

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2024

Public sitting

held on Thursday, 11 July 2024, at 10 a.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President Tomas Heidar presiding

The “Zheng He” Case

(Request for provisional measures)

(Luxembourg v. Mexico)

Verbatim Record

<i>Present:</i>	President	Tomas Heidar
	Vice-President	Neeru Chadha
	Judges	José Luís Jesus
		Boualem Bouguetaia
		David Joseph Attard
		Markiyán Z. Kulyk
		Óscar Cabello Sarubbi
		Kriangsak Kittichaisaree
		Roman Kolodkin
		Liesbeth Lijnzaad
		María Teresa Infante Caffi
		Jielong Duan
		Kathy-Ann Brown
		Ida Caracciolo
		Maurice K. Kamga
		Frida María Armas Pfirter
		Hidehisa Horinouchi
		Thembile Elphus Joyini
		Zha Hyoung Rhee
		Osman Keh Kamara
		Konrad Marciniak
	Judges <i>ad hoc</i>	Alberto Székely y Sánchez
		Marcelo Gustavo Kohen
	Registrar	Ximena Hinrichs Oyarce

Luxembourg is represented by:

Ms Annabel Rossi, Head of Legal Affairs, Legislation and Approvals, Maritime Administration, Ministry of the Economy,

as Agent;

and

Ms Mathilde Frappier, Professor of Law, Professor of Public International Law, University of Lorraine, France,

Mr Olivier Cachard, Professor of Law, Professor of Private International Law, University of Lorraine, France, member of the Board of Directors, French Association of Maritime Law (founding association of the International Maritime Committee),

Mr Alain Germeaux, Director of Legal Affairs, Ministry of Foreign and European Affairs, Defence, Cooperation and Foreign Trade,

Ms Elisabeth Relave-Svendsen, Deputy Director of Legal Affairs, Maritime Administration, Ministry of the Economy,

Mr Tobias Schell, Legal Adviser, Ministry of Foreign and European Affairs, Defence, Cooperation and Foreign Trade,

as Counsel and Advocates;

Mr André Hansen, Government Commissioner for Maritime Affairs,

Mr Marc Siuda, Deputy Government Commissioner for Maritime Affairs,

Ms Elma Bakovic, Policy Officer, Ministry of Foreign and European Affairs, Defence, Cooperation and Foreign Trade,

as members of the delegation.

Mexico is represented by:

Mr Alfonso Ascencio Herrera, Minister and Deputy Chief of Mission, Embassy of Mexico to the Kingdom of the Netherlands, The Hague, The Netherlands,

as Co-Agent;

and

Mr Carlos Antonio Cruz Carrillo, PhD Researcher, University of Basel, Switzerland,

as Counsel and Advocate.

1 **THE PRESIDENT:** The Tribunal meets today pursuant to article 26 of its Statute to
2 hear the Parties' arguments in the "*Zheng He*" Case between the Grand Duchy of
3 Luxembourg and the United Mexican States, Provisional Measures.

4
5 On 4 June 2024, Luxembourg instituted proceedings before the International
6 Tribunal for the Law of the Sea against Mexico in a dispute regarding the vessel
7 "*Zheng He*". The case was entered into the List of cases of the Tribunal as Case
8 No. 33.

9
10 On 7 June 2024, Luxembourg submitted to the Tribunal a request for the prescription
11 of provisional measures in accordance with article 290, paragraph 1, of the United
12 Nations Convention on the Law of the Sea.

13
14 I now call on the Registrar to summarize the procedure and to read out the
15 submissions of the Parties.

16
17 **THE REGISTRAR:** On 7 June 2024, a copy of the Request for the prescription of
18 provisional measures was transmitted to the Government of Mexico. By order of
19 13 June 2024, the President fixed the dates for the hearing as 11 and 12 July 2024.

20
21 On 3 July 2024, Mexico submitted a statement in response to the Request of
22 Luxembourg. I will now read the submissions of the Parties. The Applicant requests
23 that the Tribunal prescribe the following provisional measures:

24
25 I quote (*Interpretation from French*):

26
27 1. In order to preserve the fundamental rights and freedoms of the crew:

28
29 - Order Mexico to continue to ensure the freedom of movement of the crew members
30 off the vessel and their access to health-care facilities, places of worship and
31 recreational facilities;

32
33 - Order Mexico to continue to ensure that there will be no impediments to the
34 renewal of the crew and the necessary rotations;

35
36 - Order Mexico to continue to ensure that the crew will not be compelled by law
37 enforcement agencies to disembark from the vessel, nor be prevented from
38 re-embarking the vessel;

39
40 2. In order to safeguard the rights of Luxembourg as the flag State:

41
42 - Order Mexico to allow Luxembourg to effectively exercise its jurisdiction and control
43 in administrative, technical and social matters over the vessel, and to enable any
44 measures necessary for the preventive and corrective maintenance of the "*Zheng*
45 *He*" in order to ensure its compliance with the national, European and international
46 standards applicable to vessels flying the flag of Luxembourg;

47
48 - Prohibit Mexico from directly or indirectly operating the vessel "*Zheng He*", prohibit
49 Mexico from taking any measures to create or transfer real rights to the vessel and
50 from changing the flag of the vessel "*Zheng He*";

1 3. In order to avoid aggravating or extending the dispute:

2
3 - Prohibit Mexico from collecting the customs fine of 1,616,462,343.52 Mexican
4 pesos imposed on European Dredging Company SA;

5
6 - Prohibit Mexico from detaining, confiscating and expropriating, under any
7 proceeding whatsoever, vessels related to the vessel “*Zheng He*” flying the flag of
8 Luxembourg, whether they be the property of European Dredging Company SA, its
9 parent company SOFIDRA, or any other subsidiary of SOFIDRA;

10
11 - Prohibit Mexico from instituting new national proceedings or new actions against
12 the “*Zheng He*”, European Dredging Company SA, its parent company SOFIDRA or
13 any other subsidiary of SOFIDRA;

14
15 4. In order to ensure equality of the parties in the proceedings before the Tribunal:

16
17 - Authorize the agents of Luxembourg to conduct on the territory of Mexico, without
18 restriction, any investigations in connection with the present proceedings, in
19 particular to ascertain the condition of the vessel “*Zheng He*” and to collect any
20 relevant evidence;

21
22 - Transmit to Luxembourg, at its request, and after examination by the Tribunal, the
23 information and documents to which Luxembourg was unable to gain access relating
24 to the non-contentious and contentious proceedings under Mexican law concerning
25 the “*Zheng He*”, including forthwith:

26
27 - The identification of the berths in the Port of Tampico, with official and/or customary
28 names, and the GPS coordinates of the endpoints of each berth;

29
30 - The regulatory texts of Mexico in force on 21 October 2023 that were officially
31 published relating to the tax and customs regime of each berth in the port of
32 Tampico.

33
34 *(Continued in English)* The respondent requests “the International Tribunal for the
35 Law of the Sea to reject Luxembourg’s application for provisional measures.”

36
37 **THE PRESIDENT:** Thank you, Madam Registrar.

38
39 At today’s hearing, both Parties will present the first round of their oral arguments.
40 Luxembourg will make its arguments this morning until approximately 1 p.m. with a
41 break of 30 minutes at around 11:30 a.m.

42
43 Mexico will speak this afternoon from 3 p.m. until approximately 6:00 p.m. with a
44 break of 30 minutes at around 4:30 p.m.

45
46 Tomorrow will be the second round of oral arguments, with Luxembourg speaking
47 from 9:30 to 11:00 a.m. and Mexico speaking from 4:30 to 6:00 p.m.

48
49 I note the presence at the hearing of Agent, Co-Agents, Counsel and Advocates of
50 the parties.

1 I now call on the Agent of Luxembourg, Ms Annabel Rossi, to introduce the
2 delegation of Luxembourg.
3
4 **MS ROSSI:** (*Interpretation from French*) Mr President, members of the Tribunal, it is
5 a great honour to appear before your Tribunal on behalf of the Grand Duchy of
6 Luxembourg.
7
8 Allow me to introduce to you the delegation from the Grand Duchy of Luxembourg.
9
10 With me are Mr André Hansen, Government Commissioner for Maritime Affairs, and
11 his deputy Mr Marc Siuda; Ms Elma Bakovic, legal adviser at the Ministry of Foreign
12 Affairs.
13
14 As Advocates and Counsel, Professor Mathilde Frappier, Professor Olivier Cachard,
15 Ms Elisabeth Relave, legal adviser at the Maritime Administration, Mr Alain
16 Germeaux, chief legal adviser at the Ministry of Foreign Affairs, and Mr Tobias
17 Schell, legal adviser to the Ministry of Foreign Affairs.
18
19 I can confirm that the records sent by the Tribunal regarding the names and
20 functions of the various members of the delegation are correct.
21
22 Thank you, Mr President.
23
24 **THE PRESIDENT:** Thank you, Ms Rossi.
25
26 We have been informed that the Agent of Mexico, Mr Alejandro Celorio Alcántara,
27 will not be present at the hearing. I therefore call on the Co-Agent of Mexico,
28 Mr Alfonso Ascencio Herrera, to introduce the delegation of Mexico.
29
30 **MR ASCENCIO HERRERA:** Thank you, Mr President.
31
32 Mr President, Madam Vice President, members of the Tribunal.
33
34 It is certainly one of the highest honours in my career to appear before you.
35
36 It is equally a privilege to do so on behalf of Mexico, and also on behalf of Mexico's
37 Agent, Mr Alejandro Celorio, legal adviser at the Mexico's Ministry of Foreign Affairs,
38 who is regrettably unable to be here during these hearings, for reasons known to
39 you.
40
41 Mr President, allow me to introduce Mr Carlos Cruz Carrillo, who will be acting as
42 Counsel and Advocate in these proceedings.
43
44 Mr Cruz and I will be formulating the oral arguments of Mexico in these hearings.
45 Thank you, Mr President.
46
47 **THE PRESIDENT:** Thank you, Mr Ascencio Herrera.
48
49 I now request the Agent of Luxembourg, Ms Rossi, to begin her statement.
50

1 **MS ROSSI:** (*Interpretation from French*) Thirty-four years ago, Luxembourg
2 established a public maritime registry by the Law of 9 November 1990. Our maritime
3 flag scrupulously respects all international conventions in matters relating to the
4 environment, safety and labour law applicable to seafarers.

5
6 There are currently 206 vessels flying the Luxembourg flag.

7
8 The dispute between the Grand Duchy of Luxembourg and the United Mexican
9 States was triggered by the abusive detention of the “*Zheng He*” in November 2023
10 by the Mexican customs authorities.

11
12 The “*Zheng He*” is a modern, highly technical dredger.

13
14 Since it was first began operations in 2010, it has sailed various seas around the
15 globe, flying the Luxembourg flag at all times.

16
17 On 1 November 2023, it was detained and then definitively confiscated by the
18 Mexican customs authorities. This occurred when the vessel was calling at the port
19 of Tampico, for nautical reasons, during an open-seas voyage from the Bahamas.

20
21 This detention was highly surprising to the Luxembourg authorities, for various
22 reasons:

23
24 - surprising because of the cordial relations between Luxembourg and Mexico in
25 other areas;

26
27 - surprising because of the unprecedented nature of such a measure, even though
28 vessels flying the Luxembourg flag often call in Mexico;

29
30 - surprising because of the lack of diplomatic action by Mexico, which is in contrast to
31 its obstinacy in internal procedures.

32
33 In its written submissions, Mexico presents a biased version of the facts and seeks
34 to confine the dispute within its domestic context. Mexico unbudgingly invokes its
35 sovereignty in order to avoid having to apply the rules of international law of the sea.
36 Luxembourg, for its part, contends that this sovereignty must be exercised within the
37 framework of international law and the Convention in particular.

38
39 Mexico would have us believe that this dispute concerns solely the shipowner, but in
40 fact, it concerns:

41
42 - the rights of navigation of the flag State; and

43
44 - the right to protect the unit that the vessel with its seafarers and its owner form.

45
46 Luxembourg is legitimately defending its rights.

47
48 *Prima facie*, the jurisdiction of your Tribunal to examine the merits is established.
49 The Tribunal may therefore impose provisional measures in a situation of urgency,
50 which is the currently the case for the “*Zheng He*”.

1 The rights claimed by Luxembourg are plausible, as we will demonstrate during this
2 hearing.

3
4 These rights include the right of innocent passage, the right to equal treatment in
5 maritime ports and protection against the abuse of rights.

6
7 Furthermore, these rights are subject to a real and imminent risk of severe and
8 irreparable prejudice.

9
10 Because Mexico has exclusive control within its borders, it has the means at its
11 disposal to aggravate or extend the dispute at any time.

12
13 The Registrar has recalled the provisional measures requested by Luxembourg.

14
15 Mr President, with your permission, the Luxembourg delegation will explain why the
16 provisional measures are necessary in order to avoid irreparable harm to the rights
17 held by Luxembourg under the Convention. We will show that all the conditions laid
18 down in article 290, paragraph 1, are met.

19
20 The oral pleadings this morning will be organized as follows: I shall, first of all, set
21 out the facts in more detail; I will then ask you to call Professor Mathilde Frappier
22 who will cover questions of jurisdiction, and then Professor Olivier Cachard will end
23 the pleadings by examining in particular the question of urgency.

24
25 After introducing the case, my task at present, Mr President, members of the
26 Tribunal, is to present the facts that have led to the detention of the vessel. I in no
27 way intend to impinge on the discussion of the merits which will be carried out before
28 you at a later stage of these proceedings. Rather, as part of our request for the
29 prescription of provisional measures, we wish to explain to the Tribunal the key facts
30 and to set the record straight regarding these established facts, in response to the
31 selective and biased presentation given by Mexico in its written statement.

32
33 I will begin by describing the characteristics of the vessel and the circumstances
34 which led to its open-seas voyage from the Bahamas to the Tampico roadstead. I will
35 continue by describing how the navigational authorities abusively detained the
36 “*Zheng He*” *de facto* even before detaining it *de jure*.

37
38 I will then underline the unprecedented and unforeseeable nature of the abusive
39 conduct of Mexico.

40
41 The “*Zheng He*” was built in 2010, and it has flown the Luxembourg flag ever since it
42 was first put into operation.

43
44 It is a modern vessel, in perfect condition when it entered Tampico. It was regularly
45 maintained, including with periodic dry docking and major floating repairs, most
46 recently in Portugal in 2020, carried out in naval shipyards selected by the shipowner
47 according to their specialization, their availability and the market price.

48
49 The vessel has been continuously monitored, in terms of its classification and its
50 statutory certification, by Bureau Véritas, an internationally renowned body which is

1 also a member of the International Association of Classification Societies. The vessel
2 “Zheng He” has the best possible classification from Bureau Véritas for the hull as
3 well as for its machinery,¹ valid until 21 October 2025 as long as the schedule of
4 visits is respected. Bureau Véritas has the ultimate prerogative to issue statutory
5 certification where so delegated by Luxembourg.

6
7 With its double steel hull, the “Zheng He” is suitable for open-seas navigation without
8 any geographical restrictions. Since it first came into operation, “Zheng He” has
9 exercised its freedom of navigation without the least restriction before being
10 abusively detained by Mexico.

11
12 I should also add that the “Zheng He” is not a vessel that transports goods and
13 therefore cannot be compared to a simple bulk carrier. It is a highly technical service
14 vessel used to segregate, pump and then discharge sediment.

15
16 This means that it needs very complex mechanical equipment and this complexity is
17 illustrated in this vessel presentation brochure, prepared by the shipowner himself
18 and which is now displayed on the screen.

19
20 Let us turn now to the open-seas voyage during which the “Zheng He” was detained.
21 The timeline is of the highest importance here, and we should not omit any steps.

22
23 During September 2023, the owner of the “Zheng He” decided to leave the Bahamas
24 because September and October are the high points of the hurricane season, which
25 ends in November. It intended to seek shelter in the Gulf of Mexico, carry out
26 maintenance operations and accept a short-term service contract for dredging
27 should the opportunity arise. The intention was to return to the Bahamas in
28 December 2023 for the dry season, with new dredging contracts in the Bahamas for
29 2023 and 2024.

30
31 When it left the Bahamas, on 5 October 2023, the “Zheng He” received a Certificate
32 of Clearance Outwards, which is a mandatory document issued by the departure
33 State’s customs authorities in return for the departure declaration authorizing the
34 vessel to cast off.

35
36 In maritime practice, the reference given after the adverb “for” designates an
37 indicative foreign destination. It does not in any way characterize the commercial or
38 nautical purpose of the planned stopover and does not oblige the vessel to
39 effectively call into port at that destination. In no case, and contrary to the fallacious
40 argument of Mexico, does this reference determine the final destination of the
41 voyage; it is quite simply the next possible port of call.

42
43 We should also emphasize that the certificate clearly indicates that the vessel was
44 only in ballast and not transporting any merchandise.

45

¹ According to the Bureau Véritas classification rules: “The class symbol I is assigned to ships built in accordance with the requirements of the Rules or other rules recognised as equivalent, and maintained in a condition considered satisfactory by the Society” (...) “The class symbol I is to be understood as being the highest class granted by the Society”.

1 On 9 October 2023, before the arrival of the vessel in the area, the Mexican agent
2 for the vessel sent the customs authorities in Mexico a preliminary notice of arrival of
3 an open-seas vessel in Tampico. This notification, sent on a precautionary basis by
4 the agent, reserved two possible purposes for the call in port: a nautical purpose
5 mentioned primarily, namely, for a crew changeover and provisioning; a hypothetical
6 commercial purpose mentioned secondarily, which would in that case require a
7 “temporary import” procedure.

8
9 This document drawn up by the agent in Mexico was in fact prepared each and
10 every time, almost automatically.

11
12 On 11 October 2023, the “*Zheng He*” vessel was at anchorage in the Gulf of Mexico
13 without having entered internal waters.

14
15 On 17 October 2023 when the vessel was still waiting at the roadstead and had not
16 entered the port, the maritime agent for the vessel notified the Mexican port
17 authorities that the purpose of the stopover in Tampico was to carry out a number of
18 operations necessary for the continuation of the maritime voyage, namely, to change
19 the crew, to provision the vessel, to discharge and remove wastewaters, and to
20 perform preventive maintenance. This request made no mention whatsoever of any
21 service contract for dredging, either in Tamaulipas or in Mexico, or of any temporary
22 import. It was explicitly a call in port which was strictly nautical, as part of an
23 open-seas voyage.

24
25 On 21 October 2023, the port authorities granted the “*Zheng He*” authorization to
26 enter the port and indicated berth No. 3.

27
28 On 23 October 2023, when the vessel had just docked at berth No. 3, the agent for
29 the vessel confirmed to the Mexican customs authorities that the call in port was
30 carried out “for the sole purpose of provisioning the vessel, changing over the crew,
31 and for preventive maintenance, while remaining at the disposition of the authorities
32 for any further instructions”. This evidence is crucial and it is deliberately being
33 ignored by Mexico, understandably, because it confirms that the agent, acting on an
34 express mandate of the shipowner, was categorically excluding any commercial
35 purpose for this call in port.

36
37 Thus, even before fiscal procedure were initiated against the vessel, there is no
38 doubt that the exclusively nautical nature of the stopover in Tampico was known to
39 the Mexican administration, including customs. I would add here that article 5 of the
40 rules of the port provides that the customs administration sits on the operating
41 committee for the port of Tampico, ruling on the port schedule and the allocation of
42 berths. It should be noted that these meetings are held three times a week.

43
44 Whatever the domestic legal qualifications under Mexican law, the Mexican
45 authorities were therefore informed quite clearly of the following facts:

- 46
47 - The vessel was flying the Luxembourg flag;
48
49 - The vessel was navigating from the Bahamas;

- 1 - The vessel was engaged in open-sea navigation;
2
3 - The intended call in port had only one purpose, which was not commercial but
4 nautical.

5
6 When the vessel docked in berth No. 3, in line with the instructions of the port
7 authorities, it was then accused of being docked at a berth whose fiscal regime was
8 not meant for open-seas vessels.

9
10 I refer the Tribunal here to the first fine imposed on 24 October 2023, annex 11.

11
12 The “*Zheng He*” then requested authorization to shift to a different berth to be in
13 compliance with customs regulations. This authorization was granted on 31 October
14 2023 for movements scheduled the next day on 1 November.

15
16 But just when it seemed that this authorization had been granted, the Mexican
17 authorities organized a *de facto* and *de jure* detention of the vessel.

18
19 On the one hand, on 31 October, the customs authorities hastily prepared an
20 onboard visit on the “*Zheng He*”.

21
22 On the other hand, on the same day, 31 October, the port authorities published a
23 new warning notice recommending the suspension of navigation on the Rio Pánuco.
24 As a result, the movement of the “*Zheng He*” intended to shift it to berth No. 6 on
25 1 November could not take place.

26
27 A statement from the port pilots shows that they arrived to carry out the movement
28 but were stopped from proceeding by the harbour master’s office.

29
30 Clearly, the weather had not prevented the two tugs from moving, but the pilots had
31 received an order by radio from the harbour master’s office not to shift the
32 “*Zheng He*”.

33
34 Furthermore, observing improved weather conditions, the harbour master’s office
35 suspended the warning notice shortly afterwards and again authorized internal
36 movements as of 10 o’clock. Taking advantage of this opportunely orchestrated *de*
37 *facto* detention, the customs administration agents turned up immediately to detain
38 the vessel.

39
40 After being detained *de facto*, the “*Zheng He*” was then detained *de jure*, following a
41 logical process gradually aggravating the dispute.

42
43 The first step was the declaration of a precautionary seizure of the vessel by the
44 Mexican customs authorities on 1 November 2023, placing the vessel “under the
45 custody and surveillance of the Tampico customs authorities”.

46
47 This precautionary seizure took place when the vessel was not intending to return to
48 sea immediately because it planned to carry out maintenance operations in port for
49 three or four weeks.

50

1 It occurred even though the vessel had promptly settled the first customs fine that
2 had subsequently been imposed. The precautionary seizure, therefore, was not
3 necessary.

4
5 As to import duties, even assuming they were due, would have come to just a few
6 hundred US dollars. In fact, in March 2023, in the same port and for the same
7 vessel, the duties were 750 dollars.

8
9 The second step was the expropriation of the vessel via an administrative decision of
10 15 February 2024. With this decision, the Mexican customs authorities intended to
11 transfer ownership of the “*Zheng He*” to the Federal Administration of Mexico.

12
13 Mexico continues to stand by the validity of this decision and its imminent
14 enforcement.

15
16 The third step is the imposition of an exorbitant fine, the value of which is close to the
17 value of the vessel itself. This fine, on top of the seizure and definitive confiscation of
18 the vessel, has meant that, potentially, all the vessels of the same owner flying the
19 Luxembourg flag are under a sword of Damocles of another seizure.

20
21 This is not the first time that a service vessel flying the Luxembourg flag has called
22 into port in Mexico, in its territorial or internal waters. It was not the first time that a
23 service vessel had called into port for nautical reasons. But it is the first time that
24 such a port call has led to a maritime dispute between States on account of the
25 infringement of the rights of our flag by the unprecedented conduct of the coastal
26 State, characterized by:

27
28 - the placement of the vessel in a bind between the port authorities and the customs
29 authorities, which, together, acted in concert to detain the vessel and interrupt its
30 open-seas voyage;

31
32 - the impossibility for the vessel, acting in good faith to regularize its situation, even
33 supposing that its situation is unlawful;

34
35 - the imposition of penalties of unprecedented severity: expropriation of the vessel,
36 together with an exorbitant fine, which is a threat to the whole of the fleet.

37
38 Mr President, I would ask you now to call Professor Mathilde Frappier.

39
40 **THE PRESIDENT:** Thank you, Ms Rossi. I now give the floor to Ms Mathilde
41 Frappier.

42
43 **MS FRAPPIER:** (*Interpretation from French*) Mr President, members of the Tribunal,
44 it's a great honour for me to appear before you today.

45
46 On behalf of the Grand Duchy of Luxembourg, my task is twofold: first of all, I will
47 introduce the position of the Government of Luxembourg as concerns the jurisdiction
48 of your Tribunal.

1 I will then, together with Professor Olivier Cachard, demonstrate that the rights
2 claimed by Luxembourg, and whose protection it is requesting here, are plausible
3 and are at real and imminent risk.

4
5 Let me first start by addressing the issues relating to the jurisdiction of your Tribunal.

6
7 It is indisputable and unchallenged by Mexico, that on 3 June 2024, the date on
8 which Luxembourg filed its application instituting proceedings, both countries were
9 party to the United Nations Convention on the Law of the Sea and that they had,
10 pursuant to article 287, paragraph 4, chosen the same procedure before your
11 Tribunal to settle any dispute concerning the interpretation or application of the
12 Convention.

13
14 As Ms Rossi, the Agent for Luxembourg has just told you, the dispute concerns the
15 abusive and discriminatory enforcement of a customs procedure against the “*Zheng*
16 *He*” while it was lawfully availing itself of the rights and freedoms established in the
17 Convention.

18
19 This customs procedure led to the prolonged detention of the ship in the port of
20 Tampico and the levying of an exorbitant fine on its owner.

21
22 As I will show you, such a dispute concerns the interpretation and application of the
23 Convention and, therefore, comes under the compulsory jurisdiction of your Tribunal.

24
25 Under article 49 of the Rules, the proceedings must be “conducted without delay”.
26 However, this involves a written and an oral phase and a number of months may
27 elapse before a final decision is rendered. In cases of urgency, such as this one
28 involving the “*Zheng He*”, waiting so long could be problematic.

29
30 For this reason, article 290, paragraph 1, of the Convention provides that if a dispute
31 has been duly submitted to your Tribunal, and so long it considers *prima facie* that it
32 has jurisdiction, the Tribunal “may prescribe any provisional measure which it
33 considers appropriate under the circumstances to preserve the respective rights of
34 the parties to the dispute”. And it is precisely to preserve its rights under the
35 Convention that Luxembourg filed a request for the prescription of provisional
36 measures on 7 June 2024.

37
38 In the next few minutes, Mr President, members of the Tribunal, I will demonstrate to
39 you, first of all, that there is indeed a dispute between Mexico and Luxembourg;
40 secondly, that this dispute concerns the interpretation and application of the United
41 Nations Convention on the Law of the Sea; and lastly, that Luxembourg has indeed
42 fulfilled the conditions set by the Convention by trying, in vain, to find an amicable
43 settlement prior to submitting the case to the Tribunal.

44
45 First of all, there is a dispute between Mexico and Luxembourg. In other words,
46 quoting the *Mavrommatis Palestine Concessions* definition, “there is a disagreement
47 on a point of law or fact, a conflict of legal views or of interests” between the parties.

48
49 In the case of the *Land and Maritime Border between Cameroon and Nigeria*, the
50 International Court of Justice added: “The positive opposition of the claims of one

1 party by the other must not necessarily be stated *expressis verbis* in the
2 determination of the existence of a dispute. The position or the attitude of a party can
3 be established by inference.”

4
5 In the case of the *Application of the International Convention on the Elimination of All*
6 *Forms of Racial Discrimination*, the same court added that “the existence of a
7 dispute may be inferred from the failure of a State to respond to a claim in
8 circumstances where a response is called for.”

9
10 The Tribunal itself recognized that disputes may exist without their being formally
11 expressed but on account of the attitude or conduct of one of the parties. In the *M/V*
12 *“Norstar”* case, you considered that Italy could not “rely on its silence to cast doubt
13 on the existence of a dispute” and that “the existence of such a dispute can be
14 inferred from one party’s failure to respond to questions raised by the other regarding
15 the detention of the vessel.”

16
17 Similarly, in the *M/T “San Padre Pio”* case, you considered that “[t]he fact that the
18 Nigerian authorities intercepted, arrested and detained the *M/T “San Padre Pio”* and
19 commenced criminal proceedings against it and its crew members indicates that
20 Nigeria holds a different position from Switzerland”.

21
22 In the case of the *“Zheng He”* that concerns us now, Luxembourg expressed its
23 position to Mexico on a number of occasions. Although the Luxembourg authorities
24 were informed of the coercive measures against the ship only by the owner itself and
25 not directly by the Mexican authorities, the Luxembourg authorities nevertheless sent
26 an initial note verbale on 7 November 2023, and you will see extracts from the note
27 verbale on the screen. The position of Luxembourg was already clearly stated
28 therein: the *“Zheng He”* is a Luxembourg-flagged ship, not mere merchandise. Its
29 treatment by the Mexican authorities must comply with international law. Both these
30 claims relating to the nature of the ship, which flies the Luxembourg flag, and to the
31 application of international law to the situation was restated in a subsequent note
32 verbale on 14 November 2023, which you can also see extracts from on the screen.

33
34 For its part, Mexico stayed silent for a long period, refusing to change its conduct, in
35 fact insisting on enforcing the contested customs procedure on the *“Zheng He”*.
36 Thus, on 15 February 2024 the Mexican authorities adopted a resolution imposing
37 an exorbitant customs fine and, in addition, transferring its ownership to the Mexican
38 Treasury.

39
40 Such a resolution is surprising given the usual practice of the Mexican authorities.
41 This was noted by the international law firm Jones Day in a legal opinion dated
42 15 May 2024, which highlights the absence of any known precedent. You have an
43 extract of the opinion here up on the screen.

44
45 However, at the time Mexico was adopting the resolution of 15 February, Mexico
46 could not have been unaware that the ship was flying the flag of Luxembourg and
47 that the Luxembourg authorities were particularly concerned by the situation, seeing
48 as two notes verbales requiring the application of international law had already been
49 sent.

1 Apart from the resolution of 15 February 2024, Mexico subsequently took a number
2 of measures that left no doubt that it was rejecting Luxembourg's claims. Although
3 the District Court of Tamaulipas annulled the customs procedure, Mexico refused to
4 release the ship despite the fact that the Port of Tampico had indeed been notified of
5 the annulment.

6
7 Mexico then lodged an appeal against this decision annulling the resolution, in rather
8 remarkable circumstances: the appeal was to be lodged before 12 April 2024, but it
9 made its way to the relevant court only on 22 May 2024 without any explanation from
10 Mexico. This is what you can see from the written submissions of Mexico and what
11 we are showing on the screen. Mexico is now even saying that it has asked the
12 Supreme Court to deal with the case.

13
14 Generally speaking, the Tribunal will, I am sure, note the sudden acceleration of
15 domestic proceedings that have occurred since Luxembourg filed its application
16 instituting proceedings before the Tribunal, as if to substantiate the claim that it is a
17 domestic issue that could be resolved only in the Mexican courts.

18
19 But on the contrary, it shows the bind in which the ship now finds itself, the
20 precarious position it is in, faced with the activities of a complex judicial system and
21 the risk of it dragging on should the Tribunal avert its gaze from this case.

22
23 Moreover, in addition to these measures that clash head on with the claims of
24 Luxembourg, Mexico has officially referred Luxembourg back to the local legal
25 remedies without mentioning in any way whatsoever the application of international
26 law. This was done in its single note verbale sent on 20 March 2024, document
27 MC29.

28
29 There is, therefore, absolutely no doubt that the dispute between the two States has
30 indeed crystallized. They are in disagreement over the facts and the law as to
31 whether the enforcement by Mexico of this disputed customs procedure against the
32 "*Zheng He*" has indeed breached Mexico's international obligations vis-à-vis
33 Luxembourg.

34
35 In fact, Luxembourg claims that the ship never intended to proceed with a temporary
36 import as it entered Mexico's territorial sea but that it was only exercising the rights
37 and freedoms guaranteed under the Convention, more specifically, the right of
38 innocent passage.

39
40 In law, Luxembourg claims that the abusive and discriminatory reaction by the
41 Mexican authorities breaches its own rights derived from the Convention as the flag
42 State of the "*Zheng He*".

43
44 The assertion by Mexico in its written submissions of 3 July, claiming the dispute is
45 of a purely domestic nature and referring solely to its national judicial bodies,
46 confirms the opposition between the States. Let us be clear: Luxembourg is asking
47 for nothing more than the interpretation and application of the Convention. More
48 specifically, Luxembourg is not in any way, shape or form requesting that your
49 Tribunal opine on the compliance of Mexico's conduct with Mexican customs law. All
50 of Mexico's arguments relating to the applicable national rules and laws as concerns

1 temporary import and the corresponding remedies are therefore irrelevant. Their sole
2 aim is to distract the Tribunal and to distort the nature of the case brought before you
3 by Luxembourg.

4
5 Let us reiterate: it is not the application of Mexican customs legislation, in principle,
6 that is at issue for Luxembourg. Rather, it is the abusive and discriminatory manner,
7 in infringement of certain rights guaranteed by the Convention, in which this
8 legislation has been applied to the specific situation of the “*Zheng He*” since 2023.
9 Mexico’s explanation, *in abstracto*, of the temporary import procedure and the
10 available domestic remedies is therefore irrelevant. Similarly, it makes no difference
11 that the “*Zheng He*” was able to use the temporary import procedure in the past.

12
13 The case brought before you involves a foreign-flagged vessel which wishes to
14 exercise its rights and freedoms guaranteed by the Convention. The ship was
15 detained, seized, confiscated. The owner was deprived of any reasonable way of
16 regularizing the situation and has been subjected to an exorbitant fine which may
17 affect the lawful activities of other Luxembourg-flagged ships in waters under
18 Mexico’s jurisdiction.

19
20 It cannot reasonably be said that there is no relation to the Convention in this case,
21 which brings me to my second point.

22
23 The opposition between Luxembourg and Mexico manifestly concerns the
24 interpretation or application of the Convention. More specifically, it concerns the
25 rights and obligations of the flag State relating to its ships and the rights and
26 obligations of coastal States relating to foreign ships, including in its internal waters,
27 maritime ports and territorial sea.

28
29 In short, the dispute concerns the compliance of the procedure with the Convention
30 while it was enforced on the “*Zheng He*”, which was sailing and calling in port in
31 Mexican waters for a purely maritime purpose.

32
33 Mexico opposes the very applicability of the Convention, while Luxembourg defends
34 it and claims that Mexico breached a number of specific provisions of the
35 Convention, including those relating to the jurisdiction of a State over its internal
36 waters, the right of innocent passage and those that prohibit discrimination of
37 landlocked countries, and abuse of rights.

38
39 The Tribunal is not being called upon today to decide whether Mexico has indeed
40 breached any of its obligations under the Convention. That is something that could
41 be ruled upon and done only at the merits phase of the case.

42
43 At this stage concerning an order on a request for provisional measures, the Tribunal
44 must determine whether the acts and omissions which Luxembourg alleges are likely
45 to come under the provisions of the Convention, or whether some provisions of the
46 Convention invoked by Luxembourg seem to provide a basis on which the Tribunal
47 may establish its jurisdiction. This *prima facie* standard is well established in your
48 jurisprudence. You restated it fairly recently in the “*San Padre Pio*” case.

1 In the view of Luxembourg, there is no doubt that some acts and omissions alleged
2 against Mexico can and are likely to come under the provisions of the Convention.

3
4 Among these acts alleged against Mexico is the precautionary seizure of
5 1 November 2023 and the adoption of the resolution of 15 February 2024
6 transferring ownership of the ship and imposing an exorbitant fine in application of
7 Mexican customs legislation. All of that disregards the fact that the “*Zheng He*” flies a
8 foreign flag.

9
10 Among the omissions alleged against Mexico is the failure to release the ship and
11 failure to amend or revoke the resolution of 15 February 2024.

12
13 Among the provisions of the Convention that may serve as a basis for the Tribunal to
14 establish its jurisdiction, Luxembourg refers to article 2, paragraph 1, which
15 recognizes the coastal State’s sovereignty over its internal waters and its territorial
16 sea, combined with article 300, which prohibits the abuse of right in discharging the
17 rights and jurisdiction recognized in the Convention.

18
19 Luxembourg also refers to article 17, which establishes the right of innocent passage
20 through the territorial sea for ships of all States. In accordance with article 18, such
21 passage includes navigation through the territorial sea for the purpose of proceeding
22 to or from internal waters or a call at such roadstead or port facility.

23 Moreover, such passage includes stopping and anchoring insofar as they are
24 incidental to ordinary navigation.

25
26 Since November 2023, the “*Zheng He*” has intended to exercise only this right of
27 innocent passage on which all other navigational freedoms in the Convention hinge;
28 yet, the ship has effectively been deprived of that possibility since 1 October 2023.

29
30 Luxembourg also refers to article 131 of the Convention, which enshrines the equal
31 treatment of ships flying the flag of landlocked States in the maritime ports of other
32 States.

33
34 In the view of Luxembourg, all these provisions have been and continue to be
35 breached by this unprecedented enforcement of the customs procedure against the
36 “*Zheng He*”.

37
38 The conduct of an agent or of a body that has executive function, including the
39 ADACEN, which is a decentralized authority that initiated the contested
40 customs procedure or the harbour master’s office which authorized the docking of
41 the ship in berth No. 3 and then contributed to its prolonged detention: all of these
42 acts are attributable to the State, which must then be accountable for them given its
43 international obligations.

44
45 This is also the case when the agent or the body that acts in that capacity goes
46 beyond its authority or acts against its instructions.

47
48 Therefore, the Tribunal must find that it has *prima facie* jurisdiction to hear the case
49 of Luxembourg, as introduced in its application of 3 June 2024.

1 Which now brings me to my third point. Luxembourg has abided by the requirements
2 of Part XV of the Convention. Article 283 requires the parties to proceed
3 expeditiously to an exchange of views whenever a dispute arises concerning the
4 interpretation or application of the Convention.

5
6 When no amicable settlement is reached under article 286, it is brought at the
7 request of either party to a judicial body, such as your Tribunal.

8
9 Following the detention of its ship, Luxembourg swiftly sought to initiate discussions
10 with the Mexican authorities. It sent, as early as November 2023, two notes verbales,
11 clearly stating its position.

12
13 Together with these notes verbales, Luxembourg attempted to make informal contact
14 several more times with Mexican authorities to reach an amicable settlement to the
15 situation. Such contact was established at various levels.

16
17 For instance, on 26 January 2024, Mr Xavier Bettel, the Foreign Affairs Minister for
18 Luxembourg, exchanged text messages with his Mexican counterpart.

19
20 On the 23 February 2024, a delegation made up of the Foreign Affairs Ministry and
21 the Luxembourg Maritime Administration received the Ambassador of Mexico to the
22 Grand Duchy to discuss the situation of the *“Zheng He”*.

23
24 On 23 March 2024, there was a high-level meeting at which the Parties were once
25 again able to exchange their views on their assessment of the situation.

26
27 On the Mexican side, it was attended, among others, by the Director-General for
28 Europe from the Mexican Foreign Minister, Ms Ferrer, and on the Luxembourg side,
29 by the Ambassador of Luxembourg to Washington, Mr Bintner, who also covers
30 Mexico.

31
32 During the meeting, the Mexican party reiterated that the seizure was not arbitrary
33 and that the only way for the owner to resolve the matter was to pay the fine or use
34 legal remedies in Mexico.

35
36 Mexico, therefore, clearly stated its objection to a diplomatic settlement of the
37 dispute, referring us back to domestic legal remedies; this is confirmed in the one
38 and only note verbale sent by Mexico on 20 March 2024, of which you will see
39 extracts on the screen.

40
41 The urgency of the situation, the international and maritime aspects of the dispute,
42 have, therefore, been objected to and rejected by the Mexican party.

43
44 The same goes for the very principle of a diplomatic settlement.
45 This position taken by Mexico was all the more surprising as the two States usually
46 enjoy excellent relations.

47
48 Indeed, in May 2023, Luxembourg and Mexico signed a Memorandum of
49 Understanding establishing a mechanism of regular political consultations to
50 strengthen the ties of friendship and cooperation between them.

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In a note verbale dated 29 March 2024, Luxembourg once again tried to alert Mexico, explaining that the domestic remedies had not resolved the matter and that it was, therefore, considering using international legal remedies. Mexico did not respond.

In a final note verbale dated 29 April 2024, which is up on the screen now, Luxembourg was more pressing, and stated that it was finalizing an application to institute proceedings before your Tribunal.

On 2 May 2024, a new bilateral meeting was held in Paris, in the broader context of the OECD ministerial meeting, attended by the Mexican Finance Vice-Minister and the Vice-Prime Minister of Luxembourg, but this also did not change the situation.

Mr President, members of the Tribunal, all of Luxembourg’s attempts, including at the highest level, to reach an amicable solution have come up against the implicit or express refusal of Mexico.

The latter firmly dismisses the international maritime and urgent dimension of the “*Zheng He*” situation. Therefore, Luxembourg had no other choice than to conclude that the possibilities of reaching a friendly settlement of the dispute had been exhausted and to submit its request to your Tribunal.

Informed on several occasions of Luxembourg’s position and the possibility that the matter would be brought before your Tribunal, Mexico cannot now claim to have been caught unawares by the application that was filed.

Mexico now claims that Luxembourg, during the times it made contact, should have precisely identified the articles of the Convention concerned. At the same time, Mexico itself acknowledges in its written submissions – I refer to paragraph 120 – that (*continued in English*) “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.”

(*Interpretation from French*) I would like to recall that, already in its first note verbale of 7 November 2023, Luxembourg referred to international law of the sea, the jurisdiction of the flag State and that of the port State, while calling for a swift resolution of the dispute.

Luxembourg then systematically recalled in its successive notes verbales that the “*Zheng He*” was a vessel and that this vessel was flying the Luxembourg flag and that its situation called for a solution in accordance with international law.

If Mexico wished to obtain more specific information, it should have replied to Luxembourg’s invitation to enter into negotiations.

1 In that respect, your Tribunal has had the opportunity, on several occasions, to recall
2 that the obligation to exchange views promptly “applies equally to both parties to the
3 dispute.”¹

4
5 Therefore, a party cannot hide behind its failure to reply when attempts to exchange
6 views have been made by the other party.

7
8 The tribunal hearing the case in the *Chagos Marine Protected Area Arbitration* also
9 held the view that “Article 283 cannot be understood as an obligation to negotiate the
10 substance of the dispute.”

11
12 Moreover, Luxembourg wishes to point out to your Tribunal that during the meeting
13 which was held on 23 February 2024 with the Ambassador of Mexico to the Grand
14 Duchy, the Ambassador himself spoke about the right of innocent passage of the
15 “*Zheng He*”. The minutes of the meeting, drawn up at the time by the Luxembourg
16 party, appear on the screen. This is an extract of the minutes.

17
18 Luxembourg does not wish to create a problem for Ambassador Granguillhome, who
19 has already been particularly cooperative in this case. It recognizes the limited
20 probative value of such minutes unilaterally drawn up, but it firmly dismisses the
21 stance adopted today by Mexico. When Mexico transmitted, on 20 March 2024, that
22 is to say one month after the meeting with Ambassador Granguillhome, its note
23 verbale referring expressly to domestic remedies, it was fully aware of the fact that
24 certain provisions of the Convention are reasonably applicable to the situation in this
25 case.

26
27 Likewise, when Luxembourg indicated that it wished to bring an action before your
28 Tribunal, in its notes verbales of 29 March and 29 April 2024, it was still possible for
29 Mexico to make contact with the Luxembourg authorities and to open negotiations.
30 Luxembourg would have been more than happy to clarify its claims under the
31 Convention and to seek a diplomatic solution.

32
33 Today, Mexico is invoking its own failure to act in an attempt to oppose the
34 admissibility of the application. It is using, before your Tribunal, the same delaying
35 strategy that it is using before the domestic courts, believing that it can thereby shirk
36 its responsibility.

37
38 As I have just demonstrated, your Tribunal has *prima facie* jurisdiction to entertain
39 the dispute relating to the “*Zheng He*”. Moreover, Luxembourg’s application is
40 admissible.
41

¹ *Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore)*, Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003, p. 10, para. 38; see also *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, para. 58; *M/V “Norstar” (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 91, para. 213; *Detention of three Ukrainian naval vessels (Ukraine v. Russian Federation)*, Provisional Measures, ITLOS Reports 2018-2019, p. 304, para. 88; *M/T “San Padre Pio” (Switzerland v. Nigeria)*, Provisional Measures, Order of 6 July 2019, ITLOS Reports 2018–2019, p. 375, para. 74.

1 In its statement of 3 July 2024, Mexico puts forward lengthy arguments on available
2 domestic remedies. In so doing, Mexico continues to deny any international maritime
3 dimension to the dispute. Above all, it is attempting to introduce a condition of
4 exhausting local remedies, which is not applicable to the present proceedings.
5 Article 295 of the Convention requires exhaustion of domestic remedies only when
6 this is required under international law. Such is not the case when the remedy
7 concerns direct violations of rights which the flag State holds under the Convention.

8
9 Luxembourg's application predominantly invokes its own rights, namely, the right of
10 innocent passage, the right to equal treatment as a landlocked State, the right to
11 have the coastal State comply with article 300 when it applies its laws and
12 regulations.

13
14 Even if the violation of these rights also resulted in prejudice to private individuals
15 such as the members of the crew and the shipowner, in such a situation your
16 Tribunal systematically considers that exhaustion of domestic remedies is not
17 required, and I would like to refer to you to the "SAIGA", "Norstar" and "Virginia G"
18 cases.²

19
20 In any event, the urgency of the situation rules out consideration by your Tribunal of
21 the condition of exhausting domestic remedies at this stage of the proceedings.

22
23 Your Tribunal will not let itself be swayed by Mexico's allegations. It will in no way be
24 led to interfere with the activities of the Mexican courts, including in the event that the
25 Supreme Court were to hear the case. Mexico says so itself in its written
26 submissions: domestic remedies concern solely customs disputes and therefore are
27 between private individuals and the Mexican customs authorities. They do not hinder
28 the jurisdiction of your Tribunal in a dispute under international law of the sea and
29 between two sovereign States.

30
31 Mr President, members of the Tribunal, I have finished with *prima facie* issues of
32 jurisdiction and I would now like to turn to the question of the plausibility of the rights
33 claimed by Luxembourg.

34
35 The power of an international judicial body such as your Tribunal to indicate
36 provisional measures may only be exercised if "the rights asserted by a party are at
37 least plausible". The International Court of Justice affirmed this criterion of plausibility
38 for the first time in the *Case concerning Questions relating to the Obligation to*
39 *Prosecute or Extradite*.³ Your Tribunal adopted this criterion of plausibility of the
40 rights asserted in the case concerning the "Enrica Lexie" Incident.⁴

41
42 At this stage of the proceedings, the provisional measures stage, according to the
43 well-established case law, your Tribunal need not concern itself with the competing
44 claims of Luxembourg and Mexico nor definitively establish the existence of the

² *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999, p. 10, paras. 97 and 98. *M/V "Virginia G" (Panama/Guinea-Bissau)*, Judgment, ITLOS Reports 2014, p. 4, paras. 157 and 158. *M/V "Norstar" (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44, paras. 270 and 271.

³ Order on provisional measures of 28 May 2009, para. 57.

⁴ Order of 24 August 2015, paras. 84-85.

1 rights relied on by Luxembourg. It is necessary and sufficient for your Tribunal to
2 ensure that there is a reasonable possibility that the rights claimed by Luxembourg
3 exist.

4
5 According to Luxembourg, the detention of the “*Zheng He*”, which has now lasted for
6 more than eight months, clearly runs counter to several rights which it enjoys as the
7 flag State under the Convention. Those rights are, as I have already said, the right of
8 innocent passage, the right to equal treatment as a landlocked State and the right
9 not to be subjected to the abusive exercise by the coastal State of its jurisdiction,
10 including in internal waters.

11
12 It is in the very nature of a vessel, whatever it may be, to sail. To that end, a careful
13 balance is established by the Convention between the rights of flag States and the
14 rights of coastal States.

15
16 Mexico has violated the freedom of navigation of Luxembourg by initiating customs
17 proceedings against the “*Zheng He*”, even though the vessel was in the roadstead in
18 order to make a call for technical purposes, in the territorial sea, then at berth, in
19 internal waters, with the authorization of the Mexican authorities.

20
21 Mexico has infringed equal treatment due to vessels of landlocked States by
22 applying its customs legislation in conditions which are unprecedented, for the
23 “*Zheng He*”, for its owner and, to our knowledge, for any other foreign-flagged vessel
24 in Mexican waters and ports. The violation of the freedom of navigation is all the
25 more intolerable because it affects a landlocked State.

26
27 The particular speed with which the Mexican custom authorities took action against
28 the “*Zheng He*”, taking advantage of its call at the port of Tampico and a providential
29 weather warning, their obstinate refusal to acknowledge the purely nautical nature of
30 the call despite the absence of any formal temporary import procedure, the reduction
31 of the vessel to mere goods against all evidence, the impossibility of regularizing its
32 situation and obtaining the release of the vessel and the manifest disproportion of
33 the penalties imposed on the vessel are all factors which contribute to Mexico’s
34 abuse of rights as a coastal State.

35
36 Mexico claims to have acted exclusively on the basis of its customs legislation,
37 reducing the “*Zheng He*” to goods which had allegedly been unlawfully imported into
38 its territory. However, as the Agent for Luxembourg has reminded you, from the
39 moment the “*Zheng He*” arrived at the roadstead, it never claimed at that time to be
40 doing anything other than making a call for technical purposes.

41
42 The fine imposed on 24 October 2023, which was quickly settled by the shipowner,
43 when the vessel had just arrived at berth no. 3, cannot be explained in any other
44 way. The fine was imposed on the pretext that the vessel was in the wrong berth,
45 when it was still in open seas navigation. As Mexico observes in its written
46 submission, the same berth, berth no. 3, had allowed the “*Zheng He*” to carry out a
47 temporary import a few months earlier. However, this time it proved to be unsuitable.
48 This confirms that the shipowner, just like the Mexican customs authorities, knew full
49 well that this time the vessel was making a purely nautical stopover and that it did
50 not immediately intend to make any temporary import.

1 Despite the fact that the vessel had requested and obtained authorization to change
2 berth with a view to regularizing its situation, as it was still in open seas navigation,
3 everything came to a head. Taking advantage of a weather warning preventing any
4 movement, the customs authorities then proceeded to detain the vessel, arguing that
5 the vessel had definitively been unlawfully imported. Thereby, any regularization of
6 its situation was made impossible.

7
8 Rest assured, Mr President, honourable Judges, Luxembourg is not calling into
9 question the right for a sovereign State like Mexico to adopt customs legislation and
10 to seek to combat possible violations of that customs legislation. It is only the way in
11 which that legislation was applied to the vessel in this case that appears unlawful.

12
13 Mexico is now claiming that the relevant facts started when the “*Zheng He*” was
14 moored at berth no. 3 in the internal waters of the port of Tampico. Mexico is thereby
15 seeking to hide the vessel’s route and its passage through the territorial sea.
16 However, in the domestic proceedings, of which Mexico makes a big deal, the
17 customs authority clearly asserted that the “*Zheng He*” violated the Mexican customs
18 rules from the moment it arrived at the roadstead on 11 October 2023. Mexico
19 considers that arriving at the roadstead amounts to entry into national territory. And
20 on the screen you can see a relevant extract of the resolution of 15 February 2024,
21 which ordered the confiscation of the vessel and the exorbitant fine.

22
23 The roadstead is in the Mexican territorial sea. This is recognized by Mexico itself in
24 its written submissions. I refer to paragraph 16, which you can see on the screen.
25 The right of innocent passage for Luxembourg in the territorial sea of Mexico is more
26 than plausible. It is expressly enshrined in article 17 of the Convention.

27
28 Article 18, paragraph 1(b), of the Convention states that passage through the
29 territorial sea includes a call at a roadstead. Mexico now wants to lead us to believe
30 that it is only from when it arrived in internal waters that the “*Zheng He*” was subject
31 to customs legislation, but it contradicts itself. The right of innocent passage to enter
32 a port of call, which Luxembourg is relying on, is plausible. And I would like to recall,
33 once again, that the “*Zheng He*” never filed a formal temporary import application.

34
35 Moreover, article 18, paragraph 1(b), also expressly refers to the possibility for the
36 vessels of any State to proceed from internal waters and to leave a port facility. It
37 should be noted by your Tribunal that the shipowner obtained the annulment of the
38 customs proceedings, a certificate of non-appeal and an enforcement order for the
39 Tampico port authorities to release the vessel. Clearly, such a release never
40 occurred. Yet, the “*Zheng He*” was expected in the Bahamas for dredging services.
41 In that respect, you will not be convinced by Mexico’s argument that an appeal was
42 eventually lodged against the annulment of the customs proceedings. I would simply
43 point out that that appeal was received 40 days after the time limit and that the
44 Mexican courts declared it admissible only after the filing of Luxembourg’s request
45 for provisional measures. During that very long period, the port authorities refused to
46 release the vessel despite the fact that its detention a priori no longer had any legal
47 basis in the Mexican order.

48
49 It is therefore reasonable to contend that Luxembourg’s right of innocent passage to
50 leave by Mexico’s territorial sea is at issue in the present case.

1 Mexico denies any application of the Convention in its internal waters and its ports. It
2 hides behind the sovereignty of the State, which is thus absolute in its internal
3 waters. Without it being necessary at this juncture to settle definitively the question of
4 the application of the Convention to the internal waters of coastal States,
5 Luxembourg considers that the Mexican position is unreasonable.
6

7 The Convention itself recognizes the sovereignty of the State over its internal waters
8 in article 2, paragraph 1. At the same time, the Convention places limits on that
9 sovereignty. Several provisions of the Convention contribute to the delimitation of
10 internal waters and to establishing the legal regime governing them.
11

12 By way of example, article 8, paragraph 2, of the Convention provides:
13

14 Where the establishment of a straight baseline in accordance with the
15 method set forth in article 7 has the effect of enclosing as internal waters
16 areas which had not previously been considered as such, a right of
17 innocent passage as provided in this Convention shall exist in those waters.
18

19 Furthermore, I have already mentioned the inclusion in the Convention, in article 18,
20 of the possibility to enter and leave internal waters in the context of the right of
21 innocent passage. Moreover, in article 131, the Convention requires the coastal
22 State to ensure equal treatment in its maritime ports between all foreign flags,
23 including those of landlocked States. The Convention also grants powers to coastal
24 State against vessels which are voluntarily within one of its ports on the basis of
25 articles 218 and 220. In other words, it is not reasonable to argue that the
26 Convention does not enshrine any right that is applicable in internal waters.
27

28 In addition, there is also the object and purpose of the Convention, which imbues all
29 of its provisions. It is a matter of establishing “a legal order for the seas and oceans
30 which will facilitate international communication”. That legal order is based on the
31 delimitation and regulation of different maritime zones, which are all interdependent.
32 This legal order, which flows from the Convention, strikes a balance between the
33 rights of coastal States and the rights of other States. The closer a vessel is to the
34 coast, the greater the coastal State’s latitude. However, it is never absolute. General
35 international law proceeds on the same lines: in its territory, even though it is
36 sovereign, the State may not, with regard to foreign nationals which it has admitted,
37 act in an arbitrary or discriminatory manner or in a manner constituting a denial of
38 justice. In that respect, I would remind you that the “*Zheng He*” was authorized by
39 the port authorities to enter the port of Tampico, in berth no. 3, in order to make a
40 call for technical purposes.
41

42 As regards Luxembourg’s right as a landlocked State to equal treatment in the
43 maritime ports of other States, that right is protected by article 131 of the
44 Convention. The treatment of the “*Zheng He*” has no known precedent in Mexican
45 practice. Never before has a foreign-flagged vessel been confiscated and,
46 cumulatively, received an exorbitant fine on the pretext of an unlawful import. What is
47 a violation of equal treatment if it isn’t the application of different treatment in similar
48 situations? It is therefore reasonable to contend that the right to equal treatment in
49 maritime ports for Luxembourg, as a landlocked State, is at issue in this case.
50

1 As regards the abuse of rights, which Luxembourg considers Mexico has committed
2 against it in breach of article 300 of the Convention, the plausibility of such abuse of
3 rights is clear from the facts which Luxembourg has recalled. Despite the fact that
4 the arrival at berth no. 3, for purely nautical reasons, had been authorized by the
5 port, the customs authorities, having been informed, took action and within 24 hours
6 the vessel was detained and seized. More precise information, which Luxembourg
7 will present in due course, fully substantiates the argument of abuse. There is a body
8 of evidence, illustrated in particular by the speed with which the customs authorities
9 acted, the impossibility for the vessel to regularize its situation, the surprising
10 occurrence of a weather warning at the very time when the customs authorities were
11 coming on board to seize the vessel and the disproportionate nature of the penalty
12 imposed, both the fine and the confiscation, which, I would remind you, are both
13 unprecedented for a foreign-flagged vessel. That is a whole body of evidence which,
14 in the view of Luxembourg, shows an abusive exercise by Mexico part of its
15 jurisdiction in its internal waters.

16
17 The vessel's detention since 1 November 2023 has made it impossible to carry out
18 any navigation plan determined by the shipowner. The vessel can no longer move
19 and can no longer carry out its dredging activities wherever it might be required –
20 dredging activities which, after all, are a lawful activity within the meaning of
21 article 58, paragraph 1, of the Convention. In particular, the dredging contracts which
22 had been concluded in the Bahamas and which were to have occupied the "*Zheng*
23 *He*" for the first half of 2024 could not be honoured.

24
25 The proceedings brought against the vessel are ongoing in the Mexican legal order.
26 Although the shipowner has obtained the annulment of the customs proceedings and
27 thereby requested the release of the vessel, the port authorities have not proceeded
28 with the release and have claimed that they had appealed, despite the fact that a
29 certificate of non-appeal had already been issued by the competent registry. Since
30 then, the appeal, which was received extremely late, has been declared admissible.
31 This means that the vessel's detention, which has already lasted since 1 November
32 2023, will continue. Consequently, violations of Luxembourg's rights as a flag State
33 will continue, each day compounding the damage caused to the unit that is the
34 "*Zheng He*".

35
36 Mr President, honourable Judges, as I have demonstrated, the existence of certain
37 rights invoked by Luxembourg in this case is plausible. This is true in particular of the
38 right of innocent passage, the right to equal treatment in the maritime ports of other
39 States, and the right not to be subject to an abusive exercise by another State of its
40 jurisdiction.

41
42 One of the purposes of the provisional measures requested before your Tribunal is
43 to preserve the rights of the Parties pending the final decision. Article 290,
44 paragraph 1, of the Convention is clear in that sense. The rights which I have just
45 mentioned, whose existence can reasonably be argued and which are the subject of
46 the proceedings on the merits brought by Luxembourg, are linked to the provisional
47 measures requested by it.

48
49 These measures were read out the Registrar. They seek to ensure that
50 Luxembourg's jurisdiction over its vessel is respected and from that jurisdiction flow

1 all the plausible rights which I have just mentioned, all this bearing in mind that
2 Mexico claims to have exercised its sovereign jurisdiction in its internal waters. The
3 requested provisional measures also seek to minimize the harm caused to the
4 vessel, including its crew and its owner, in order to avoid aggravating the dispute.

5
6 In that respect, Luxembourg challenges Mexico's assertion in paragraphs 101 and
7 102 of its written submission that it is seeking through the provisional measures to
8 fulfil its own international obligations. First of all, Luxembourg would remind Mexico
9 that it is also party to the two international covenants from 1966 and that, irrespective
10 of the limited substantive jurisdiction of this Tribunal, the rights enshrined in those
11 international covenants should be granted to all persons, including the crew
12 members of the "Zheng He", who fall under Mexico's jurisdiction.

13
14 Furthermore, and above all, Mexico acknowledges that "the vessel continues to fly
15 the Luxembourg flag". That is paragraph 81 of the Mexican written submission,
16 which you can see on the screen. Accordingly, Mexico must respect the jurisdiction
17 of Luxembourg as a flag State and allow it to exercise its control in administrative,
18 technical and social matters over the "Zheng He" in accordance with article 94 of the
19 Convention.

20
21 As Professor Olivier Cachard will demonstrate, if Luxembourg were now to be
22 deprived of its effective jurisdiction and control over the "Zheng He", it would run the
23 risk of losing the flag and, therefore, of losing all of the plausible rights on which it
24 relies in the present case.

25
26 Mr President, honourable Judges, thank you for your attention. I have come to the
27 end of my oral presentation.

28
29 Mr President, with your permission I suggest that we now take the planned break
30 and, when we return, that you to give the floor to Professor Olivier Cachard.

31
32 **THE PRESIDENT:** Thank you. Indeed this would be an appropriate point to take a
33 break for 30 minutes. We will continue the hearing at 12:05.

34
35 *(Short break)*

36
37 **THE PRESIDENT:** Please be seated. We will now continue the hearing, and I will
38 now give the floor to Mr Olivier Cachard.

39
40 **MR CACHARD:** *(Interpretation from French)* Mr President, honourable Judges, it is
41 a great honour for me to appear before you today on behalf of the Grand Duchy of
42 Luxembourg.

43
44 Following on from my colleague, Ms Frappier, I will conclude the presentation on the
45 plausibility of Luxembourg's claim by demonstrating before you that the jurisdiction of
46 Luxembourg over the "Zheng He" is not in dispute at all. Then I will explain why
47 urgency and the conditions for prescribing provisional measures are established.

48
49 So let's begin with the plausibility of Luxembourg's claim, in particular of the
50 jurisdiction of the flag State over its vessel, the "Zheng He".

1 Luxembourg's claim is plausible; indeed, more than plausible because it is
2 incontestable and uncontested that the "Zheng He" is registered in Luxembourg,
3 whose flag it flies. The competence *ratione personae* of Luxembourg to exercise its
4 jurisdiction over the vessel is manifestly established.

5
6 First of all, the Luxembourg registration and nationality of the "Zheng He" are neither
7 contestable nor contested.

8
9 Our vessel has been continuously registered in the Luxembourg register since
10 22 October 2010. It flies the Luxembourg flag. It is incontestably of Luxembourg
11 nationality, without the effectiveness of its genuine link with the Grand Duchy of
12 Luxembourg being seriously called into question. The vessel is directly operated
13 from Luxembourg by its Luxembourg owner, which is the actual shipowner. I should
14 underline that the safety managers, the ship manager, the ISM manager, the ISPS
15 manager and the MLC manager, all these safety managers which are required by
16 conventions, are established in Luxembourg, from where they carry out their
17 supervisory work.

18
19 When navigating in the territorial sea and in internal waters, the "Zheng He" has
20 always identified itself as a vessel of Luxembourg nationality, always flying the
21 Luxembourg flag.

22
23 From the beginning of the detention phase, in its first note verbale, which has been
24 submitted to you, the Grand Duchy drew Mexico's attention to the fact that the
25 "Zheng He" was flying the Luxembourg flag. In its third note verbale – if you wish to
26 refer to it, this is annex MC28 of document 5, Luxembourg appended a document
27 attesting to the fact that the vessel was a Luxembourg vessel.

28
29 At no time have either the local Mexican authorities or the United Mexican States
30 themselves challenged the evidence of the Luxembourg nationality of the vessel.

31
32 All the documents issued by the Mexican port authorities recognize the Luxembourg
33 flag.

34
35 All the documents issued by the Mexican customs authorities recognize Luxembourg
36 nationality and the Luxembourg flag.

37
38 And the one and only note verbale from Mexico dated 20 March 2024 also
39 recognizes the Luxembourg nationality of the vessel.

40
41 Therefore, the competence *ratione personae* of Luxembourg over its vessel is
42 manifestly established.

43
44 The presentation on the competence *ratione personae* of Luxembourg over the
45 "Zheng He" will be made in three points; under the Convention, under the SOLAS
46 Convention and under the MLC Convention.

47
48 So firstly, the exercise of jurisdiction and control by the flag State are recognized by
49 the Convention.

1 As the flag State, Luxembourg is bound by the obligations under the international
2 conventions governing not only the law of the sea – your Convention – but also
3 conventions on maritime law. From this it derives the duty to exercise “a permanent
4 control [and I must stress that word] over the vessel”, wherever the vessel is to be
5 found, including in the territorial sea or in the internal waters of another State.
6

7 Here, I am referring to an article with which you are very familiar, article 94 of the
8 Convention, which stipulates that “every State shall effectively exercise its
9 jurisdiction and control” in the three areas of interest to us today: “in administrative,
10 technical and social matters over ships flying its flag.” As you know, jurisdiction
11 extends to both judicial and regulatory power, while control extends to monitoring
12 and technical controls.
13

14 The jurisdiction and control of the flag State must be exercised in particular in
15 matters of maritime safety pursuant to the Safety of life at sea (SOLAS) Convention
16 and IMO resolutions. They must also be exercised, in terms of protecting the social
17 rights and fundamental rights of seafarers, pursuant to the Maritime Labour
18 Convention. Luxembourg is fully engaged in the maritime activities of the
19 international community. It is an active participant in IMO and ILO working groups
20 and it takes very seriously its obligations vis-à-vis other States and vis-à-vis the
21 international community.
22

23 In order to exercise its jurisdiction and its control, Luxembourg must ensure that its
24 competence *ratione personae* exercised over vessels flying its flag is neither
25 contested nor rendered ineffective. It is clear, that is to say, it is more than plausible,
26 that the detention of the “*Zheng He*” by Mexico prevents Luxembourg from
27 complying with its international obligations as a flag State.
28

29 Without denying Mexico’s sovereignty over its territorial sea and over its internal
30 waters, Luxembourg simply wishes to state here that under international law it has a
31 competing competence *ratione personae* over its vessels – vessels flying its flag –
32 not only on the high seas, but wherever the vessels are to be found, including the
33 territorial sea and the internal waters of another State. The previously mentioned
34 administrative, technical and social matters, referred to in article 94, are, all three of
35 them, affected by the detention of the “*Zheng He*”.
36

37 Secondly, as regards maritime safety, the exercise of jurisdiction and control by the
38 flag State are explicitly enshrined in the SOLAS Convention.
39

40 Luxembourg has ratified the SOLAS Convention, which imposes many obligations
41 on flag States.
42

43 Under that Convention, States are often referred to by the word “Administration”, flag
44 States in particular.
45

46 Regulations 8 to 12 of Part B of Chapter 1 of the Annex to the Convention impose on
47 flag States, or their administration, the obligation to carry out inspections and
48 surveys of vessels in order to make sure that the safety of the vessel is guaranteed
49 by complying with technical requirements.
50

1 It is of little importance in this regard that Luxembourg, like most major flag States,
2 entrusts inspections and surveys to a classification body, in this case Bureau Veritas.
3 It has done so because of the recognized international expertise of that body, since,
4 as Regulation 6 in the SOLAS Convention states, “in every case, the Government
5 concerned fully guarantees the completeness and efficacy of the inspection and
6 survey.”
7

8 The fact that Luxembourg is a landlocked State within the meaning of the
9 Convention cannot prevent it from exercising its competence *ratione personae* and
10 the powers which it holds over vessels flying its flag. Quite the contrary,
11 Luxembourg, like all landlocked States, has to have guaranteed even more and even
12 better the possibility of exercising its competence *ratione personae* and its powers
13 over its vessels when they are in the territorial sea and in the internal waters of
14 another State. And for good reason, because, for geographical reasons, which are
15 pretty obvious, Luxembourg’s vessels are never in the Luxembourg territorial sea.
16

17 It is of little importance in this regard that the “*Zheng He*” is detained for one reason
18 or for another. The exercise of competence *ratione personae* by the flag State is
19 universally effective.
20

21 Thirdly, as far as social rights are concerned, the exercise of jurisdiction and control
22 by the flag State are explicitly enshrined in the MLC Convention.
23

24 Luxembourg has ratified the MLC Convention (Maritime Labour Convention).
25 According to its preamble, that Convention is “a single, coherent instrument
26 embodying as far as possible all up-to-date standards of existing international
27 maritime labour Conventions and Recommendations”. It is a code of rights for
28 seafarers.
29

30 The tenth recital in the preamble to the MLC refers explicitly to article 94 of the
31 Convention, which makes the MLC a coordinated instrument with the Convention,¹
32 and the MLC explicitly recognizes the jurisdiction of the flag State with respect to the
33 social rights of seafarers. On the screen you will see article V, paragraph 2, of the
34 MLC: “Each Member shall effectively exercise its jurisdiction and control”. And how
35 does it do this? Let’s look at the end of the article: “including regular inspections,
36 reporting, monitoring and legal proceedings under the applicable laws.” And all these
37 duties are incumbent upon the flag State, as the first sentence says. For us,
38 Luxembourg.
39

40 It is not an option for Luxembourg effectively to exercise its jurisdiction and control, it
41 is a duty, and Luxembourg intends to comply fully with that duty.
42

43 With regard to the jurisdiction exercised under the MLC, which is understood as a
44 normative and decision-making power, Luxembourg does exercise it effectively. I will
45 be quick. It has adopted all the amendments to the MLC: 2016, 2020, 2022. It has

¹ “Recalling that Article 94 of the United Nations Convention on the Law of the Sea, 1982, establishes the duties and obligations of a flag State with regard to, inter alia, labour conditions, crewing and social matters on ships that fly its flag”

1 brought its legislation into line with the MLC.² As regards control, it submits regular
2 implementation reports to the ILO. And those implementation reports show that, as a
3 flag State, inspections are regular and numerous: 99 inspections in 2021, for a
4 number of vessels which, as was explained earlier, is around 200, depending on the
5 year.

6
7 Effective exercise of jurisdiction by Luxembourg under the MLC is all the more
8 necessary because, in this case, in the light of the detention of the vessel,
9 Luxembourg's jurisdiction has in practice become almost exclusive. Unlike many
10 other States in Latin America, in the broad sense (Argentina, Brazil, Chile, Honduras,
11 Nicaragua),³ unlike all those States, Mexico has not, to our knowledge, ratified the
12 MLC. It cannot therefore carry out an inspection on that basis as a port State. Only
13 the flag State therefore has the right and jurisdiction to carry out such controls.

14
15 In the light of all this, the competence *ratione personae* of Luxembourg to exercise
16 its jurisdiction and control in administrative, technical and social matters, including in
17 territorial seas and including in internal waters, is more than plausible; it is manifestly
18 derived from established facts and from international law.

19
20 Mr President, Madam Vice-President, honourable Judges, I now turn to the question
21 of urgency, and this will take us to the end of this first round.

22
23 It is my task to establish that the prescription of provisional measures is not just
24 appropriate, but absolutely necessary in order to preserve several rights of the State
25 of Luxembourg which are currently being jeopardized or are on the verge of being
26 jeopardized very imminently.

27
28 Of course, Luxembourg has confidence in the quality and the speed of the
29 proceedings on the merits to be administered by your Tribunal. It is also aware that
30 the adversarial principle and the time allowed for debate will mean that a resolution
31 on the merits will take several months; but after eight months of detention of the
32 vessel already, irreversible steps are on the verge of being taken by Mexico.

33
34 The request for provisional measures made by the Grand Duchy of Luxembourg has
35 a legal basis that you know very well: article 290, paragraph 1, which authorizes a
36 court or tribunal to prescribe "any provisional measures which it considers
37 appropriate under the circumstances to preserve the respective rights of the parties
38 to the dispute."

39
40 So, coming to the purposes of these provisional measures, your Tribunal has
41 decided on several occasions, particularly in the light of article 290 and the Rules,
42 that it has the power not only to ensure that the rights of the parties are safeguarded,
43 but to take measures to prevent or avoid the aggravation of the dispute.

² Law of 10 July 2011 approving the Maritime Labour Convention (Memorial A 2011, No. 147, p. 2070); Grand Ducal Regulation of 31 May 2015 respecting certain responsibilities of the flag State in relation to compliance with and the enforcement of the MLC, 2006, (Memorial A 2015, No. 95, p. 1580); Grand Ducal Regulation of 25 March 2020 amending the Grand Ducal Regulation of 31 May 2015 respecting certain responsibilities of the flag State in relation to compliance with and the enforcement of the MLC, 2006.

³ Argentina, Brazil, Chile, Honduras, Nicaragua.

1 With regard, now, to the conditions for granting provisional measures, and the test to
2 be carried out, to borrow an expression from common law, I refer to your own
3 decision in the maritime delimitation case between Ghana and Côte d'Ivoire, in
4 paragraph 102:

5
6 [U]rgency is required in order to exercise the power to prescribe provisional
7 measures, that is to say the need to avert a real and imminent risk that
8 irreparable prejudice may be caused to rights at issue before the final
9 decision is delivered.⁴

10
11 The condition of urgency therefore requires the object of the risk, its reality and its
12 temporality to be characterized.

13
14 As far as the object of the risk is concerned, it has been shown that *prima facie* the
15 requested measures actually seek to safeguard the rights which Luxembourg
16 indisputably derives from the Convention.

17
18 As far as the reality of the risk is concerned, Luxembourg will show in the next few
19 minutes that the requested measures are necessitated not only by the circumstances
20 surrounding the detention of the vessel, but also by the subsequent conduct of
21 Mexico.

22
23 As regards the temporality of the risk, Luxembourg will show that on the day when
24 your Tribunal is called on to adjudicate on provisional measures, and to date, the
25 imminence of the risk is well established. In more than one respect, the risk is even
26 greater today than in previous months, when Luxembourg had preferred to adopt a
27 patient diplomatic approach without having to criticize publicly, as it regrets to do
28 today, the very serious infringements of international law to which it is subject. The
29 temporality of the risk is neither past nor present. It is imminent; in other words, the
30 period from today to the day when your Tribunal gives its final decision.

31
32 Luxembourg will give a five-step explanation following the chronological order of the
33 requested measures. By way of introduction, it will mention the regime to which the
34 vessel is currently subject because of the precautionary seizure; the first point will
35 concern the preservation of the fundamental rights of the crew. The second relates
36 to the preservation of the rights of Luxembourg as the flag State. The third point will
37 concern the risk of aggravation of the dispute, and the fourth the measures required
38 to guarantee the procedural equality of the Parties.

39
40 By way of introduction, let's take a look at the regime to which the "*Zheng He*" is
41 subject because of its detention.

42
43 253 days ago, the "*Zheng He*" was improperly detained on the basis of a unilateral
44 decision taken by the Mexican authorities as part of an administrative procedure.

45
46 From a practical point of view, this means that the vessel is "in chains"; in other
47 words, it is moored at a fixed position at berth no. 11, where it was taken on
48 1 November upon the instructions of the Mexican authorities, without being able to

⁴ ITLOS, Maritime delimitation between Ghana and Côte d'Ivoire, para. 102.

1 move since then, either in internal waters or elsewhere in the territorial sea, let alone
2 in the high seas.

3
4 And yet, it is not an abandoned vessel. While it is embroiled in local proceedings,
5 whose complexity and twists and turns remind one of the well-known work of Franz
6 Kafka, the shipowner has not abandoned its seafarers or its vessel. It continuously
7 exercises possession of the vessel, of which it is still the owner. It maintains on
8 board the crew required by the Minimum Safe Manning Document. From a legal
9 point of view, although the vessel is still in the possession of its shipowner, who
10 claims ownership, it is now under the custody and surveillance of the Mexican
11 administration.

12
13 On the screen you will see Annex MC16, the Certificate of Initiation and
14 Precautionary Seizure. It clearly indicates the care, custody and authority of the
15 Tampico customs office. The vessel is described as goods, but it is in fact the vessel
16 that is at issue. It is stated for the record that the seized vessel is under the custody
17 of the Tampico customs office.

18
19 And Mexico itself acknowledges this in its own Annex 28 – which is displayed on
20 screen. The Tampico customs office entrusted custody of the vessel to the terminal
21 operating berth no. 11. If you look at the extract from this letter, below the table that
22 identifies the “*Zheng He*”, you can see (*continues in English*)

23
24 the aforementioned vessel remains under your custody, and ... it may not
25 be removed from pier 11, without a specific order issued by this
26 Administrative Unit.

27
28 (*Interpretation from French*) The terminal operator thus exercises control over the
29 vessel for the Mexican authorities. This control covers entering and leaving the
30 terminal, but it also entails, as a consequence, controls over entries and exits on
31 board the vessel itself, as Mexico itself is forced to concede in its Annex 31.

32
33 The different service providers asked to work on board, at the request of the captain,
34 have to seek prior authorization from the terminal operator. The terminal operator
35 reports to the Mexican authorities alone.

36
37 The “*Zheng He*” is therefore, as you will have understood, under the custody of the
38 Mexican authorities, which have delegated this restrictive function to a terminal
39 operator, for which they are the principal. Our vessel is thus subject to the
40 discretionary powers of Mexico on a daily basis. Luxembourg, as we have heard,
41 intends to exercise its sovereign rights and powers without having to be subject to
42 the discretion of a coastal State with which it is in dispute.

43
44 Let's now turn to the provisional measures requested by Luxembourg.

45
46 First of all, the preservation of the fundamental freedoms and rights of the crew. As
47 the flag State, Luxembourg claims the application of several international
48 conventions or treaties for the protection of the rights of its seafarers: the two 1966
49 covenants on civil and political rights and on economic and social rights, the MLC

1 Convention, but also the WHO and the Constitution of the World Health
2 Organization.

3
4 When the vessel was detained, there were 36 seafarers on board. In order to ensure
5 the safety of the vessel, the shipowner must now to keep on board, on a permanent
6 basis, 15 or so seafarers, including senior officers, deck mechanics and engineers.
7

8 Luxembourg acknowledges to Mexico that, at present and up to now, the seafarers
9 have not been subject to detention, custodial measure or criminal incarceration. It
10 welcomes this, but notes that the security conditions in Mexican ports in general, and
11 in the port of Tampico in particular, are conducive to a custodial measure occurring
12 at any time, regardless of the upright behaviour of its seafarers. Several international
13 professional maritime organizations, the International Chamber of Shipping and P&I
14 Gard,⁵ draw attention to the well-known expansion of drug trafficking in Mexican
15 ports; traffickers use vessels without the knowledge of shipowners or crews in order
16 to conceal drugs. Where drugs are discovered, the crews are detained for many
17 months, even though they are not involved at all in the trafficking. Prolonging the
18 detention of the “*Zheng He*” without any guarantees for the seafarers therefore
19 places them in a situation of real and imminent risk.
20

21 Whatever this argument, the fundamental rights of seafarers are nevertheless
22 infringed in the absence of a custodial measure.
23

24 First of all, for a foreign national in Mexico, freedom of movement in the State of
25 Tamaulipas is more theoretical than concrete. In a notice of 14 June 2024, a public
26 notice available on a United States website, the State Department of the United
27 States of America and the Consulate General of the United States for Mexico
28 formally advise foreign nationals against travelling to Tamaulipas, as you can see.
29

30 (*Continues in English*) “The Department of State’s Travel Advisory for Tamaulipas is
31 Level 4 – Do not travel due to crime and kidnapping.”
32

33 (*Interpretation from French*) Second, according to the preamble to the WHO
34 Constitution, “[h]ealth is a state of complete physical, mental and social well-being
35 and not merely the absence of disease or infirmity.”
36

37 In the recent period, the mental health of the seafarers has been sorely tested by the
38 prolonged detention of the vessel, by the emotional rollercoaster resulting from
39 hopes then disappointments caused by the unpredictable results of internal
40 remedies. In particular, this is true of the psychological condition of the captain, who
41 is responsible for the company on board, who must ensure discipline and deal with
42 the seafarers. With his crew, he has been severely tested by the refusal to release
43 the vessel, on which he thought he could rely when the courts had definitively
44 annulled the proceedings.
45

⁵ Article by **P & I Club Gard** dated 11 April 2023: <https://gard.no/articles/drug-smuggling-on-increase-mexican-ports/>; Article by the **International Chamber of Shipping**, “Mexico alert: smuggling of illegal narcotics / risk of ship detention and crew arrest” dated 20 May 2020, <https://www.ics-shipping.org/press-release/mexico-alert-smuggling-of-illegal-narcotics-risk-of-ship-detention-and-crew-arrest/>

1 In the period ahead, there are three threats to these seafarers.
2
3 - fatigue from the long period of waiting on a vessel which is deteriorating;
4
5 - the growing tension stemming from the fact that Luxembourg is now firmly
6 challenging Mexico's views and the questionable practices of certain local
7 authorities;
8
9 - and, lastly, the media coverage in Mexico, which makes the seafarers vulnerable.
10
11 What is more, at any moment the seafarers may be prohibited from re-embarking,
12 which means that the shipowner would be unable to exercise possession of the
13 vessel continuously, making it impossible for the shipowner to comply with the flag
14 State rules and making it completely impossible for the flag State to retain the vessel
15 under a Luxembourg flag.
16
17 I now come to the second head of claim in the provisional measures: the
18 safeguarding of the rights of Luxembourg as the flag State.
19
20 As the flag State, Luxembourg claims the application of its rights under the
21 Convention and the related sectoral conventions, SOLAS and the MLC Convention.
22 In terms of the application of those conventions, there is a real and imminent risk that
23 those rights will be irreversibly infringed. We will look at the main risks and explain
24 the claims of Luxembourg.
25
26 First of all, Luxembourg requests provisional measures to ensure the respect of the
27 obligations and powers of the flag State, including in the territorial sea of a coastal
28 State, which means that under article 94 of UNCLOS, as has been stated, it is able
29 continually to exercise its jurisdiction and control "in administrative, technical and
30 social matters".
31
32 Second, Luxembourg requests provisional measures to guarantee the respect of the
33 nationality and legal status of the "*Zheng He*", its vessel which flies the Luxembourg
34 flag.
35
36 Lastly, while Luxembourg wishes to ensure the respect, including as a landlocked
37 State, of its right of navigation and its right of innocent passage, it does not wish to
38 make a request which calls on your Tribunal to prejudge the merits.
39
40 First of all, Mexico is making it impossible for Luxembourg fully to exercise its
41 jurisdiction and control in administrative, technical and social matters over its own
42 vessel.
43
44 Article 94 of the Convention is an umbrella provision for two sectoral conventions,
45 the SOLAS and MLC Conventions, which specify the obligations of the flag State.
46
47 For a flag State, in particular a landlocked one such as Luxembourg, the inability to
48 exercise its jurisdiction and control results from a combination of the vessel being
49 detained in foreign internal waters for an abnormally long period of time, under the
50 custody and at the disposal of a foreign administration. Let us look at what the

1 consequences are for the ability of a serious flag State, such as Luxembourg, to
2 comply with its obligations in terms of maritime safety and then social rights.

3
4 With regard to maritime safety, Luxembourg is unable to honour its obligations under
5 the SOLAS Convention, in particular the Annex and Regulation 6, which we have
6 already mentioned, Regulation 6 and subsequent regulations. Inspections and
7 surveys have to be carried out. And those inspections and surveys determine the
8 classification and statutory certification of the vessel. That classification then
9 determines the seaworthiness of the vessel.

10
11 I would ask the Tribunal to refer to the document displayed on the screen
12 [Annex MC32], which is an extract from the vessel classification document, issued by
13 Bureau Veritas, and together we will go through a number of slides in order to fully
14 understand this extremely technical document.

15
16 Page 256. You will see that the vessel classification is very favourable. The class
17 symbols show that it is the best possible classification.

18
19 On page 257, you will see that the class certificate is, in principle, valid until
20 21 October 2025. However, as you will see on the next slide, a number of surveys
21 and inspections must be conducted within specific periods, failing which the class
22 certificate will no longer be valid.

23
24 For instance, the inspection called “Bottom survey in dry dock or afloat” (as
25 mentioned p. 260 of Annex MC32). Under the rules of the classification society, this
26 is a major inspection of the hull. The classification hinges on an in-depth assessment
27 of the structural condition of the vessel, and in particular its hull. And this
28 assessment can only be carried out in a dry dock or in waters that are sufficiently
29 clear for divers to be able to determine the condition of the vessel. The assessment
30 must be carried out, at the latest, 36 months after the previous assessment, and the
31 entire assessment had to be completed no later than 8 January 2024. An extension
32 has already been granted provisionally until 7 June 2024. Obviously, this inspection
33 cannot be conducted while the vessel is docked because it cannot move to the dry
34 dock and because the waters in the port are too murky to allow an inspection by
35 divers. That is why Mexico should be ordered at least to authorize the vessel to
36 move within its internal waters, or in the territorial sea, so that divers are able to
37 conduct the necessary survey where the waters are clear.

38
39 The same holds for the lifeboat inspection (as mentioned p. 259 of Annex MC32).
40 And lifeboats are not a minor issue. They represent the safety of seafarers. Lifeboats
41 should be checked not only on board, they must be put afloat to check whether the
42 launching system is operational. That is not possible at all at the moment.

43
44 So, why is this a concern for Mexico and the Grand Duchy, and why is it not a
45 dispute between private persons?

46
47 The situation is attributable to Mexico, which, by prolonging its improper detention, is
48 “playing for time” and therefore inevitably and deliberately calling into question the
49 seaworthiness of the “*Zheng He*”. In doing so, and I regret to say this, Mexico, as a
50 coastal State, is artificially creating for itself the conditions for the further detention of

1 the vessel under the SOLAS Convention, this time as the port State. This is nothing
2 more and nothing less than an abuse of rights.
3
4 This is detrimental to Luxembourg for two reasons.
5
6 The first reason is, obviously, the domino effect: the loss of classification calls into
7 question the statutory certificate; the statutory certificate which has been called into
8 question then calls into question the registration in the Luxembourg register.
9
10 The second reason: the position of the “*Zheng He*” in internal waters, at the disposal
11 of Mexican administration, makes it impossible for Luxembourg freely to exercise its
12 inspection powers through its agents.
13
14 The rights of Luxembourg will therefore be a dead letter if your Tribunal does not
15 prescribe a provisional measure to enable the inspections and controls necessary for
16 the maintenance of the vessel’s class and certification to be carried out as quickly as
17 possible.
18
19 I now come to the social rights of seafarers.
20
21 Luxembourg is also unable to honour its obligations under the Maritime Labour
22 Convention. I earlier referred to these obligations under article V, paragraph 2, and I
23 will not return to them.
24
25 The chaining of our vessel runs counter to this obligation for a number of reasons.
26
27 The vessel is deteriorating because of insufficient preventive maintenance. Other
28 more consequential work, such as changing certain parts of the auxiliary engine, is
29 urgently needed to preserve not the seaworthiness but the habitability of the vessel.
30 Because there is no auxiliary engine, there is no longer any air-conditioning, there is
31 no longer any ventilation, there is no longer any filtration of drinking water. I refer
32 here to a letter by the engine manufacturer, MAN [Annex MC36], which is
33 responsible for maintenance of the auxiliary engine. You can see that it states that a
34 period of 64,000 running hours has elapsed – that is seven years of operation – and
35 it indicates that if components are not changed, there are serious risks to the
36 operation of that engine: “With this in mind, we ... cannot guarantee safe operation
37 of this engine past the 64,000 running hours.”
38
39 The detention of the vessel in Mexico, in a State which is not party to the MLC, rules
40 out cooperation, even hypothetically, by Mexico within the framework of the MLC.
41
42 The intervention of Luxembourg public agents in foreign territory, with powers of
43 public authority, must be explicitly authorized by the Tribunal in accordance with
44 international law and the conditions that you deem relevant.
45
46 Which now brings me to the measures requested by Luxembourg to guarantee the
47 respect of the nationality and the legal status of its vessel, which flies the
48 Luxembourg flag.
49

1 I regret having to note the doublespeak in which Mexico is engaged in the
2 international order and in the domestic order, all of this just to bring about,
3 implacably, the process of expropriating the “*Zheng He*”, without being slowed down
4 by any provisional measure and without waiting for the final decision of your
5 Tribunal. It is this doublespeak that we wish to highlight here to emphasise the
6 imminence of the risk of prejudice to the ownership and nationality of the
7 “*Zheng He*”.

8
9 In its domestic legal order, in which it would like unduly to confine this international
10 dispute, Mexico has rolled out a systematic strategy aimed at undermining the rights
11 of Luxembourg. This strategy is based on four elements, which I will mention briefly.
12

13 The first element: the Mexican authorities still demonstrate a clear, unequivocal and
14 consistent desire to directly expropriate the “*Zheng He*” and to transfer ownership to
15 the State of Mexico. Let me refer you to the decision of the tax administration: “Said
16 merchandise”, the “*Zheng He*”, “becomes the property of the federal fiscal
17 authorities”.

18
19 This desire is also reiterated in the Statement in Response of Mexico of 3 July, in
20 paragraph 83, where Mexico states that the detailed arrangements for the transfer of
21 ownership to an ad hoc authority, INDEP, are already prepared.
22

23 The second element: as was demonstrated earlier, the Mexican authorities are
24 “playing for time” to bring about the unseaworthiness of the vessel, leading the
25 Luxembourg authorities to find that the “*Zheng He*” is no longer under their control
26 and therefore no longer meets the criteria of the Luxembourg flag. This is an indirect
27 strategy of abuse of rights.
28

29 The third element: in their own legal order, the Mexican authorities refuse to give
30 effect to the judgments of their courts when they annul customs proceedings. I will
31 not return at length to the federal judgment of 22 March 2024 annulling the entire
32 customs procedure for the seizure of the vessel, which vitiates all subsequent
33 proceedings, and I will not return to the fact that this annulment is additionally based
34 on the violation of fundamental rights.
35

36 I would just like to point out what the clerk of Tampico Court stated on 18 April 2024
37 [Annex MC24]. You can see on the screen that the certificate of non-appeal acts as
38 a letter of formal notice within a period of three days and, of course, no action was
39 taken in response to that letter of formal notice.
40

41 The fourth element: the Mexican authorities are playing with the rules of Mexican law
42 and legal remedies to make the detention of the “*Zheng He*” definitive. It is not the
43 task of your Tribunal to rule on Mexican law, the great complexity of which it will
44 have noted in the statement submitted by Mexico. The aim is to make you believe
45 that the prescription of provisional measures is not necessary because various legal
46 remedies are available to the shipowner as a private person. In truth, such a strategy
47 cannot deceive your Tribunal.
48

49 - The claim is that of Luxembourg, not of the shipowner.
50

1 - Legitimate confidence in the internal institutions of Mexico has been broken
2 because Luxembourg finds that an appeal can be lodged after the issuance of a
3 certificate of non-appeal, because Luxembourg waits until 3 July in the Mexican
4 written submission to discover that 12 days after the matter was referred to your
5 Tribunal, extraordinary proceedings were brought before the Supreme Court.
6 Therefore, in the international legal order, which alone concerns us today, Mexico's
7 position gives cause for complaint and calls for the prescription of provisional
8 measures.

9
10 If Luxembourg currently recognizes the Luxembourg nationality of the "*Zheng He*", it
11 does so on the basis of perfectly valid documents, certifications and classifications.
12 However, by its conduct, Mexico is calling into question the validity and durability of
13 the certificate.

14
15 As for Mexico, it now recognizes the Luxembourg nationality of the vessel, However,
16 if, at the end of the race to the Mexican courts by the Mexican administration, it is
17 ruled that that the expropriation of the "*Zheng He*" is definitive, then Mexico will rely,
18 on the merits before you in a few weeks or a few months, on the transfer of real
19 rights over the vessel. It is therefore urgent that Mexico be ordered to suspend local
20 proceedings while your Tribunal rules on the merits.

21
22 Mexico's unilateral assertion of its rights of ownership over the vessel and the
23 transfer to the Mexican flag is more than plausible. Hostile public positions have
24 been taken at the highest levels of State against foreign dredging companies. Here
25 again, I regret to have to quote the official transcription of a press release from the
26 State Secretariat for the Navy on 23 November 2021. The State Secretariat for the
27 Navy notes and deplores the poor condition of the Mexican dredger fleet, with 20 to
28 40-year-old vessels. The Secretariat deplores the calls for tenders from foreign
29 operators and the Secretariat announces a clearly national policy to provide Mexico
30 with an independent dredging system so that there are no more calls for tenders:
31 "because these calls for tender were launched by foreign countries, because there
32 are no dredgers of this kind in our country."

33
34 It is therefore plausible that an expropriated vessel in very good condition could be
35 very useful in Mexico.

36
37 Mexico also maintains its claim to ownership of the "*Zheng He*" when it refers in its
38 own written submission to the Instituto para Devolver al Pueblo lo Robado, INDEP.
39 Luxembourg, let it be clear, contests this transfer in advance under the "*nemo plus*
40 *iuris*" rule. Ownership of the vessel cannot be validly transferred by someone who
41 does not have a right to that vessel. There will therefore be a difficulty under
42 article 92 of the Convention because two possible States will be competing over one
43 vessel.

44
45 Lastly, Luxembourg states once again that its claim seeking to protect the right of
46 innocent passage of its vessels, under article 18 in particular, is covered by the
47 claims on the merits which your Tribunal will adjudicate upon later when it rules on
48 the release of the vessel and reparation for the abusive detention by the Mexican
49 authorities. Although Luxembourg therefore considers that its right of innocent

1 passage inward and outward is particularly well founded, it does not intend to ask
2 your Tribunal to prejudge the merits.

3
4 The third head of claim for the provisional measures: the prescription of measures to
5 avoid aggravating the dispute.

6
7 I am referring here to your consistent jurisprudence, going all the way back to the
8 *M/V "SAIGA" Case*. On a number of occasions you have ruled that it was necessary
9 to avoid aggravating maritime disputes.

10
11 And there are two things that are liable to aggravate the dispute, and in all likelihood
12 the dispute between Luxembourg and Mexico.

13
14 First of all, the exorbitant fine imposed by the Mexican authorities. That fine extends
15 the dispute beyond the "*Zheng He*" alone. It extends it to all vessels in the
16 Luxembourg fleet belonging to the same shipowner.

17
18 Since 15 February 2024 there has been a high risk that the Mexican authorities will
19 seize one or more other Luxembourg-flagged vessels of the SOFIDRA group when
20 they pass through the territorial waters or the internal waters of Mexico. And this is
21 not a textbook example, Mr President, ladies and gentlemen of the Tribunal. The
22 shipowner operates 68 vessels, as is mentioned in Annex MC3.3, and, according to
23 our checks as at 1 July, there are currently no fewer than 18 service vessels,⁶
24 including dredgers, in the area of Central America and South America. Sixteen of
25 those vessels are mainly on the east coast to date.

26
27 That is why you have been requested to order the suspension of the collection of the
28 customs fine and to prohibit the detention of any vessels of the shipowner.

29
30 It is also necessary – this is the second risk of aggravation – to stop this race to the
31 courts undertaken in all haste by Mexico to maintain the expropriation at all costs.

32
33 If the federal judgment of 22 March had been enforced, we would not be here today:
34 the dispute would have been extinguished. Instead, the maritime authorities implicitly
35 and for no reason refused to release the vessel, without giving any justification, and
36 now allege that the judgment is not final, even though it has been the subject of a
37 certificate of non-appeal.

38
39 To get ahead of your Tribunal, the Mexican authorities even brought proceedings
40 before the Mexican Supreme Court on 19 June 2024 in order to impose their solution
41 on the merits.

42

⁶ *Willem de Vlamingh* (Gulf of Mexico), *Trinidad* (Uruguay), *Taccola* (Argentina), *Postnik Yakovlev* (Argentina), *Pancho* (Argentina), *Ortelius* (Argentine), *Leeuw* (Argentina), *Kaerius* (Argentina), *Henri Pitot* (Guyana), *Giovanni Venturi* (Argentina), *Galileo Galilei* (Argentina), *Fernao de Magalhaes* (Cuba), *DN 204* (Argentina), *DN 205* (Cuba), *Bartolomeu Dias* (Ecuador, West coast), *Alvar Nunez Cabeza de Vaca* (Panama), *Al Idrisi* (Ecuador) *Afonso de Albuquerque* (Argentina), AIS data collected on 1 July 2024.

1 That is why your Tribunal is requested to prohibit Mexico from instituting new
2 national proceedings or new actions, and effectively to suspend the legal remedies in
3 Mexico until a solution is given on the merits.

4
5 As you know, such a request is not unprecedented. In the “*Enrica Lexie*” case, your
6 Tribunal had ruled that the parties “shall both suspend all court proceedings and
7 shall refrain from initiating new ones which might aggravate [...] the dispute”.

8
9 Fourthly, the prescription of measures to ensure equality of the Parties.

10
11 The international maritime dispute between Luxembourg and Mexico arose from
12 decisions taken by the Mexican authorities when the “*Zheng He*” was exercising its
13 right of innocent passage entering the territorial sea.

14
15 Luxembourg as the flag State quite clearly has a competing jurisdiction with Mexico,
16 but it has no access to the decisions and the preparatory acts adopted by the
17 Mexican authorities. Access is arranged for it only for evidence which the Mexican
18 State deigns to produce when it is in its own interest. In this context of exclusive
19 control by the United Mexican States, the prescription of the provisional measures
20 requested is the only way to ensure the procedural equality of the Parties and,
21 therefore, the effectiveness of the rights claimed.

22
23 That is the case for the request to authorize the agents of Luxembourg to conduct
24 investigations on the territory of Mexico, without restriction. This measure is
25 necessary and it is proportionate. Necessary because at no time during the
26 diplomatic talks, at no time in response to the notes verbales, did Mexico invite the
27 agents of Luxembourg to visit the scene, focusing instead on the domestic nature of
28 the dispute and on the exclusive jurisdiction of its authorities. Proportionate too,
29 because Luxembourg requests the guarantee of its right to have its agents carry out
30 investigations, but without restriction and under the supervision of your Tribunal.

31
32 As regards the request seeking the transmission to Luxembourg, at its request and
33 after examination by you, of the information and documents to which it was unable to
34 gain access, this request by Luxembourg falls fully within the powers of your
35 Tribunal, without there being any conflict with article 27 of your Rules, as has been
36 alleged by Mexico.

37
38 As you know, in the second judgment in 1949 in the *Corfu Channel Case*,⁷ the
39 International Court of Justice had already stated that by reason of the exclusive
40 control exercised by a State within its frontiers, the applicant State is unable to
41 furnish proof of facts giving rise to the international responsibility and liability of the

⁷ ICJ, “On the other hand, the fact of this exclusive territorial control exercised by a State within its frontiers has a bearing upon the methods of proof available to establish the knowledge of that State as to such events. By reason of this exclusive control, the other State, the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such a State should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognized by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion.” *Reports*, p. 18.

1 opposing party. Exclusive territorial control calls for an adjustment to the evidence
2 regime.

3
4 In fact, Mexico's opposition to our request is seeking to defer the requirement to
5 disclose documents during the merits phase, which would have the effect either of
6 rendering it pointless because it would be too late or of unduly prolonging the
7 proceedings.

8
9 In conclusion, Mr President, honourable Judges, the requests for the prescription of
10 provisional measures made by Luxembourg are motivated by established urgency,
11 which grows with each day of the detention, the race towards the domestic courts,
12 the inevitable deterioration of the vessel, and the proven and imminent risk of losing
13 classification and certification, with all that this would entail for the real rights and the
14 nationality of our vessel.

15
16 Luxembourg, while defending its procedural rights, is not asking you to prejudge the
17 merits or to prejudice Mexico's rights. It is simply requesting that guarantees be
18 ordered pending the outcome of the proceedings on the merits.

19
20 Luxembourg would like to thank the Tribunal for its careful attention at the end of this
21 first round.

22
23 **THE PRESIDENT:** Thank you, Mr Cachard. The first round of arguments by
24 Luxembourg is now concluded. We will continue the hearing in the afternoon at
25 3 p.m. to hear the first round of oral arguments of Mexico.

26
27 The sitting is now closed.

28
29 *(Lunch break)*