

[Translation by the Registry]

Brief note in response to the Tribunal's question

The International Tribunal for the Law of the Sea put to the Parties the following question:

“Could the Parties please provide further details on the reasons why the “Zheng He” entered the Port of Tampico? If available, please provide information on where and when the next dredging work to be carried out by the Zheng He was due to take place, including any contractual or work arrangements.”

The present note will aim to complete and specify the information provided by Luxembourg during the first and second rounds of the oral pleadings. It refers to the documents entered into the case record before the closing of the proceedings to satisfy the requirements of the Tribunal.

The shipowner of the *Zheng He* decided, for nautical reasons, to leave The Bahamas owing to increased hurricane risks forecast for the region with the intention to return as soon as possible. Negotiations had been engaged and made official with Orion Marine Group on a schedule of dredging works spread over several months at the Grand Bahama Shipyard (**Doc. 13: Grand Bahama Shipyard, Dredging and reclamation works**). The contract clearly identifies the dredger *Zheng He* and the period: “Start Dredging after Hurricane Season November 2023”.

It did not wish to remain in the Bahamas in October 2023 because the poor weather conditions could have resulted in damage if the shipowner had not decided to leave Freeport immediately, on account of the slow speed of the vessel. It should be noted that the *Zheng He* was unable not take shelter in the port of Freeport because there were no available berths at that time.

Upon leaving Freeport, the *Zheng He* received, on 5 October 2023, a Certificate of Clearance Outward (**Annex 1 of Mexico**) issued by the authorities of The Bahamas. This is a compulsory document issued by the customs authorities of the departure State in return for a departure declaration authorizing the vessel to cast off. In maritime practice, the destination given after the adverb “for” designates an indicative foreign destination located outside the departure State (“outwards”). It does not, in any way, characterize the commercial or nautical purpose of the planned stopover and does not oblige the vessel to effectively call into port at that destination. In no case does this indication determine the final destination of the open-sea voyage. In fact, Luxembourg would like to point out that the port of Tampico, in a document called “Vessel Scheduling Record of the Port of Tampico” (**Annex 7 of Mexico**), dated 30 October 2023, shows that the vessel came from The Bahamas and that the Netherlands was the final destination (“Holland”).

Once it found shelter in the Gulf of Mexico, the *Zheng He* decided to call in port to carry out operations relating to maintenance, provisioning, crew changeover – operations that were vital and could not be postponed.

On **9 October 2023**, before the arrival of the vessel in the area, the Mexican agent for the vessel sent the Tampico customs authorities a preliminary notice of arrival of an open-seas vessel (**Annex MC4**). This notification, prepared on a precautionary basis by the agent, was sent systematically, if not automatically, by the vessel's Mexican agent. After first stating the critical nautical purpose (crew changeover and provisioning), the agent also added that the vessel was going to be subjected to a temporary import procedure. However, such a procedure is conditional upon the conclusion of contract in Mexico which never occurred. Thus, there could be no intention to proceed with a temporary import.

On **11 October 2023**, the *Zheng He* vessel was at anchorage in Mexico's territorial sea without having entered internal waters.

On **17 October 2023**, while the vessel was still waiting at the roadstead and had not entered port, the maritime agent notified the Mexican port authorities that the purpose of the stopover in Tampico was to receive the services necessary for the continuation of the maritime voyage, namely, to change the crew, to provision the vessel, to discharge and remove wastewaters, and to perform preventive maintenance (**Annex MC7**). The request made no mention whatsoever of any service contract for dredging, either in Tamaulipas or in Mexico, or of a request for temporary import. It was explicitly a strictly nautical call in port, as part of an open-seas voyage.

On **21 October 2023**, the port authorities granted the *Zheng He* authorization in principle to enter port, at berth No. 3 (**Annex MC9**), following discussions between the stakeholders of the operating committee for the port of Tampico. This committee holds ordinary meetings three times a week to decide on the allocation of berths. There are also extraordinary meetings. On 21 October, precisely, it was an extraordinary meeting that was held, at which the entry of the *Zheng He* was on the agenda (**Document No. 12**). The document – a screenshot of which is provided below – shows that the *Zheng He* was authorized to stay in port for an exclusively nautical purpose:

ZHENG HE/JVV LOGISTIC – ASIPONA DOC 3 MOORING CICE, 15 DAYS STAY, ENTRY DRAFT 6.50 METRES. RUBBISH REMOVAL
* WITH IOSSIF DUTSINIS, MUD WITH LCAVEX AND MECHANICAL WORKS WITH ELECTROMEX.

Let us recall that maintenance operations for a service vessel, in particular a dredger, are complex and require a longer call in port than for an ordinary vessel. In response to the vessel's agent who requested to stay in port three to four weeks (**Annex MC 7**), the operating committee for the port of Tampico acknowledged this need by granting an authorization for 15 days (**Document 12**).

On **23 October 2023**, when the vessel had just docked at berth No. 3, the vessel's agent confirmed to the Mexican customs authorities that the call in port was carried out "for the sole purpose (our emphasis) of provisioning the vessel, changing over the crew, and for preventive maintenance, and that he remained at the disposition of the authorities for any further instructions" (**Annex MC 10**). This crucial piece of evidence being ignored by Mexico. It confirms that the agent, acting on an express mandate of the shipowner, categorically excludes any commercial purpose for this call in port.

In conclusion, it is therefore beyond a doubt that the envisaged call was exclusively for a nautical purpose and that the Mexican authorities, including the customs authorities, were fully aware of this. Afterwards, the dredger was to return to The Bahamas for a dredging contract anticipated for November 2023 after the hurricane season (**Document No. 13**).

In summary, the vessel that had sailed from The Bahamas was engaged in open-sea navigation. It arrived at the roadstead before entering the port. The waiting period at the roadstead under the current port conditions is customary and the length of the nautical call in port warranted by the vessel's specific features.

Hamburg, 12 July, at 4.15 p.m.

[signature]

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