of ships of the flag State "*on account of their small size*". Luxembourg is not saying that such boats are excluded from the scope of the Convention, in particular article 131, but that, at the very least, they belong to objectively different categories to the *"Zheng He"*.

310.- The list in Annex 51 includes "*sailboats*", "*boats*", "*jet skis*", "*catamarans*", "*recreational boats*" and "*aquatic motorcycle*s" (**Document L83**). In this regard, it appears from the small summary tables at the beginning of Annex 51 that, of the 77 situations mentioned, only two came under the heading "*Ship*", while the vast majority were considered "*Boats*" (52 situations), "*Sailboat*" (5 situations) and "*Yacht*" (13 situations). Mexico itself therefore categorizes the boats mentioned in Annex 51 differently.

311.- Furthermore, in 74 of the 77 situations mentioned, the flag is not identified and it is therefore impossible to ascertain whether they are relevant reference third parties. They could very well be ships or other types of vessel flying the Mexican flag, flying the flag of another landlocked State or not yet flying any flag when they were imported into Mexican territory.

Luxembourg is thus left with guesswork. It would seem, however, that many cases mentioned in Annex 51 do not relate to ships, but to pleasure boats, which were not necessarily in a maritime port but in a marina and which did not breach the obligation to carry out temporary importation but had remained in Mexican territory beyond the 10 years authorized by such temporary importation without seeking an extension (**Document L72.2**).

312.- Last but not least, assuming that the situations highlighted by Mexico in Annex 51 were similar to that of the *"Zheng He"* in October 2023 when it entered the territorial sea, which is highly doubtful, the treatment received by the *"Zheng He"* was not **precisely** the same.

313.- One detail immediately stands out from the small summary tables at the beginning of Annex 51: there is a sudden explosion in the value of the merchandise and the fines imposed by the SAT during 2023, the year in which the *"Zheng He"* was detained. Luxembourg would also point out here that the SAT itself recognizes the exceptional nature of the fine imposed on the *"Zheng He"*, as that was one of its arguments in support of its first request for the exercise of the "power of attraction" before the Supreme Court of Justice of the Nation (**Document L68.1**): "*The intervention of the Supreme Court of Justice of the Nation (SCJN) in a case involving the seizure of a foreign ship for a significant amount … due to non-compliance with tax obligations in national waters is of utmost importance for several reasons, both legal and economic. Firstly, the case raises important issues of maritime and tax law that require the highest and most authoritative interpretation in the country. Additionally,* ***the amount involved in the seizure is considerably high***" (emphasis added).

314.- Furthermore, Luxembourg wishes to point out – and which it is not evident from Annex 51 (**Document L83**) – that during the onboard inspection on 1 November 2023, customs and AGACE agents **boarded the *"Zheng He"*** without having authorization to do so under Mexican law and without there being any known precedent (**Document L72.2**). What is more, in addition to the exorbitant fine imposed on the *"Zheng He"*, it was **combined with** confiscation for the benefit of the Mexican Federal Treasury. In none of the resolutions mentioned in Annex 51 to which Luxembourg has had access was such a high fine **and** in combination with confiscation ordered.

[113] See articles 4 and 5 of the 1966 International Convention on Load Lines; article 1 of the 1976 Convention No. 147 concerning merchant shipping; article 2 of the 1986 United Nations Convention on Conditions for Registration of Ships; article II of the 2006 Maritime Labour Convention.

315.- This is easily understood, as those different resolutions actually related to boats which bore no relation to the *"Zheng He"* in terms of value and activities, and which are subject to a separate procedure. Mexican customs law distinguishes between pleasure boats ("*embarcaciones de recreo y deportivas, del tipo lancha, yate o velero, de más de cuatro y medio metros de eslora incluyendo los remolques para su transporte*"), which are subject to rule 4.2.5 of the *Reglas Generales de Comercio Exterior*, and seagoing vessels like the *"Zheng He"*, which are subject to rule 4.2.11 ("*embarcaciones de carga, de pesca comercial, las especiales y los artefactos navales, como las denominadas plataformas de perforación y explotación, flotantes, semisumergibles o sumergibles, así como aquellas embarcaciones diseñadas especialmente para realizar trabajos o servicios de explotación, exploración, tendido de tubería e investigación …* **las embarcaciones especiales incluyen las dragas**, remolcadores y chalanes, así como embarcaciones de salvamento y los artefactos navales incluyen a las plataformas destinadas a funciones de dragado, exploración y explotación de recursos naturales, entre otras") (**Document L87**). In other words, in Annex 51 (**Document L83**), the Mexican authorities put forth situations which they nevertheless consider different, under their own legislation, from that of the *"Zheng He"* and to which they therefore accord different treatment.

316.- Pleasure boats subject to rule 4.2.5 may apply for a temporary importation permit up to six months before they enter Mexican territory. That permit may be applied for in certain Mexican Consulates in the United States of America, online or at dedicated customs posts on entry into Mexican territory. By contrast, vessels like the *"Zheng He"* which are subject to rule 4.2.11 may request their temporary importation only once they are already in Mexican territory so that the customs authorities can take action at dedicated inspection points. In addition, in order to obtain such a temporary importation permit, the contract for the provision of services requiring the vessel in question must be presented. It should be recalled that the *"Zheng He"* never requested its temporary importation when it arrived in Tampico in October 2023, as is confirmed by the customs authorities themselves (**Document L88, p. 8**): "… *there is no request or registration of a Temporary Import procedure*". None of the resolutions to which Luxembourg has had access, purportedly corresponding to the situations identified in Annex 51 (**Document L83**), relates to a ship subject to rule 4.2.11, even though that is the rule with which, as the customs authorities allege, the *"Zheng He"* failed to comply.

317.- All in all, Annex 51 (**Document L83**), far from demonstrating that the treatment received by the *"Zheng He"* was equal to that received by other similar foreign ships in Mexican maritime ports, confirms the exceptional and prejudicial nature of that treatment.

3) Luxembourg cannot see any legitimate reason warranting such exceptional treatment and can attribute it only to its status as a landlocked State

318.- Evidence of a difference in treatment to the detriment of the *"Zheng He"* is sufficient to demonstrate a violation of article 131, as that provision requires the coastal State to accord "equal treatment" to the ships of landlocked States. Because no such "equal treatment" was accorded, there has been a violation.

319.- Luxembourg recognizes that it is impossible for it to prove conclusively that the *"Zheng He"* has been mistreated by Mexico because of its flag: such evidence, which relates to the intent of the State, cannot be adduced in the absence of measures expressly motivated by the Luxembourg flag of the *"Zheng He"*. The difficulty in proving discriminatory intent, based on a precise criterion, is recognized by other international judicial bodies. That difficulty has led those judicial bodies to accept that evidence of different and prejudicial treatment is

sufficient to establish the existence of unlawful unequal treatment, at least unless it is seriously refuted by the State against which the allegation is made. Luxembourg refers in this regard to the abovementioned opinion of Judge Tanaka in the *South West Africa* case.[114]

320.- An arbitral tribunal dealing with a claim of differential treatment to the detriment of a foreign investor, when that foreign investor was covered by a national treatment clause, thus held:

> *181. It is clear that the concept of national treatment as embodied in NAFTA and similar agreements is designed to prevent discrimination on the basis of nationality, or "by reason of nationality." (U.S. Statement of Administrative Action, Article 1102.) However, it is not self-evident, as the Respondent argues, that any departure from national treatment must be* explicitly *shown to be a result of the investor's nationality. There is no such language in Article 1102 ....* ***For practical as well as legal reasons, the Tribunal is prepared to assume that the differential treatment is a result of the Claimant's nationality, at least in the absence of any evidence to the contrary****. ...*
>
> *183. More generally, requiring a foreign investor to prove that discrimination is based on his nationality could be an insurmountable burden to the Claimant, as that information may only be available to the government.* ***It would be virtually impossible for any claimant to meet the burden of demonstrating that a government's motivation for discrimination is nationality rather than some other reason.*** *Also, as the Respondent argues, if the motives for a government's actions should not be examined, there is effectively no way for the Claimant or this Tribunal to make the subjective determination that the discriminatory action of the government is a result of the Claimant's nationality, again in the absence of credible evidence from the Respondent of a different motivation. If Article 1102 violations are limited to those where there is explicit (presumably* de jure*) discrimination against foreigners, e.g., through a law that treats foreign investors and domestic investors differently,* ***it would greatly limit the effectiveness*** *of the national treatment concept in protecting foreign investors*.[115] (emphasis added)

The approach taken by this arbitral tribunal is not isolated. Another tribunal held that "*intent is not decisive or essential for a finding of discrimination, and that the impact of the measure on the investment would be the determining factor to ascertain whether it had resulted in non-discriminatory treatment.*"[116]

321.- In the present case, unequal treatment is established because no other similar foreign ship has suffered the same prejudicial treatment as the *"Zheng He"* in a Mexican maritime port. It must be inferred that this unequal treatment is based on the flag of the *"Zheng He"*, the flag of a landlocked State, since there is no other legitimate reason that could explain such unequal treatment. Why did the Mexican authorities, when they had never done so previously, decide that a Luxembourg dredging vessel – which had been authorized to make a nautical call and had not requested its temporary importation – was merchandise illegally imported into Mexican territory, which therefore had to be confiscated and exorbitantly fined? The fight against customs or tax fraud cannot reasonably be invoked by the Mexican authorities, as those authorities do not act consistently and the right of innocent passage guaranteed by the Convention would be rendered ineffective.

---

[114] "*Equality being a principle and different treatment an exception, those who refer to the different treatment must prove its raison d'être and its reasonableness*" (*South West Africa, Second Phase, Judgment, I.C.J. Reports 1966,* p. 6, Dissenting Opinion of Judge Tanaka, p. 309).

[115] *Marvin Feldman* v. *Mexico, ICSID ARB(AF)/99/1, Award of 16 December 2002*, paras. 181-183.

[116] *Siemens A.G.* v. *Argentina, ICSID ARB/02/8, Award of 6 February 2007*, para. 321. See also *Bayindir* v. *Pakistan, Award of 27 August 2009*, para. 390.

4) Luxembourg requests the Tribunal to order Mexico to disclose full and complete information in connection with Annex 51

322.- Luxembourg is of the view that it is necessary to have more comprehensive information on all of the cases listed in Mexico's Annex 51 (**Document L83**), namely, the type of vessel, the flag, the rules applied, the offences observed, and the nature and amount of the penalties decided by the customs authorities. This is a specific and narrow request for documents on the basis of the information on which Mexico itself has decided to rely. Moreover, these documents are those that Mexico, which has exclusive rights over its territory and control of its files and records, does have or must have.

323.- Pursuant to article 27 of its Statute, the Tribunal "*shall make all arrangements connected with the taking of evidence*". Because Mexico claims to rely on the cases listed in Annex 51 to refute the allegation of unequal treatment, the Tribunal must order Mexico, which has refused despite requests from both the INAI and Luxembourg, to produce the entirety of the 77 resolutions referred to in this Annex 51 (**Document L83**) without undue delay. This is more than a matter of the Parties' obligation to cooperate in the search for truth; it is a matter of compliance with the adversarial principle before the Tribunal.

324.- Given that Mexico does have or must have the relevant 77 resolutions, should it refuse to disclose them, its failure to do so may be taken into account by the Tribunal as an argument in support of the veracity of Luxembourg's allegations.

CHAPTER VI. VIOLATION BY MEXICO OF ARTICLE 300 OF THE CONVENTION

325.- Luxembourg is committed to ensuring that, in these proceedings, the Tribunal finds that article 300, along with certain specific provisions of the Convention such as articles 2, 24, 26, 92, 94 or 131, have been violated. Luxembourg considers that it has suffered particular injury on account of the lack of good faith and of the abuse on the part of Mexico; such injury cannot be repaired by merely finding that Mexico has violated other provisions of the Convention.

326.- Article 300 of the Convention provides: "*States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.*" Luxembourg notes that Mexico contributed significantly to the drafting of this article during the *travaux préparatoires* of the Convention.[117]

327.- Luxembourg will therefore now show that by detaining and imposing a fine on the *"Zheng He"*, Mexico has not exercised its rights and jurisdiction recognized by the Convention (**I**) reasonably and in accordance with their purpose (**II**). In doing so, Mexico adversely affected the delicate balance established by the Convention and committed an abuse of right which engages its international responsibility vis-à-vis Luxembourg; that assessment, which is amply corroborated by the facts, must lead the Tribunal to order Mexico to pay all the costs of the present proceedings (**III**).

I. Identification of specific provisions of the Convention imposing obligations and recognizing rights, jurisdiction and freedoms conferred on Mexico as a coastal State and a port State

328.- After recalling some general aspects relating to article 300 (**A**), Luxembourg will identify the specific provisions of the Convention which have been implemented in bad faith or abusively by Mexico in these proceedings (**B**).

A. General aspects of article 300

329.- Article 300 imposes two distinct but interconnected obligations on States Parties. The first obligation, formulated positively, requires States Parties to perform their obligations under the Convention in good faith. This recalls the principle of *pacta sunt servanda*, the general obligation to perform every treaty in force in good faith.[118] The second obligation, which is

[117] A. Proelss (ed.), *United Nations Convention on the Law of the Sea*, *A Commentary*, Beck-Hart, Nomos, 2017, pp. 1938-1939.

[118] A general obligation set forth in article 26 of the Vienna Convention on the Law of Treaties: "*Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*" See also *Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 296, para. 38.

expressed negatively, prohibits States Parties from committing an abuse of right in the exercise of the rights, jurisdiction and freedoms recognized in the Convention.

330.- Abuse of right is defined in French by specialized dictionaries as the "*[e]xercice par un Etat d'un droit d'une manière ou dans des circonstances qui font apparaître que cet exercice a été pour cet Etat un moyen indirect de manquer à une obligation internationale lui incombant ou a été effectué dans un but ne correspondant pas à celui en vue duquel ledit droit est reconnu à cet Etat*"[119] [exercise by a State of a right in a manner or under circumstances which indicate that such exercise was an indirect means for that State to breach an international obligation incumbent upon it or was carried out for a purpose not corresponding to that for which the right is conferred on that State] or "*l'usage déraisonnable d'un droit*" [120] [the unreasonable use of a right]. Abuse of right is thus understood in at least two ways in international law. First, it can be the use of a right for purposes other than those which were assigned to it, otherwise known as a misuse of power. Second, it can be the unreasonable use of a right, in particular in a manner that is prejudicial to others.

331.- The link between good faith, the prohibition of abuse of rights and the reasonable exercise of a right is well established in legal literature and in international jurisprudence. Some time ago, the WTO Appellate Body thus held: "*The chapeau of Article XX is, in fact, but one expression of the principle of good faith. This principle, at once a general principle of law and a general principle of international law, controls the exercise of rights by states. One application of this general principle, the application widely known as the doctrine of* abus de droit*, prohibits the abusive exercise of a state's rights and enjoins that whenever the assertion of a right 'impinges on the field covered by [a] treaty obligation, it must be exercised bona fide, that is to say, reasonably'.*"[121]

332.- There is little doubt that the two obligations set out in article 300 overlap to a considerable extent. This has already been recognized by the Tribunal, which noted that "*the second element of article 300 of the Convention, i.e., abuse of rights, is closely related to good faith.*"[122] The Permanent Court of International Justice had already made a link between the two concepts of abuse of rights and breach of the principle of good faith.[123] Accordingly, Luxembourg will not always make a distinction between absence of good faith and abuse of right on the part of Mexico, as each gives rise to the violation of article 300 and engages the international responsibility of Mexico.

333.- Article 300, and in particular the notion of abuse of right, illustrates that the legal prerogatives available to States Parties to the Convention cannot be construed as absolute, even though they allow them considerable leeway. The exercise by a State of its sovereign rights is likely to affect other States. It has a bearing on the maintenance of the balance found within the Convention between the competing interests of the States Parties, and of coastal States in particular, on the one hand, and flag States, on the other.

334.- Article 300 refers to obligations "*assumed under this Convention*" and to the rights, jurisdiction and freedoms "*recognized in the Convention*". Therefore, logically, your

---

[119] "*Abus de droit*" *in* J. Basdevant (ed.), *Dictionnaire de la terminologie du droit international,* Paris*,* Sirey, 1960, p. 4.
[120] "*Abus de droit*" *in* J. Salmon (ed.), *Dictionnaire de droit international public,* Brussels, Bruylant/AUF, 2001, p. 4.
[121] WTO, *United States – Shrimp,* DS58, Report of the Appellate Body of 12 October 1998, para. 158, emphasis in the original, citing B. Cheng, *General Principles of Law as applied by International Courts and Tribunals* (Stevens and Sons, Ltd., 1953), Chapter 4, in particular p. 125.
[122] *M/V "Norstar" (Panama* v. *Italy), Judgment, ITLOS Reports 2018-2019*, p. 92, para. 303.
[123] *Certain German interests in Polish Upper Silesia (Merits), Judgment of 25 May 1926, P.C.I.J. Series A, No. 7*, p. 30.

Tribunal has consistently recalled that article 300 cannot be invoked on its own.[124] It is therefore necessary for Luxembourg to identify the provisions of the Convention that have been implemented in bad faith or abusively by Mexico.

335.- Before doing so, Luxembourg wishes to state that although article 300 is not applicable on its own, it can be violated even if other provisions of the Convention are applicable but do not appear to have been violated. Luxembourg considers that article 300 penalizes the unreasonable or abusive use of the rights, jurisdiction and freedoms recognized in the Convention. In doing so, it allows certain limits to be placed on the fulfilment of the obligations or the exercise of the rights, jurisdiction and freedoms recognized by the Convention, including where such fulfilment or exercise seemingly complies with the applicable provisions, provided they misrepresent their spirit or demonstrate the malicious intent of a State Party. As one reference commentary for the Convention notes to that effect: "*The violation of good faith itself is deemed to be contrary to the terms of article 300. Where a State acts in fulfilment of an obligation arising out of the Convention but does so with knowledge that by so doing another State will suffer a detriment, that State can be said to be in breach of article 300.*"[125] In other words, Luxembourg takes the view that although article 300 cannot be applied on its own, it can be violated on its own.

B. Specific provisions of the Convention at issue in the present case

336.- It is necessary to identify the provisions of the Convention that are applicable concurrently with article 300. Specifically, Luxembourg claims that Mexico:

Has not fulfilled in good faith the obligations set out in article 2, paragraph 3, article 24, paragraph 1, and article 26, paragraph 1, of the Convention.

Article 2, paragraph 3, imposes on the coastal State the duty to exercise its sovereignty over its territorial sea subject to the Convention and to general rules of international law. This was recently confirmed by the tribunal dealing with the *Arbitration regarding the Chagos Marine Protected Area*, after a lengthy analysis of the wording of the provision, its context, the object and purpose of the Convention and the *travaux préparatoires*.[126]

As regards article 24, paragraph 1, and article 26, paragraph 1, they impose on the coastal State the duty not to hamper the innocent passage of foreign ships through the territorial sea and not to levy charges upon foreign ships by reason only of their passage through the territorial sea. Luxembourg has already demonstrated that both those duties were not only applicable in the present case but had also been breached by Mexico by reason of the treatment accorded to the *"Zheng He"*.

337.- ***Has abusively exercised its jurisdiction and sovereign rights in its internal waters, its territorial sea and its maritime ports. That jurisdiction and those rights are***

---

[124] *M/V "Louisa" (Saint Vincent and the Grenadines* v. *Kingdom of Spain), Judgment, ITLOS Reports 2013*, p. 43, para. 137; see also *M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 109, para. 396; *M/V "Norstar" (Panama* v. *Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 74, para. 131; *M/V "Norstar" (Panama* v. *Italy), Judgment, ITLOS Reports 2018-2019*, p. 79, para. 241.

[125] A. Proelss (ed.), *United Nations Convention on the Law of the Sea*, *A Commentary*, Beck-Hart, Nomos, 2017, pp. 1938-1940.

[126] *Award in the Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom of Great Britain and Northern Ireland*, Award of 18 March 2015, RIAA volume XXXI, pp. 359-606, para. 499-516.

recognized in particular by article 2, paragraph 1, article 2, paragraph 3, and article 131 of the Convention.

With regard to article 2, paragraph 1, Luxembourg considers that it recognizes the sovereignty of the coastal State in its internal waters. This is clear from the very wording of the provision: "*The sovereignty of a coastal State extends, beyond its land territory and internal waters ….*" Accordingly, the manner in which the State acts towards foreign ships in its internal waters falls within the prohibition of abuse of rights enshrined in article 300. That article refers to "*the rights, jurisdiction and freedoms* ***recognized*** *in this Convention*". The adjective "*reconnus*" used in the French version is derived from the verb "*reconnaître*", which means "*admettre, ne pas contester, être d'accord pour accepter*" [admit, not dispute, agree to accept].[127] The adjective "recognized" used in the English version of the Convention means "acknowledged, accepted, known, identified"[128] and the adjective "*reconocidos*" used in the Spanish version has the synonyms "*conocido*, *reputado*, *renombrado, acreditado*".[129] The negotiators did not opt for a narrower adjective such as "*accordés*" [accorded] or "*attribués*" [conferred], which would have made it possible to exclude from the scope of article 300 pre-existing rights and jurisdiction or those not exclusively regulated by the Convention. Legal literature confirms to that effect that article 300 has a broad scope, stating that *this general provision is intended to apply in the exercise of the rights of all States, regardless of the area in which the right in question is exercised. The prohibition of the abuse of right therefore applies in addition to other rules, which concern only certain activities or certain areas. Article 300 of UNCLOS thus applies to all jurisdiction, including that which has already been regulated by other provisions of the Convention or by customary rules.*[130]

Furthermore, Luxembourg recalls that internal waters are not exempt from regulation under the Convention. In that sense, an arbitral tribunal has recently ruled that "*the Arbitral Tribunal is not entirely convinced by the rather sweeping premise of the Russian Federation's objection that the Convention does not regulate a regime of internal waters and, therefore, a dispute relating to events that occurred in internal waters cannot concern the interpretation or application of the Convention.*"[131] That arbitral tribunal recalled article 8, paragraph 2, as well as article 192 of the Convention, which applies to all maritime areas, undoubtedly including internal waters.[132] Luxembourg will also recall article 131, the application and violation of which it has demonstrated in these proceedings.[133]

It is, moreover, perfectly consistent with the purpose of the Convention to hold that the prohibition of abuse of rights also regulates the exercise by the coastal State of its sovereignty in its internal waters. As is stated in the first preambular paragraph,[134] the objective of the States was to establish a comprehensive legal framework for the oceans. To that end, the Convention builds on what already exists, as is made clear in the final preambular paragraph[135] which expressly refers to the rules and principles of general international law.

---

[127] "*Reconnaître*" *in* J. Basdevant (ed.), *Dictionnaire de la terminologie du droit international,* Paris*,* Sirey, 1960, p. 515.
[128] Definition from the *Oxford English Dictionary*.
[129] Definition from the *Diccionario de la lengua española*.
[130] M. Lemey, *L'abus de droit en droit international public*, Paris, LGDJ Lextenso, 2021, p. 41.
[131] *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait, Ukraine* v. *the Russian Federation,* Award concerning the preliminary objections of 21 February 2020, PCA Case No. 2017-06, para. 294.
[132] *Ibid.*, para. 295.
[133] Chapter V above.
[134] "***Prompted*** *by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea …*".
[135] "***Affirming*** *that matters not regulated by this Convention continue to be governed by the rules and principles of general international law …*".

338.- Article 300 was introduced in order to reconcile the competing interests of coastal States and of other States Parties, including flag States, in the exercise of the rights and jurisdiction recognized in the Convention in the different maritime areas, including internal waters and the territorial sea. Mexico has abused its sovereign right in applying its customs legislation to a foreign-flagged ship. In that respect, there is not only a violation of the articles relating to the right of innocent passage and equal treatment in maritime ports: those violations were committed in bad faith on the part of Mexican authorities with the intent to impair the rights of navigation and the jurisdiction and control of Luxembourg over a ship flying its flag. Article 300 of the Convention has thus been violated, which must now be substantiated.

II. The circumstances surrounding the detention of the *"Zheng He"* demonstrate, in a clear and convincing manner, an abusive exercise by Mexico of its rights and jurisdiction as a coastal State and a port State

339.- Although bad faith and abuse of rights cannot be presumed,[136] the circumstances surrounding the detention and exorbitant taxation of the *"Zheng He"* provide clear and convincing evidence of an abusive exercise by Mexico of its jurisdiction as a coastal State and a maritime port State. Not only has Mexico availed itself of the rights and jurisdiction recognized by the Convention in disregard of their purpose (**A**), but it has also exercised its rights and jurisdiction unreasonably, without sufficiently taking into account the interests and rights of Luxembourg as the flag State (**B**).

A. Misuse by Mexico of the purpose of the rights and jurisdiction conferred on it in the Convention

340.- In his declaration in the *Certain Questions of Mutual Assistance in Criminal Matters* case, Judge Keith noted that the principles of good faith, abuse of rights and misuse of power "*require the State agency in question to exercise the power for the purposes for which it was conferred and without regard to improper purposes or irrelevant factors.*"[137] The circumstances surrounding the prolonged detention and exorbitant taxation of the *"Zheng He"* demonstrate that Mexico did not exercise its jurisdiction recognized by the Convention in accordance with the purposes for which they were conferred. On the contrary, Mexico misused the customs jurisdiction recognized with respect to the coastal State in its territorial sea and the jurisdiction as regards access to ports recognized with respect to the State in its maritime ports.

341.- To claim to apply its customs or tax legislation to a ship entering the territorial sea when that ship never requested temporary importation, obtained authorization to make a purely nautical call and did not carry out or intend to carry out any activity of loading or unloading merchandise or funds or embarking or disembarking persons constitutes a misuse of Mexico's sovereign right to regulate activities in its territorial sea. Mexico cannot claim to have interpreted and implemented article 2, paragraph 3, article 19 and article 21 of the Convention

[136] *M/V "Norstar" (Panama* v. *Italy), Judgment, ITLOS Reports 2018-2019*, p. 79, para. 243. To the same effect, *Certain German interests in Polish Upper Silesia (Merits), Judgment of 25 May 1926, P.C.I.J. Series A, No. 7*, p. 30.
[137] *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France), Judgment, I.C.J. Reports 2008*, p. 279.

in good faith. It knew that the *"Zheng He"* was a dredging vessel arriving from The Bahamas without any cargo (**Document L25**) and that no works contract awaited it in Mexican territory (**Document L76**). Mexico further recognizes that the *"Zheng He"* never formally requested its temporary importation (**Document L88, p. 8**). Lastly, Mexico has also never alleged that the *"Zheng He"* was prejudicial to peace, good order or security in the course of its passage through the territorial sea, which is the general test used by the Convention to characterize non-innocent passage. In that regard, the arbitrary and unjustifiable nature of the detention of the *"Zheng He"* has already been highlighted by Luxembourg and characterized as an act of State.[138]

342.- The customs procedure conducted against the *"Zheng He"* was possible only at the cost of denying its very status as a ship and reducing it to mere foreign merchandise. This becomes fairly clear on reading the Mexican legislation that was applied to the *"Zheng He"*, in particular article 146 of the Customs Law which relates to *the possession, transport or handling of goods of foreign origin*,[139] and article 36 of that Law, which applies to *those who introduce or remove goods from the national territory intended for a customs procedure*.[140]

343.- As regards the exercise by Mexico of its jurisdiction as a port State, it authorized the *"Zheng He"* to moor at berth No. 3 in order to make a nautical call (**Document L35**). Mexico thus availed itself of its sovereign right to regulate access to its maritime ports before simply denying the *"Zheng He"* its very status as a ship. Mexico first accused the vessel of mooring at an unsuitable berth. Then, Mexico claimed to act solely on the basis of its customs regulations in respect of merchandise illegally introduced into its territory. In other words, Mexico availed itself of its jurisdiction in matters of port access to lure the *"Zheng He"* to berth No. 3 before alleging that it had moored at that very berth No. 3, then reducing the vessel to mere merchandise and applying to it rules normally applicable to goods being transported and not to the means of transport itself. Therefore, Mexico did not simply apply to the *"Zheng He"* treatment that was exceptional and therefore discriminatory against its flag State, a landlocked State. It applied treatment that denied the specific nature of the *"Zheng He"* as a ship, even though it had recognized its status as a ship in open-seas navigation (**Document L28**) and had assigned it berth No. 3 for a purely nautical call during a meeting of the Tampico Port Operating Committee (**Document L36**).

B. The unreasonable exercise by Mexico of the rights and jurisdiction conferred on it in the Convention

344.- Regardless of the misuse by Mexico of its jurisdiction as a coastal State and a maritime port State, the establishment and maintenance of the detention of the *"Zheng He"* since 1 November 2023 have been vitiated by numerous irregularities, instances of concealment and inconsistencies on the part of the Mexican authorities of such levels as to go beyond the limits of good faith. Furthermore, the disproportion and abnormality of the penalty imposed on the *"Zheng He"* constitute an abuse in themselves.

---

[138] See Chapter IV, I, A above.

[139] Original version: "*La tenencia, transporte o manejo de mercancías de procedencia extranjera, a excepción de las de uso personal, deberá ampararse en todo tiempo, con cualquiera de los siguientes documentos …*".

[140] Original version: "*Quienes introduzcan o extraigan mercancías del territorio nacional destinándolas a un régimen aduanero, están obligados a transmitir a las autoridades aduaneras, a través del sistema electrónico aduanero, en documento electrónico, un pedimento con información referente a las citadas mercancías, en los términos y condiciones que establezca el Servicio de Administración Tributaria mediante reglas, empleando la firma electrónica avanzada, el sello digital u otro medio tecnológico de identificación. …*".

1) Inconsistency of the Mexican authorities

345.- Both legal literature[141] and jurisprudence[142] have had occasion to note the link between good faith and protection of legitimate expectations which a subject of law has created in others by reason of his or her conduct. However, the conduct of the Mexican authorities towards the *"Zheng He"* has been characterized by numerous turnabouts to the detriment of the vessel, its owner and its flag State.

346.- The inconsistency on the part of the Mexican authorities stems, first, from the authorization granted to the *"Zheng He"* to moor at berth No. 3 for purely nautical purposes, before it was accused of anchoring at an unsuitable berth, which resulted in an initial fine of a modest amount (**Document L40**). Yet, steps had been taken by the Port of Tampico harbour master's office to obtain a temporary change of purpose of berth No. 3 (**Document L32**). That change was authorized by the Director General of Ports of Mexico (**Document L38**). Furthermore, Luxembourg recalls that the ship agent himself had instead requested berth No. 11, which is located within Terminal 3. The inconsistency on the part of the Mexican authorities stems, second, from the authorization granted to the *"Zheng He"* to move to berth No. 6 (**Document L42**), before that movement was prevented without any factual basis. The legitimate expectations of the captain and crew of the *"Zheng He"* have thus been frustrated on a number of occasions. It is immaterial here whether the turnabouts of the Mexican authorities could be attributed to cunning or merely poor communication between them. Luxembourg has already shown that authorization to moor at berth No. 3 had been duly obtained and that the customs authorities not only had been notified of the mooring but had participated in the decision to assign berth No. 3 to the *"Zheng He"* through their attendance at the *Port of Tampico Operating Committee* (**Document L36**).

347.- The inconsistency on the part of the authorities is also shown in the changing reasons put forward in support of the detention and then the confiscation and the exorbitant fine. The decision ordering the precautionary seizure of the vessel was notified to the shipowner only one month after it had been taken. In other words, for several weeks the authorities did not provide any explanation for keeping the vessel at dock, then for moving it to berth No. 11, where it was placed under the guard of a third-party company in the name and on behalf of the Tampico customs authorities. In the context of the *amparo* review instituted by the shipowner, Mexico then attempted to justify the precautionary seizure on the ground that the vessel was at the wrong berth in connection with a request for temporary importation. Yet, a fine had already been imposed and paid on that basis (**Document L40**) and it was precisely the onboard inspection resulting in the precautionary seizure that prevented the vessel from being moved to another, supposedly more suitable, berth. Subsequently, a further reason was advanced, based on other provisions of the Mexican Customs Law, alleging illegal importation into Mexican territory. Since the Mexican authorities themselves acknowledge that a request for temporary importation had never been made by the *"Zheng He"* and that the presence of the vessel at berth No. 3 for purely nautical purposes, on the authorization of the harbour master's office, was lawful, another reason had to be found for the detention of the vessel – one that would, moreover, allow it to be confiscated and made subject to a fine but for a much higher amount. It was then that the Mexican authorities alleged, in the decision of 15 February 2024 (**Document L50**), the illegal importation of the vessel itself upon its entry into the territorial

[141] See R. Kolb, *La bonne foi en droit international public: Contribution à l'étude des principes généraux de droit*, Paris, PUF, 2000, p. 143.
[142] *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 268.

sea, in flagrant violation of the right of innocent passage, as Luxembourg has already demonstrated.[143]

348.- Lastly, Luxembourg notes that the crew and the shipowner of the *"Zheng He"* have not had *any response* from the authorities to the request for the release of the vessel submitted on 19 April 2024 (**Document L53**), even though that request is enforceable under Mexican law. Although a certificate of non-appeal against the decision of the District Court had been obtained (**Document L52**), it was followed several weeks later – when the case had just been brought before your Tribunal – by the "fortuitous" appearance of an appeal purportedly lodged in time. That appeal would therefore have taken several weeks to arrive by post within the State of Tamaulipas. This is a further example of frustration of the legitimate expectations of the vessel, its crew and its flag State, without any credible explanation having ever been given by Mexico. Its attitude cannot in any way be considered compatible with what can reasonably be expected of a sovereign State, namely, that it act towards foreign ships in a manner that is consistent, unambiguous and transparent. What is at stake is the very possibility for such foreign ships, and through them their flag State, to organize their movements and their other activities in connection with the use of the sea for internationally lawful purposes in accordance with the Convention.

2) Haste and lack of transparency on the part of the Mexican authorities

349.- The accumulation of irregularities observed in the course of the onboard inspection, as established by the Mexican domestic court (**Document L51**), bears witness to the exceptional conditions of haste and opacity in which the Mexican authorities acted: the onboard inspection order issued by AGACE was not notified either to the legal representative of ASIPONA responsible for berth No. 3 (**Document L44**) or to the captain of the *"Zheng He"* (**Document L49**). That inspection order was executed at the very moment when the vessel was to be moved to berth No. 6 (**Document L42**). The pretext given for the movement being prevented, a weather warning, did not in any way justify keeping the vessel at berth No. 3. In this regard, Luxembourg wishes to remind the Tribunal that the usual practice in the event of adverse weather is that the harbour master consults the harbour pilots. However, in this case, the pilots themselves had not envisaged any particular weather-related problems and arrived at berth No. 3 to carry out the manoeuvre to berth No. 6, located only a few hundred metres away. Very surprisingly, the pilots were then notified by radio of a *warning notice* by the harbour master (**Document L45, questions 5 and 6**). Yet, it should be recalled again, such a notice did not entail any prohibition on movements within the port. It was, moreover, lifted most opportunely (**Document L48**), precisely when the onboard inspection of the *"Zheng He"* started.

350.- The decision by the authorities, on 1 November 2023, to carry out with haste the onboard inspection which triggered the entire procedure is all the more questionable, as the *"Zheng He"* had been at the Tampico roadstead in the Mexican territorial sea from 11 October 2023. It was available to the customs authorities, which had been informed by the ship agent of its arrival on 9 October 2023 (**Document L27**). In other words, the customs authorities could have carried out an inspection at any time during the 11 days which preceded the vessel's arrival at berth No. 3, but they did not do so. If the offence of illegal importation was consummated upon the vessel's entry into the territorial sea, why were the coercive measures not carried out then? The location itself of the detention of the vessel constitutes an abuse because, as a port State, Mexico had given its authorization for its mooring before taking advantage, or at least so

[143] See Chapter III.IV above.

it thought, of the greater leeway offered by the vessel's being present in internal waters. Similarly, why obstruct the authorized movement to berth No. 6 without any legitimate reason if it were a matter of enabling the regularization of the situation and avoiding illegal importation? The only reason is that it was absolutely necessary to carry out, at berth No. 3 on 1 November 2023, the onboard inspection scheduled the previous day, leading to the precautionary seizure of the vessel, which therefore seems entirely disproportionate.

351.- The following can be added to the list of irregularities demonstrating the serious lack of transparency in which the entire procedure was conducted: the incorrect identification of the AGACE auditors who boarded the vessel without having authorization to carry out the onboard inspection on 1 November 2023, as was established by the Mexican court (**Document L51**); the failure to present the record of detention to the captain of the *"Zheng He"* following that onboard inspection; and the belated notification of the precautionary seizure to the owner of the *"Zheng He"*, which was not made until 28 November 2023, i.e., nearly one month later. What is more, third parties seem to have been informed of the decision of 15 February 2024 before the crew and the owner of the vessel (**Document L55**), and there is, of course, the continued detention without any legal basis since 19 April 2024 even though the harbour master's office had been notified of the clearance order (**Document L53**).

352.- Luxembourg is not asking the Tribunal to make a ruling on compliance with Mexico's domestic rules, but to note, in accordance with article 300 of the Convention, that the manner in which Mexico has acted cannot be within the limits of the reasonable exercise of its jurisdiction as a coastal State and a port State. In light of the facts, the precautionary seizure of the vessel on 1 November 2023, without allowing a shipowner acting in good faith to regularize the situation, then the continued detention after 19 April 2024 without any apparent legal basis, were therefore manifestly unjustified.

353.- On the subject of the lack of transparency, Mexico's attitude towards Luxembourg must be added. Although Luxembourg is directly affected as the flag State, it was never notified of the coercive measures taken against the *"Zheng He"* by the Mexican authorities themselves. Further still, when Luxembourg quickly tried to enter into discussions with the Mexican authorities and to obtain further information, expressing its concern at the situation affecting its vessel and confirming that the vessel was registered in the Luxembourg register, the Mexican authorities remained silent for some time. They merely issued a single note verbale during the first eight months of the detention of the *"Zheng He"* in response to multiple notes verbales from Luxembourg. This lack of transparency continued after proceedings were instituted before your Tribunal and even after the undertaking given by Mexico, during the hearing relating to the Request for the prescription of provisional measures, to cooperate with Luxembourg in relation to "any request for information, strictly related to this case".[144] For example, when Luxembourg requested Mexico, in its note verbale of 27 September 2024 in particular (**Document L39**), to provide it with the letter from the Director General of Ports of Mexico explicitly authorizing the temporary change of purpose of berth No. 3 for eight weeks in order to allow the *"Zheng He"* to make a purely nautical call there, it remained completely silent. Luxembourg would also like to point out that the shipowner of the *"Zheng He"* obtained an order from the *Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales* (INAI) that the SAT provide, within a maximum of 10 working days, a public version of the 77 resolutions listed in Mexico's Annex 51 (**Document L83**), which are supposed to prove that the treatment accorded to the *"Zheng He"* was standard **(Document L85**). However, Mexico granted access, only several weeks later, to a set of incomplete and redacted

[144] Statement by the Agent of Mexico cited by the Tribunal in the Order of 27 July 2024 on the Request for the prescription of provisional measures, para. 145.

documents, some of which are almost entirely illegible. Since then, INAI itself has been abolished by the Mexican legislature, making any further disclosure of documents by the SAT highly unlikely, despite the order to which it is subject. That is why Luxembourg took the initiative, by note verbale dated 16 January 2025 (**Document L65**), to request directly from Mexico the disclosure in full of the 77 resolutions in question, but once again to no avail. Luxembourg also recalls that it requested from Mexico information concerning the first request for the exercise of the "power of attraction" before the Supreme Court in its note verbale of 27 September 2024 (**Document L63**); that information has never been received from Mexico.

3) Disproportion of the harm to the vessel and its flag State

354.- Luxembourg will simply recall at this point that the decision of 15 February 2024 (**Document L50**) imposes a fine of more than 1,616 million Mexican pesos and in combination with an order for confiscation for the benefit of the Mexican Federal Treasury. Other than being disproportionate, Luxembourg points out that such a penalty is discriminatory: never has a foreign ship equivalent to the *"Zheng He"* been subject to a "double penalty" of this nature in a Mexican maritime port.[145] This is confirmed strikingly by the statistics communicated by Mexico: the fine imposed on the *"Zheng He"* in itself far exceeds the amount of all the other fines imposed in the cases reported by AGACE (**Document L83**). The first summary table reproduced in that document submitted by Mexico during the Request for the prescription of provisional measures phase is clear: for the period 2012-2024, the total amount of the fines imposed was 1,819 million Mexican pesos. Therefore, if the fine of 1,616 million imposed on the *"Zheng He"* is subtracted, there remains "only" 203 million. The disproportion is all the more evident if a comparison is made between the fine imposed on the *"Zheng He"* for illegal importation into Mexican territory and the price the same vessel would have had to pay for temporary importation: the *"Zheng He"* itself had paid "only" 744 Mexican pesos in spring 2023 for such temporary importation, which is, moreover, valid for 10 years (**Document L82**).

355.- Luxembourg notes that those penalties, the exorbitant fine and the confiscation of the vessel are based on the alleged illegal importation of the *"Zheng He"* upon its entry into Mexico's territorial sea. However, as it has already demonstrated in this Memorial,[146] there has never been any question of the *"Zheng He"* carrying out any economic activity in Mexican territory, but only of making a call for nautical purposes before heading to The Bahamas, where dredging contracts awaited it. To that effect, the *"Zheng He"* obtained the necessary authorizations and also attempted to comply with the demands of the Mexican authorities, as is shown by its request to shift berth, which was prevented by the Mexican authorities themselves on 1 November 2023. Its good faith cannot therefore be called into question.

356.- Luxembourg draws the Tribunal's attention in this regard to the *Duzgit Integrity* arbitration, in which the arbitrators held:

> *Customs fines apply to goods that are intended for import. Here there was no question of importation or even of an economic transaction. ... In the circumstances, the heavy Custom Directorates fine of more than EUR 1,000,000 imposed by São Tomé appears to be misplaced and disproportionate.*
>
> *Further, there is no evidence to suggest that* Duzgit Integrity *was a repeat offender. ...*
>
> *The Tribunal further recalls that for eight months, until its release under the terms of the Settlement Agreement, the vessel was under the full control of São Tomé while all expenses and responsibility were borne by the Maltese owner.*

[145] See Chapter V. II. 2 above.
[146] See Chapter I.I.D, I.II.B and I.II.C above.

> *In the Tribunal's view, when considered together, the prolonged detention of the Master and the vessel, the monetary sanctions, and the confiscation of the entire cargo, cannot be regarded as proportional to the original offence or the interest of ensuring respect for São Tomé's sovereignty (including São Tomé's interest in demonstrating that such conduct will not be tolerated in future cases).*
>
> *The disproportionality is such that it renders the cumulative effect of these sanctions incompatible with the responsibilities of a State exercising sovereignty on the basis of Article 49 of the Convention.*[147]

As far as the present case is concerned, the detention has continued since 1 November 2023. The crew and the owners of the *"Zheng He"* have never abandoned the vessel over those long months. Although the *"Zheng He"* was placed by the Mexican customs authorities under the custody and control of *Tampico Terminal Maritima* SA (**Document L77**), the Luxembourg owners still assume all the costs and responsibilities pertaining to the vessel. It should be borne in mind, furthermore, that an order to release the vessel had been obtained and notified to the Port of Tampico harbour master's office on 19 April 2024 (**Document L53**), with no effect. Consequently, the duration of the detention is due solely to the wish of the Mexican authorities to keep the vessel under their jurisdiction, using all available stratagems to that end, including the filing of a belated appeal (as with the appeal lodged out of time against the decision of the Tampico District Court annulling the procedure conducted against the *"Zheng He"*) or exceptional appeals (as with the request for the exercise of the "power of attraction" before the Supreme Court submitted by AGACE **twice without any new evidence** (**Documents L68.1 and 68.3**). Mexico is patently exercising its legal prerogatives as a coastal State and a port State, which allows it to keep the vessel at dock under its guard, which, Mexico must be aware, seriously infringes the rights and freedoms of Luxembourg as a flag State. Even more than just the impossibility for Luxembourg to exercise its jurisdiction over its vessel fully and to enjoy through it the freedom of the high seas – which has been demonstrated[148] – it is the duration of that impossibility, **deliberately maintained** by Mexico, that constitutes an abuse.

357.- Even in its territory, a sovereign State is still obliged to take into account the rights and freedoms conferred on other States such that their exercise is not rendered impossible. In this instance, the application by Mexico of its customs legislation to the *"Zheng He"* has unjustifiably and disproportionately limited the rights of Luxembourg as the flag State, namely, the right of innocent passage, the right to equal treatment and the right to exercise its jurisdiction and control in administrative, technical and social matters over a vessel flying its flag.

III. Mexico must therefore bear the costs incurred by Luxembourg in the present case in their entirety

358.- Beyond constituting a violation of article 300 of the Convention, which engages Mexico's international responsibility and obliges it to provide reparation for the injury caused by that violation, the commission of an abuse of rights by Mexico calls for a modification in the allocation of the costs.

359.- Under article 34 of the Statute of the Tribunal, "*[u]nless otherwise decided by the Tribunal, each party shall bear its own costs.*" Consequently, although each party to proceedings normally bears the costs which it has incurred, the Tribunal has the power to

[147] *The Duzgit Integrity Arbitration (Malta* v. *São Tomé and Príncipe), Award of 5 September 2016*, paras. 257-261.
[148] See Chapter IV.I.D above.

modify that allocation and to order one party to bear, in whole or in part, the costs of the other party.

360.- Luxembourg takes the view that the particular gravity attached to the finding of an abuse of rights, the threat that such abuse of rights represents to the legal order established by the Convention and the stability of relations between the States Parties, and the need to deter the recurrence of such abuse in the future must lead the Tribunal to order the party responsible for such abuse to bear the costs in their entirety. If the finding of an abuse of rights in violation of article 300 is not combined with a financial sanction of payment of the costs in their entirety, there may be no particular consequence for the State which committed that abuse: such abuse will in most cases be compounded by the violation of one or more other provisions of the Convention, which already makes it possible to engage the international responsibility of the State in question and to obtain reparation for the damage caused. The finding of an abuse of rights or failure to comply with the obligation of good faith will therefore probably have no other consequence than the particular indignity associated with such a finding by an international judicial body. Luxembourg takes the view that this is not enough.

361.- In the present case, if Mexico had not acted in bad faith and committed an abuse of right, grossly misusing and unreasonably exercising its powers as a coastal State and a port State, Luxembourg would not have chosen to institute proceedings before this Tribunal. Luxembourg wishes to emphasize, furthermore, that the length of the proceedings before the Tribunal is largely due to Mexico, which for a long time refused to begin serious diplomatic negotiations with Luxembourg and claimed to do so only once the submission of Luxembourg's Memorial became imminent, requiring the two Parties to jointly ask the Tribunal for an extension (**Joint letter received by the Registry of the Tribunal on 29 January 2025**). Luxembourg would like to add that it has done everything on its part to keep the costs it has incurred in these proceedings at reasonable levels.

CHAPTER VII. THE INJURY CAUSED TO LUXEMBOURG AND TO THE PERSONS HAVING AN INTEREST IN THE ACTIVITY OF THE *"ZHENG HE"*

362.- The previous judgments of the Tribunal are consistent with the most well-established principles of international law. On several occasions, it held that the internationally wrongful act of a State engages its international responsibility and implies the ruling of adequate reparation that is as close as possible to full reparation. In the *M/V "SAIGA" (No. 2)* case, it held:

> *It is a well-established rule of international law that a State which suffers damage as a result of an internationally wrongful act by another State is entitled to obtain reparation for the damage suffered from the State which committed the wrongful act and that "reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed"* (*Factory at Chorzów, Merits, Judgment No.13, 1928, P.C.I.J., Series A, No. 17, p. 47).*

363.- By referring to the reparation of damage, the Tribunal aligns itself as well with the commonly accepted contemporary understanding that "*[i]njury includes any damage, whether material or moral, caused by the internationally wrongful act of a State*", as the International Law Commission affirmed in its *Draft articles on Responsibility of States for Internationally Wrongful Acts.*[149] Injury therefore encompasses material damage, moral damage and harm itself to the protected legal interest of the State that is the victim of the violation of international law. The Tribunal has acknowledged this in its jurisprudence, namely, in the *M/V "SAIGA" (No. 2)* and subsequent judgments.

364.- First, it will be asserted and proved that Luxembourg and the persons involved or having an interest in the activity of the *"Zheng He"* have suffered injury (**I**). Second, it will be established that the violations of the Convention by Mexico are the direct, immediate and exclusive cause of the injury caused to Luxembourg and to the persons having an interest in the activity of the *"Zheng He"* (**II**).

I. Luxembourg and the persons involved or having an interest in the activity of the *"Zheng He"* have suffered injury

365.**-** At this preliminary stage of the proceedings on the merits, Luxembourg is as yet unable to establish the final *quantum* of the reparation debt incumbent on Mexico, insofar as most of the injury continues to compound daily. For each type of injury, Luxembourg will submit in due time the breakdown and the expert reports in order to formulate requests of a determined amount. The amounts indicated here correspond to an initial assessment to be adjusted at the conclusion of the proceedings before the Tribunal.

366.- After having identified the heads of injury suffered by Luxembourg as a result of the international violation of its rights guaranteed by the Convention (**A**), the heads of injury

[149] ILC, *Draft articles on Responsibility of States for Internationally Wrongful Acts, ACDI, 2001, vol. II-2.*

suffered by the crew members will be established (**B**). The heads of injury suffered by the other persons involved or having an interest in the activity of the *"Zheng He"* will then be set out (**C**), followed by costs (**D**) and interest (**E**).

A. The heads of injury suffered by Luxembourg

367.- Luxembourg has suffered moral damage of particular severity on account of being a landlocked State within the meaning of Convention (**A**). Because of Mexico's inaction since 7 November 2023 when Luxembourg sent its first note verbale, the Grand Duchy has incurred material costs (**B**).

1) Harm to the flag of a landlocked State

368.- The detention of the *"Zheng He"* and then the initiation of an expropriation procedure of the vessel and the imposition of an exorbitant fine characterize several violations by Mexico of the freedoms, rights and prerogatives to which Luxembourg is entitled under the Convention, as was demonstrated above (Chapters III, IV, V and VI). By their mere occurrence, these breaches by Mexico as a coastal State of its obligations with respect to the flag State has caused *moral damage* to Luxembourg.

369.- Each of the violations ascribed to Mexico already constitutes in and of itself *legal damage* for Luxembourg. It constitutes *continuing harm* to the flag of Luxembourg, whether as a result of the denial of the Luxembourg vessel's status unduly recharacterized as mere merchandise, the refusal to recognize its right of innocent passage, the interference with the exercise of its rights, duties and prerogatives, in particular with respect to its jurisdiction and control, or of the discriminatory treatment it received.

370.- With regard to landlocked States, Luxembourg submits that these violations are furthermore of particular severity as they are akin to contesting the rights and freedoms acquired today under the Convention by all landlocked States and returning to nineteenth-century positions. It may be recalled, for example, that in the report of a Minister of the Navy of a coastal State dated 29 December 1854 had declared that *the right of Switzerland to have a maritime flag was not recognized because its maritime situation did not allow it to be monitored nor protected*.[150]

371.- Such claims cannot be applied with respect to the Luxembourg flag whose rigorous policy and requirements have earned it recognition as an exemplary flag. For example, the Luxembourg flag encourages ultra low emission vessels that comply with the Ultra Low Emission vessels (ULEv) rating criteria, whose specifications were established by Bureau Veritas. The quality of the Luxembourg flag is certified by onboard vessel inspections conducted by States of the Paris Memorandum in which Luxembourg-flagged vessels are ranked on the white list. Its flag is even a member of the selective club of what is known as low-risk ships, following an IMO VIMSAS audit. Given this context, the publicity around the detention and the expropriation procedure of the *"Zheng He"* is likely to be detrimental to the reputation of the Luxembourg flag.

372.- Luxembourg therefore asserts and proves that it has suffered not only *legal damage* as a result of the internationally wrongful act alone but also *political damage* as a result of the nature of the harmed standards as well as the circumstances of that harm. For a landlocked

[150] Cited by G. Gidel, *Le droit international public de la mer, Le temps de paix. T. I, Introduction, La Haute Mer,* Paris, Librairie Duchemin, 1981, p. 79.

State, the negation of the vessel's status and right of innocent passage is particularly serious. The continuity and the repetition of the harm are also rather serious. The widespread publicity around the vessel's detention and its repercussions in specialized maritime press, namely, *Lloyd's List* (**Document L56.1**)[151] and *Le marin* (**Document L56.2**),[152] adversely affects the flag within the maritime community. In the print and electronic formats of the general media, it is the image of Luxembourg that is marred. The Luxembourg flag has been described by the press as "tiny".[153] The columnists lay emphasis on the failure of diplomatic negotiations.[154] They wrongly spread the idea that the mariners detained on board are not taken care of and are left with no water or food (**Document L57**),[155] which is extremely detrimental to the virtuous reputation of Luxembourg, State Party to the Maritime Labour Convention.

373.- With regard to *legal damage*, Luxembourg respectfully requests the Tribunal to invite Mexico to offer public apologies. With regard to the *political damage* related to the harmed image of the flag, Luxembourg respectfully requests the Tribunal to direct Mexico to pay one symbolic euro for satisfaction.

2) The incurring of material costs in addition to usual costs

374.- The Grand Duchy of Luxembourg has incurred material costs to defend the interests of its flag in a situation of asymmetry. The asymmetry is a consequence, first, of the lack of any real engagement on the part of Mexico to actively seek a negotiated solution. On numerous occasions, as soon as the vessel was detained, Luxembourg attempted to hold informal discussions and sent notes verbales and requests for meetings, demonstrating its intention to seek a negotiated solution through the participation of very high-level representatives of the Luxembourg government. In return, Luxembourg was met with decorous inaction.

375.- Such inaction, at odds with the principle of good faith, has manifested itself in various ways. *First*, Mexico has sought to maintain its evidentiary advantage by refusing to disclose, in due time and in full, the identified documents in its possession. That is so for the letter addressed by the General Directorate of Ports of Mexico to the Port of Tampico, temporarily modifying the purpose of berth No. 3 to enable the *"Zheng He"* to moor lawfully, and which Luxembourg had to obtain through its own means **(Document L32 and L38**). The same holds as well for the resolutions of **Annex 51** that Mexico (**Document L83**) produced, at the last minute, to respond to the Request for provisional measures. This document is anonymized and redacted to the extent that it is unusable to determine whether a discriminatory situation exists. However, it was not possible to obtain the information so concealed through the use of local remedies: first, although the decision of the body authorizing access to administrative information, the INAI, ordered that this information be communicated, there was no follow-up action; furthermore, Mexican lawmakers have recently abolished the INAI, which has provoked fierce criticism from human rights activists in Mexico. In this context, Mexico's failure to respond to Luxembourg's repeated requests for information (**Documents L63 and L65**) are indicative of a lack of good faith.

---

[151] https://www.lloydslist.com/LL1149384/Mexico-treated-vessel-as-imported-goods-Luxembourg-alleges

[152] https://lemarin.ouest-france.fr/juridique/le-mexique-detient-une-drague-de-jan-de-nul-depuis-plus-de-huit-mois-et-reclame-78-millions-deuros-bb09d9be-6146-11ef-9def-0ffd2dc3a11f

[153] For example, 11/07/2024, https://www.bignewsnetwork.com/news/274451022/luxembourg-accuses-mexico-of-illegal-ship-seizure-at-maritime-tribunal

[154] 27/07/2024, https://www.bignewsnetwork.com/news/274471841/maritime-tribunal-refuses-to-issue-emergency-measures-over-detained-ship

[155] https://www.vrt.be/vrtnws/en/2024/08/15/flemish-company_s-dredging-unable-to-leave-mexico-strange-that/

376.- *Second*, the administrations of the United Mexican States deployed a dilatory strategy even before the provisional measures proceedings. Even though the District Court of Tampico had cancelled the onboard inspection, the unlawfulness of which invalidated the entire detention and expropriation procedure, the Mexican authorities have not hesitated to multiply their appeals against this decision which should have led to the release of the vessel, going as far as to invoke, during the hearing before the Tribunal, a request for the exercise of the "power of attraction" by the Supreme Court of Mexico that was sent on 8 June 2024 (**Document L68.1**). Yet it appears that the Supreme Court ultimately refused that request, which will have the effect of further delaying the outcome of local remedies (**Document L68.2**).

377.- *Third*, the Tribunal is invited to take into consideration that any impediment to an amicable solution is not the result of a lack of maritime culture on the part of Mexico or of an underdeveloped maritime administration. The size of SEMAR, with its wide range of departments and services,[156] testifies to all the operational, technical and human resources that Mexico had at its disposal to offer a solution to the *"Zheng He"* situation that is swift and in compliance with international law. For example, there is a *Legal Unit* that reports directly to the Secretary of the Navy and a *Ports and Merchant Marine Coordination Unit.* Rather than making use of these resources towards finding a negotiated solution, it has used them to perpetuate the violation of Luxembourg's rights.

378.- With regard to the material costs incurred by Luxembourg in addition to the usual costs, Luxembourg respectfully requests the Tribunal to order Mexico to pay a sum of €200,000, to be adjusted.

B. The injury suffered by the crew members

379.- The crew members have suffered moral damage and damage from loss of activity. These two types of damage illustrate the consequences of the detention on the fulfilment of the maritime employment contract and on the maintenance of the seafarers' professional skills.

1) Moral damage

380.- The captain of the *"Zheng He"* and the crew members he is responsible for have first and foremost suffered initial stress related to the detention procedure of the vessel by AGACE on 1 November 2023 (**Document L49**). This initial stress is prolonged by a combination of factors creating the objective conditions of a psychosocial risk situation according to the approach taken by the ILO and the WHO.[157]

381.- *First,* since 1 November 2023, the *"Zheng He"* has continuously been moored at berth in the Port of Tampico. While it is a modern vessel, the living spaces on board a service vessel are cramped – more cramped than on a transport vessel. In these conditions, the confined "*huis clos*" situation on board a detained vessel creates objective conditions conducive to a psychosocial risk, recognized by occupational ethnologists, in which seafarers can be considered neither dead nor alive.[158]

---

[156] *Manuel de organización general de la Secretaría de marina, Acuerdo secretarial núm*. 360/2023, DOF, 28/07/2023, [https://dof.gob.mx/nota_detalle.php?codigo=5697005&fecha=28/07/2023#gsc.tab=0]

[157] ILO (International Labour Office), 1986, *Psychosocial factors at work: nature, impact and prevention, Report of the Joint ILO-WHO Committee on Occupational Health*, Ninth Session, Geneva, 18-24 September 1984, Occupational Safety and Health Series No. 56 (Geneva).

[158] M. Duval, *Ni morts, ni vivants : Marins ! Pour une éthnologie du huis clos,* Paris, Presses Universitaires de France, 1998, 148 p.

382.- *Second*, another psychosocial risk factor is related to the fulfilment of their maritime contract – the crew members are deprived of the nautical activities that make the work of seafarers worthwhile. They ensure the safety and maintenance of a detained vessel, without navigation, manoeuvres or the usual professional interaction with other ships and other trades involved in public works contracts. This psychosocial risk is well known to occupational psychologists as *bore out syndrome*.[159] The crew rotation organized by the shipowner is not enough to combat this psychosocial risk, since the seafarers assigned to the *"Zheng He"* have no other professional prospects than to return to their vessel at the end of the rest period.

383.- *Third,* a psychosocial risk factor relates to the unsafe conditions prevailing in Mexico, and specifically in Tamaulipas, for foreigners on account of known criminal activities, kidnapping of foreigners (**Document L90)**, drug trafficking and corruption. COFACE, which offers insurances for foreign trade, analyses the "country risks" in Mexico, mentioning among the weaknesses: *"High criminality linked to drug cartels and trafficking, widespread corruption surfing on poverty and inequality"*.[160] Consequently, the seafarers cannot escape from the psychosocial risk of the *huis clos* situation on their cramped vessel, insofar as the external environment is objectively analysed as being dangerous. The survey conducted among the seafarers by the shipowner (**Document L92**) attests to the reality of the psychosocial risk.

384.- With regard to the moral damage of physical persons, international case law allows presumptions to be made in favour of the victim. For instance, the International Court of Justice, followed by other courts such as the Inter-American Court for Human Rights, has held:

> *In the view of the Court, non-material injury can be established even without specific evidence. In the case of Mr. Diallo, the fact that he suffered non-material injury is an inevitable consequence of the wrongful acts of the DRC already ascertained by the Court.* [161]

385.- With regard to the moral damage suffered by the seafarers who served on board the *"Zheng He"* by rotation during the detention, Luxembourg respectfully requests the Tribunal to order Mexico to pay the sum of EUR 2,000 per seafarer as compensation.

2) Damage from loss of activity

386.- In addition to moral damage, the seafarers suffer from economic and professional damage related to the loss of activity. That manoeuvring and navigation activities have been reduced to nothing has an impact on all gateway, radio and machinery posts. Accordingly, it is increasingly difficult for the seafarers to maintain their professional skills. The loss of dredging activity also affects the ability to maintain professional skills specific to the operation of a dredger and all gateway, radio and machinery posts. In addition, it leads to a loss of income for the crew members who are deprived of daily bonuses known as "*missed out cutterbonus*".

387.- With regard to the damage from the loss of activity suffered by the seafarers who were rotated into service on board the *"Zheng He"* during the detention, Luxembourg

---

[159] D. Jegaden, 2010, "Le stress et l'ennui chez les marins", *La Revue Maritime*, n° 489, pp. 48-55 ; D. Jégaden, M. Rio, S. Bianco, D. Lucas, B. Loddé, J.D. Dewitte, "L'ennui au travail et la disposition à l'ennui chez les marins : différence entre officiers et personnels d'exécution", *Archives des Maladies Professionnelles et de l'Environnement*, Volume 76, Issue 1, 2015, p. 3-10 ; N. Coadic, D. Jégaden, D. Lucas, "Évaluation de la santé mentale et des facteurs psychosociaux chez les élèves officiers de l'école de la marine marchande", *Annales Médico-psychologiques, revue psychiatrique*, Volume 182, Issue 3, 2024, pp. 273-278. Dr Dominique Jégaden honorary chief physician of the Navy, president of the French Society of Maritime Medicine.

[160] https://www.coface.com/fr/actualites-economie-conseils-d-experts/tableau-de-bord-des-risques-economiques/fiches-risques-pays/mexique

[161] *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 334, para. 21.

respectfully requests the Tribunal to order Mexico to pay the sum of EUR 95,370.73, provisionally estimated for the present, for the loss of income in euros and USD 23,327.79 for the loss of income in dollars.

C. The injury suffered by the persons involved or having an interest in the activity of the *"Zheng He"*

388.- The persons involved or having an interest in the activity of the *"Zheng He"* have suffered injury under three main categories: fees and costs related to the prolonged detention of the *"Zheng He"* in Tampico (**1**), losses due to the depreciation, degradation and expropriation of the *"Zheng He"* (**2**), and loss of revenue related to the impossibility of operating the vessel (**3**).

1) Fees and costs related to the prolonged detention of the "Zheng He" *in Tampico*

389.- The fees and costs related to the prolonged detention of the *"Zheng He"* in Tampico encompass both port fees and usage charges (**i**), labour and insurance costs related to keeping a minimum crew on board in compliance with the Minimum Safe Manning Document *(***ii**), bunker charges (**iii**) and provisioning costs for essential products (**iv**).

i) Port fees and usage charges

390.- Following the onboard inspection and the detention of the vessel by the Mexican authorities on 1 November 2023, the *"Zheng He"* was forced to remain docked in the Port of Tampico, in turn at berth No. 3 and at berth No. 11 at the terminal operated by Portum 21 which states, on 15 November 2023, an hourly docking rate of 30 Mexican pesos an hour. On this category of injury alone, the forced docking of the vessel, continuously for an undetermined period of time, therefore gives rise to a daily increase in the port fees that will be claimed from the shipowner when the vessel is returned. After a year and six months, the debt has already risen to 11,826,000 Mexican pesos. These expenses exceed the normal expenses that would have been owed by the owner had the nautical call in port ceased on 30 November 2023. The provisional assessment of this material damage will need to be completed on the day of the Tribunal's ruling.

391.- The Tribunal is invited to take into consideration that Mexico has, by its abusive detention of the *"Zheng He"*, created for itself a debt liability on the port fees and usage charges, as the port operator is merely a screen.

ii) Labour and insurance costs incurred by the shipowner to keep a minimum crew on board in compliance with the Minimum Safe Manning Document

392.- Following the onboard inspection and the detention of the vessel by the Mexican authorities on 1 November 2023, the shipowner has been forced to maintain a minimum crew on board of the seafarers necessary to ensure the safety of the vessel in accordance with the rules of international maritime safety (**Document L8**) and those necessary for its maintenance. The shipowner clearly has not kept personnel on board of its own accord but rather in order to fulfil its maritime law obligations on board a vessel moored at berth pursuant to a unilateral decision by Mexico.

393.- Even though the vessel is not in operation, the shipowner has nevertheless had to pay not only salaries but also social contributions, insurance cover and crew rotation costs. Specifically, as of 1 December 2024, the date on which the *"Zheng He"* should have set sail for The Bahamas, the shipowner has had to continue paying salaries even though the vessel is no longer conducting any nautical or dredging activities. This is therefore a situation in which additional costs are being incurred despite the fact that the vessel is not conducting the slightest commercial activity; these can be described as *wasted expenses*. Contrary to the scenario of the *M/V "Norstar"* (paragraph 438), in which the flag claimed that the obligation to pay seafarers' salaries arose from employment contracts that were still in force, in the instant case, the payment of salaries is the exclusive and direct consequence of the coercion put on the shipowner from the seizure of the vessel and the artificial prolongation of the dispute for the purpose of expropriation by the Mexican authorities. As long as the vessel flies the Luxembourg flag, its maintenance must be continued and its safety must be ensured.

394.- The periodic rotations and changeovers of seafarers have also engendered repatriation costs which contribute to the *wasted expenses*. They are also necessary owing to the *huis clos* situation into which the crew is forced. When the Tribunal assesses the material damage suffered by Luxembourg, it is invited to bear in mind that the seafarers have been kept on board without the possibility of conducting any productive activity, nor of hoping to do so in the short term, which the shipowner deplores. The assessment of this category of injury will need to be completed on the day of the Tribunal's ruling.

iii) Bunker charges

395.- The continued detention of the vessel over such a long period beyond the planned duration of the call has given rise to daily fuel consumption, in particular to supply the auxiliary motor and to ensure that the security equipment and equipment necessary for the life of the seafarers on board continue to function. This is another example of *wasted expenses*. It constitutes material damage for the shipowner and therefore for Luxembourg. When the Tribunal assesses this material damage suffered by Luxembourg, it is invited to take into consideration the totality of the fuel consumed since 1 December 2023. The assessment of this category of injury will need to be completed on the day the Tribunal makes its ruling.

iv) Provisioning costs for essential products

396.- The detention of the vessel over such a long period and the need to keep crew on board in accordance with maritime safety rules have required regular provisioning of essential products on the vessel. Again, these are *wasted expenses* and constitute material damage for the shipowner and therefore for Luxembourg. When the Tribunal assesses this material damage suffered by Luxembourg, it is invited to take into consideration the totality of provisioning costs since 1 December 2023. The assessment of this category of injury will need to be completed on the day of the Tribunal's ruling.

397.- With regard to the injury arising from fees and costs related to the prolonged detention of the *"Zheng He"* in Tampico, Luxembourg respectfully requests the Tribunal to order Mexico to pay compensation, currently estimated at EUR 3,854,715.24 as of 30 September 2024, to be adjusted at the end of the proceedings, as some types of damage remain to be quantified.

2) Losses related to the depreciation and expropriation of the "Zheng He"

398.- Thus far, the *"Zheng He"* has undergone objective depreciation (**i**) and is exposed to a risk of definitive expropriation which will likely become effective during the present proceedings (**ii**).

i) The objective depreciation of the vessel

399.- The depreciation of vessels adheres to a methodology and calculation rules agreed upon on the market. For service vessels and in particular dredgers, the reference is the *Ciria Guide on cost standards for dredging equipment 2024* which is authoritative on dredgers. When this methodology is applied to the *"Zheng He"*, the result shows a depreciation of EUR 1,000,000 per month (**Document L93**). In line with the Tribunal's jurisprudence, this initial assessment will be substantiated by an expert assessment, which will imply the appearance of the expert before the Tribunal.

400.- In a situation of normal use, this depreciation is compensated by revenue generated by the vessel's operation. However, given that the vessel has been detained since 1 November 2023, the *"Zheng He"* has been depreciating without generating the slightest revenue for its shipowner. The objective depreciation of the vessel is therefore a loss for the shipowner. When the Tribunal assesses this material damage suffered by Luxembourg, it is invited to take into consideration the totality of the vessel's detention time since 1 December 2023.

401.- It is futile for Mexico to allege that Luxembourg has not adduced sufficient evidence of the *"Zheng He"*'s depreciation due to its detention. This is because the detention of the *"Zheng He"* is a wrongful act within the meaning of international law, which has consequences on the standard of proof.

In a dispute before an ICSID tribunal between the Turkish owner of service vessels used for electric plants and Pakistan,[162] the tribunal, composed of three experienced arbitrators, decided the following:

> *When a party, such as Pakistan, has unlawfully created a situation likely to generate damages – and the detention of a vessel in outer anchorage is likely to do – it cannot be exonerated from liability only because the damaged party was not able to evidence that the situation so created caused the expected damages. Without a complete reversal of the burden of proof of the causation, the party whose acts are likely to generate damages must at least establish that it took appropriate measures to avoid or reduce the expected damages. Pakistan did nothing of that sort.*

The arbitral tribunal went on to state at paragraph 779:

> *Indeed, a vessel which is suddenly detained and not released until seven months after the Tribunal renders a decision ordering such release is not expected to be maintained as it would be in the ordinary course of business. This is even more the case when the vessel remains forcibly idled and subjected to inhospitable sea and weather conditions, as it was the case.*

Supposing that the *"Zheng He"* were returned to the Luxembourg shipowner, its legitimate owner, the Tribunal is invited to note that evidence of the vessel's yearly depreciation due to its detention is sufficiently established.

402.- With regard to the damage caused by the depreciation of the *"Zheng He"* due to its prolonged detention, and supposing that the vessel will ultimately be returned by Mexico,

---

[162] *Karkey Karadeniz Elektrik Uretim A.S.* v. *Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award, 22 August 2017, para. 777.

Luxembourg respectfully requests the Tribunal to order Mexico to pay compensation, assessed at EUR 1,000,000 per month since 1 November 2023, to be adjusted at the end of the proceedings.

ii) The probable loss of the vessel in the event of failure of local remedies against the expropriation

403.- Since the unilateral administrative decision of AGACE dated 15 February 2024, Mexico has triggered a process with a view to expropriating the vessel. If the expropriation has not yet become definitive from Mexico's viewpoint by the time Luxembourg makes its final submissions, it will merely have been because of the autolimitation of the Mexican authorities, following the institution of the instant proceedings, and their claim to be exercising remedies that are time barred or futile. But it is highly likely that a final ruling on the expropriation will be rendered in the coming months. Should that occur, the Tribunal will need to decide on the material damage resulting from the loss of the *"Zheng He"*. To that end, the Tribunal is invited to take into consideration several objective parameters.

404.- First, the Tribunal is invited to consider the evidence: the classification of the vessel and its certification by Bureau Veritas (**Document L1.1**); the list of the major works that had been completed previously on the *"Zheng He"* and the assessment conducted by an expert from the Netherlands (**Document L93**); the assessment by the Mexican authorities themselves in their official records (**Documents L49 and L50**); and the age of the vessel, which is below that of the average in its category **(Document L2**). The foregoing shows that the *"Zheng He"* was in good condition and perfectly seaworthy when it entered the port of Tampico.

405.- Moreover, the Tribunal is invited to consider that the *"Zheng He"* is not a merchant vessel belonging to a standard class, like cargos or tankers. The *"Zheng He"*, built by a shipyard for its shipowner, is therefore not easily *replaceable* with another used vessel immediately available on the second-hand market, as the global fleet comprises only 58 vessels. Consequently, the value to take into account is not the current market value, in the absence of a substitutable offer, but the replacement value of an equivalent vessel which is estimated at EUR 240,000,000 (**Document L93**).

406.- The Tribunal is further invited to consider the time necessary for the shipowner to take delivery of a new vessel of the same type as the *"Zheng He"*. From the conception and engineering phase, through to the shipyard construction phase up until the taking of delivery phase, that period is currently some 54 months (**Document L74**).

407.- Supposing that the vessel is ultimately not returned, and with regard to the damage arising from the definitive expropriation of the *"Zheng He"* on 15 February 2024, Luxembourg respectfully requests the Tribunal to order Mexico to pay compensation corresponding to the value of the vessel as set by the expert assessment which Luxembourg will subsequently provide.

***3) The loss of revenue related to the impossibility of operating the* "Zheng He"**

408.- For the shipowner, the vessel constitutes an element of its wealth: as an asset, it contributes to the value of the company that owns it and facilitates the acquisition of credit for new purchases, by serving, for example, as collateral to banks for maritime securities such as mortgages or loans. Beyond this loss of wealth (examined above), the detention of the vessel leads to a loss of revenue because it can no longer be operated. It is this loss of revenue that will be the issue here.

409.- International case law[163] traditionally accepts two types of reparable injury: on the one hand, direct damage suffered by the victim who, on account of the violation of international law, is unable to fulfil contractual obligations (*damnum emergens*) and, on the other hand, the losses suffered by the victim who, on account of the violation of international law, is unable to seize new opportunities to make profit (*lucrum cessans*). Luxembourg will demonstrate that the shipowner has indeed suffered these two types of damage, whether they concern concluded contracts (**i**) or contracts to be concluded (**ii**). It will then present the only relevant methodology for a service vessel operated by a shipowner that operates several others (**iii**).

i) The impossibility of honouring contracts already concluded

410.- The impossibility of assigning the *"Zheng He"* to dredging contracts already concluded by the shipowner on account of its unlawful detention by Mexico is not a matter of eventuality but of material damage that has actually occurred. To use the traditional terminology, the impossibility of assigning the *"Zheng He"* to dredging contracts already concluded falls under *damnum emergens* and not *lucrum cessans*.

411.- To wit, the fulfilment of three contracts has been affected by the unavailability of the *"Zheng He"*. The first concerned a works contract for the dry dock of the shipyard in Freeport, in The Bahamas, subcontracted by Orion. The second concerned dredging works in Ocean Cay in The Bahamas. The third concerned the dredging of a container terminal of the Port of Freeport. For these three works contracts, which would have generated revenue between USD 55,000,000 and USD 63,000,000, a comparable vessel, the *"Fernão de Magalhães"*, had to take the place of the *"Zheng He"*, depriving the shipowner of the possibility of assigning the *"Fernão de Magalhães"* to other contracts.

ii) The impossibility of concluding new dredging contracts

412.- Because of the unlawful and continued detention of the *"Zheng He"* by Mexico, with no known end date thus far, the vessel's shipowner is deprived of the possibility of commercially operating it and concluding new dredging works that would involve the appointment of the *"Zheng He"*. The unavailability of the vessel on the dredging market is both the direct consequence of its unlawful detention and the cause of the loss of the revenue that the shipowner could reasonably earn on the market on which it is present.

413.- In the *M/V "Saiga" (No. 2)* case, the Tribunal recognized the principle that damage from loss of profits is reparable.[164]

414.- With regard to the *"Zheng He"*, this loss is far from theoretical; on the basis of an array of criteria, it can be presumed, with a reasonable degree of certainty, that the dredger could have been employed since May 2024 following tenders for which contracts had already been concluded. A ***first criterion*** is derived from the fact that the global fleet of jumbo cutter dredgers is a niche fleet comprising only about 50 vessels, thereby facilitating employment in a context of undercapacity. A ***second criterion*** concerns the fact that, among the vessels of this fleet, the *"Zheng He"* belonged to the 20 per cent of the most recent dredgers, below the average age of the category, estimated at 20 years. A ***third criterion*** is based on the certification obtained

[163] *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A; Sapphire International Petroleums Ltd.* v. *National Iranian Oil Company, Award of 15 March 1963, AFDI*, 1977, vol. 23, p. 453 f.; 35 ILR 186.

[164] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 65, para. 172.

by the *"Zheng He"* with no restrictions on navigation, allowing it to be employed anywhere in the world. A ***fourth criterion*** pertains to the inclusion of the *"Zheng He"* in the fleet of the EDC group among 68 other service vessels, which would have enabled it to be employed either alone on a construction site or together with other service vessels on larger sites. A ***fifth criterion*** relates to the fact that the *"Zheng He"* is operated by the subsidiary of a major global public works group, Jan De Nul. This group has a commercial presence worldwide, through subsidiaries, branches or agents, allowing it to bid on a vast range of private and public tenders. A ***sixth criteria*** is based on the additional notation CLEANSHIP 7+ the *"Zheng He"* has received, proof of its good environmental performance. The *"Zheng He"* is thus eligible for numerous public or private contracts that set out social and environmental conditions. A ***seventh criterion*** is predicated on the buoyancy of the dredging market for reasons related to natural events and the environmental transition: the sedimentation of waterways (clean and safe waterways), the need to reclaim or preserve buildable areas (land reclamation), and the need to develop coastal infrastructures (reinforced and extended coastlines) to confront rising waters are just a few examples of contract opportunities.

415.- In light of the combination of these criteria, Mexico cannot dispute the reality of the damage arising from lost revenue by placing a high standard of proof on Luxembourg. International case law has never required any proof of the certainty of anticipated profits. Quite the contrary – it has long been decided that the likelihood referred to the normal course of things for the victim. For example, in the *Cape Horn Pigeon* case in which a whaler had been deprived of one fishing season as a result of its unlawful detention, the arbitral award stated that "*it suffices to show that in the natural order of things one would be able to realize a profit of which one is deprived by the act which gives rise to the claim*".[165]

iii) The relevant calculation methodology

416.- The relevant calculation methodology must take into consideration whether the vessel against which detention and expropriation measures have been instituted constitutes the sole maritime asset of its shipowner. For a shipowner, a vessel is an asset from two standpoints. First, the vessel is commercially operated, generating revenue, in this instance by the conclusion of dredging contracts. This revenue is used to reimburse loans that financed the purchase. In addition, the vessel is an element of the shipowner's wealth that can be used as collateral for securities such as loans and mortgages, thereby opening up access to the credit it needs to finance new activities.

417.- When the vessel is operated by a *single ship company*, as tankers and bulk carriers often are, the vessel that is detained and expropriated is the maritime company's sole asset. The operation of the vessel then becomes equated with the operation of the company: its nautical operation gives rise to maritime-related liabilities for the shipowner (salaries, bunkering, miscellaneous fees), and generates revenue from transport or chartering. *Future opportunities* for the operation of the vessel, in other words, its commercial operation, are therefore determined by its tonnage and the past history of its operation on a given market.

418.- On the other hand, when the expropriated vessel does not belong to a *single ship company* but rather to a *ship management company*, the detained and/or expropriated vessel can no longer be considered in isolation. This vessel is a part of the *ship management company*'s

[165] *Cape Horn Pigeon, James Hamilton Lewis, C. H. White and Kate and Anna Ships (United States of America* v. *Russia*), Award of 29 November 1902, RSA, vol. IX, p. 65; to that effect, *Antoine Fabiani Case (France* v. *Venezuela), Award of 30 December 1896*, Moore, John Bassett, *History and Digest of the International Arbitrations to which the United States has been a Party*, Washington 1898, Vol. V, at p. 4878.

wealth in the same way as the other vessels of its fleet. On that basis, it can be inferred that the detention or the definitive expropriation of this vessel necessarily has an economic impact on the use of the other vessels of the fleet, in particular if they are *sister ships* or comparable vessels. Thus, the unavailability of the *"Zheng He"* has compelled its shipowner to substitute it for contracts in progress, where possible, with the *"Fernão de Magalhães"* which features similar characteristics. The unavailability of the *"Zheng He"* therefore produces a domino effect for its shipowner: the vessel is substituted with another vessel which then itself become unavailable for other dredging contracts. To analyse the injury suffered by the shipowner, it is therefore necessary to consider the overall impact of the detention and expropriation of the *"Zheng He"* on the business of European Dredging Company, by noting the impact on the shipowner's cash flow, and more generally on the Jan De Nul group. This comprehensive approach also finds support in law.

419.- ***First*****,** it is a comprehensive approach that was adopted by the Mexican administration itself, which was not satisfied with simply proceeding with the detention and expropriation process of the *"Zheng He"* but rather combined it with an exorbitant fine, setting the legal basis for the detention and subsequent expropriation of one or more vessels of the same shipowner. The ship management company EDC and the JDN group have in fact, to date, witnessed several of its vessels under the sword of Damocles in Mexico. The comprehensive approach to injury was therefore absolutely foreseeable by Mexico, which itself had extended its measures beyond the *"Zheng He"* alone.

420.- ***Second*****,** this comprehensive approach is the only one that is warranted by the distinction between the vessel and the ship management company. Whether under Luxembourg law or international law, the vessel is considered a registered tangible asset belonging to an identified shipowner. Even if it is identified by a unique IMO number and has a name, anthropomorphism should be avoided: the vessel is neither a person nor even the company as a whole. Here, the injury to the shipowner and persons having an interest in the vessel must be considered.

421.- ***Third,*** the nautical specificities of the *"Zheng He"*, both on account of its affiliation with the class of large *self-propelled suction dredgers* as well its operation on public and private infrastructure works contracts, implies an appropriate expert assessment of the losses suffered by the shipowner due to the vessel's prolonged detention and its potentially definitive expropriation by Mexico. Therefore, the methodology to establish the *quantum* of the injury is necessarily different from those which the Tribunal has had to consider in the cases submitted to it concerning, respectively, an oil tanker of 5700 dwt (*"Saiga"*), an oil/chemical tanker of 7616 dwt (*"San Padre Pio"*), tankers (*"Virginia G" and "Norstar"*) intended for bunkering activities, or a vessel of 787 dwt (*"Louisa"*) and its tender, both intended for observation and survey activities.

422.- In this context, as the Tribunal has already established in other cases, reference must be made to the precedent set by the PCIJ in the *Factory at Chorzów* case. While "*reparation must, as far as possible, wipe out all the consequences of the illegal act*", in this instance, that would suppose referring to an expert assessment to define the contribution of the *"Zheng He"* to the creation of value by its shipowner and by the Jan De Nul group. In the *Factory at Chorzów* case, the PCIJ had questioned the expert as follows:

> What would have been the financial results, expressed in Reichsmarks current at the present time (profits or losses), which would probably have been given by the undertaking thus constituted from July 3rd, 1922, to the date of the present judgment, if it had been in the hands of the said Companies?

> *What would be the value at the date of the present judgment, expressed in Reichsmarks current at the present time, of the same undertaking (Chorzów) if that undertaking (including lands, buildings, equipment, stocks, available processes, supply and delivery contracts, goodwill and future prospects) had remained in the hands of the Bayerische and Oberschlesische Stickstoffwerke, and had either remained substantially as it was in 1922 or had been developed proportionately on lines similar to those applied in the case of other undertakings of the same kind, controlled by the Bayerische, for instance, the undertaking of which the factory is situated at Piesteritz?*
>
> *The purpose of question I is to determine the monetary value, both of the object which should have been restored in kind and of the additional damage, on the basis of the estimated value of the undertaking including stocks at the moment of taking possession by the Polish; Government, together with any probable profit that would have accrued to the undertaking between the date of taking possession and that of the expert opinion.*
>
> *On the other hand, question II is directed to the ascertainment of the present value on the basis of the situation at the moment of the expert enquiry and leaving aside the situation presumed to exist in 1922.*
>
> *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J. Series A No. 17,* pp. 51 and 52

The use of an expert opinion to determine the value of the expropriated object and the value of the additional damage, specifically on the basis of presumed profits, was enshrined in positive law[166] with respect to reparation for expropriation.

423.- In the instant case, in addition to the value of the expropriated vessel (see above), what is to be determined is the presumed contribution of the *"Zheng He"* to EDC and the Jan De Nul group, over the period from either 1 November 2023 to the date of its return (if the vessel is ultimately returned by Mexico) or otherwise from 1 November 2023 to the date of its arrest, increased by the 54 months necessary for the delivery of a new equivalent vessel (if the vessel is not returned by Mexico).

424.- Luxembourg will therefore request the Tribunal to order Mexico to pay the compensation it will claim for the loss of revenue arising from the impossibility of operating the *"Zheng He"*. Luxembourg will specify these losses in due course according to the expert assessment it will provide at a later time.

D. Consolidated quantum of the injury and taking of evidence

425.- In light of the foregoing, Luxembourg will, in time, after the exchange of pleadings, provide the exact amounts claimed for the reparation of damage, which will reflect the increase in and consolidation of damages over the course of the present proceedings. Luxembourg likewise reserves the right to modify or extend its claims for compensation, the reimbursement of its costs and the payment of interest at a later stage of the proceedings.

---

[166] Judge Charles Brower, Concurring Opinion, para. 15, in IUSCT Case No. 56, *Amoco International Finance Corporation* v. *The Government of the Islamic Republic of Iran, National Iranian Oil Company, National Petrochemical Company and Kharg Chemical Company Limited: "Our precedents confirm therefore that expected future profits must be included in the calculation of compensation. (…) A fortiori where the expropriated property consists of contract rights, the compensation must be defined by the anticipated net earnings that would have been realized, as well as one can judge, had the contract been led into place until completion."*; *Phillips Petroleum Co.* v. *Islamic Republic of Iran, Award No. 425-39-2, 29 June 1989, 21 IUSCT*, 79*; Amoco Asia Corp. et al.* v. *Republic of Indonesia, ICSID Case No. ARB/81/1, Award of 31 May 1990*.

426.- As it is aware that in the jurisprudence of the Tribunal, any claim for damages must be precisely supported, Luxembourg informs the Tribunal that at the end of the detention period of one year and six months, which is a partial period, the supporting documents regarding the injury suffered by the persons involved or with an interest in the activity of the *"Zheng He"* are extremely abundant. Luxembourg therefore requests from the Tribunal: authorization to submit them solely by electronic means when the time comes; and practical and technical instructions from the Registry (format, sufficient storage space) in order to prepare the file of annexes.

E. Costs

427.- Luxembourg has incurred significant costs to defend the interests of its flag. The preparation of pleadings has led to considerable expenses, monopolizing the resources of both the Luxembourg Maritime Administration and engaging external counsel, whose fees and costs relating to the present case had to be paid. Mexico's decorous inaction throughout the entire proceedings, with no genuine willingness to find an amicable solution, combined with the violation of article 300 of Convention, compels Luxembourg to request the Tribunal to disregard the usual distribution of costs provided for by article 34 of its Statute and to order Mexico to reimburse Luxembourg the entirety of its costs.

F. Interest

428.- Article 38 of the articles of the International Law Commission on State responsibility recognizes that interest may be awarded to provide full reparation.

Article 38. Interest

> *Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.*
>
> *Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.*

Paragraph 12 of the commentary under article 38 states:

> *Article 38 does not deal with post-judgement or moratory interest. It is only concerned with interest that goes to make up the amount that a court or tribunal should award, i.e. compensatory interest. The power of a court or tribunal to award post-judgement interest is a matter of its procedure.*

429.- The Tribunal has already found that it was fair and reasonable for interest to be paid in respect of monetary losses, property damage and other economic losses but went on to say that it was not necessary to apply a uniform rate of interest in all instances.[167] In the case at hand, when the Tribunal assesses the interest owed by Mexico, it is invited to *let itself be guided by the principle that the injured State is entitled to receive interest to enable full reparation of the injury suffered as a result of internationally wrongful measures of the State that caused the injury*.

[167] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999,* p. 66, para. 173.

430.- When it is called upon to rule on interest, the Tribunal is respectfully invited to take into consideration several parameters: the reference rate, the reference currency and the compounding of interest, also known as anatocism.

431.- ***With regard to the reference rate***, a rate should be chosen which, by its purpose and incorporation or not of a risk premium, corresponds to the nature of the reparation debt to which it will be applied.

Before the interbank rate LIBOR was phased out on 30 September 2024, the Tribunal had referred to it on two occasions, in line with international practice, since account had to be taken of the fact that the party receiving the reparation had been unable to invest the allocated sums in a low-volatility, moderate-risk market. LIBOR was therefore a rate that incorporated an average risk premium and used for maturities ranging from one night to 12 months. In investment law, LIBOR + 2 per cent was often used as the rate in rulings. With the disappearance of LIBOR, the Tribunal could consider applying SOFR (Secured Overnight Financing Rate). The Tribunal must bear in mind that SOFR is a *risk-free* backward-looking interest rate (and not forward-looking). If the Tribunal applies SOFR for the heads of injury suffered by the persons having an interest in the vessel, it is invited to combine it with an average risk premium of 4 per cent. ***The interest rate to be applied to compensation for damage suffered by the persons having an interest in the vessel would therefore be SOFR + 4 per cent.***

Supposing Mexico were to carry out the expropriation process of the *"Zheng He"* to completion, triggering, on the basis of the exorbitant customs fine, the expropriation of another Luxembourg vessel on the same grounds, the damage suffered would be that of a definitive expropriation and the appropriation of one or more vessels by Mexico. If that were to occur, owing to Mexico's exercise of public authority, the shipowner should be considered, from an economic perspective, as a moneylender to Mexico since it financed the *"Zheng He"* and had it built. ***For damage relating to the expropriation of the vessel(s), the Tribunal would therefore be invited to factor in the amount that Mexico generally borrows in pesos, applying a rate of 8 and 10 per cent depending on the maturities, or between 3.50 and 5.50 per cent on international euro markets.***

432.- ***With regard to the reference currency,*** it would depend on that used to quantify and settle the debt. *With regard to the Mexican fines* imposed in the local currency, it would be logical to apply the Mexican TIIE,[168] which corresponds, all things considered, to SFOR. *With regard to damage in connection with payments or losses in euros*, the Tribunal is invited to refer to STR, which is the official rate published by the ECB. With regard to damage in connection with payments or losses in *USD*, the Tribunal is invited to refer to SFOR + 4 per cent.

433.- ***With regard to compound interest***, it is calculated on the amount of the reparation debt itself and on the interest payable or accrued on this debt. The matter of compound interest is relevant in the case before the Tribunal because of the long period of the vessel's detention, and this period cannot be favourable to the State that has violated the provisions of the Convention. ***For this reason, Luxembourg will request the Tribunal to make a ruling on damages together with the relevant rate depending on the reparation debt and compound interest.***

434.- Luxembourg will subsequently submit an expert opinion relating to the interest rate at the same time as the expert assessments relating to injury.

[168] https://www.banxico.org.mx/SieInternet/consultarDirectorioInternetAction.do?sector=18&idCuadro=CA684&accion=consultarCuadroAnalitico&locale=en

II. The violations of the Convention by Mexico are the direct, immediate and exclusive cause of the injury suffered by Luxembourg and the persons having an interest in the activity of the *"Zheng He"*

435.- First, the violations by Mexico of the rights of Luxembourg under the Convention suffice to establish the right to reparation of Luxembourg's legal damage (**A**). The applicants have not interrupted the exclusive causal link between the violations by Mexico and the damage for which reparation is being claimed. Second, with regard to the other heads of injury, the violations by Mexico of Luxembourg's rights substantiate the requirement of necessary, direct and exclusive causation with the alleged injury (**B**). Lastly, the applicants have not interrupted the direct, necessary and exclusive causal link between the violations by Mexico and the damage for which reparation is being claimed (**C**).

A. The violations by Mexico of Luxembourg's rights under the Convention suffice to establish the right to reparation of Luxembourg's *legal damage*

436.- In the Tribunal's settled case law, reference is made to the *Draft articles* of the International Law Commission whose codification of customary international law is recognized by the Tribunal. This applies firstly to article 1 of the *Draft articles* that provides: "*Every internationally wrongful act of a State entails the international responsibility of that State*." In the *M/V "Virginia G"* case, the Tribunal recognized its customary value.[169] It also applies to article 31(1) of the *Draft articles*, which provides that "[*t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act*." In its advisory opinion of 1 February 2011, the Seabed Disputes Chamber noted that this provision also codified customary international law.[170] These two articles must be applied in conjunction with article 42(a) of the *Draft articles* relating to the *Invocation of responsibility by an injured State*. This article reads as follows:

> *A State is entitled as an injured State to invoke the responsibility of another State if the obligation breached is owed to:*
> *(a) that State individually; or ….*

This article designates the State that has suffered the violation of international law as the injured State. And the first injury to the injured State, logically and chronologically, lies in the breach of the primary obligation itself, i.e., international law, even before moral damage and material damage have occurred. In its *Report*, under article 31, the International Law Commission comments in French, with regard to the injury of the injured State, that *it includes any damage caused to the legal interests, as such, of the State, whether or not this damage can be considered "moral" damage*.[171]

The breach alone of one of the obligations incumbent on Mexico under the Convention vis-à-vis Luxembourg therefore suffices to give rise to Luxembourg's right to reparation of its *legal*

[169] *M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 117, para. 430.
[170] *Responsibility and Obligations of States with regard to Activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 62, para. 19.
[171] ILC, Report of the International Law Commission, 53rd session, 2001, Supplement No. 10, A/56/10, p. 243.

damage, regardless of any characterization of the damage and the causal link. Luxembourg may accordingly, in any event, claim satisfaction.

B. The breaches by Mexico substantiate the requirement of necessary, direct and exclusive causation with the alleged injury

437.- With regard to damage other than the *legal damage* arising from the violation alone of the Convention**,** the breaches by Mexico of its obligations substantiate the requirement of causation with the injuries suffered both by Luxembourg itself (**1**) as well as by the persons involved or having an interest in the operation of the vessel (**2**). Without the prolonged detention of the vessel since 1 November 2023 and without the initiation of a procedure for its expropriation, none of the damage alleged by Luxembourg, whether material or moral, would have occurred. In other words, the abusive detention of the vessel and Mexico's initiation and continuation of a procedure for the expropriation of the vessel are the condition *sine qua non* of all the damage for which reparation is sought from the Tribunal. They are the direct cause, the *causa causans*.

1) The causation of the moral damage suffered by Luxembourg

438.- The reparation of a State's *moral damage* is not the same as the cessation of the wrongful act or the reestablishment of the previous situation. And declaratory reparation is not suitable for all moral damage. Of course, it is appropriate where victims seek only the recognition of their right. But where victims invoke the detrimental consequences of the violation of their right, they are seeking compensation for the moral consequences resulting from the harm to this interest. There is therefore no reason to presuppose that the restoration of a right as such must exclusively take the form of symbolic satisfaction. In the arbitral award issued in the dispute between New Zealand and France in the *"Rainbow Warrior"* case,[172] the arbitral tribunal decided that a State's non-material damage could be compensated not by simple satisfaction but by the award of damages:

> *117. The Tribunal considers that it has the power to make an award of monetary compensation for breach of the 1986 Agreement under its jurisdiction to decide "any dispute concerning the interpretation or the application" of the provisions of that agreement (Chorzów Factory Case (Jurisdiction) P.C.I.J. Series A No. 9, p. 21).*
>
> *118. The Tribunal next considers that an order for the payment of monetary compensation can be made in respect of the breach of international obligations involving, as here, serious moral and legal damage, even though there is no material damage.*

2) The causation of the injury suffered by the persons with an interest in the activity of the "Zheng He"

439.- Had it not been for the prolonged detention of the vessel by unilateral administrative decision of the Mexican authorities on 1 November 2023, the *"Zheng He"* would have set sail again at the end of its nautical call to reach The Bahamas, by 30 November 2023 at the latest, in order to carry out the dredging services in Freeport to which it was contractually

[172] UN, *Report of International Arbitral Awards*, *Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements concluded on 9 July 1986 between the two states and which related to the problems arising from the "Rainbow Warrior" Affair Decision of 30 April 1990, Vol. XX*, p. 215-284, in particular p. 272.

bound under a valid contract. Had the call in Tampico proceeded normally, the maintenance activities planned in detail by the shipowner would have been conducted, as can be seen from the various letters sent to the Mexican authorities. However, the abrupt halt to the manoeuvring of the *"Zheng He"* by the harbour master's office, followed by the surprise onboard inspection and the vessel's detention, prevented those maintenance activities required to prepare for the continuation of the voyage from being performed. The consequences over time of the violations committed by Mexico will be assessed differently depending on whether they relate to the injury suffered by the seafarers, the depreciation of the vessel, the injury suffered by the other persons with an interest or involved in the operation of the vessel, or the injury linked to the initiation of proceedings with a view to expropriating the vessel.

440.- **On 1 November 2023 - *The moral damage and the damage from the loss of activity suffered by the seafarers*** are the necessary and direct consequence of the detention by Mexico of the vessel to which they were assigned under their seafarers' employment agreements. This forced detention is therefore the direct and necessary cause of the injury set out above as of 1 November 2023. The fact that a regular change of crew was subsequently organized at the initiative of the shipowner, in compliance with the *Maritime Labour Convention*, has no bearing on the fact that a continuous physical presence of a minimum crew had to be ensured on board at all times, in accordance with safety regulations, even though the ship was moored at berth without carrying out any nautical or dredging activity.

441.- **On 1 November 2023 – *The damage from the loss of economic value of the* "Zheng He"** is the direct and immediate consequence of the continuing nature of the vessel's detention, which was ordered for an indefinite period. The continuing detention of the *"Zheng He"* since the onboard inspection as well as the procedure that immediately followed mean that the causal event had to have occurred on 1 November 2023, the date from which it has been impossible to release the vessel. The causal period of the vessel's material deterioration runs from this date, as does the causal period of the loss of economic value due to its detention for an indefinite period.

442.- **On 1 December 2023** - ***The other material damage suffered by the persons involved or having an interest in the operation of the ship*** is the direct and necessary consequence of the *"Zheng He"*'s inability to set sail again as planned at the end of its call on account of its detention. From the outset, the planned duration of the call was three to four weeks according to the shipowner's agent (**Documents L27 and L31**). Although the port entry permit issued by the harbour master's office did not yet indicate a duration (**Document L28**), the Mexican port authorities did intend to authorize the *"Zheng He"*'s call at berth No. 3 until 30 November 2023. This was stated by the General Director of Ports in his letter of 24 October, the existence of which Mexico has sought to conceal (**Document L38)**. Because the period of the *"Zheng He"*'s aberrant detention has generated costs and material damage, that period must therefore be calculated as of 1 December 2023, since the *"Zheng He"* should have returned to sea on that date as anticipated both by the shipowner and the harbour master's office.

443.- **As of 15 February 2024 – *The damage related to the initiation of the expropriation procedure of the* "Zheng He"** began on the date on which AGACE took the unilateral decision to expropriate the vessel and also to impose an exorbitant fine equivalent to its estimation of the vessel's value. Despite the multiple informal, hierarchical and contentious appeals lodged by the shipowner and despite the numerous diplomatic efforts made by Luxembourg, the sword of Damocles of the vessel's expropriation has constantly been hanging over the shipowner since that date.

C. The applicants have not interrupted the exclusive causal link between Mexico's violations and the damage for which compensation is sought

444.- Firstly, it is futile for Mexico to allege, since the provisional measures proceedings, that the detention of the vessel is the consequence of the *"Zheng He"*'s shipowner's own decisions and actions. This allegation is inaccurate on two accounts.

Firstly, while the *"Zheng He"* voluntarily entered the territorial sea of Mexico and then the Port of Tampico, it was only for a scheduled nautical call of three weeks to a month for the sole purpose of ship maintenance, with the expressed intention of leaving afterwards. As demonstrated above, the vessel had not scheduled any dredging operations (**Document L76**) either in the Port of Tampico or in the Mexican territorial sea during or after the call; nor was the vessel put for sale in Mexico by its owner and therefore no temporary import form should have been or could have been completed according to the criteria under Mexican law themselves.

Secondly, the *"Zheng He"* had been authorized by Mexico to wait at the Tampico roadstead before calling in port with authorization from the harbour master's office. Thus, the *"Zheng He"* was exercising its right of innocent passage and calling in port with Mexico's authorization. It is therefore Mexico's violation of Luxembourg's rights that is the direct, necessary and exclusive cause of the injury suffered by Luxembourg.

445.- Lastly, Mexico cannot accuse Luxembourg of any interruption in the causal link between Mexico's wrongful acts and the injury suffered by Luxembourg.

Firstly, the shipowner cannot be deemed as having agreed to the acts ascribed to it by the Mexican administration or of having acknowledged the alleged offence that would have subsequently led to the detention of the vessel. The tax debt of 24 October 2023 (**Document L40**) was set at 9,750 Mexican pesos, or approximately USD 450, which is a trivial amount in view of the detention and the expropriation procedure that was subsequently initiated. The person subject to the fine was the Mexican agent himself and not the shipowner, whose name does not appear on the record; and it was the Mexican company that took the initiative, without consulting the shipowner, to pay this modest fine (**Document L41**).

Secondly, as shown above, the Luxembourg shipowner pursued successively, but in vain, all available legal remedies under the Mexican legal system to have the unlawful nature of the onboard inspection and the defects vitiating the detention of the vessel (**Document L49**) recognized and to obtain its release. The shipowner likewise pursued legal action against the decision ordering the expropriation of the vessel (**Document L50**) and the imposition of a fine equivalent to the value of the vessel, but to no avail. Additionally, as soon as it had obtained a final court decision (**Documents L51 and L52**), it was met with the refusal of the port authorities to release the vessel **(Document L53)**.

Thirdly, the Luxembourg shipowner cannot be held responsible for not having paid within 30 days the astronomical fine of almost USD 78,000,000 ordered on 15 February 2024 by AGACE (**Document L50**) when, on the one hand, appeals were still pending against the onboard inspection that had served as the basis for the customs procedure and, on the other hand, AGACE had simultaneously ordered the expropriation of the vessel. At any rate, in the *M/V "Norstar"* case, the Tribunal rejected the argument that the shipowner's non-payment could be analysed as an interruption in the causal link:

> *The Tribunal considers that the release of a vessel upon the posting of a bond or other security does not provide for the unconditional return of the arrested vessel and thus does not constitute*

the cessation of the internationally wrongful act. Therefore, the Tribunal finds that the causal link was not interrupted in 1999.[173]

Thus, the wrongful acts of Mexico constitute the direct, necessary and exclusive cause of the injury suffered by Luxembourg and the persons having an interest or role in the operation of the *"Zheng He"*. The causal link between the wrongful acts of Mexico and the injury suffered by Luxembourg has therefore not been interrupted by Luxembourg or by the persons having a role or interest in the operation of the vessel.

[173] *M/V "Norstar" (Panama/Italy), Judgment, ITLOS Reports 2019*, p. 103, para. 363.

FINAL SUBMISSIONS OF LUXEMBOURG

The Grand Duchy of Luxembourg respectfully requests the International Tribunal for the Law of the Sea to adjudge and declare that:

FIRST:

The Tribunal has jurisdiction to entertain the dispute and the application of Luxembourg is admissible;

SECOND:

By detaining the *"Zheng He"* and by initiating and pursuing an internal expropriation procedure as well as imposing an exorbitant fine posing a threat to the other vessels of the Luxembourg fleet, as set out in chapters III, IV, V and VI, the United Mexican States has acted and continue to act in a manner inconsistent with articles 2, 17, 18, 19, 24, 26, 92, 94 and 131 of the Convention;

By detaining the *"Zheng He"* and by initiating and pursuing an internal expropriation procedure as well as imposing an exorbitant fine posing a threat to the other vessels of the Luxembourg fleet, the United Mexican States has not fulfilled its obligations in good faith with respect to the Convention and has exercised rights and jurisdiction in a manner which constitutes an abuse of right, in violation of article 300 of the Convention;

These breaches of the Convention engage the responsibility of the United Mexican States and require it to:

(a) *Principally*, immediately cease and cause to cease the internationally wrongful conduct of a continuing nature, *viz.*, the ongoing detention of the *"Zheng He"* and the refusal to allow it to leave the Port of Tampico and the territorial sea of Mexico;

(b) *Principally*, waive the expropriation of the *"Zheng He"* and the exorbitant fine imposed on the shipowner on 15 February 2024;

(c) *Principally*, offer its apologies to the Grand Duchy of Luxembourg and provide it with assurances of non-repetition;

(d) *Principally*, provide the Grand Duchy of Luxembourg with full reparation, with interest, of the injury and damage caused by the internationally wrongful acts of Mexico and suffered by the flag as well as by the persons having an interest in the operation of the vessel;

(e) *Principally*, reimburse the Grand Duchy Luxembourg its costs with interest;

(f) *Alternatively*, in the event that the courts or authorities of Mexico hand down a final ruling under their legal system to expropriate the vessel, provide full reparation to the Grand Duchy of Luxembourg for the injury caused by the loss of the vessel and by the need to have a replacement vessel built.

Annabel Rossi

Agent

Table of documents

Document L1:
Document L1.1: BUREAU VERITAS, *Zheng He, Veristar Info Survey Status*, 13 May 2024
Document L1.2: BUREAU VERITAS, *Certificate of classification No. LBN0/PVS/20210108161413*, 8 January 2021

Document L2: IADC; *Fleet List IADC*, 2023, (Cutter Suction Dredgers)

Document L3: *Technical and nautical features of the "Zheng He"*, 2 images

Document L4:
Document L4.1: LUXEMBOURG FLAG, List of the 12 vessels owned by EDC SA
Document L4.2: *Control of EDC SA by the parent company SOFIDRA*
Document L4.3: *List of the 69 Luxembourg-flagged vessels operated by SOFIDRA subsidiaries*

Document L5: LUXEMBOURG FLAG, *Continuous Synopsis Record 4*

Document L6: *Note verbale from the Grand Duchy of Luxembourg of 7 November 2023, 011-MEX-O-NV-20231107-LU*

Document L7: *Note verbale from the Grand Duchy of Luxembourg of 17 January 2024, 003-MEX-O-NV-2024-SRE*

Document L8: GRAND DUCHY OF LUXEMBOURG, *Minimum Safe Manning Document*, 30 August 2023

Document L9: GRAND DUCHY OF LUXEMBOURG, *Maritime Labour Convention Certificate*, 18 May 2021

Document L10: GRAND DUCHY OF LUXEMBOURG, BY BUREAU VERITAS, *Short Term Cargo Ship Safety Equipment Certificate*, 18 April 2024

Document L11: JAN DE NUL, *Best and final offer, Letter of tender*, 27 September 2023

Document L12: OCEAN CAY LTD, *Bidder Appointment of JDN Americas as Preferred Bidder*, 6 October 2023

Document L13: JAN DE NUL CENTRAL AMERICAS LTD, *Disposal Area Plan*, 28 July 2023

Document L14: ORION, *Appointment of JDN Americas as Subcontractor*, 13 October 2023

Document L15:
Document L15.1: JAN DE NUL CENTRAL AMERICAS LTD, *Financial and Technical Submission*, 5 October 2023
Document L15.2: JAN DE NUL CENTRAL AMERICAS LTD, *Post Tender clarification letter*, 17 November 2023
Document L15.3: HUTCHISONPORTS FHC, *Letter of acceptance*, 21 February 2024

Document L16: INFOPLAZA, *IPB Statement Hurricane Season*, 11 July 2024

Document L17: DTN, *Hurricane season Atlantic GOM*, 11 July 2024

Document L18: *Extraction of NOAA data from comparative maps of hurricanes and low-pressure systems in Freeport, Bahamas and in Tampico, Mexico*

Document L19: *Photographs of the ship's bow in dry dock and of the dummy, deployed or closed*

Document L20: DTN, *Route location forecast*, 5 October 2023

Document L21: *Email from the captain of the "Zheng He" to the agent JVV regarding waste*, 17 October 2023, 10.43 p.m.

Document L22: BRITISH ADMIRALTY, *Admiralty Sailing Directions Pilot Book NP-69A*

Document L23: *Programa Maestro de Desarollo Portuario del Porto de Tampico 2016-2021, extract*

Document L24: SEMAR, GENERAL DIRECTORATE OF THE PORT, *Port of Tampico Operating Rules*, June 2020

Document L25: BAHAMAS, *Certificate of clearance outwards*, 5 October 2023

Document L26: *Vessel scheduling record of the port of Tampico*, 30 October 2023

Document L27: JVV LOGISTICS, *Aviso de Llegada de embarcacion en trafico de altura*, 9 October 2023

Document L28: SEMAR, TAMPICO HARBOUR MASTER'S OFFICE, *Permit for entry of vessels or major naval craft in open-sea navigation No. 514873*, 10 October 2023

Document L29: *Hierarchical tree structure of the Mexican tax administration*

Document L30: MARINETRAFFIC.COM, *Map of the location of the* "Zheng He" between 10 October 2023 and 3 November 2023

Document L31: JVV LOGISTICS, *Request for authorization to dock the* "Zheng He", 17 October 2023

Document L32: SEMAR, TAMPICO HARBOUR MASTER'S OFFICE, *Request for authorisation to use public dock*, 17 October 2023

Document L33: HECTOR ROMERO, ASIPONA AND JVV, *WhatsApp message thread regarding the decision on the berth for the "Zheng He" to dock*, 20 October 2023

Document L34: SEMAR, TAMPICO HARBOUR MASTER'S OFFICE, *Warning notice No. 036/2023 for a Surada event*, 20 October 2023

Document L35: SEMAR, TAMPICO HARBOUR MASTER'S OFFICE, *Authorization to enter the port*, 21 October 2023

Document L36: *Minutes of the meeting of the Port of Tampico Operating Committee*, 21 October 2023

Document L37: JVV LOGISTICS, *Information notice, the "Zheng He" has moored at ASIPONA berth No. 3*, Tampico, 23 October 2023

Document L38: *Letter sent by the General Director of Ports of Mexico authorizing the temporary change of purpose of berth No. 3*, 24 October 2023

Document L39: *Note verbale from Luxembourg to Mexico*, 27 September 2024

Document L40: ADUANA DE TAMPICO, *Establishment of a fiscal debt (No. 2178) against JVV Logistics, the vessel's local agent*, 24 October 2023

Document L41: JVV LOGISTICS, *Dispatch of a proof of payment of the fine Reference to file No. 65.3-2023-61-I'5'*, 31 October 2023

Document L42: SECRETARIA DE MARINA, *Authorization to shift position No. 521010*, 31 October 2023

Document L43: SAT, ADMINISTRACION GENERAL DE AUDITORIA DE COMERCIO EXTERIOR, ADACEN, *Onboard inspection order*, 31 October 2023

Document L44: SECRETARIA DE MARINA, *Letter in response to the questions of European Dredging Company*, 26 December 2023

Document L45: SINDICATO NACIONAL DE PILOTOS DE PUERTO, *Maniobra de la draga Zheng He*, confirmation issued on 11 December 2023

Document L46: SECRETARIA DE MARINA, *Aviso de Precaucion n° 038/2023*, 31 October 2023

Document L47: ZHENG HE, *Extracts from the log when the vessel is at dock*

Document L48: SECRETARIA DE MARINA, *Aviso de Precaucion n° 039/2023*, 1 November 2023

Document L49: SAT, ADMINISTRACION GENERAL DE AUDITORIA DE COMERCIO EXTERIOR, *Record of initiation and precautionary seizure, Orden n°CVD6OOOO37/23, 1 November 2023*

Document L50:
Document L50.1: SAT, ADMINISTRACION GENERAL DE AUDITORIA DE COMERCIO EXTERIOR, Orden CVD6000037/23, 15 February 2024
Document L50.2: SAT, ADMINISTRACION GENERAL DE AUDITORIA DE COMERCIO EXTERIOR, Orden CVD6000037/23, 15 February 2024, partial translation in English
Document L50.3: SAT, ADMINISTRACION GENERAL DE AUDITORIA DE COMERCIO EXTERIOR, Orden CVD6000037/23, 15 February 2024, partial translation in French

Document L51: DISTRICT COURT OF TAMPICO, TAMAULIPAS, decision of 22 March 2024 annulling the customs procedure

Document L52: SECRETARIO DEL JUZGADO DECIMO DE DISTRITO EN EL ESTADO, Certification, 18 April 2023

Document L53: Notification to the Tampico harbour master's office of the invalidity of the onboard inspection used a basis for the vessel's detention, 19 April 2024

Document L54: GRUPO CONSULTOR DE COMERCIO EXTERIOR, Proposal of services, 6 December 2023

Document L55: Screenshot of WhatsApp mobile telephone messaging service, 21 February 2024

Document L56:
Document L56.1: DAVID OSLER, *Mexico treated vessel as imported goods*, Luxembourg alleges, Lloyd's List, 6 June 2024
Document L56.2: GUILLAUME JORIS, *Le Mexique détient une drague de Jan De Nul depuis plus de huit mois et réclame 78 millions d'euros*, Le marin, 23 August 2024

Document L57: *Flemish company's dredging ship unable to leave Mexico; "Strange that the Mexican authorities are ignoring a court ruling"*, VRT.be, 15 August 2024

Document L58: *Minutes of a meeting of 23 February 2024 between a delegation of Luxembourg and the Ambassador of Mexico to Luxembourg*

Document L59: *Note verbale from the Grand Duchy of Luxembourg of 29 March 2024, 20240329 NV LU to EMB MEX, 848x2c0ce*

Document L60: *Note verbale from the Grand Duchy of Luxembourg of 29 April 2024, 20240429 NV LU to MEX, 848x97e7e*

Document L61: *Note verbale from the Grand Duchy of Luxembourg of 8 August 2024 84ax2cfb*
Document L62: *Note verbale from the Grand Duchy of Luxembourg of 26 August 2024 84ax67b32*

Document L63: *Note verbale from the Grand Duchy of Luxembourg of 27 September 2024 84axd3218*

Document L64: *Note verbale from the Grand Duchy of Luxembourg of 23 December 2024*

Document L65: *Note verbale from the Grand Duchy of Luxembourg of 16 January 2025 84cx6f26b*

Document L66:
Document L66.1: REPRESENTACIONES MARÍTIMAS, SA DE CV, *Request for movement to the Anchorage Area for Class Underwater Inspection on the dredger "ZHENG HE"*, 19 August 2024
Document L66.2: REPRESENTACIONES MARÍTIMAS, SA DE CV, *New application for Movement to the Anchorage Area for underwater class Inspection on the dredger "ZHENG HE"*, 26 August 2024
Document L66.3: REPRESENTACIONES MARÍTIMAS, SA DE CV, *Application for a departure permit for the speedboats "ANTARES", "ADHARA" and "SIRIUS" anchorage area to transport divers and inspectors to the dredging vessel "ZHENG HE"*, 26 August 2024
Document L66.4: PORTUM21, *email of 30 August 2024 "Movement from the anchorage area to the Quay"*

Document L67: BUREAU VERITAS, *Zheng He, Fleet in Service Survey Status*, 7 March 2025

Document L68:
Document L68.1: SAT, *Official letter 600-04-03-10-002024-49102, referring the case to the Supreme Court and requesting it to exercise its power of attraction*, 18 June 2024
Document L68.2: SUPREME COURT OF THE UNITED STATES OF MEXICO, *Decision of 6 November 2024*
Document L68.3: SAT, *Second official letter 600-04-03-10-00-2025-45279, referring the case to the Supreme Court and requesting it to exercise its power of attraction*, 15 January 2025

Document L69:
Document L69.1: VANESSA BUSCHSCHLÜTER, *Protests in Mexico as controversial judicial reform passed*, BBC news, 11 September 2024
Document L69.2: ANA ISABEL MARTINEZ, *Mexican judicial workers launch strike ahead of vote to overhaul courts*, Reuters, 19 August 2024

Document L70: *Note verbale from the United States of Mexico of 20 March 2024*

Document L71: JONES DAY MEXICO, *Legal Opinion*, 15 May 2024

Document L72:
Document L72.1: LETICIA GARCIA MORENO, *Customs law consultation*
Document L72.2: LETICIA GARCIA MORENO, *Information Note – Mexican Customs Law*
Document L72.3: LETICIA GARCIA MORENO, *Curriculum vitae*

Document L73: *Mexican Customs Law Regulations*, Arts. 16 to 22

Document L74: VAN WOERKOM, NOBELS & TEN VEEN, *Statement 25W51397/JV/MV/mb*, 17 March 2025

Document L75:
Document L75.1: JUDICIO DE AMPARO, *Appeal for Review*, 22 April 2023
Document L75.2: SECOND COLLEGIATE COURT IN ADMINISTRATIVE AND CIVIL MATTERS OF THE 19TH CIRCUIT, *Admissibility Order in the amparo de revision*, 274/2024, 12 June 2024

Document L76: SEMAR, *Official letter B.-C. 3896*, 10 July 2024

Document L77: ADUANAS, *Official letter No. 2226*, 1 November 2023

Document L78: PORTUM21, *Authorization to enter the terminal and access the* "Zheng He", 16 November 2023

Document L79: TECHDIVING COMPANY, *In-Water Examination Report*, 20 December 2023

Document L80: INDEP, *Official letter DCJ/DEJC/0574/2024*, 17 June 2024

Document L81: ELISA DE ANDA MADRAZO, "*A la sombra", El sol de Mexico*, 27 February 2024

Document L82: EDC, *Temporary importation form for the* "Zheng He", 31 March 2023

Document L83: UNITED MEXICAN STATES, *Annex 51 notified during the proceedings on the Request for the prescription of provisional measures*

Document L84: PORTUM21, *hourly docking rate*, 15 November 2023

Document L85: INSTITUTO NACIONAL DE TRANSPARENCIA, ACCESO A LA INFORMACION Y PROTECCION DE DATOS PERSONALES, *Resolution RRA* 12076/24

Document L86: *Email of 17 January 2025 in which the United States of Mexico proposes providing information under the condition of confidentiality*

Document L87: *General Rules for Foreign Trade for 2023 and its Annexes 2 and 13*

Document L88: PRODECON, *Hold Harmless Agreement*, 17 January 2025

Document L89
Document L89.1: SALVADOR GARCIA SOTO, *Acusan empresarios corrupción en el SAT*, El Universal, 15 June 2024
Document L89.2: FRANCISCO RESENDIZ, PRD: *crisis, extincion, nacimiento*, La Razon de Mexico,18 June 2023
Document L89.3: ALBERTO AGUIRRE, *Y el sexto magistrado?*, El Economista, 20 June 2023
Document L89.4: EDUARDO RUIZ-HEALY, *corrupcion en el SAT pese a lo que asegura AMLO?*, El Economista, 24 June 2024

Document L90: US EMBASSY AND CONSULATES IN MEXICO, *Security Alert: Kidnappings on Reynosa Intercity Buses*, 14 June 2024

Document L91: *Psychological evaluations by the Commander Gerit de Vos and Hendrik Henry Gruis, conducted remotely from the Embassy of Belgium by a qualified psychologist*, 11 April 2024

Document L92: *Result of the survey conducted by the shipowner among seafarers*, October 2024

Document L93: VAN WOERKOM, NOBELS & TEN VEEN, *Zheng He Valuation Report*, 12 December 2024