

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

THE “ZHENG HE” CASE

GRAND DUCHY OF LUXEMBOURG v. UNITED MEXICAN STATES

**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

**THE MINISTER OF FOREIGN AFFAIRS OF THE UNITED MEXICAN STATES TO THE
REGISTRAR OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA**

MEXICO

Mexico City, 3 July 2024

Ms. Ximena Hinrichs Oyarce,
Registrar
Registry of the International Tribunal for the Law of the Sea,
Am Internationalen Seegerichtshof 1
Hamburg, Germany.

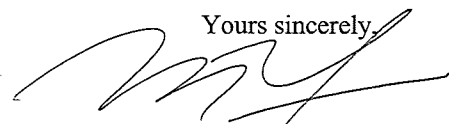
Madam Registrar,

I refer to the consultations convened by the President of the Tribunal with representatives of the Parties, held on 12 June 2024, during which procedural issues for the hearing arising from the request submitted by the Government of the Grand Duchy of Luxembourg to the International Tribunal for the Law of the Sea for the prescription of provisional measures under article 290, paragraph 1, of the United Nations Convention on the Law of the Sea in the "Zheng He" case were addressed.

In this regard, I hereby convey the Mexican Statement in response to said request, in accordance with the President's suggestion to file it by 3 July 2024. This submission is made without prejudice to Mexico's right to present any observations before the closure of the hearing, pursuant to article 90, paragraph 3, of the Rules of the Tribunal.

Pursuant to article 53, paragraph 2, of the Rules of the Tribunal, I further avail this opportunity to designate as Counsel and Advocates of the United Mexican States: Minister Alfonso Ascencio Herrera, Deputy Chief of Mission at the Embassy of Mexico to The Netherlands; Mrs. Fadia Ibrahim Nader, Director for the Settlement of Disputes regarding Privileges and Immunities; Mr. Max Orlando Benítez Rubio, Director for the Defense of Territory and Sovereignty; Mr. Edgar Eduardo Noriega Herrera, Acting Director for the Law of the Sea; Mr. Eduardo Fragoso Jacobo, Attorney at Law; Mrs. Andrea Vianey Estrada Buenrostro, Attorney at Law; and Mr. Leonardo David Lima Valdés, Attorney at Law. It also designates as Advocates-Counselors from the Embassy of Mexico to the Kingdom of the Netherlands, and to the Federal Republic of Germany: Mrs. Alicia Patricia Pérez Galeana, Multilateral Legal Affairs; Mrs. Fabiola Jiménez Morán Sotomayor, International Legal Counsel; and Mr. Erasmo Alonso Lara Cabrera, International Legal Counsel. Finally, as external Advocate-Counselor, Mexico designates Mr. Carlos Cruz Carrillo, PhD Researcher, University of Basel. May I take this opportunity to provide the assurance of my highest esteem.

Yours sincerely,



Miguel Angel Reyes Moncayo
Deputy Legal Adviser to the Ministry of Foreign Affairs and
Co-Agent of the United Mexican States

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STATEMENT IN RESPONSE OF THE UNITED MEXICAN STATES

CHAPTER 1 INTRODUCTION

1. On 3 June 2024, the Grand Duchy of Luxembourg (“Luxembourg” or “Applicant”) submitted an Application instituting proceedings against Mexico before the International Tribunal for the Law of the Sea (“ITLOS” or “the Tribunal”), pursuant to Article 287, paragraphs 1(a), and 4 of the United Nations Convention on the Law of the Sea (“UNCLOS” or “the Convention”), concerning an alleged dispute related with the vessel *Zheng He*. Afterwards, on 7 June 2024, Applicant lodged a Request for the Prescription of Provisional Measures (“Request for Provisional Measures” or “Request”), pursuant to Article 290(1) of UNCLOS, to obtain eleven measures grouped in four packages.

2. Although the United Mexican States (“Mexico” or “Respondent”) is not required to submit any written statement to that Request, Respondent presents this Statement in Response so as to assist the Tribunal on its task. Likewise, Mexico acts bearing in mind that all States must act in good faith and in conformity with the purposes and principles enshrined in the Charter of the United Nations, and settle their disputes by peaceful means.

3. The case presented by Luxembourg must be carefully analyzed, considering that it does not pertain to matters within the jurisdiction of this Tribunal. Although Applicant invokes various articles of the Convention, the facts surrounding this case clearly demonstrate that everything occurred in Mexican internal waters and under Mexican law. This case resulted from the violation of Mexican law due to decisions freely made by private individuals and is not related to the interpretation or application of UNCLOS.

4. As explained below, the shipping agency in charge of the vessel *Zheng He* disregarded the national procedure established for temporary importation. It is noteworthy to highlight that the vessel has entered Mexican waters before in compliance with national legislation. The fact that on this occasion the vessel has failed to comply is totally unrelated to Mexican authorities, rather it seems to be due to private parties’ conduct ignoring requisites of national law.

5. Furthermore, the legal issues related with the vessel *Zheng He* in Mexico are currently under thorough consideration by national judicial authorities. There is even a request for the highest national judicial organ to consider the propriety of deciding upon the case. In this regard, this Tribunal must bear in mind that “it is for each State, in the first instance, to interpret its own domestic law”.¹ Thus, it should be considered necessary to wait for the national authorities to decide the case first and to avoid the discussion of this case to the extent that it

¹ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Reports 2010, p. 639, at para. 70.

relates to a matter of interpretation and application of domestic law. As the International Court of Justice has pointed out, and as this Tribunal should also consider, “The Court does not, in principle, have the power to substitute its own interpretation for that of the national authorities, especially when that interpretation is given by the highest national courts”.²

6. In summary, the present case concerns the entry of a vessel that previously engaged in regular business in Mexico and, on this occasion, failed to comply with Mexican customs law. This non-compliance is under review by the appropriate national authorities and is not related to the interpretation or application of UNCLOS. This clearly constitutes an attempt to mischaracterize the situation as one falling under the scope of the Convention.

7. In the following chapters, Mexico presents to this Tribunal: first, the complete factual background to understand why this case should be left out of the ITLOS’ consideration, even prima facie; second, the relevant law that constitutes the basis to rule on the indication of provisional measures; third, Respondent’s considerations on jurisdiction that clarify how the issues raised by Applicant fall outside of this Tribunal’s competence; fourth, the lack of plausibility and urgency of the measures requested by Luxembourg.

CHAPTER 2 STATEMENT OF FACTS

I. The *Zheng He* in Mexican ports

8. The *Zheng He* vessel, allegedly owned by the Luxembourg company European Dredging Company SA (“the Company” or “the Owner”), departed from the port of Freeport, Bahamas, on 5 October 2023. At the time of its departure, the Government of the Commonwealth of the Bahamas issued a Certificate of Clearance Outwards, clearly stating the Port of Tampico, Mexico, as the vessel’s final destination.³ This indicates that the entry of the vessel into Mexico’s internal waters was not a mere port call contrary to Luxembourg’s assertions in its request for provisional measures.⁴

9. The Owner contracted the services of the company *Agencia Consignataria de Buques JVV Logistics JVA* (“JVV Logistics”) as a shipping agent in October 2023.⁵ According to Mexican domestic law, JVV Logistics is the individual or legal entity authorized to act on behalf of the shipowner or operator of a vessel.⁶ This agent can act as a general shipping agent

² *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Reports 2010, p. 639, at para. 70.

³ Annex 1. Customs Department of the Commonwealth of The Bahamas, *Certificate of Clearance Outwards*, 5 October 2023.

⁴ *Zheng He (Luxembourg v. Mexico, Provisional measures, Request for the prescription of provisional measures submitted by the Grand Duchy of Luxembourg under article 290 (1) of the United Nations Convention on the Law of the Sea*, 7 June 2024, p. 5, para. 14.

⁵ Annex 2. Coordination General of Ports and Merchant Marine, *Authorization to act as General Shipping Agent ANG 51/2021*, 6 October 2021.

⁶ Article 22 of the Mexican Maritime Navigation and Commerce Law. “The shipping agent is the natural or legal person authorized to act on behalf of the shipowner or operator, in the capacity of a mandate or mercantile broker, acting in their name or representation [...]”.

to represent their principal in any commercial act entrusted to them, as well as in all activities related to the maritime agency contract.⁷

10. Mexican law also empowers JVV Logistics to act as a ship consignee agent, representing the Owner before federal authorities at the port.⁸ Their representative functions include executing all administrative acts necessary to obtain the dispatch of the vessel and carrying out the necessary steps to comply with provisions, resolutions, or instructions issued by any federal authority.⁹ In this case, JVV Logistics represented the Owner before the Mexican federal authorities in all matters related to the vessel acting as both, a general shipping agent and a ship consignee agent.

11. On 9 October 2023, JVV Logistics sent a notice to the Mexican customs authorities informing them of the arrival of the *Zheng He* on 11 October 2023, at 6:00 a.m., to the Tampico anchorage area for crew change and provisioning.¹⁰ The shipping agent also informed customs authorities that the vessel would later enter the fiscal dock for temporary import procedures with the Tampico Maritime Customs, making the vessel available to the authority if any inspection was required.

12. Regarding this point, the wording used by the shipping agent in the notice is noteworthy:

"Through this letter, we inform you of the arrival at this port of the dredger vessel flying the Luxembourg flag named 'ZHENG HE' with a gross tonnage of 8,015 units and a length of 138.50 meters, coming from Freeport, Bahamas. **The ETA announced is for 11 October 2023, at 06:00 hours, to the Tampico anchorage area for crew change and provisioning. It will later enter the fiscal dock for temporary import procedures with the Tampico Maritime Customs, making the vessel available to you in case any type of inspection is required.**"¹¹

⁷ Article 22, Section I, of the Mexican Maritime Navigation and Commerce Law. "[...] I.- General shipping agent, [is the one] who shall have the authority to represent their principal or client in contracts for the transportation of goods, leasing, and chartering; appoint consignee shipping agents for vessels and perform other commercial acts entrusted by their principal or client, as well as all matters related to the maritime agency contract; [...]"

⁸ Article 22, Section II, of the Mexican Maritime Navigation and Commerce Law. "[...] II.- Consignee shipping agent of vessels, [is the one] who shall have the authority to perform acts and administrative procedures related to the vessel in the port of consignment according to Article 24 of this Law; [...]"

⁹ Article 24, Sections II, III, and IV, of the Mexican Maritime Navigation and Commerce Law. The consignee shipping agent of vessels shall act as the representative of the shipowner before federal authorities at the port and may perform the following functions: [...] II.- Carry out all administrative acts necessary to obtain clearance for the vessel; III.- Perform the necessary actions to comply with provisions, resolutions, or instructions issued by any federal authority in the exercise of its functions; IV.- Prepare the outfitting and departure of the vessel, conducting the necessary diligences to provision and equip it adequately; [...] To operate in Mexican ports, every foreign shipowner shall designate a consignee shipping agent for vessels at the operating port. Mexican shipowners are not obligated to designate consignee shipping agents for vessels at Mexican ports to attend to their own vessels, provided they have offices in the port, a representative, and have notified the corresponding port captaincy.

¹⁰ Annex 3. JVV Logistics, *Notice of arrival of a vessel in open-sea navigation*, 9 October 2023.

¹¹ *Ibid.*

13. The abovementioned confirms a premeditated and planned action. Grammatically, this indicates a firm and specific intention of the Owner: the temporary importation of the vessel as merchandise under Mexican customs law. Contrary to Luxembourg's statements,¹² the Owner, through its shipping agent, conveyed its intentions regarding the vessel to the Mexican authorities. Luxembourg even acknowledged this intention in its verbal note dated 7 November 2023.¹³

14. On 10 October 2023, the Harbor Master's Office ("HMO")¹⁴ authorized the vessel's arrival at the Tampico anchorage area at the request of JVV Logistics.¹⁵ While the HMO noted that the vessel was in open-sea navigation, this merely implied that the *Zheng He* was coming from a foreign port, in this case, the port of Freeport, Bahamas. According to Mexican law, open-sea navigation means navigation "[b]y sea between ports or points located in Mexican territory or in Mexican marine areas and ports or points located abroad, as well as between foreign ports or points."¹⁶

15. It is worth noting that under Mexican law, the HMO has specific powers that coexist with the powers of other authorities in internal waters and Mexican ports.¹⁷ In other words, the determinations of the HMO do not affect or prevent customs or tax authorities from exercising their own powers. In this sense, the authorization issued by the HMO for the *Zheng He*'s arrival makes this situation clear to the applicant: "This authorization is issued without prejudice to and does not inhibit the authorizations or provisions already issued or to be issued by other authorities within their jurisdiction [...]"¹⁸ As such, the Owner remained subject to the request and obtaining of permits and authorizations required by other Mexican authorities.

16. On 11 October 2023, the *Zheng He* arrived at the Tampico anchorage area,¹⁹ which is considered Mexican territorial sea, according to Article 12 of UNCLOS, where it remained anchored for six days. Subsequently, on 17 October 2023, the vessel's agent requested the HMO

¹² *Zheng He (Luxembourg v. Mexico, Provisional measures, Request for the prescription of provisional measures submitted by the Grand Duchy of Luxembourg under article 290 (1) of the United Nations Convention on the Law of the Sea*, 7 June 2024, p. 5, para. 16.

¹³ See para. 82 *infra*.

¹⁴ The Secretariat of the Navy (SEMAR), through the Harbour Masters' Offices (HMO), administers and oversees navigation in national waters, ensuring navigation safety, human safety at sea, protection of the marine environment, and regulation of maritime traffic.

¹⁵ Annex 4. HMO. *Authorization for the arrival of vessels or large naval artifacts in open-sea navigation No. 514873*, 10 October 2023.

¹⁶ Article 38 of the Mexican Maritime Navigation and Commerce Law.

¹⁷ In the case of the *Zheng He*, at least the following authorities were involved: i) SEMAR, through the HMO of Tampico, whose authority in the port is primarily regulated by the Mexican Maritime Navigation and Commerce Law; ii) the National Customs Agency of Mexico (ANAM), through the Tampico Customs Office, whose functions are primarily regulated by the Internal Regulations of the National Customs Agency of Mexico; iii) the General Administration of Foreign Trade Audit (AGACE), through the Decentralized Administration of Foreign Trade Audit of the Northeast (ADACEN), regulated primarily by the Tax Administration Service Law; and iv) the Administration of the National Port System (ASIPONA) of Tampico, primarily regulated by the Ports Law. All of the above authorities have different competencies and powers.

¹⁸ Annex 4. HMO. *Authorization for the arrival of vessels or large naval artifacts in open-sea navigation No. 514873*, 10 October 2023.

¹⁹ The Tampico anchorage area is located at a distance of between 2.24 to 5.74 nautical miles from the Mexican coast.

and the Administration of the National Port System of Tampico ("ASIPONA", for its acronym in Spanish)²⁰ to dock at ASIPONA's section 3.²¹ On 21 October 2023, the HMO authorized the *Zheng He* vessel to position itself at ASIPONA dock 3, meaning in Mexican internal waters.²² In the authorization document, it was again indicated that this authorization was issued without prejudice to the authorizations or provisions of other authorities within their powers. Meanwhile, ASIPONA granted authorization to dock at dock 3 from 21 October 2023, to 15 November 2023.²³

17. Luxembourg highlights that a day before the HMO issued the authorization dated 21 October 2023, said authority issued a precautionary notice for a *Surada* event.²⁴ In light of the above, Mexico emphasizes the importance of considering the chronology in which these events occurred. At the time the precautionary notice was issued, the port entry request had already been made. This sequence of events establishes that the vessel's entry to dock 3 was not due to *force majeure* but was an act requested by JVV Logistics, aligned with the vessel's temporary importation purpose to carry out dredging work in Mexico.

18. Additionally, it is noteworthy that the HMO recommended "taking extreme precautions in navigation due to reduced visibility, as well as staying informed of local weather conditions issued daily on VHF-12, 18, and channel 27 of Coastal Radio."²⁵ Apart from these recommendations, the circular did not require vessels located in the anchorage area, including the *Zheng He*, to dock at any pier.

19. Another important detail to note is that on 24 November 2023, JVV Logistics resigned from representing the Company concerning the *Zheng He* vessel. Since then, legal representation has been assumed by the shipping agency "Representaciones Marítimas S.A. de C.V."²⁶

II. The Administrative Procedure

20. In this section, Mexico will explain the temporary import procedure that must be followed under its national legislation in general terms and the administrative procedure to which the *Zheng He* vessel was subjected. This is in order to provide the Tribunal with elements for consideration, without prejudging issues of jurisdiction in the present case, as indicated at the beginning of this document.

A. Temporary Import Procedure under Mexican Law

²⁰ The ASIPONA plans, develops, and operates port infrastructure, managing concessions, permits, and authorizations for their use, and promoting the competitiveness and efficiency of ports.

²¹ Annex 5. JVV Logistics, *Request for authorization to dock the Zheng He at berth 3*, 17 October 2023.

²² Annex 6. HMO, *Amendment Authorization No. 518020*, 21 October 2023.

²³ Annex 7. ASIPONA, *Vessel scheduling record of the port of Tampico*, 30 October 2023.

²⁴ Annex 8. HMO, *Precautionary Notice No. 036/2023*, 20 October 2023.

²⁵ *Ibid.*

²⁶ Annex 9. JVV Logistics, *Delivery act due to change of consignment*, 24 November 2023.

21. The temporary import regime, provided for in Article 106 of the Customs Law, allows goods to enter the country for a limited time and for a specific purpose, provided that they return abroad in the same condition.²⁷ Temporary importation can be carried out through a temporary import application, in accordance with Article 161 of the Regulations of the Customs Law,²⁸ or through a temporary import permit, in accordance with Rule 4.2.11 of the General Foreign Trade Rules.²⁹

²⁷ Article 106 of the Mexican Customs Law. “A temporary import regime is understood to be the entry into the country of goods to remain there for a limited time and for a specific purpose, provided that they return abroad in the same state [...]”.

²⁸ Article 161 of the Regulations of the Mexican Customs Law. “For the purposes of the provisions of Article 106, section V, subsection c) of the Law, Residents in the National Territory and abroad may carry out the temporary importation of vessels and the trailers necessary for their transportation for up to ten years, provided that they meet the following requirements:

- I. Submit the official form approved by the SAT, before the Customs Authority to carry out the procedure of entry into the country of the vessel, through the owner, or on his behalf, the captain of the VESSEL or his representative;
- II. Prove the ownership of the vessel and the trailer, at the time of carrying out the procedure before the Customs Authority, for which a copy of any of the following documents shall be attached: invoice, charter contract, title deed, or the registration certificate granted by the competent authority;
- III. Make the corresponding payment for the procedure for the temporary importation of vessels, and
- IV. Comply with the other requirements established by the SAT through Rules.

For the purposes of this article, the vessel includes the hull, machinery, equipment and fixed or mobile accessories, intended for navigation, decoration and operation of the vessel, in the terms established by the SAT through Rules”.

²⁹ Rule 4.2.11 of the General Rules of Foreign Trade. “For the purposes of Articles 106, section V, subsection c) and 107, first paragraph of the Law, cargo vessels, commercial fishing vessels, special vessels and naval artifacts, such as the so-called drilling and exploitation platforms, floating, semi-submersible or submersible, as well as those vessels specially designed to carry out exploitation work or services, exploration, pipeline laying and research, classified in Chapter 89 of the TIGIE, may be imported temporarily for up to ten years and it will not be necessary to present a temporary import declaration, or use the services of a customs agent, customs agency or customs representative.

In this case, the interested parties will need to have authorization from the customs authority, for which they must present to the customs office of entry or the corresponding one according to the circumscription where the goods referred to in the previous paragraph are located, the official form called “Authorization for temporary importation of boats” of Annex I, attaching a copy of the equivalent document stating the technical characteristics of the goods described above, where applicable, a charter in which it is established within the corporate purpose of the company, which will be dedicated to the provision of exploration or exploitation services, as well as the corresponding concession or authorization contract, for the provision of the services required of said goods.

In the case of goods temporarily imported to be used in drilling and exploitation, floating, semi-submersible platforms, as well as in those vessels specially designed to carry out work or services of exploitation, exploration, laying and piping and research, which require to be subjected to repair or maintenance processes, they may be unloaded and loaded at the docks owned by the legal entities that have temporarily imported them or at docks owned by legal entities with whom they have entered into a contract for the provision of services related to the platforms and vessels referred to in this rule.

For the purposes of the preceding paragraph, the importer must submit a monthly notice of the shipments and unloading of goods carried out in the immediately preceding month, before the corresponding customs office, within the first ten days of the month following that in which the goods were loaded or unloaded, containing the following information:

- I. Name and RFC of the importer.
- II. General description and quantity of the goods.
- III. Place and date of disembarkation/embarkation.
- IV. Address to which it was transferred for repair or maintenance.

22. According to Articles 10 and 20 of the Customs Law, vessels arriving from foreign ports or points and scheduled to carry out temporary import procedures must be made available to the customs authorities, specifically the National Customs Agency of Mexico (“ANAM”, for its acronym in Spanish),³⁰ for inspection or verification at an authorized place for such purposes.³¹

23. Subsequent to customs clearance, it is the responsibility of the General Administration of Foreign Trade Audit (“AGACE”, for its acronym in Spanish),³² through its decentralized administrations, to verify that vessels in Mexican territory comply with national fiscal and customs legislation, with verification powers that include conducting inspection visits.³³

24. In the event that compliance with national legislation in the matter is not proven during an inspection visit, including the legal stay or possession of goods in the country, fiscal authorities such as AGACE and its decentralized agencies have the power to initiate an Administrative Procedure in Customs Matters (“PAMA”, for its acronym in Spanish). This is done by issuing a report to ascertain the status of the goods. In this report, a precautionary

For the purposes of the first paragraph of this regulation, special vessels include dredgers, tugs and chalanes, as well as rescue vessels, and naval vessels include platforms intended for dredging, exploration and exploitation of natural resources, among others

In order to comply with the free trade agreements, conventions or treaties to which the Mexican State is a party and which are in force, the Secretariats of State may also import, under this rule, by a single customs office and at one or more times, special vessels, including in terms of Rule 2 a) of the General Regulations of the LIGIE, for this, they must only present the official form called “Authorization for temporary importation of boats” of Annex 1, attaching a copy of the equivalent document stating the technical characteristics of the goods described above.”

³⁰ According to Article 1 of the Internal Regulations of ANAM, through its Customs offices, it has jurisdiction over customs clearance, which, in accordance with Article 35 of the Customs Law, is understood as "the set of acts and formalities related to the entry of goods into national territory and their exit from it, which according to the different traffics and customs regimes established in this regulation, must be carried out before the customs authorities by those who introduce or extract goods from national territory, whether consignees, recipients, owners, possessors, or holders in imports, and senders in exports, as well as customs agents or customs agencies, using the electronic customs system."

³¹ Article 10 of the Mexican Customs Law. “The entry or exit of goods from the national territory, the loading, unloading, transshipment and storage maneuvers of the same, the embarkation or disembarkation of passengers and the inspection of their luggage, must be carried out by an authorized place, on a working day and time”. Article 20 of the Mexican Customs Law. “Porter companies and their representatives in national territory, captains, pilots, drivers and owners of the means of transport of goods entering or leaving the national territory, are obliged to:

I. To place at the disposal of the customs authorities the means of transport and the goods they carry for inspection or verification, at the place indicated for such purposes”.

³² The AGACE, through its Decentralized Administrations of Foreign Trade Audit such as ADACEN, conducts audits and verifications of foreign trade to prevent, detect, and combat smuggling and tax evasion, exercising its verification powers after the customs clearance of goods.

³³ Article 42 of the Federal Fiscal Code. "Tax authorities, in order to verify that taxpayers, joint and several liabilities, related third parties, tax advisors, financial institutions, trustees, settlors or beneficiaries in the case of trusts, and contracting or integrating parties in the case of any other legal entity, have complied with tax and customs provisions, and, where applicable, to determine omitted contributions or tax credits, as well as to verify the commission of tax crimes and provide information to other tax authorities, shall be empowered to: [...] V. Conduct domiciliary visits to taxpayers in order to verify compliance with the following obligations: [...] e) To possess documentation or receipts proving legal ownership, possession, stay, holding, or importation of goods of foreign origin, which must be exhibited to the authority during the visit [...]"

seizure may be determined,³⁴ if applicable, to ensure compliance with a fiscal obligation or the effectiveness of a right before issuing a final resolution.

25. Once the investigation into the possible non-compliance of a natural or legal person's obligations through the PAMA is concluded, a resolution will be issued. If it is favorable to the person, a period will be set for the recovery of the seized goods, and no fine will be imposed. If the customs authority verifies the person's fiscal non-compliance, a tax credit will be imposed along with the definitive seizure of the goods.

26. Finally, it is important to note that there are several administrative and judicial remedies available to challenge the resolution issued in the PAMA, among which the *amparo indirecto* proceeding stands out.

B. The Administrative Procedures of the *Zheng He*

27. As mentioned, on 11 October 2023, the *Zheng He* arrived at the anchorage area of Tampico, which is considered Mexican territorial waters under Article 12 of UNCLOS. On 21 October the vessel was authorized to enter Dock 3 of the Port of Tampico, i.e., into Mexican internal waters. However, it was not until 23 October 2023, that the *Zheng He's* shipping agent notified the ANAM³⁵ Customs Office of Tampico of the vessel's arrival.³⁶

28. On 24 October 2023, ANAM imposed a tax credit on JVV Logistics because the *Zheng He* docked at an unauthorized location for vessels arriving from international waters intending to carry out temporary import procedures.³⁷ It is recalled that JVV Logistics was aware that the authorization issued by maritime authorities does not prejudice authorizations that must be obtained from other authorities, such as customs. JVV Logistics stated in its letter of 23 October 2023, that the docking was solely for provisioning, crew change, and preventive maintenance while awaiting instructions. However, ANAM considered these statements insufficient to comply with Articles 10 and 20 of the Customs Law.

³⁴ Article 150 of the Customs Law. "Customs authorities shall draw up the record to initiate the administrative procedure in customs matters when, as a result of customs inspection, verification of goods in transit, or exercising verification powers, goods are provisionally seized as provided for by this Law. [...]"

Article 151 of the Customs Law. "Customs authorities shall proceed with the precautionary seizure of goods and the means of transportation in the following cases: [...] III. When it is not demonstrated with the corresponding customs documentation that the goods underwent the procedures established in this Law for their introduction into national territory or for their entry from the border strip or region into the rest of the country, and when their legal stay or possession is not proven, or when vehicles are driven by unauthorized persons. In the case of passengers, precautionary seizure shall only apply to undeclared goods and the means of transportation, provided that it is a private vehicle or, in the case of public service vehicles, if it is intended exclusively for the passenger's use or does not operate on the normal route."

³⁵ ANAM is a decentralized administrative body of the Ministry of Finance and Public Credit, responsible for organizing and directing customs and inspection services to ensure compliance with regulations on the entry and exit of goods from national territory, as well as the collection of taxes and fees in foreign trade operations.

³⁶ Annex 10. JVV Logistics, *Notice of docking at dock 3 of the ASIPONA Tampico*, 23 October 2023.

³⁷ Annex 11. Tampico Customs Office, *Determination of a tax credit under file No. 6S.3-2023-61-I.S.*, 24 October 2023.

29. In the resolution imposing the fine, ANAM indicated to JVV Logistics that, in its capacity as the vessel's and Owner's representative before Mexican authorities, it had two remedies at its disposal: the "*recurso de revocación*" and the "federal administrative litigation." Both are ordinary means to challenge the imposition of the fine. However, JVV Logistics proceeded to pay the fine without reservation,³⁸ thereby acknowledging the applicability of Mexican customs and tax legislation regarding the vessel and the infraction committed.

30. At the request of JVV Logistics, on 31 October 2023, the HMO authorized the vessel's change from Dock 3 to the Terminal of Multiple Uses II, fiscal dock F-6.³⁹ On the same date, the HMO issued a warning due to adverse weather conditions.⁴⁰ In its precautionary notice, the HMO recommended suspending internal movements on the Pánuco River during the night and early morning due to north winds of 20 to 25 knots with gusts of 34 knots, which could cause some type of maritime accident or incident.

31. It was not until 1 November 2023, at 10:00 a.m., that internal maneuvers on the Pánuco River resumed, according to the precautionary notice issued by the Port Authority on that date.⁴¹ Until that moment, all movements in the port, including those requested by the *Zheng He*, were suspended.

32. On 1 November 2023, the Northeast Regional Office of the Foreign Trade Audit Administration ("ADACEN", for its acronym in Spanish) boarded the vessel to conduct an onboard inspection visit, a procedure provided for under Mexican law⁴² and within this authority's jurisdiction.⁴³

33. During the inspection, neither the Company nor JVV Logistics presented customs documentation demonstrating the legal importation, stay, and possession of the *Zheng He* in national territory, in contravention of the Mexican Customs Law.⁴⁴ Consequently, the authority initiated the PAMA and proceeded with the precautionary seizure of the vessel,⁴⁵ in accordance with its powers.⁴⁶

³⁸ Annex 12. JVV Logistics, *Proof of payment of a fine with reference to file No. 6S.3-2023-61-I.S.*, 31 October 2023.

³⁹ Annex 13. HMO, *Amendment Authorization No. 521010*, 31 October 2023.

⁴⁰ Annex 14. HMO, *Precautionary Notice No. 038/2023*, 31 October 2023.

⁴¹ Annex 15. HMO, *Precautionary Notice No. 039/2023*, 1 November 2023.

⁴² Artículo 42 del Código Fiscal de la Federación. Ver nota al pie 32 supra.

⁴³ Annex 16. Decentralized Administration in Foreign Trade Audit of the Northeast (ADACEN), based in Nuevo León, of the General Administration of Foreign Trade Audit (AGACE), *Order for a domicile visit contained in the official letter 110-10-00-00-00-2023-272, order number CVD6000037/23*, 31 October 2023.

⁴⁴ Article 146 of the Customs Law. "The possession, transport, or handling of goods of foreign origin, except those for personal use, must be at all times substantiated with any of the following documents: Customs documentation proving their legal importation, or alternatively, electronic or digital documents that, in accordance with applicable legal provisions and rules issued by the Tax Administration Service, certify their legal possession, transport, or handling. [...]"

⁴⁵ Article 151 of the Customs Law.

⁴⁶ Annex 17. ADACEN, *Start and precautionary embargo record contained in the official letter number 110-10-00-00-00-2023-272, order number CVD6000037/23*, 1 November 2023.

34. During the PAMA, the Company's legal representative had the opportunity to demonstrate before Mexican authorities the legal importation, stay, and possession of the cited vessel. For this purpose, two documents were submitted to ADACEN. The first was received by the authority on 15 November 2023. The second was received by ADACEN on 12 December 2023.⁴⁷ Throughout these texts, the Company again acknowledged the need to comply with Mexican customs and tax legislation and that its entry into Mexican internal waters aimed to carry out temporary import procedures. The shipping agent also indicated that the vessel intended to carry out dredging work in Mexico, for which it was awaiting the conclusion of a contract.⁴⁸

35. After considering the evidence and arguments presented by the Company, ADACEN issued a resolution on 15 February 2024,⁴⁹ determining that the Company did not prove the legal stay or possession of the vessel in Mexican territory, in violation of the Mexican Customs Law.⁵⁰ Consequently, in accordance with Mexican law, ADACEN imposed a tax credit of \$1,616,462,343.62 Mexican pesos and definitively confiscated the *Zheng He*.⁵¹

36. It is worth noting that the Company has operated in Mexico on several occasions, demonstrating knowledge and compliance with the required customs and tax legislation to enter Mexican territory. It has usually utilized the temporary import regime, which offers economic advantages over definitive importation. For example, on 31 March 2023, the Company successfully processed Temporary Import Application 23 81 3182 3000533 for the *Zheng He* to perform dredging work in the port of Altamira, Mexico, complying with each and every fiscal and customs obligations without any issues.⁵²

⁴⁷ Annex 18. European Dredging Company SA, *Written submission of evidence and arguments in the Administrative Procedure in Customs Matters, Order number CVD6000037/23*, 15 November 2023.

⁴⁸ Annex 19. European Dredging Company SA, *Supplement to the Written submission of evidence and arguments in the Administrative Procedure in Customs Matters, Order number CVD6000037/23*, 12 December 2023.

⁴⁹ Annex 20. AGACE, *Resolution in the Administrative Procedure in Customs Matters CPA6000082/23*, 15 February 2024.

⁵⁰ Article 146 of the Customs Law.

⁵¹ Article 176 of the Customs Law. "The infractions related to importation or exportation are committed by anyone who introduces into the country or extracts from it goods, in any of the following cases: [...] X. When the legal stay or possession of the goods in the country is not substantiated with the corresponding customs documentation, or when they have not undergone the procedures established in this Law for their introduction into national territory or their exit from it. Goods presented to the automated selection mechanism without a customs declaration when one is required, or with a declaration that does not correspond, shall be considered within this case [...]."

Article 178 of the Customs Law. "The following penalties shall be applied to those who commit the infractions established by Article 176 of this Law: [...] IX. Fine equivalent to that specified in fractions I, II, III, or IV of this article, as appropriate, or from 70% to 100% of the commercial value of the goods when they are exempt, as specified in fraction X, unless it is demonstrated that the corresponding payment was made prior to the presentation of the goods, in which case, only the penalty provided in fraction V of Article 185 of this Law shall be incurred."

Article 183-A of the Customs Law. "Goods shall become the property of the Federal Treasury, without prejudice to other applicable penalties, in the following cases: [...] III. In cases provided for in Article 176, fractions III, V, VI, VIII, and X of this Law, except in the latter case, when it is demonstrated that the corresponding payment was made prior to the presentation of the goods, or in the case of excess or surplus detected in goods processed by maquiladoras registered in their program, as referred to in Article 153, last paragraph of this Law."

⁵² Annex 21. European Dredging Company SA, *Temporary Import Permit 23 81 3182 3000533*, 31 March 2023.

37. It is relevant to mention that Mexican legislation also provides facilities for individuals who do not have documentation proving the legal importation, stay, or possession of goods to regularize them at a later time, after the precautionary seizure and before the resolution of the PAMA.⁵³ Despite having this option, the Owner and JVV Logistics did not take any action to utilize it.

III. Domestic judicial remedies

38. This section will address the remedies filed before the federal judicial bodies. In particular, it will demonstrate that, contrary to what Luxembourg has stated, the legal status of the vessel is currently the subject of litigation before higher instances of the Federal Judiciary.⁵⁴

A. The Mexican Federal Judiciary

39. The Federal Judiciary is an independent authority vested with the necessary powers to administer justice and maintain balance among the other state authorities. It is responsible, among other matters, for interpreting laws, resolving disputes between individuals in federal matters, intervening in controversies where a law or authority act or omission violates human rights, and resolving conflicts between authorities.

40. In this context, Mexico wishes to clarify to this Honorable Tribunal the function of the organs of the Federal Judiciary involved in the present case and the legal proceedings instituted at the domestic level related to the *Zheng He*.

1. Organs of the Federal Judiciary involved in the present Case

41. The Federal Judiciary in Mexico comprises different organs. Specifically, in the matter related to the *Zheng He*, a District Court, Collegiate Circuit Tribunals, and the Supreme Court of Justice of the Nation (“SCJN”, for its acronym in Spanish) have been involved. It is worth clarifying the functions of each of these authorities to this Honorable Tribunal.

42. District Courts consist of first-instance federal judges responsible for *amparo* proceedings and other matters between individuals. On the other hand, Collegiate Circuit Tribunals, as second-instance bodies, resolve *recursos de revisión* against the District Court judgements.

43. Finally, the SCJN is the highest judicial body, with jurisdiction over constitutional controversies, actions of unconstitutionality, *amparo* review proceedings, and conflicts of jurisdiction, in addition to issuing binding jurisprudence.

⁵³ Rule 2.5.1. "Regularization of Goods" of the Foreign Trade Rules. "For the purposes of Article 101 of the Law, individuals who have foreign-origin goods in their possession and do not have the necessary documentation to prove their legal importation, stay, or possession, other than those referred to in rule 2.5.2., may regularize them by importing them definitively."

⁵⁴ *Zheng He (Luxembourg v. Mexico, Provisional measures, Request for the prescription of provisional measures submitted by the Grand Duchy of Luxembourg under article 290 (1) of the United Nations Convention on the Law of the Sea*, 7 June 2024, p. 8, para. 33.

2. Legal Proceedings Related to the Zheng He

44. As will be explained, various legal proceedings have been instituted in relation to the *Zheng He*, including an *amparo indirecto*, *recurso de revisión*, *recurso de queja*, and incidents for definitive injunction and modification incidents.

45. The *amparo indirecto* trial is a judicial constitutional control mechanism aimed at ensuring the protection and guarantee of human rights for all individuals and legal entities against acts, omissions, or regulations issued or applied by any authority in Mexico.

46. Within the *amparo indirecto* trial, incidents for definitive injunction can be filed to prevent irreparable harm and preserve the subject matter of the conflict during the proceedings, preventing the challenged act from being irreversibly consummated. Additionally, a modification incident can be filed when the resolution granting or denying the definitive injunction must be modified or revoked due to supervening facts that influence the conditions that motivated the stay, insofar that no final judgment has been rendered.

47. The decisions of the District Court in an *amparo indirecto* trial may be reviewed in a second instance by a Collegiate Circuit Tribunal or the SCJN through the so-called *recurso de revisión*.

48. The *recurso de revisión* is usually resolved by Collegiate Circuit Tribunals. However, if the matter is of interest or significance to the Mexican State, the SCJN may “attract” the case for resolution. Additionally, the *recurso de queja* is used to challenge judicial decisions that cannot be reviewed through the *recurso de revisión* or other legal remedies.

B. *Amparo indirecto* 1240/2023

49. Due to the precautionary seizure of the vessel, on 14 November 2023, the legal representative of the Company filed an *amparo indirecto* to challenge the inspection visit and the precautionary seizure, requesting as a precautionary measure the provisional and outright suspension of the precautionary seizure. Essentially, the arguments were: a) The existence of a risk to the physical integrity of the vessel's crew, requiring the provision of supplies to the vessel to ensure their survival; and b) the existence of a danger of delay due to the duration of the seizure, as it prevented the company from using and enjoying the property that belongs to them.

50. On 15 November 2023, the Tenth District Court in Tamaulipas admitted *amparo indirecto* 1240/2023. In the same order: a) it denied the outright suspension, as the facts narrated by the company did not provide objective elements of harm to the life, health, physical integrity, and personal dignity of the crew members; and b) it denied the provisional suspension, as the acts were already consummated. Both decisions were notified to the company's legal representative on 16 November 2023.

51. Following the *amparo* procedure, on 22 March 2024, the District Court: a) dismissed the case concerning attacks on the life, health, and physical and psychological integrity of the

crew, derived from the seizure order; and b) granted the *amparo* and protection to the company as a consequence of due process and legality violations regarding ADACEN's actions in the customs procedure (precautionary seizure).

52. The effects of the decision were to nullify: (i) the inspection visit order of 31 October; (ii) the initiation of the administrative customs procedure; and (iii) the precautionary seizure of the vessel *Zheng He*.⁵⁵

53. On 25 March 2024, this decision was electronically served to the company, and the following day, 25 March 2024, it was served to ADACEN.

54. In accordance with Article 86 of the *Amparo* Law, the deadline to file a *recurso de revisión* is 10 days from the day after the notification, excluding non-working days and weekends. Accordingly, the deadline for filing the *recurso de revisión* was as follows: a) for the plaintiff (the Company): from 26 March to 11 April 2024. b) for the responsible authority (ADACEN): from 1 to 12 April 2024.

55. On 17 April 2024, the Company filed a request to the District Court to declare that the judgment of the *amparo indirecto* could be executed. That day, unaware that the fiscal authority had timely filed an *amparo en revisión*, the District Court issued an order declaring the matter *res judicata*.

C. *Recurso de revisión* 274/2024

56. Following the judgment of *amparo* 1240/2023, ADACEN filed a *recurso de revisión*. According to Mexican legislation, the *recurso de revisión* can be filed via postal service. In this case, the filing date is the date when the document is delivered to the postal authority, not when the judicial authority receives it.

57. The *recurso de revisión* was received by the District Court in Tamaulipas on 22 May 2024. On 6 June 2024, the District Court transferred the docket to the Second Collegiate Tribunal in Administrative and Civil Matters of the Nineteenth Circuit.

58. On 12 June 2024, the Collegiate Tribunal issued an order stating that the *recurso de revisión* was timely filed, as it was submitted to the Mexican Postal Service on 12 April 2024, meaning the fiscal authority timely filed it. Consequently, it was admitted under file number 274/2024 and is currently pending resolution.⁵⁶

59. In the *recurso de revisión*, ADACEN argued that the District Court should have declared the company's *amparo* claim inadmissible. It argued that the Court amended the company's deficient pleadings, infringing upon the principle of equality of arms.

⁵⁵ Annex 22. Tenth District Court in the State of Tamaulipas, *Judgment of amparo indirecto 1240/2023*, 22 March 2024.

⁵⁶ Annex 23. Second Collegiate Court in Administrative and Civil Matters of the Nineteenth Circuit, *Admissibility Order in the amparo en revisión 274/2024*, 12 June 2024.

D. *Recurso de queja* 164/2024

60. On 17 May 2024, ADACEN filed a *recurso de queja* via postal service against the 17 April 2024 decision, in which the District Court declared that the *amparo* judgment in favor of the Company could be executed. The main argument of AGACE was that, as mentioned in the previous section, the *recurso de revisión* was still pending before a Collegiate Court. On 6 June 2024, the *recurso de queja* was referred to the Second Collegiate Tribunal in Administrative and Civil Matters of the Nineteenth Circuit.

61. On 12 June 2024, the Collegiate Tribunal admitted the *recurso de queja* filed by ADACEN, as it was timely submitted to the Mexican Postal Service. It was assigned file number 164/2024 and is currently pending resolution.⁵⁷

62. In this sense, contrary to what Luxembourg alleges, the judgment of *amparo indirecto* 1240/2023 is not final, as the *recurso de revisión* filed by ADACEN against the judgment and the *recurso de queja* filed by the same authority against the declaration of finality of the *amparo* judgment issued by the District Court are still pending. Consequently, it will be necessary to wait for these proceedings to be resolved before the prevailing party can execute the *amparo indirecto* judgment.

E. Request for the Exercise of the Supreme Court of Justice of the Nation's Attraction Power

63. Article 40 of the Amparo Law states that the SCJN may attract, either *ex officio* or at the request of a party, with or without standing, cases that entail a high degree of interest and significance for the Mexican State.

64. On 19 June 2024, the SCJN received a motion for the exercise of the attraction power ("SEFA", for its acronym in Spanish) from ADACEN. In this motion, ADACEN requests the referral of the *recurso de revisión* 274/2024 as a matter of potential interest to the Supreme Court. As of the date of this submission, this SEFA is being processed under file number 1441/2024.⁵⁸

F. Legal Remedies Related to the Provisional Injunction

1. *Recurso de queja* 390/2023

65. On 17 November 2023, the Company filed the first *recurso de queja* against the denial of the outright suspension requested to provide supplies to the crew. On 23 November 2023, the *recurso de queja* was referred for resolution to the Second Collegiate Tribunal in Administrative and Civil Matters of the Nineteenth Circuit.

⁵⁷ Annex 24. Second Collegiate Court in Administrative and Civil Matters of the Nineteenth Circuit, *Admissibility Order in the recurso de queja file 164/2024*, 12 June 2024.

⁵⁸ Annex 25. Tax Administration Service, *Official letter 600-04-03-10-00-2024-49102*, 18 June 2024.

66. On 27 November 2023, the judgment was published, in which the *recurso de queja* was granted with the following effect: "(...) the challenged order denying the outright suspension is revoked, and instead, the precautionary measure is granted for the responsible authority to facilitate unrestricted access to supplies for the crew (...)"⁵⁹

67. The parties were served of this decision by official letter on 28 November 2023.

2. *Recurso de queja* 397/2023

68. On 17 November 2023, the Company filed a second *recurso de queja* against the denial of the provisional injunction of the precautionary seizure. The process was referred to the First Collegiate Tribunal in Administrative and Civil Matters of the Nineteenth Circuit.

69. On 24 November 2023, the Tribunal resolved that the *recurso de queja* was unfounded and confirmed the denial, after considering that granting the provisional injunction would render the *amparo* trial moot, contrary to the SCJN case-law.

70. The Tribunal reasoned that the injunction of the precautionary seizure of the vessel would result in the absence of elements to analyze the challenged actions alleged by the Company in the main *amparo* trial (1240/2023).

71. This decision was served to the District Court on 27 November, and to the Company and ADACEN on 14 December 2023.

3. *Definitive Injunction Incident* 1240/2023

72. As referred above, the District Court denied the suspensions on 15 November 2023. However, in accordance with the applicable *amparo* legislation, the District Court is obliged to open an incidental proceeding, i.e., a separate file focused on addressing special and urgent matters such as precautionary measures.

73. This incidental proceeding, within the main trial, has its own deadlines and formalities. For example, authorities have 48 hours to submit a report, and the initial hearing is held within no more than 5 days.

74. On 29 November 2023, the judicial authority inspected the vessel Zheng He to verify: (i) the location where the vessel was docked; (ii) if the crew was on board; (iii) the conditions of the crew members; and (iv) if the crew had access to supplies.

75. The following day, the District Court held a hearing to assess the inspection elements and the company's statements. Consequently, it confirmed its denial of suspension, now definitive. This was because: "[...] according to the nature of the claimed act, suspension is not feasible as it would result in restitutive effects proper to the *amparo*, making it unnecessary to

⁵⁹ See para. 88 *infra*.

simultaneously address the appearance of good law, the danger in delay, and the non-contravention of public order provisions and the detriment to social interest.”⁶⁰

76. In the Court's opinion, if the suspension of the precautionary seizure order were granted, it would affect the process and resolution of the main *amparo* trial. This decision was served to the parties on 1 December 2023. Dissatisfied, the Company filed the *recurso de revisión* 61/2024.

4. *Recurso de revisión* 61/2024

77. On 19 December 2023, the company filed a *recurso de revisión* against the denial of the definitive injunction order of 30 November 2023. On 9 February 2024, the Second Collegiate Tribunal in Administrative and Civil Matters of the Nineteenth Circuit admitted *recurso de revisión* 61/2024.

78. On 7 May 2024, the legal representative of the Company withdrew its *recurso de revisión* stating: “Through this writing, for the benefit of my clients, I hereby withdraw the cited *recurso de revisión* filed against the incidental resolution dated 30 November 2023; without the need for ratification of this writing as it is presented with the electronic signature of the undersigned attorney of the complainant.”⁶¹

79. On 8 May 2024, the Second Collegiate Tribunal agreed to the withdrawal. The company was served of this order on 14 May 2024. It is important to remember that, while this *recurso de revisión* was pending, the *amparo* case was resolved.

5. *Administrative remedies*

80. On 3 and 5 April 2024, JVV Logistics and the Company filed a *recurso de revocación* against the fiscal credit imposed by AGACE. Said *recurso de revocación* is an ordinary remedy of defense before the same administrative authority, and is used as the last internal control of the legality of the acts it issued. However, AGACE has not been able to resolve this *recurso de revocación*, since the judicial procedures previously mentioned are not resolved. In this sense, AGACE informed JVV Logistics and the Company that this *recurso de revocación* would be stayed.

IV. Current situation of the vessel and the crew

A. The *Zheng He* Vessel

81. As previously mentioned, ADACEN imposed a fiscal credit against the vessel and proceeded to definitively confiscate it. However, it is important to highlight that despite the vessel being in the custody of the Mexican State, aspects related to the vessel's legal status are

⁶⁰ Annex 26. Tenth District Court in the State of Tamaulipas, *Minutes of the incidental hearing in amparo indirecto 1240/2023*, 30 November 2023.

⁶¹ Annex 27. European Dredging Company, *Withdrawal of recurso de revisión 61/2024*, 7 May 2024.

currently under review in *amparo indirecto* 274/2024. Meanwhile, the vessel continues to fly the Luxembourg flag.

82. ADACEN requested the Head of Tampico Customs to allow the entry of the *Zheng He* vessel into the designated area for its custody and safeguarding.⁶² Tampico Customs, through an official letter dated 1 November 2023, assigned dock 11 of the CR289 Fiscal Precinct for this purpose. Subsequently, through an official letter dated 8 November 2024, Tampico Customs informed ADACEN about the custody of the vessel, indicating that it is physically located in the CR289 Fiscal Precinct.⁶³

83. When ownership of a vessel is definitively transferred to the Mexican State, the Mexican authority transfers the property to the Institute to Return Stolen Goods to the People ("INDEP", for its acronym in Spanish), the Mexican authority responsible for its administration. Although ADACEN requested the transfer of the *Zheng He* vessel to INDEP, the Institute stated its inability to receive it due to pending judicial proceedings.⁶⁴ This confirms that the Mexican authorities are currently unable to take any action aimed at transferring the ownership of the *Zheng He* vessel.

84. It is important to note that since 16 November 2023, the Mexican State has provided all necessary facilities for the owner to carry out preventive and corrective maintenance of the *Zheng He* upon request.⁶⁵ For example, the customs authority of Tampico has authorized requests to conduct inspection work to certify that there are no fumes in the vessel, as well as to perform a dredger certificate inspection.⁶⁶

B. The Crew

85. The Mexican authorities have facilitated the crew of the *Zheng He* to enter and exit the terminal since the date of its docking,⁶⁷ as well as to receive supplies, including provisions, fuel, and garbage collection services. Similarly, the vessel has received potable water supply services and collection of oily and waste waters for the benefit of the crew.

86. Additionally, within the framework of the *amparo indirecto* trial filed on 14 November 2023, the company of the *Zheng He* requested the injunction of the precautionary seizure,

⁶² Annex 28. ADACEN, *Official letter No. 2226*, 1 November 2023.

⁶³ Annex 29. Tampico Customs Office, *Official letter No. 2254*, 8 November 2023.

⁶⁴ Annex 30. Institute to Return the Stolen Goods to the People, *Official letter DCJ/DEJC/0574/2024*, 17 June 2024.

⁶⁵ Annex 31. Portum 21 Multipurpose Terminal, *Record of port service providers for repair and maintenance that, upon request, have been granted to the Zheng He*, from 3 November 2023.

⁶⁶ Annex 32. Portum 21 Multipurpose Terminal, *Records TTM-PP-PS15.3.2.13-fl*, entitled "*Crew Entry/Exit Record*", from 3 November 2023.

⁶⁷ Annex 33. Portum 21 Multipurpose Terminal, *Record of the facilities granted to the Zheng He to receive provision supplies, organic waste disposal services, inorganic waste disposal services, fuel and lubricant supply services, wastewater collection services, oily water collection services, and potable water supply services*, from 3 November 2023.

arguing a risk to the physical integrity of the crew and the need for the provision of food supplies.

87. Although the outright suspension was initially denied due to a lack of objective elements of harm to the crew or the vessel, after filing a *recurso de queja* against this denial, on 27 November 2023, the Company obtained a judgment that overturned the denial and granted the precautionary measure for the responsible authority to facilitate unrestricted access to supplies for the crew.⁶⁸ This decision remains in effect to date.

88. In this regard, it is important to note that the Mexican authorities are obliged by an internal judicial decision to facilitate unrestricted access to supplies for the crew.

V. Diplomatic Exchanges

89. As stated in its request for the prescription of provisional measures, Luxembourg submitted a series of notes to Mexico dated 7⁶⁹ and 14⁷⁰ November 2023, as well as 17 January 2024.⁷¹

90. In response, on 20 March 2024, the Embassy of Mexico in Luxembourg sent a note to the Ministry of Foreign Affairs of Applicant, pointing out that both the Company and any other party have various domestic remedies available for the protection of their respective rights, should they consider these to have been violated.⁷²

91. This response is based on the fact that, as inferred from the content of the verbal notes, the Applicant did not mention any possible violation of any provision of the UNCLOS, much less any specific right provided for in this Treaty. Consequently, an exchange of views to comply with the obligation under Article 283, paragraph 1, of the Convention could not take place.

92. Subsequently, on 29 March⁷³ and 29 April 2024,⁷⁴ Luxembourg sent new verbal notes to Mexico expressing its intention to bring the case of the *Zheng He* vessel before the Tribunal. However, it was not until 4 June 2024, when Mexico was notified of Luxembourg's submission of a request to initiate proceedings before the Tribunal, that Mexico became aware

⁶⁸ Annex 34. Plenary of the Second Collegiate Court in Administrative and Civil Matters of the Nineteenth Circuit, *Judgment of complaint 390/2023*, 27 November 2023.

⁶⁹ Annex 35. Embassy of the Grand Duchy of Luxembourg to Mexico, Note 011-MEX-O-NV-2023, 7 November 2023.

⁷⁰ Annex 36. Embassy of the Grand Duchy of Luxembourg to Mexico, Note 012-MEX-O-NV-2023, 14 November 2023.

⁷¹ Annex 37. Embassy of the Grand Duchy of Luxembourg to Mexico, *Note 003-MEX-O-NV-2024*, 17 January 2024.

⁷² Annex 38. Embassy of the United Mexican States to the Grand Duchy of Luxembourg, *Note UEU0744*, 20 March 2024.

⁷³ Annex 39. Ministry of Foreign and European Affairs of the Grand Duchy of Luxembourg, *Note 848x2c0ce*, 29 March 2024.

⁷⁴ Annex 40. Ministry of Foreign and European Affairs of the Grand Duchy of Luxembourg, *Note 848x97e7e*, 29 April 2024.

of the allegations of a supposed violation of Articles 17, 18, 19, 21, 58, 87, 90, 92, 131, and 300 of UNCLOS.

CHAPTER TWO: THE LAW OF PROVISIONAL MEASURES

93. Article 290 (1) and (5) of UNCLOS, 25 of the Statute and 89 of the Rules of the Tribunal, enables a Party to a dispute to request provisional measures under two scenarios: first, under Articles 290(1) of the Convention and 89(1) of the Rules, pendant a final decision on the merits; and, second, under Articles 290(5) of the Convention and 89(2) of the Rules, pendant the constitution of an Arbitral Tribunal under Annex VI or VII of UNCLOS. Under the present circumstances, Article 290 (1) applies to the present proceedings, since Luxembourg seized the Tribunal in the present case.

I. Requirements

94. In accordance with Article 290(1) of UNCLOS, ITLOS may prescribe provisional measures if it considers that: (i) it has *prima facie* jurisdiction under Part XI or Part XV of the Convention; and (ii) where such measures are appropriate to preserve the rights of the Parties to the dispute.

95. In the interpretation and application of Article 290(1) in previous cases, the Tribunal has established certain requirements to examine a request for the prescription of provisional measures, such as plausibility of the alleged rights and a situation of urgency that will justify the prescription of measures.

96. Regarding plausibility, the Tribunal established that it needs to satisfy itself that the rights which the requesting party claims on the merits and seeks to protect are at least plausible.⁷⁵ Under that reasoning, in “San Padre Pio”, the Tribunal declared that it was not called upon to determine definitively whether the rights claimed by the requesting party exist, but need only to decide whether such rights are plausible.⁷⁶ In that sense, the Tribunal established that the assessment of plausibility requires the examination of legal and factual issues,⁷⁷ meaning that the alleged right must have a legal basis and be applicable to the facts of the case. Also, the Tribunal prescribed provisional measures after establishing the existence of a link between the rights claimed and the provisional measures requested.⁷⁸

97. With respect to urgency, Article 290(1) does not establish urgency as an element for the prescription of provisional measures, in opposition to Article 290(5). However, the Tribunal

⁷⁵ *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana v. Côte d’Ivoire)*, ITLOS Case No. 23, Provisional Measures, Order of 25 April 2015 (“Gulf of Guinea”),p. 158, para. 58.

⁷⁶ *M/T “San Padre Pio” (Switzerland v. Nigeria)*, Provisional Measures, Order of 6 July 2019, ITLOS Reports 2018–2019, p. 399, at para. 105.

⁷⁷ *M/T “San Padre Pio” (Switzerland v. Nigeria)*, Provisional Measures, Order of 6 July 2019, ITLOS Reports 2018–2019, p. 400, para. 110.

⁷⁸ *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana v. Côte d’Ivoire)*, ITLOS Case No. 23, Provisional Measures, Order of 25 April 2015 (“Gulf of Guinea”),p. 159, para. 63

has constantly incorporated that element in other judgments.⁷⁹ In “The Enrica Lexie Incident” case, the Arbitral Tribunal established that:

*“that a showing of urgency in some form is inherent in provisional measures proceedings. Generally, urgency is linked to the criterion of preservation of the respective rights of the parties to the dispute in order to avert a real and imminent risk that irreparable prejudice may be caused to the rights at issue, pending the final decision on the merits pursuant to Article 290, paragraph 1, of the Convention.”*⁸⁰

98. In sum, for Luxembourg to be granted provisional measures in the present proceedings, it has to establish before this Tribunal that:

- a) It has *prima facie* jurisdiction, since there is a clear basis for its jurisdiction and a dispute exists within its jurisdiction *ratione materiae*. Also, that the claims are admissible since negotiations were exhausted under Article 283 of UNCLOS;
- b) The rights claimed by Luxembourg are plausible under UNCLOS;
- c) There is a link between the rights claimed and the measures requested by Luxembourg;
- d) Urgency justifies the imposition of the measures, since there is a real and imminent risk that irreparable harm might be caused to the rights of Luxembourg.

99. In the following chapters, Mexico will prove that this Tribunal lacks *prima facie* jurisdiction to prescribe the provisional measures requested by Luxembourg, due to the lack of a dispute under UNCLOS. In any case, if this Tribunal recognizes that it has *prima facie* jurisdiction, Mexico contends that the remaining requirements for the prescription of provisional measures are not met. Therefore, Mexico respectfully submits to the Tribunal that Luxembourg has failed to meet any or all of these requirements. The cumulative character of the test for the prescription of provisional measures has been established by the International Court of Justice in the case of “*Application of the International Convention on the Elimination of All Forms of Racial Discrimination*” (Azerbaijan v. Armenia).⁸¹

II. Object and purpose of the procedure

100. In international litigation, the purpose of provisional measures is to protect the rights of the parties to a dispute, both Applicant and Respondent, in the face of a risk of irreparable damage,⁸² and to ensure the effectiveness of its judgment and judicial functions.

⁷⁹ *M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Provisional Measures, Order of 23 December 2010, ITLOS Reports 2008–2010, p. 58, at p. 69, para. 72; *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015, p. 146, paras. 41 to 43.

⁸⁰ *The ‘Enrica Lexie’ Incident case*, Permanent Court of Arbitration, Case No. 2015-28, Request for the Prescription of Provisional Measures, Order of 29 April 2016, para. 89.

⁸¹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan c. Armenia)*, Provisional Measures, Order of 22 February 2023, I.C.J. Reports 2023, p. 43, para. 24.

⁸² *Land and Maritime Boundary between Cameroon and Nigeria*, Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996, p. 13, at p. 21, para. 35.

101. The objective of this incidental proceeding is to protect plausible rights and not international obligations that the Parties have to fulfill. In the present case, Luxembourg argues that the provisional measures requested are appropriate, due to the plausibility of the claimed rights. In this regard, its alleged rights are based on UNCLOS, International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Maritime Labour Convention (MLC).

102. At this moment, it is worth noting that the provisions argued by Luxembourg under the ICCPR, ICESCR, and the MLC only establish obligations upon it, without establishing any rights that might be the object of the present dispute. Thus, as it will be proved in the following chapters, the arguments of Luxembourg under these conventions are not within the object and purpose of provisional measures.

CHAPTER THREE: PRIMA FACIE JURISDICTION

I. This Tribunal does not have *prima facie* jurisdiction to adjudicate this case

103. Mexico submits that Luxembourg has not advanced claims that could fall within this Tribunal's *prima facie* jurisdiction to prescribe provisional measures, as required by Article 290 of UNCLOS.

104. Article 288, paragraph 1, of UNCLOS provides that this Tribunal shall have jurisdiction over disputes concerning the interpretation or application of the Convention, which is also the approach undertaken by both States parties to the present proceedings in their declarations pursuant to Article 287. The declarations filed by both States framed their consent, which is pivotal to determine the scope of the jurisdiction of an international tribunal, since it may only have jurisdiction over a dispute to the extent that the relevant States have given their consent.⁸³

105. Since Article 287 states that the voice of procedure is for the settlement of "disputes" concerning the interpretation or application of the Convention, there must exist "a disagreement on a point of law or fact, a conflict of legal views or of interests",⁸⁴ that relates to UNCLOS. This requires that "the two sides hold clearly opposite views concerning the question of the performance or non-performance"⁸⁵ of obligations under that Convention.

⁸³ *The Mavrommatis Palestine Concessions (Greek Republic v. Great Britain)*, Judgment, PCIJ, Series A, No. 2, p. 6, 16

⁸⁴ *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 3, at para. 50; See also *Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives)*, Preliminary Objections, Judgment, ITLOS Reports 2021, at paras. 323-324.

⁸⁵ *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 3, at para. 50.

106. It is clear that a conflict of legal views concerns UNCLOS when there is “a link between the facts advanced”⁸⁶ and “the provisions of the Convention referred to by it and show that such provisions can sustain the claims submitted”.⁸⁷

107. In this case, Luxembourg claims that Mexico breached the following provisions: 2, 17, 18, 19, 21, 58, 87, 90, 92, 131, and 300. Nevertheless, this is not supported by the factual background, which is linkless to these Articles.

108. First of all, the detention of the vessel *Zheng He* took place in the port of Tampico, which is governed by the law relating to internal waters, subject to the sovereignty of the coastal State. This sovereignty grants the coastal State the power to regulate access to its ports.⁸⁸ Having this in mind, the detention and confiscation of a vessel in internal waters, resulting from an enforcement procedure of customs laws, is of a domestic nature. In this case, the interpretation or application of UNCLOS seems to be inappropriate.

109. The provisions concerning the right of innocent passage (Articles 17, 18, 19, and 21) make fairly clear that this right does not apply to the present circumstances, as plain from Article 18. Paragraph 1 provides that innocent passage implies the navigation through the territorial sea, without entering internal waters, or only proceeding to or from internal waters or call at such roadstead or port facility. Paragraph 2 states: “[p]assage shall be continuous and expeditious”. Passage only includes stopping and anchoring when it is incidental to ordinary navigation or is rendered necessary.

110. Here, the certificate of clearance outwards issued at the port of Freeport, Bahamas, states that the final destiny of the vessel was Mexico. This is confirmed by the notice of arrival transmitted by *JVV Logistics* to Tampico maritimes customs on 9 October 2023. Thus, the arrival of the *Zheng He* was fixed in Mexico’s internal waters, it was not just traversing nor stopping incidentally. This cannot be connected to the exercise of the right of innocent passage regulated under provisions 17, 18, 19, and 21 of UNCLOS.

111. The inapplicability of Articles 58, 87, and 90 of UNCLOS is crystal-clear. These provisions relate, respectively, to the rights and duties of other States in the exclusive economic zone, the freedom of the high seas, and the right of navigation. Nonetheless, the detention of the *Zheng He* occurred in the port of Tampico, not in any of the previously mentioned zones. None of the provisions invoked applies to the present case.

112. First, it cannot be interpreted that a vessel has the right to leave a port and gain access to the high seas disregarding its detention in the context of legal proceedings against it,⁸⁹ as it

⁸⁶ *M/V “Norstar” (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44, para. 110.

⁸⁷ *M/V “Norstar” (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44, para. 110.

⁸⁸ United Nations Convention on the Law of the Sea (“UNCLOS”), Article 2(1) and 8(1); See also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, Judgment of 27 June 1986, ICJ Reports (1986), 14, 111, paras. 212-213.

⁸⁹ *M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Judgment, ITLOS Reports 2013, p. 4, at p. 46, para. 109.

is the case of the *Zheng He*, which was subjected to a legal procedure under Mexican customs laws, resulting from the lack of required documentation to prove the legal importation, stay, and possession of the vessel in Mexican territory.

113. Second, States exercise sovereignty in their internal waters, where foreign ships have no right of navigation unless conferred by the Convention or other rules of international law,⁹⁰ which is not the present case; and there is no right to leave port and gain access to the high seas.⁹¹

114. Luxembourg also alleges that Mexico has breached Article 131, which mandates that ships flying the flag of land-locked States shall enjoy treatment equal to that accorded to other foreign ships in maritime ports. For this to be applied, it would be necessary to have a set of facts that could, at least *prima facie*, lead to consider that the *Zheng He* was subjected to a different treatment to that given to other foreign ships in Mexico, based on the flag of the vessels. Nonetheless, there is no such factual background to sustain a claim based on Article 131. Conversely, the background evinces a treatment in accordance with law: the Company performed a similar procedure in March 2023, in Mexico, where no issue arose because all normative requirements were fulfilled; contrary to this occasion.

115. Similarly, Applicant claims that Mexico acted contrary to Article 300 of UNCLOS, concerning the duty of State Parties to fulfill in good faith the obligations assumed under the Convention and to exercise the rights, jurisdiction and freedoms recognized therein in a manner that does not constitute an abuse of right. Though, as recognized by this Tribunal, “Article 300 cannot be invoked on its own”.⁹² This provision “becomes relevant only when ‘the rights, jurisdiction and freedoms recognized’ in the Convention are exercised in an abusive manner”.⁹³

116. In this regard, Luxembourg relates in a quite vague and ambiguous manner this provision to all the other Articles invoked, and to Articles 2, 218, and 220. However, none of the previous provisions apply to the present case, including Articles 218 and 220, which fall under Part XII of UNCLOS’ “Protection and preservation of the marine environment”. First, Luxembourg does not advance any fact linked to a possible abuse of right which could sustain its claims. Second, the detention of the *Zheng He* does not relate to any provision in the Convention, since it was the result of lack of proper documentation, a matter of exclusive jurisdiction of the coastal State.

117. Also the additional instruments invoked by Luxembourg are irrelevant, *id est*, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and Maritime Labour Convention (MLC).

⁹⁰ *M/V “Norstar” (Panama v. Italy)*, Judgment, ITLOS Reports 2018–2019, p. 10, para. 221.

⁹¹ *M/V “Norstar” (Panama v. Italy)*, Judgment, ITLOS Reports 2018–2019, p. 10, para. 221.

⁹² *M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Judgment, ITLOS Reports 2013, p. 4, at para. 137.

⁹³ *M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Judgment, ITLOS Reports 2013, p. 4, at para. 137.

118. First of all, the consent given by Mexico makes clear that ITLOS may only have jurisdiction to adjudicate matters related to the interpretation or application of UNCLOS with respect to any case in which Mexico could be involved. Secondly, if Applicant pretends to claim the protection of any individual, it would need to exhaust local remedies available in Mexico before resorting to an international tribunal. This is not only recognized in Article 295 of UNCLOS, but also under general international law.⁹⁴ Thirdly, Luxembourg's obligations under the Maritime Labour Convention are relevant only to that State, since Mexico is not a party of that treaty.

II. Luxembourg presents issues out of the subject-matter invoked in the exchange of views pursuant to Article 283 of CONVEMAR

119. In case that this Court determines that it does have *prima facie* jurisdiction, Mexico argues that the requirements of Article 283, paragraph 1, of the Convention are not met for this case to be adjudicated in relation to all the issues advanced by Luxembourg.

120. UNCLOS specifies in Article 283, paragraph 1, that in the event of a dispute between States concerning the interpretation or application of the Convention, they must proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means. Although it is not necessary for a State to expressly refer to a specific treaty in its exchanges with another State to later invoke that instrument., "the exchanges must refer to the subject-matter of the treaty with sufficient clarity to enable the State against which a claim is made to identify that there is, or may be, a dispute with regard to that subject-matter".⁹⁵

121. In this case, the exchanges between Luxembourg and Mexico only made reference to the seizure of the vessel *Zheng He*, and its crew being stuck on the vessel. This was also referred to as the "situation of the Luxembourg-flagged vessel *Zheng He* in the port of Tampico". The exchange of views only related to the seizure of the vessel due to what Luxembourg characterized as "an alleged violation of Mexican customs legislation" It never involved a right of innocent passage, freedom of navigation, unequal treatment, or any mistreatment to the vessel's crew. Therefore, Luxembourg failed to resort to a previous exchange of views regarding the subject-matter of its application submitted to this Tribunal.

III. Conclusion

122. Considering the aforesaid, it is clear that the case submitted by Luxembourg does not relate to the interpretation or application of UNCLOS; rather, it relates to a subject-matter

⁹⁴ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Preliminary Objections, Judgment, I.C.J. Reports 2007, p. 582, at para. 42.

⁹⁵ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award of 15 March 2015, at para. 379. See Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Judgment, General List No. 166, paras. 127-128: The Court had to determine whether requests for legal assistance fell within the scope of Article 12 of ICSFT, without directly mentioning it. The relevant analysis considered whether the requests expressly referred to the terms alluded by that provision, excluding those that did not.

outside the scope of the Convention. Therefore, ITLOS must find that the application lodged by Luxembourg manifestly lacks jurisdiction, even *prima facie*.

CHAPTER FOUR: URGENCY OF THE MEASURES REQUESTED

123. Luxembourg maintains that the rights it seeks to protect are the right to freedom of navigation and other internationally lawful uses of the sea. It also argues that “México has deprived Luxembourg of all the navigation rights and freedoms enshrined in UNCLOS and has deprived the crew members of certain internationally recognized human rights”.

124. Without prejudice to the arguments advanced in the previous chapters regarding the lack of jurisdiction *prima facie* of this Tribunal to prescribe the requested measures, Mexico considers that the requirement of urgency has not been met, since: (i) the rights that Luxembourg seeks to protect through its request of provisional measures are not plausible; and (ii) there is no risk of an imminent and irreparable prejudice.

I. Regarding the rights and freedoms of the crew

125. In the first section of the requested measures, Luxembourg requests the Tribunal to order Mexico:

- Order Mexico to continue to ensure the freedom of movement of the crew members off the vessel and their access to health-care facilities, places of worship, and recreational facilities;
- Order Mexico to continue to ensure that there will be no impediments to the renewal of the crew and the necessary rotations;
- Order Mexico to continue to ensure that the crew will not be compelled by law enforcement agencies to disembark from the vessel nor be prevented from reembarquing the vessel;

126. As of this moment, both the vessel and the crew are in the internal waters of the United Mexican States. In this sense, Article 2 of UNCLOS establishes that “the sovereignty of a coastal State extends, beyond its land territory and internal waters...”⁹⁶ Consequently, the Convention does not establish any right in favor of a State with respect to the safeguarding of the rights and freedoms of the crew of a vessel flying its flag.

127. As established in Chapter two, the element of plausibility requires to prove the existence, at least plausible, of the rights sought to be protected, either in international treaties or in customary rules of international law. In the context of proceedings under UNCLOS, such rights must exist within the Convention in order to comply with this element.

⁹⁶ UNCLOS, Article 2.

128. Additionally, Luxembourg claims that it must ensure the social rights of its crew under the Maritime Labor Convention⁹⁷ and the International Covenant on Economic, Social and Cultural Rights.⁹⁸ Moreover, Luxembourg points out that Mexico has the obligation, under general international law, to treat any foreign person under elementary considerations of humanity, without arbitrariness or discrimination.⁹⁹

129. Although Mexico recognizes its obligations under general international law and under the International Covenant on Economic, Social and Cultural Rights, it is considered that such norms do not prove the plausible existence of Luxembourg's rights under the Convention. In this sense, in the case of "Arctic Sunrise" (Netherlands v. Russia), the Arbitral tribunal declared "that if necessary, it may have regard to general international law in relation to human rights in order to determine whether law enforcement action such as the boarding, seizure, and detention of the Arctic Sunrise and the arrest and detention of those on board was reasonable and proportionate. This would be to interpret the relevant Convention provisions by reference to relevant context. This is not, however, the same as, nor does it require, a determination of whether there has been a breach of Articles 9 and 12(2) of the ICCPR as such. That treaty has its own enforcement regime and it is not for this Tribunal to act as a substitute for that regime."¹⁰⁰

130. Consequently, given that UNCLOS does not establish rights in favor of Luxembourg with respect to the protection of the rights and freedoms of the crew, nor can the rules set forth in the MLC, the ICESCR, or in general international law be taken as a basis, it must be concluded that such rights are not plausible.

131. Additionally, Mexico considers that there is no urgency, since there is no risk of an irreparable prejudice to the rights alleged by Luxembourg. First, the Applicant recognizes that Mexico is already taking action and seeks that the Tribunal request Mexico to continue to ensure such measures. In this regard, there is no exceptional and urgent situation that justifies the adoption of provisional measures.

132. In previous cases, this Tribunal has granted provisional measures concerning the integrity of the crew of a vessel when humanitarian considerations exist. For example, in the case of the M/V San Padre Pio, the Tribunal considered that the restrictions on the freedom and movement of the crew for a prolonged period of time, the context of violence towards the crew, and the constant threats of piracy and armed robbery of ships in the region constituted humanitarian considerations.¹⁰¹

133. In the present case, the crew is not under any risk that would imply humanitarian considerations. As mentioned in the first chapter, Mexico, through its administrative and

⁹⁷ Request for the prescription of provisional measures submitted by Luxembourg, (7 June 2024), para. 59.

⁹⁸ Request for the prescription of provisional measures submitted by Luxembourg, (7 June 2024), para. 40.

⁹⁹ Request for the prescription of provisional measures submitted by Luxembourg, (7 June 2024), para. 40.

¹⁰⁰ *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, Award of 14 August 2015, p. 46, para. 197.

¹⁰¹ *M/T "San Padre Pio" (Switzerland v. Nigeria)*, Provisional Measures, Order of 6 July 2019, ITLOS Reports 2018–2019, p. 375, paras. 129-130.

judicial authorities, has allowed the free movement and circulation of the crew, and has guaranteed access to health services and food.

II. Regarding the rights of Luxembourg as the flag State

- Order 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* to ensure its compliance with the national, European, and international standards applicable to vessels flying the flag of Luxembourg;
- Prohibit Mexico from directly or indirectly operating the vessel *Zheng He*;
- Prohibit Mexico from taking any measures to create or transfer real rights to the vessel and from changing the flag of the vessel *Zheng He*;

134. At the outset, Mexico considers that these measures are not related to the provisions of UNCLOS invoked by Luxembourg as an alleged basis to establish plausible rights in the present proceedings. As mentioned above, “a link must exist between the rights whose protection is sought and the provisional measures being requested.”¹⁰²

135. According to the request for provisional measures, the alleged rights that Luxembourg seeks to protect are included in Articles 2, 17, 18, 19, 21, 58, 87, 90, 92, 131 and 300 of the Convention.¹⁰³ These provisions concern the coastal State sovereignty over the territorial sea and internal waters, innocent passage, freedom of navigation in the Exclusive Economic Zone and the high seas, nationality of ships, unequal treatment of land-locked States, and good faith.

136. In this respect, Luxembourg has failed to establish the existence of a plausible right which can be related to the requested measures. Furthermore, Luxembourg seeks to rely on these provisions in order to construe a right of redress in relation to its obligations under external treaties to UNCLOS. However, there is no such plausible basis under any of the above provisions.

137. Notwithstanding the lack of a plausible right, Mexico submits that the Mexican authorities have provided all the facilities for the owner to carry out the necessary actions to provide preventive and curative maintenance to the dredge. Thus, it is evident that Luxembourg has not accredited a situation of urgency or a real and imminent risk that would require an order of provisional measures to continue providing such maintenance.

¹⁰² *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide* (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I), p. 224, para. 51.

¹⁰³ Request for the prescription of provisional measures submitted by Luxembourg, (7 June 2024), paras. 40 and 41.

138. Regarding the other two measures, Luxembourg requests that the Tribunal prohibit Mexico from directly or indirectly operating the vessel, as well as from taking any action tending to create or transfer real rights to the vessel or to change the flag of the *Zheng He*.

139. Mexico submits that the plausibility requirement is not met, since both actions correspond to the exercise of Mexico's sovereign powers in its territory, which includes internal waters. In addition, the measures are not consistent with the factual context of the present dispute, since, as noted in Chapter one, the company has exercised and continues to exercise all of its substantive rights of recourse before Mexican courts. Even to this day, the administrative proceeding is suspended by a judgment issued by a District Court in favor of the Company's rights. Therefore, Luxembourg continues to be the flag State and the Company retains control of the *Zheng He*, even though it is in the custody of the maritime port authority. Thus, Luxembourg's arguments are not plausible.

140. Under this factual context, Mexico also argues that there is no urgency. There is currently no real and imminent risk, given that there are pending legal proceedings.

141. For the granting of provisional measures, the Party seeking such measures must prove that its rights are under a risk of a real, imminent and irreparable harm until such time as a final judgment is rendered. Luxembourg alleges that the situation of the vessel and the crew is critical in that "the prolongation of the detention of the vessel and the coercive measures imposed by Mexico may cause irreversible damage to the vessel". However, as mentioned above, the Company retains control of the *Zheng He*, and the requests made to provide preventive maintenance to the vessel have been granted, along with facilities provided for the crew to enter and leave the terminal.

142. Based on the foregoing, Luxembourg has not proven that there is an imminent risk that an irreparable condition could occur in the short term.

III. Avoid aggravating or extending the dispute

- Prohibit Mexico from collecting the customs fine of 1,616,462,343.52 Mexican pesos imposed on European Dredging Company SA;
- Prohibit Mexico from detaining, confiscating, and expropriating, under any proceeding whatsoever, vessels related to the vessel *Zheng He* flying the flag of Luxembourg, whether they be the property of European Dredging Company SA, its parent company SOFIDRA, or any other subsidiary of SOFIDRA;
- Prohibit Mexico from instituting new national proceedings or new actions against the *Zheng He*, European Dredging Company SA, its parent company SOFIDRA, or any other subsidiary of SOFIDRA;

143. With respect to Luxembourg's request to prohibit Mexico from collecting the fine, it is emphasized that there is no urgency or imminent damage that is impossible to repair, inasmuch as: a) Luxembourg has not established that there is plausibility with the collection of the fine from the company and its rights as a flag State; b) there are proceedings under Mexican law

that are still pending, and c) in any event, the collection of a fine does not constitute irreparable damage.

144. With respect to the last two measures requested by Luxembourg concerning all vessels that are "owned by European Dredging Company SA, its parent company SOFIDRA or any other subsidiary of SOFIDRA" and "new domestic proceedings or remedies against El Zheng He, European Dredging Company SA, its parent company SOFIDRA and any other subsidiary of SOFIDRA", Mexico wishes to emphasize that provisional measures are an "exceptional remedy" under international law.¹⁰⁴ In this regard, the Tribunal determined in *Ghana/Côte d'Ivoire* that an order for provisional measures cannot be issued as a matter of course, clarifying that "should there be an imminent risk of impossible reparation, it can only be considered on a case-by-case basis in light of the relevant factors".¹⁰⁵

145. In accordance with the above, the measures requested by Luxembourg are not plausible and could even be excessive since they refer to situations that may or may not occur in the future and are not related to the present case.

146. The Tribunal has recognized that, in the analysis of provisional measures, it must consider the plausibility of the rights of both parties.¹⁰⁶ In that sense, Mexico's sovereign rights over its internal waters are plausible in light of international law, and, therefore, an order for measures in that sense would impede the exercise of its jurisdiction. Consequently, the measures requested are inadmissible.

IV. Equality of the parties in the proceedings before the Tribunal

- Authorize the agents of Luxembourg to conduct on the territory of Mexico, without restriction, any investigations in connection with the present proceedings, in particular, to ascertain the condition of the vessel *Zheng He* and to collect any relevant evidence;
- Transmit to Luxembourg, at its request and after examination by the Tribunal, the information and documents to which Luxembourg was unable to gain access relating to the non-contentious and contentious proceedings under Mexican law concerning the *Zheng He*, including forthwith:
 - The identification of the berths in the Port of Tampico, including their official and/or customary names and the GPS Coordinates of the endpoints of each berth;
 - The regulatory texts of Mexico in force on 21 October 2023, that were officially published, relating to the tax-and-customs regime of each berth in the Port of Tampico.

¹⁰⁴ *Passage through the Great Belt (Finland v. Denmark)*, Provisional Measures, Separate Opinion of Judge Shahabuddeen, ICJ Reports 1991, p. 29.

¹⁰⁵ *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Cote d'Ivoire)*, Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015, para. 43.

¹⁰⁶ "*Enrica Lexie*" (*Italy v. India*), Provisional Measures, Order of 24 August 2015, ITLOS Reports 2015, p. 197, para. 84.

147. Mexico recognizes that the principle of equality between the parties is a fundamental principle in international litigation, and that it has a solid basis in international law in general. However, this principle is not provided for under UNCLOS and, therefore, Luxembourg does not have a plausible right enshrined in the Convention that could support the necessity and urgency of the requested measure.

148. Mexico considers that if the Tribunal were to grant both provisional measures, it would be acting in contravention of the rules set forth in the instruments that regulate its actions. In particular, the Tribunal would contravene the provisions of Article 27 of the Statute of the Tribunal, which establish that the Tribunal must adopt all necessary measures for the taking of evidence. Likewise, Article 81 of the Rules of the Tribunal establishes that the Tribunal “may at any time decide, at the request of a party or *proprio motu*, to exercise its functions with regard to the obtaining of evidence at a place or locality to which the case relates, subject to such conditions as the Tribunal may decide upon after ascertaining the views of the parties.”¹⁰⁷

149. With regards to the first measure, and under the terms of the Articles cited above, the Tribunal must issue an order for the collection of evidence *in situ*. A disproportionate measure such as the one requested by Luxembourg would affect the rights of Mexico to present its point of view on the taking of evidence in similar situations. In that regard, Luxembourg has the procedural opportunity to request all such information through the Tribunal under the international instruments mentioned above.

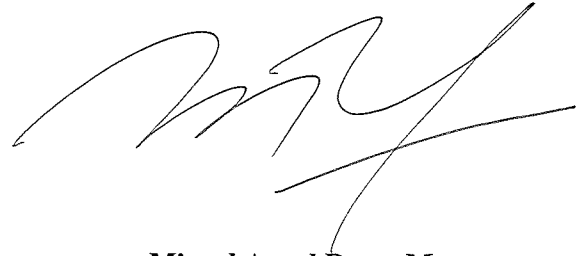
150. Notwithstanding the foregoing, Mexico wishes to express its willingness to hold consultations with Luxembourg to establish the process for the taking of evidence at the location of the *Zheng He*, and for Luxembourg to specify what information it requires regarding Mexican law. It is provided, however, that the agreements made within the framework of such consultations shall be set forth in an order of the Tribunal, pursuant to Article 81 of the Statute.

CHAPTER FIVE: SUBMISSIONS

151. For the reasons given in this *Response*, the United Mexican States respectfully requests the International Tribunal for the Law of the Sea to reject Luxembourg’s application for provisional measures.

¹⁰⁷ Rules of the Tribunal, article 81.

The Co-agent of the United Mexican States certifies that the documents listed below and annexed to its Statement in Response to the request for the prescription of provisional measures of the Grand Duchy of Luxembourg are true and accurate copies of the originals of these documents and excerpts thereof. Pursuant to Article 64, paragraph 2, of the Rules of the Tribunal, I further certify that the translations of the annexed documents are accurate.

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

Miguel Angel Reyes Moncayo

**Deputy Legal Adviser to the Ministry of Foreign Affairs
and Co-Agent of the United Mexican States**

Mexico City, 3 July 2024.

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Annex 2. Coordination General of Ports and Merchant Marine, *Authorization to act as General Shipping Agent ANG 51/2021*, 6 October 2021.

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Annex 13. HMO, *Amendment Authorization No. 521010*, 31 October 2023.

Annex 14. HMO, *Precautionary Notice No. 038/2023*, 31 October 2023.

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Annex 16. Decentralized Administration in Foreign Trade Audit of the Northeast (ADACEN), based in Nuevo León, of the General Administration of Foreign Trade Audit

(AGACE), *Order for a domicile visit contained in the official letter 110-10-00-00-00-2023-272, order number CVD6000037/23*, 31 October 2023.

Annex 17. ADACEN, *Start and precautionary embargo record contained in the official letter number 110-10-00-00-00-2023-272, order number CVD6000037/23*, 1 November 2023.

Annex 18. European Dredging Company SA, *Written submission of evidence and arguments in the Administrative Procedure in Customs Matters, Order number CVD6000037/23*, 15 November 2023.

Annex 19. European Dredging Company SA, *Supplement to the Written submission of evidence and arguments in the Administrative Procedure in Customs Matters, Order number CVD6000037/23*, 12 December 2023.

Annex 20. AGACE, *Resolution in the Administrative Procedure in Customs Matters CPA6000082/23*, 15 February 2024.

Annex 21. European Dredging Company SA, *Temporary Import Permit 23 81 3182 3000533*, 31 March 2023.

Annex 22. Tenth District Court in the State of Tamaulipas, *Judgment of amparo indirecto 1240/2023*, 22 March 2024.

Annex 23. Second Collegiate Court in Administrative and Civil Matters of the Nineteenth Circuit, *Admissibility Order in the amparo en revisión 274/2024*, 12 June 2024.

Annex 24. Second Collegiate Court in Administrative and Civil Matters of the Nineteenth Circuit, *Admissibility Order in the recurso de queja file 164/2024*, 12 June 2024.

Annex 25. Tax Administration Service, *Official letter 600-04-03-10-00-2024-49102*, 18 June 2024.

Annex 26. Tenth District Court in the State of Tamaulipas, *Minutes of the incidental hearing in amparo indirecto 1240/2023*, 30 November 2023.

Annex 27. European Dredging Company, *Withdrawal of recurso de revisión 61/2024*, 7 May 2024.

Annex 28. ADACEN, *Official letter No. 2226*, 1 November 2023.

Annex 29. Tampico Customs Office, *Official letter No. 2254*, 8 November 2023.

Annex 30. Institute to Return the Stolen Goods to the People, *Official letter DCJ/DEJC/0574/2024*, 17 June 2024.

Annex 31. Portum 21 Multipurpose Terminal, *Record of port service providers for repair and maintenance that, upon request, have been granted to the Zheng He*, from 3 November 2023.

Annex 32. Portum 21 Multipurpose Terminal, *Records TTM-PP-PS15.3.2.13-f1, entitled "Crew Entry/Exit Record"*, from 3 November 2023.

Annex 33. Portum 21 Multipurpose Terminal, *Record of the facilities granted to the Zheng He to receive provision supplies, organic waste disposal services, inorganic waste disposal services, fuel and lubricant supply services, wastewater collection services, oily water collection services, and potable water supply services*, from 3 November 2023.

Annex 34. Plenary of the Second Collegiate Court in Administrative and Civil Matters of the Nineteenth Circuit, *Judgment of complaint 390/2023*, 27 November 2023.

Annex 35. Embassy of the Grand Duchy of Luxembourg to Mexico, *Note 011-MEX-O-NV-2023*, 7 November 2023.

Annex 36. Embassy of the Grand Duchy of Luxembourg to Mexico, *Note 012-MEX-O-NV-2023*, 14 November 2023.

Annex 37. Embassy of the Grand Duchy of Luxembourg to Mexico, *Note 003-MEX-O-NV-2024*, 17 January 2024.

Annex 38. Embassy of the United Mexican States to the Grand Duchy of Luxembourg, *Note UEU0744*, 20 March 2024.

Annex 39. Ministry of Foreign and European Affairs of the Grand Duchy of Luxembourg, *Note 848x2c0ce*, 29 March 2024.

Annex 40. Ministry of Foreign and European Affairs of the Grand Duchy of Luxembourg, *Note 848x97e7e*, 29 April 2024.