

# INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2024

Public sitting

held on Thursday, 11 July 2024, at 3 p.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)

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**Verbatim Record**

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<i>Present:</i>	President	Tomas Heidar
	Vice-President	Neeru Chadha
	Judges	José Luís Jesus
		Boualem Bouguetaia
		David Joseph Attard
		Markiyan 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

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*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 will now continue the hearing in the “*Zheng He*”  
2 Case. This afternoon, we will hear the first round of oral arguments presented by  
3 Mexico.

4  
5 I give the floor to the Co-Agent of Mexico, Mr Alfonso Ascencio Herrera, to begin his  
6 statement.

7  
8 **MR ASCENCIO HERRERA:** Thank you, Mr President.

9  
10 Mr President, Madam Vice-President, members of the Tribunal.

11  
12 If you allow me, I would like to begin by highlighting that Mexico is, and has been, a  
13 fervent supporter of the key role of the International Tribunal for the Law of the Sea  
14 in settling disputes concerning the 1982 Convention on the Law of the Sea.<sup>1</sup> That is  
15 why, it comes as no surprise that Mexico, more than 21 years ago, has chosen the  
16 Tribunal as one of the means for the settlement of disputes concerning the  
17 interpretation or application of the Convention, under article 287. In this respect,  
18 Mr President, may I also emphasize that the terms “disputes concerning the  
19 interpretation or application of the Convention”, are terms which Mexico will  
20 constantly refer and remark in the course of these hearings.

21  
22 Mr President, Mexico is a coastal State with a long maritime tradition and which has  
23 actively participated in the international efforts undertaken in the twentieth century  
24 and the present one for the codification and the progressive development of the Law  
25 of the Sea. Mexico’s best diplomats participated in leadership roles in the drafting of  
26 the 1958 Geneva Conventions and, most prominently, during the Third United  
27 Nations Conference on the Law of the Sea. Mexico was not only the third State in  
28 ratifying UNCLOS back in 1983,<sup>2</sup> but also one which developed a specialized  
29 legislation to implement various Parts of the Convention, even before UNCLOS  
30 entered into force. In doing so, Mexico has ensured a consistent application of the  
31 Convention and has contributed to preserve its unified character and its integrity in  
32 line with relevant UN General Assembly Resolutions on Oceans and the Law of the  
33 Sea.<sup>3</sup>

34  
35 In the application of the Convention, Mexico has been fully respectful of the rights  
36 and obligations enshrined therein. And it has zealously promoted the respect of its  
37 national legislation, in particular where its rights in internal waters and its ports are at  
38 risk.

39  
40 Mexico and Luxembourg are two States with cordial and good diplomatic relations  
41 nearing 80 years since their formal establishment. Both share in many ways the  
42 same values, including an unwavering commitment to international law and the rule  
43 of law in global affairs. But, today, here we stand before the Tribunal facing this  
44 situation due to the unfortunate acts by the owners and representatives of the vessel  
45 the “*Zheng He*” in the context of the Mexican legislation in Mexico’s internal waters.  
46

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<sup>1</sup> UNTS, vol. 1833, No. 31363.

<sup>2</sup> [https://www.un.org/Depts/los/settlement\\_of\\_disputes/choice\\_procedure.htm](https://www.un.org/Depts/los/settlement_of_disputes/choice_procedure.htm)

<sup>3</sup> For instance: UNGA Res. A/RES/78/69, para. 1.

1 Mr President, the present case arises from the contractual relationship between two  
2 private companies: the Luxembourg-based company owner of the vessel  
3 “*Zheng He*”, and a Mexican shipping agent acting as its representative. Unlike  
4 previous occasions when the “*Zheng He*” freely entered and departed Mexico’s  
5 internal waters complying with Mexican laws and regulations, this time, both private  
6 entities, made decisions that led to clear violations of the Mexican legal framework.  
7 These violations occurred entirely in Mexico’s internal waters and ports, prompting  
8 Mexico to assert its sovereignty and enforce its laws.

9  
10 Although the decisions of Mexican authorities are not yet final, as local remedies are  
11 still underway, Luxembourg has, in an unwarranted manner, brought the matter  
12 before this Tribunal in an attempt to rectify a situation, clearly outside the scope of  
13 the Convention. As a consequence, Mexico appears before this Tribunal to argue  
14 that its actions are in full conformity with international law.

15  
16 It is in this context, that the Tribunal is confronted with a case concerning issues and  
17 events exclusively connected to the exercise of State sovereignty in internal waters.  
18 In a way, this case creates an opportunity for the Tribunal to reinforce the legal  
19 certainty of a fundamental principle of the Convention, which is the prerogative of the  
20 State to exercise its sovereignty over its internal waters and its ports.

21  
22 Ever since the “*Louisa*” case and the “*ARA Libertad*” case as well as ongoing  
23 proceedings in an arbitration under Annex VII of the Convention, the extent to which  
24 the Convention regulates the regime of internal waters has not been yet the subject  
25 of full judicial coverage.

26  
27 An answer to this is that the regime of internal waters lacks detailed regulation under  
28 the Convention given that States have traditionally enjoyed a broad range of  
29 jurisdictional rights in their ports derived from their sovereignty over internal waters.

30  
31 Mr President and members of the Tribunal, this is critical in the context of these  
32 provisional measures proceedings, particularly where the exercise of prescriptive  
33 and enforcement jurisdiction in waters, which come under the full sovereignty of the  
34 State, is at stake. This is so and with the greatest respect, despite Luxembourg’s  
35 attempts to portray to you a picture which does not accord to the facts and to the  
36 material content of the provisions invoked by them, both in its application instituting  
37 procedures and in its request for indication of provisional measures.

38  
39 Just a cursory look to various and relevant provisions of the Convention reveal that  
40 the regime of internal waters deals exclusively with their sovereign status, their  
41 location in the landward side of the baseline of the territorial sea, and the right of  
42 innocent passage under the strict conditions provided for in article 8(2), of the  
43 Convention, and those established under article 18. Conditions which are clearly  
44 inapplicable in this case. Furthermore, it was clarified by this Tribunal that the  
45 immunity of warships is applicable in internal waters.<sup>4</sup>

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<sup>4</sup> “*ARA Libertad*” (*Argentina v. Ghana*), *Provisional Measures, Order of 15 December 2012, ITLOS Reports 2012*, p. 332, para. 95.

1 None of those provisions relate to sanitary, customs or fiscal matters, among other  
2 subjects, in internal waters. The Convention, simply, does not say anything about  
3 these.

4  
5 This case is not about navigation in the territorial sea and the right of innocent  
6 passage. It is not about freedom of navigation in the exclusive economic zone or the  
7 high seas. And it is not about discriminatory treatment against a landlocked state.

8  
9 To the contrary, Mr President. What is this case about?

10  
11 It is about internal waters and the situation of a ship, the “*Zheng He*”, which has  
12 entered voluntarily the Port of Tampico inside the Pánuco River, and which has  
13 infringed Mexican customs and tax laws. That is why its owners and representatives  
14 are currently still awaiting the outcome of internal judicial proceedings in the highest  
15 courts of Mexico, including, most likely in the Mexican Supreme Court of Justice. The  
16 involvement of the highest courts in the country, reflects the importance and the high  
17 profile which the situation of the “*Zheng He*” has in Mexican judicial proceedings.

18  
19 In this connection, and as it will be further detailed in Mexico’s intervention this  
20 afternoon, there are yet ongoing domestic remedies, the result of which will define  
21 the legal situation of the “*Zheng He*” in the context of the Mexican legal system. In  
22 other words, the legal situation of the “*Zheng He*” remains *sub judice* in the Mexican  
23 judiciary. Then, Mr President the question arises: why Luxembourg did not wait until  
24 the end of those internal remedies?

25  
26 Mr President, it is clear that what is at stake is Mexico’s sovereignty in internal  
27 waters and the respect for its administrative and judicial system. As the Tribunal has  
28 stated in the context of an indication of provisional measures in the “*Enrica Lexie*”  
29 case:<sup>5</sup> “The Order must protect the rights of both Parties”.<sup>6</sup>

30  
31 Mr President, for the purposes of this hearing, Mexico proposes to structure its  
32 intervention in the following manner divided into four main parts:

33  
34 First, I will describe the factual setting of this case so as to show that Mexico has  
35 acted, and is acting, in conformity with its national legislation and that the facts  
36 exclusively occurred in Mexican internal waters, where the “*Zheng He*” voluntarily  
37 entered the Port of Tampico with the dual purpose of starting temporal import  
38 procedures of the ship and then carrying out dredging activities in Mexican maritime  
39 areas.

40  
41 To close the segment, Mr Cruz Carrillo will describe the administrative and judicial  
42 procedures initiated against the owners and representatives of the “*Zheng He*”, vis-a-  
43 vis the Mexican customs and tax legislation. Afterwards, he will outline the pending  
44 ongoing proceedings in the Mexican highest courts concerning the legal situation of  
45 the “*Zheng He*”. The latter is also with the intention to show that there are still active  
46 and available legal remedies that the owners of the vessel are still resorting to. The  
47 facts will also show, and contrary to what Luxembourg told you this morning, that  
48 there is no case of discriminatory case or acts or unequal treatment in Mexico’s ports

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<sup>5</sup> “*Enrica Lexie*” (*Italy v. India*), *Provisional Measures, Order of 24 August 2015, ITLOS Reports 2015*, p. 182.

<sup>6</sup> *Ibid*, para. 125.

1 against the “*Zheng He*” or Luxembourg, both as the flag State or as a landlocked  
2 State.

3  
4 I should say, Mr President, that a complete overview of the factual setting is found in  
5 the written response filed by Mexico on 4 July 2024.

6  
7 Second, Mr Cruz Carrillo will focus on explaining why the Tribunal lacks jurisdiction  
8 in this case, and even *prima facie* jurisdiction to entertain the request of Luxembourg  
9 for the indication of provisional measures.

10  
11 Third, Mr Cruz Carrillo will continue with Mexico’s submissions on why the present  
12 request for provisional measures lacks of: the existence of plausible rights for which  
13 Luxembourg seeks relief; a link between the requested measures and the rights  
14 alleged by the Applicant; and then I will explain the lack of an imminent risk of  
15 irreparable damage.

16  
17 And fourth, I will make some concluding remarks.

18  
19 Mr President and Madam Vice-President, members of the Tribunal, during this first  
20 part of Mexico’s presentation, we would like to highlight three main aspects of the  
21 statements of facts.

22  
23 In particular, we would like to address: first, the entry of the “*Zheng He*” into Mexican  
24 internal waters; second, the administrative and judicial procedures adopted against  
25 the “*Zheng He*”; and third, the status quo of the “*Zheng He*” and its crew. During our  
26 presentation, we will rely on the annexes of the statement of response.

27  
28 First, I will deal with the entry of the “*Zheng He*” into Mexican internal waters.

29  
30 Mr President and members of the Tribunal, the “*Zheng He*” vessel departed from the  
31 port of Freeport, Bahamas, on 5 October 2023. As you can see in annex 1, referred  
32 to in our Statement in Response, at the time of the vessel’s departure the  
33 Government of the Commonwealth of the Bahamas issued a Certificate of Clearance  
34 Outwards, clearly stating the Port of Tampico, Mexico, as the vessel’s final  
35 destination. This indicates that the entry of the vessel into Mexico’s internal waters  
36 was not a mere port call, contrary to Luxembourg’s assertions in its request for  
37 provisional measures.

38  
39 It is worth recalling that the owner of the vessel contracted the services of the  
40 company JVV Logistics as a shipping agent. As such, JVV Logistics represented the  
41 owner before the Mexican federal authorities in all matters related to the vessel  
42 acting both as a general shipping agent and a ship consignee agent.

43  
44 Now, bearing this in mind, let me underscore how and under what circumstances the  
45 “*Zheng He*” entered into internal waters. On 9 October 2023, JVV Logistics sent a  
46 notice to the Mexican customs authorities informing them the “*Zheng He*” would be  
47 arriving on 11 October 2023, at 6:00 a.m., to the Tampico anchorage area for crew  
48 change and provisioning. However, let me draw to your attention annex 3 of our  
49 Statement in Response, where the shipping agent explicitly stated: “The ETA  
50 announced is for 11 October 2023, at 06:00 hours, to the Tampico anchorage area

1 for crew change and provisioning. It will later enter the fiscal dock for temporary  
2 import procedures with the Tampico Maritime Customs, making the vessel available  
3 to you in case any type of inspection is required.”  
4

5 Contrary to what Luxembourg states in its request for provisional measures, the  
6 owner, through its shipping agent, affirmed that the vessel “will later enter the fiscal  
7 dock” for the purposes of temporary import. This indicated a firm and specific  
8 intention of the owner. Luxembourg even acknowledged this intention in its note  
9 verbale dated 7 November 2023, by stating that the “*Zheng He*” had “[...] the  
10 intention to subsequently carry out the procedure for its temporary importation.”  
11

12 On 10 October 2023, the Harbour Master’s Office (“HMO”) authorized the vessel’s  
13 arrival at the Tampico anchorage area at the request of JVV Logistics.  
14

15 Let me draw to your attention that the Harbour Master’s Office is not the only  
16 authority involved in the procedures related to the entry of vessels into the Mexican  
17 territorial sea or its internal waters. As such, the determinations of the Harbour  
18 Masters do not affect or prevent customs or tax authorities from exercising their own  
19 powers. Thus, the owner remained obliged to obtain the necessary permits and  
20 authorizations required by other Mexican authorities.  
21

22 Having stated the latter, please allow me to recall the sequence of events that led  
23 the “*Zheng He*” to enter Mexican internal waters. On 11 October 2023, the  
24 “*Zheng He*” arrived at the Tampico anchorage area, where it remained anchored for  
25 ten days. As represented on annex 41,<sup>7</sup> the anchorage areas in the Port of Tampico  
26 are all within the territorial sea.  
27

28 On 17 October 2023, the vessel’s agent requested the Harbour Master’s Office and  
29 the Administration of the National Port System of Tampico to arrive at dock 3. On  
30 21 October 2023, the Harbour Master issued the authorization to arrive to dock 3,  
31 stating once again that the authorization was being issued without prejudice to other  
32 authorizations to be issued by other authorities.  
33

34 As you can see in the next slide, dock number 3 is located inside the Pánuco River,  
35 which clearly are internal waters. This is also depicted in annex 43.<sup>8</sup>  
36

37 Luxembourg will try to make you believe that the vessel entered into Mexican  
38 internal waters due to a situation of distress. However, I will like to underscore that a  
39 precautionary notice for a storm with strong winds was issued three days after JVV  
40 Logistics requested permission to arrive at dock 3. This sequence of events  
41 establishes that the vessel’s entry to Mexican internal waters was not due to *force*  
42 *majeure* but was a premeditated and voluntary act requested by the shipping agent.  
43

44 Your Excellencies, continuing with the chronology of events. On 24 October 2023,  
45 the National Customs Agency imposed a tax credit on JVV Logistics, because the  
46 “*Zheng He*” arrived at dock 3, which is not a berth destined for vessels intending to  
47 initiate temporary import procedures.

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<sup>7</sup> Annex 41. Map (Territorial sea, anchorage areas and Pánuco River).

<sup>8</sup> Annex 43. Map (Piers 3, 6 and 11).

1  
2 Allow me to stop here and highlight a key fact. JVV Logistics proceeded to pay the  
3 tax credit imposed by the Customs Agency with no reservation and no challenge  
4 through the available administrative or judicial means. Thereby, implicitly  
5 acknowledging their non-compliance and the applicability of Mexican customs and  
6 tax legislation.

7  
8 As I indicated, the “*Zheng He*” had clear intentions to start temporary import  
9 procedures as requested in 9 October 2023. Nonetheless, the “*Zheng He*” voluntarily  
10 remained at dock 3 from 21 October until 1 November, even after being fined by the  
11 National Customs Agency. It was not until 31 October 2023 that JVV Logistics  
12 requested authorization to change from dock 3 to the fiscal dock F-6, which is  
13 destined for temporary import procedures. On this point, please allow me to clarify  
14 that crew changes and provisioning can be done at any dock, including fiscal docks.

15  
16 Nonetheless, that same day, 31 October 2023, the Harbour Master issued a warning  
17 due to adverse weather conditions, recommending that all internal movements on  
18 the Pánuco River were suspended during the night and until further notice in order to  
19 avoid any maritime accident. The internal maneuvers on the Pánuco River resumed  
20 on 1 November. Up until that moment, all movements in the port, including those  
21 requested by the “*Zheng He*”, were suspended. Our learned colleagues of the  
22 opposite side, wrongly, interpreted these meteorological events as an alleged  
23 conflagration prepared by Mexico to detain the “*Zheng He*”.

24  
25 In sum, the “*Zheng He*” voluntarily entered into Mexican internal waters and was  
26 subject to enforcement measures for failing to produce the required documentation  
27 under Mexican custom and tax law.

28  
29 Mr President, members of the Tribunal, this concludes my first intervention in these  
30 proceedings. And now I will kindly ask you to call to the podium to Mr Cruz Carrillo to  
31 continue with Mexico’s exposition.

32  
33 **THE PRESIDENT:** Thank you, Mr Ascencio Herrera. I now give the floor to  
34 Mr Carlos Cruz Carrillo.

35  
36 **MR CRUZ CARRILLO:** Mr President, Madam Vice-President, Honourable members  
37 of the Court.

38  
39 It is a great pleasure to appear before you and a personal privilege to do so for the  
40 first time on behalf of my country, the United Mexican States.

41  
42 My task this afternoon will be twofold. First, I will continue with the factual  
43 background concerning the current situation of the “*Zheng He*” and its crew. Second,  
44 I will start with Mexico’s submission on the applicable law to the request for  
45 provisional measures before you.

46  
47 Let me then continue with the events of the national procedures regarding the  
48 “*Zheng He*”, and the actual situation of the vessel and its crew.

1 Mr President, members of the Tribunal. You heard from Mr Ascencio on how the  
2 “Zheng He” voluntarily entered into Mexican internal waters and its stumbles to  
3 comply with Mexican regulations. Let me now explain the administrative procedures  
4 concerning the “Zheng He”.

5  
6 The Northeast Regional Office of the Foreign Trade Audit Administration  
7 (“ADACEN”, for its acronym in Spanish), upon realizing the prolonged presence of  
8 the vessel in dock 3, decided to conduct an onboard inspection on 1 November of  
9 2023.

10  
11 During the inspection, neither the Company or JVV Logistics failed to produce  
12 customs documentation demonstrating the legal importation, and the possession of  
13 the “Zheng He” in Mexican territory, in contravention to Mexican Customs Law.  
14 Consequently, the authority triggered an administrative customs procedure (“PAMA”,  
15 for its acronym in Spanish) and proceeded with the precautionary seizure of the  
16 vessel.

17  
18 Let me draw your attention to the fact that the “Zheng He” has operated in Mexico on  
19 several occasions. This demonstrates that the shipowners were fully aware of the  
20 applicable customs and tax legislation in Mexican ports. In fact, the company owner  
21 of the vessel has usually utilized the temporary import regime, which offers economic  
22 advantages over definitive importation. As you can see in annex 21 of Mexico’s  
23 Statement in Response, on 31 March 2023, the Company successfully processed a  
24 Temporary Import Application for the “Zheng He” to perform dredging work in the  
25 port of Altamira, Mexico, complying with each and every fiscal and customs  
26 obligations without any issues.

27  
28 After considering the evidence and arguments presented by the Company,  
29 ADACEN, the authority, issued a resolution on 15 February 2024, determining that  
30 the Company did not prove the legal stay of the vessel in Mexican territory, in  
31 violation of the Mexican Customs Law. Consequently, in accordance with Mexican  
32 law, ADACEN imposed a tax credit and confiscated the “Zheng He” as you can  
33 observe in annex 20 of the Statement in Response.

34  
35 Against this resolution, the shipowner and its representatives filed an *amparo*  
36 *indirecto* – which is a constitutional remedy in Mexico – to challenge the inspection  
37 visit and the precautionary seizure, requesting provisional and outright suspension of  
38 the seizure. The primary arguments were the risk to the physical integrity of the  
39 vessel’s crew, including the provision of supplies to ensure their survival, and the  
40 danger of delay due to the seizure, which prevented the company from using and  
41 enjoying the vessel.

42  
43 On 15 November 2023, the Tenth District Court in Tamaulipas admitted the *amparo*  
44 *indirecto* 1240/23, but denied the outright suspension as the facts did not provide  
45 objective elements of harm to the crew’s life, health, physical integrity and personal  
46 dignity. It also denied the provisional suspension as the acts were already  
47 consummated.

48  
49 On 22 March 2024, the District Court ruled in favour of the shipowner for due  
50 process violations and legality by ADACEN in the administrative customs procedure.

1 As shown in annex 22 of the Statement in Response, this decision nullified the  
2 inspection visit order of 31 October 2023, the initiation of the administrative customs  
3 procedure, and the precautionary seizure of the vessel “Zheng He”.

4  
5 Subsequently, on 17 April 2024, the company filed a request to execute the  
6 judgment and release the vessel, leading the District Court to issue an order  
7 declaring the matter *res judicata*. Yet, in doing so, the District Court acted unaware  
8 of the timely *recurso de revisión* filed by the fiscal authority to challenge this  
9 decision.

10  
11 In sum, contrary to Luxembourg’s claims, the *amparo indirecto* judgment 1240/2023  
12 is not final, as the *recurso de revisión* is still pending in the highest courts of Mexico.  
13 Consequently, the execution of the *amparo* judgment must await the resolution of  
14 these proceedings.

15  
16 Mr President, members of the Tribunal, I would like to point out that a few weeks  
17 ago, on 19 June 2024, ADACEN submitted a motion for the Supreme Court of  
18 Justice of Mexico’s attraction power for the *recurso de revisión* 274/2024. Such  
19 motion remains pending.

20  
21 Mr President, members of the Court, let me now turn to the situation of the vessel  
22 and the crew which is the final aspect of the factual background concerning the  
23 current situation. In particular, I will address the measures already adopted by  
24 Mexico in this regard.

25  
26 Concerning the “Zheng He”, as mentioned, fiscal authorities imposed a tax credit on  
27 the vessel and proceeded to confiscate it. However, it is important to highlight that  
28 despite the vessel being in the custody of the Mexican State, its legal status is  
29 currently under review under *amparo indirecto* 274/2024. Until these judicial  
30 proceedings are resolved, the vessel continues to fly the Luxembourg flag.

31  
32 As a manner of context, it is important to note on this point that when ownership of a  
33 vessel is definitively transferred to the Mexican State, it is handed over to the  
34 competent authority (Institute to Return Stolen Goods to the People). In the present  
35 case, ADACEN requested the transfer of the “Zheng He” to the Institute due to the  
36 administrative procedure. However, the Institute expressed its inability to receive the  
37 vessel due to pending judicial proceedings. Your Honours, this clearly confirms that  
38 Mexican authorities are currently unable to take any action aimed at transferring the  
39 ownership of the “Zheng He” vessel.

40  
41 Additionally, as observed in annex 31 of the Statement in Response, since  
42 16 November 2023, the Mexican State has provided all necessary facilities for the  
43 owner to carry out preventive and corrective maintenance on the “Zheng He” upon  
44 request. As you can see in the example of annex 32 of the Statement in Response,  
45 Tampico customs authorities have authorized inspections to certify the absence of  
46 fumes and to perform a dredger certificate inspection. These measures demonstrate  
47 Mexico’s commitment to ensuring the vessel’s maintenance and operational  
48 readiness, despite the ongoing legal processes.

1 Concerning the crew of the “*Zheng He*”, as shown in annex 33 of the Statement in  
2 Response, the Mexican authorities have facilitated their ability to enter and exit the  
3 terminal since the date of its docking. Furthermore, they have ensured the crew  
4 receives essential supplies, including provisions, fuel, and garbage collection  
5 services. Similarly, the vessel has been provided with potable water supply services  
6 and the collection of oily and waste waters, all for the benefit of the crew.  
7

8 Alongside this, there were additional domestic judicial remedies invoked by the  
9 owner of the “*Zheng He*” to protect the integrity of the crew. As mentioned, in the  
10 proceedings relating to the *amparo indirecto*, the legal representatives of the “*Zheng*  
11 *He*” requested the outright suspension to provide supplies to the crew and guarantee  
12 their physical integrity. This request was initially denied due to a lack of objective  
13 evidence of harm to the crew or the vessel.  
14

15 However, on 27 November 2023, a Tribunal granted the *recurso de queja* filed by the  
16 shipowner, revoking the challenged order and thereby granting the precautionary  
17 measure for the responsible authority to facilitate unrestricted access to supplies for  
18 the crew. During these proceedings, judicial authorities inspected the vessel to verify  
19 its location, the conditions of the crew members, and their access to supplies.  
20 Although no sufficient evidence of harm was initially found, the Tribunal, considering  
21 the seizure situation and respecting the crew’s human rights, ordered a  
22 precautionary measure requiring port authorities to ensure the provision of supplies  
23 and services to the crew for as long as they remained on board, as detailed in  
24 annex 34 of the Statement in Response.  
25

26 In this regard, it is crucial to note that the Mexican authorities are obliged by an  
27 internal judicial decision to facilitate unrestricted access to supplies for the crew.  
28

29 Mr President, members of the Tribunal, from this factual background presented to  
30 you by Mr Ascencio and me, we can highlight three key aspects:  
31

32 First, the “*Zheng He*” voluntarily entered into Mexican ports, with a clear intention to  
33 start a temporal importation procedure and to engage in dredging activities in  
34 Mexican waters.  
35

36 Second, far from being an arbitrary and discriminatory detention, the “*Zheng He*” was  
37 confiscated for failing to comply with the requirements established in Customs and  
38 Tax Legislation. In addition, the shipowners duly used the available administrative  
39 and judicial means to challenge the determination of Mexican authorities. Such  
40 judicial and administrative procedures are pending.  
41

42 Third and final point on the factual background, the legal situation of the “*Zheng He*”  
43 vessel is *sub judice*. However, Mexican authorities have enabled its maintenance. In  
44 a similar fashion, Mexico has been implementing measures to ensure the integrity of  
45 the crew.  
46

47 Mr President, members of the Tribunal, I will now turn to Mexico’s submissions  
48 concerning the requirements to prescribe provisional measures under article 190,  
49 paragraph 1, of the Convention.  
50

1 At the outset, allow me to underscore that the *raison d'être* of a request for  
2 provisional measures under such provisions. That is, protecting the rights of the  
3 Parties to a dispute – both, the Applicant and the Respondent – pending a final  
4 decision of this Tribunal.

5  
6 Let me now examine the hurdles Luxembourg has to clear in order to succeed in its  
7 application for provisional measures.

8  
9 In accordance with article 290, paragraph 1, of the Convention, this Tribunal may  
10 prescribe provisional measures if it considers that: it has *prima facie* jurisdiction  
11 under Part XI or Part XV of the Convention; and where such measures are  
12 appropriate to preserve the rights of the Parties to the dispute.

13  
14 Additionally, this Tribunal has established the plausibility test as one of the  
15 requirements to prescribe provisional measures.<sup>1</sup> Concretely, this Tribunal stated  
16 that it was not called upon to determine definitively whether the rights claimed by the  
17 requesting party exist, but need only to decide whether such rights are plausible.<sup>2</sup>  
18 Moreover, this Tribunal has established that a link must exist between the requested  
19 measures and the rights claimed.<sup>3</sup>

20  
21 Although article 290, paragraph 1, does not establish urgency as an element for the  
22 prescription of provisional measures, in “*The Enrica Lexie Incident*” case, the Arbitral  
23 Tribunal, constituted under Annex VII of the Convention stated: “Generally, urgency  
24 is linked to the criterion of preservation of the respective rights of the parties to the  
25 dispute in order to avert a real and imminent risk that irreparable prejudice may be  
26 caused to the rights at issue, pending the final decision on the merits pursuant to  
27 article 290(1) of the Convention.”<sup>4</sup>

28  
29 In sum, for Luxembourg to be granted provisional measures in the present  
30 proceedings, it has to establish before this Tribunal that:

31  
32 The Tribunal has *prima facie* jurisdiction, since there is a clear basis for its  
33 jurisdiction, a dispute exists within its jurisdiction *ratione materiae*, and that  
34 negotiations were exhausted under article 283 of the Convention.

35  
36 Second, the rights claimed by Luxembourg are plausible under the Convention.

37  
38 Third, that there is a link between the rights claimed and the measures requested by  
39 Luxembourg.

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<sup>1</sup> *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, ITLOS Case No. 23, Provisional Measures, Order of 25 April 2015 (“Gulf of Guinea”), p. 158, para. 58.

<sup>2</sup> *M/T “San Padre Pio” (Switzerland v. Nigeria)*, Provisional Measures, Order of 6 July 2019, ITLOS Reports 2018–2019, p. 399, at para. 105.

<sup>3</sup> *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, ITLOS Case No. 23, Provisional Measures, Order of 25 April 2015 (“Gulf of Guinea”), p. 159, para. 63.

<sup>4</sup> *The ‘Enrica Lexie’ Incident* case, Permanent Court of Arbitration, Case No. 2015-28, Request for the Prescription of Provisional Measures, Order of 29 April 2016, para. 89.

1 And finally, that urgency justifies the imposition of the measures, since there is a real  
2 and imminent risk that irreparable harm might be caused to the rights of  
3 Luxembourg.

4  
5 I will now present the submissions concerning *prima facie* jurisdiction, plausibility of  
6 rights and the required link. Mr Ascencio will continue the case by presenting the  
7 requirement of urgency.

8  
9 Mr President, members of the Tribunal, in the previous *audience* this morning,  
10 Luxembourg made some arguments on why this Tribunal should have jurisdiction  
11 over the present case. They were, expectedly, self-serving. Now, we must redress  
12 the imbalance, and shed light upon a fatal flaw from which this honourable Tribunal  
13 has no jurisdiction, not even *prima facie*: the lack of a link between the facts and the  
14 allegedly violated provisions of the Convention.

15  
16 Mexico has set out brief arguments in its Statement in Response, and I will now  
17 briefly expand upon them.

18  
19 Article 290, paragraph 1, of the Convention sets out that this Tribunal may prescribe  
20 provisional measures only if it has *prima facie* jurisdiction to adjudicate the case.  
21 This is the first threshold that must be crossed by Luxembourg. For this to happen,  
22 the provisions invoked by Luxembourg should *prima facie* appear to afford a basis  
23 on which jurisdiction could be founded.<sup>5</sup>

24  
25 Article 288, paragraph 1, of the Convention provides that this Tribunal shall have  
26 jurisdiction over disputes concerning the interpretation or application of the  
27 Convention. It is in this regard that the jurisdiction of this Tribunal is affected by a  
28 fatal flaw in Luxembourg's request: the lack of a link between the facts and the  
29 allegedly violated provisions of the Convention.

30  
31 Applicant relies on both States' declarations accepting the Tribunal's jurisdiction  
32 pursuant to article 287 of the Convention. As with all international tribunals, their  
33 jurisdiction exists with States' consent as the fundamental basis. This consent fixes  
34 the scope of the jurisdiction conceded.<sup>6</sup> Even this Tribunal has stated that: "The  
35 principle of consent by a State to the judicial settlement of its dispute with another  
36 State is fundamental to international judicial proceedings."<sup>7</sup>

37  
38 Mexico gave its consent for this Tribunal to adjudicate cases for the "settlement of  
39 disputes concerning the interpretation or application of the Convention". Luxembourg  
40 simply recognized this Tribunal's competence in accordance with article 287 of the  
41 Convention. This provision provides, similarly, for the settlement of disputes  
42 concerning the interpretation or application of the Convention. This is the point where  
43 both declarations coincide in conferring jurisdiction to this honourable Tribunal, and  
44 thus, the extent of jurisdiction fixed.<sup>8</sup>

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<sup>5</sup> *M/T "San Padre Pio" (Switzerland v. Nigeria), Provisional Measures, Order of 6 July 2019, ITLOS Reports 2018–2019*, p. 375, at para. 45.

<sup>6</sup> *The Mavrommatis Palestine Concessions, Judgment, P.C.I.J., Series A, No. 2*, p. 6, 16.

<sup>7</sup> *Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives), Preliminary Objections, Judgment, ITLOS Reports 2021*, p. 67, para. 168.

<sup>8</sup> *Case of Certain Norwegian Loans, Judgment of July 6th, 1957: I.C.J. Reports 1957*, p. 9, p. 23.

1  
2 Under this thought, Luxembourg must persuade most of you that there is an  
3 expectancy of this Tribunal having jurisdiction on the merits. We, conversely, assert  
4 that this Tribunal has not been seized in relation to a dispute that concerns the  
5 “interpretation or application” of the Convention. The events that are the subject of  
6 the case that brings us before you today took place in internal waters. None of the  
7 provisions of the Convention regulate how a State may exercise its exclusive  
8 sovereignty in this space.  
9

10 In its application, Luxembourg alleged at paragraph 16 that Mexico has breached  
11 eleven provisions of the Convention. However, in its request for the prescription of  
12 provisional measures, from paragraphs 35 to 46, Applicant made vague and obscure  
13 references to their relevance for the case it has submitted. Sometimes, it expresses  
14 crystal clear inapplicable provisions, either by the explicit terms of the Convention or  
15 by the jurisprudence of this Tribunal.  
16

17 As aforementioned, the alleged dispute submitted by Luxembourg should relate to a  
18 “dispute” concerning the interpretation or application of the Convention. In the words  
19 of the Permanent Court of International Justice, it means that there should be a  
20 “disagreement on a point of law or fact, a conflict of legal views or of interests”.<sup>9</sup> This  
21 has been further developed by that Court’s successor, requiring that: “The two sides  
22 hold clearly opposite views concerning the question of the performance or non-  
23 performance of certain international obligations”.<sup>10</sup> Consequently, for a dispute on  
24 this matter, both States to the present case should hold opposite views regarding the  
25 interpretation or application of the Convention.  
26

27 Nonetheless, it must be noted that it is not sufficient that one side argues that a State  
28 has breached the Convention, and that the latter denies it. That is simply not enough  
29 to hold opposite views on the interpretation or application of the Convention.  
30 Otherwise, it would lead to unreasonable results, as absurd as it would be to say that  
31 UNCLOS regulates outer space. Clearly, if one State argues that the Convention  
32 regulates outer space and another rejects the idea, it would not constitute a dispute  
33 over the interpretation or application of the Convention, since it is not its subject  
34 matter.  
35

36 Accordingly, this Tribunal has fixed the standard to ascertain whether a dispute  
37 brought by a State concerns the interpretation or application of the Convention.  
38 There must be “a link between the facts advanced”, and “the provisions of the  
39 Convention referred to by it and show that such provisions can sustain the claims  
40 submitted.”<sup>11</sup>  
41

42 As a quick example, I refer to the *M/V “Louisa”* case. There, Saint Vincent and the  
43 Grenadines contended that Spain breached article 73 of the Convention when it  
44 detained the former’s vessel. However, ITLOS concluded that article 73 could not

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<sup>9</sup> *The Mavrommatis Palestine Concessions (Greek Republic v. Great Britain)*, Judgment, P.C.I.J., Series A, No. 2, at p. 6, 11.

<sup>10</sup> *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 3, at para. 50.

<sup>11</sup> *M/V “Norstar” (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44, para. 110.

1 serve as a basis for the claim submitted by Saint Vincent and the Grenadines. This,  
2 because the detention was made in the context of violations to domestic laws on the  
3 protection of the underwater cultural heritage and the possession and handling of  
4 weapons of war in Spanish territory; meanwhile, the subject matter of article 73  
5 relates to living resources.<sup>12</sup> Similarly, Luxembourg claims the breach of UNCLOS's  
6 provisions that are not applicable to the underlying facts.

7  
8 Although I will address each of the provisions invoked by Luxembourg, one main  
9 point must be duly considered first. The confiscation of the vessel "*Zheng He*", as I  
10 mentioned, resulted from the lack of compliance with Mexican Customs Law. As  
11 evidenced in annexes 16 and 17, Mexican authorities required the documentation to  
12 prove the legal importation, stay, and possession of the "*Zheng He*" in national  
13 territory, but no one was able to furnish such documents. This led to the  
14 administrative procedure specified in annex 20 that resulted in the confiscation of the  
15 vessel.

16  
17 It is clear that no provision of UNCLOS is applicable to this matter. Further  
18 considering that coastal States bear full sovereignty over its ports and internal  
19 waters.

20  
21 Now, let me turn to the provisions related to innocent passage: articles 17 to 19, and  
22 21 of the Convention. It is fundamental to look first at article 18, which states the  
23 meaning of "passage". If the navigation performed by the "*Zheng He*" cannot be  
24 considered as such, then it lacks any sense to analyse whether it could have been  
25 innocent navigation or not, as specified in article 19. Accordingly, it could not be  
26 argued that the vessel "*Zheng He*" was exercising a right of innocent passage  
27 covered by article 17. It would also be meaningless to turn to article 21, which  
28 elaborates on the regulations of the coastal State in relation to innocent passage.

29  
30 In this regard, article 18, paragraph 1, is quite clear when it states that "passage"  
31 means navigation through the territorial sea for the purpose of: (a) traversing the sea  
32 without entering internal waters or calling at a roadstead or port facility outside  
33 internal waters; or (b) proceeding to a or from internal waters or a call at such  
34 roadstead or port facility. This must be read in conjunction with article 18,  
35 paragraph 2, which states that the passage shall be continuous and expeditious. It  
36 only contemplates stopping and anchoring when it is incidental to ordinary navigation  
37 or is rendered necessary.

38  
39 Honourable members of the Tribunal, the "*Zheng He*" headed to the Port of Tampico  
40 as its final destination. Annex 1 contains a Certificate of Clearance Outwards, issued  
41 by the Government of the Commonwealth of the Bahamas of 5 October 2023,  
42 specifying the Port of Tampico, Mexico, as the final destination of the vessel. This is  
43 further confirmed by annex 3, where it is shown that JVV Logistics notified the  
44 Mexican customs authorities informing the arrival of the "*Zheng He*" on 11 October  
45 2023. The shipping agent specified that the vessel would enter a fiscal dock for  
46 temporary import procedures with the Tampico Maritimes Customs.

47  

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<sup>12</sup> *M/V "Louisa" (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Judgment, ITLOS Reports 2013, p. 4, at p. 46, paras. 100-105.

1 The argument that the vessel was exercising a right of innocent passage cannot in  
2 any way reconcile with its acknowledged purposes in Mexico. It was not just passing  
3 by. I want to draw this Tribunal's attention to the fact that in March 2023, the  
4 European Dredging Company successfully processed a Temporary Import  
5 Application for the "Zheng He" to perform dredging work in the port of Altamira,  
6 Mexico, and it complied with all the requirements. This is demonstrated with  
7 annex 21. The vessel had regular business in Mexico.

8  
9 Luxembourg has also alleged that Mexico breached articles 58, 87 and 90 of the  
10 Convention, which provide for the rights and duties of other States in the exclusive  
11 economic zone, the freedom of the high seas, and the right of navigation. Applicant  
12 stated at paragraph 41 of its request for the indication of provisional measures that  
13 the alleged dispute concerns Mexico's infringement of the freedom of navigation. In  
14 paragraph 40, it referred to this freedom in the exclusive economic zone and in the  
15 high seas. This, read along with its paragraph 76, conveys the idea that Luxembourg  
16 purports to argue that the "Zheng He" had freedom to navigate from internal waters  
17 to the exclusive economic zone and the high seas.

18  
19 However, article 58 of the Convention specifies that all States enjoy the freedoms of  
20 navigation referred to in article 87, when they are in the exclusive economic zone.  
21 Article 90 enshrines the right of every State to sail ships on the high seas, and in  
22 accordance to article 87, the freedom of the high seas comprises freedom of  
23 navigation in that area. Thus, these provisions have a geographical limit in its  
24 application. In front of this, it is of the utmost relevance to highlight again that the  
25 "Zheng He" was not in the exclusive economic zone nor in the high seas when it was  
26 subjected to the procedure that resulted in its confiscation.

27  
28 Luxembourg argues that there is somehow a right to leave internal waters, even  
29 when the vessel has been subjected to an administrative procedure for non-  
30 compliance of national law. But this Tribunal has recognized that "[t]o interpret the  
31 freedom of navigation as encompassing a right to leave port and gain access to the  
32 high seas would be inconsistent with the legal regime of internal waters."<sup>13</sup>

33  
34 Furthermore, the *M/V "Louisa"* case is useful here again. There, Saint Vincent and  
35 the Grenadines alleged the breach of articles 58 and 87. It argued that when Spain  
36 detained the former's vessel docked in a Spanish port, it denied access to the high  
37 seas, in violation of its freedom to navigate. However, the Tribunal considered that  
38 article 87 cannot be interpreted in such a way as to grant the *M/V "Louisa"* a right to  
39 leave the port and gain access to the high seas notwithstanding its detention in the  
40 context of legal proceedings against it.<sup>14</sup> Consequently, it concluded that article 87  
41 could not constitute a basis for the claims submitted.

42  
43 Additionally, States exercise sovereignty in its internal waters, where foreign ships  
44 have no right of navigation unless conferred by the Convention or other rules of  
45 international law, which is not the present case.<sup>15</sup> Article 86 of the Convention states

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<sup>13</sup> *M/V "Norstar" (Panama v. Italy)*, Judgment, ITLOS Reports 2018–2019, p. 10, para. 221.

<sup>14</sup> *M/V "Louisa" (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Judgment, ITLOS Reports 2013, p. 4, at p. 46, para. 109.

<sup>15</sup> *M/V "Norstar" (Panama v. Italy)*, Judgment, ITLOS Reports 2018–2019, p. 10, para. 221.

1 that the provisions of Part VII, “High Seas”, apply to all parts of the sea that are not,  
2 among others, internal waters of a State. Part VII covers articles 87 and 90.

3  
4 The only conclusion to be drawn from this is that Luxembourg is trying to stretch the  
5 Convention out of its limits and against settled judicial decisions of this tribunal.

6  
7 Additionally, Luxembourg argues at paragraphs 69 to 70 of its request for provisional  
8 measures that Mexico would breach article 92 of the Convention if the definitive  
9 expropriation of the vessel was to be confirmed. However, the portion of that article  
10 invoked by Luxembourg presupposes that the ship is in a voyage or in a port of call.  
11 As has been explained and demonstrated, the “*Zheng He*” was not in any of the  
12 aforesaid hypotheses. Rather, it was in the port of destiny.

13  
14 Mr President, members of the Tribunal, Luxembourg also alleges a breach to  
15 article 131, related to the treatment to be given to ships flying the flag of landlocked  
16 States, in an equal manner as the treatment conferred to other foreign ships in  
17 maritime ports. This provision differs from the previous in the high seas because it  
18 actually refers to maritime ports. Nevertheless, for it to be applicable, it is not enough  
19 that some events have taken place in a port. For the provision to be applicable, it is  
20 required to prove the existence of a link between the facts advanced and that article,  
21 in order to demonstrate that this Tribunal has *prima facie* jurisdiction. Here is where  
22 its invocation turns obscure and fairly inappropriate.

23  
24 Article 131 needs the following cumulative circumstances to come into play. First, the  
25 set of facts that encompass the treatment given to a foreign ship flying the flag of a  
26 landlocked State – Luxembourg in this case. Second, at least one example of the  
27 treatment given to a foreign ship flying the flag of a coastal State. Third, that the  
28 treatment given to both ships was different, in prejudice of the ship flying the flag of a  
29 landlocked State. And fourth, that the treatment afforded to the latter was specifically  
30 due to the fact that the ship flies the flag of a landlocked State.

31  
32 None of the previously mentioned circumstances can be extracted from  
33 Luxembourg’s application and request for the prescription of provisional measures,  
34 besides the facts only related to the “*Zheng He*” alone.

35  
36 Another set of ambiguously invoked articles refers to article 300. It is undoubted that  
37 this provision “becomes relevant only when ‘the rights, jurisdiction and freedoms  
38 recognized’ in the Convention are exercised in an abusive manner.”<sup>16</sup>

39  
40 In its request for indication of provisional measures, the Applicant mentioned  
41 article 300 at paragraphs 36 and 40. It alluded to article 2 to say that the Convention  
42 recognizes the sovereignty of the coastal State over its internal waters. It also  
43 referred to articles 218 and 220 to argue that they contemplate limited powers in  
44 favour of the port State and the coastal State. Based on this, Luxembourg advances  
45 that States cannot exercise powers in an abusive manner against foreign vessels,  
46 even in internal waters and ports.

47  

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<sup>16</sup> *M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Judgment, ITLOS Reports 2013, p. 4, at para. 137.

1 Still, none of the provisions invoked apply to the present situation. Luxembourg tries  
2 to mischaracterize the facts as an attempt to force a discussion regarding the  
3 interpretation and application of the Convention. However, it is evident from factual  
4 background that all its allegations fall outside the Convention.

5  
6 First, article 2 does not limit the coastal State exercise of sovereignty over its internal  
7 waters. As it is clear from this article, its purpose is to establish the “legal status of  
8 the territorial sea, of the air space over the territorial sea and of its bed and subsoil”.  
9 It does not regulate internal waters, let alone limits the exercise of sovereignty by a  
10 coastal State. Given that the facts of this case occurred in internal waters and in the  
11 port of Tampico, article 2 must not be applicable.

12  
13 Second, articles 218 and 220 are irrelevant as they fall under Part XII of the  
14 Convention concerning the “Protection and preservation of the marine environment”,  
15 which is not under discussion.

16  
17 The last set of totally inapplicable rules in the present case refers to the invocation of  
18 the ICCPR, the International Covenant on Economic, Social and Cultural Rights, and  
19 the Maritime Labour Convention.

20  
21 First of all, the consent given by Mexico made clear that ITLOS may only have  
22 jurisdiction to adjudicate matters related to the interpretation or application of  
23 UNCLOS. Consequently, any other international instrument is out of consideration  
24 with respect to any case in which Mexico could be involved.

25  
26 Additionally, I want to refer to the argument formulated by the Applicant in paragraph  
27 40 of his request for provisional measures, according to which the international  
28 instruments that I just referred to would be applicable to the present case in  
29 accordance with article 293, paragraph 1, of the Convention.

30  
31 In this regard, I wish to remember that article 293, paragraph 1 provides that: “A  
32 court or tribunal having jurisdiction under this section shall apply this Convention and  
33 other rules of international law not incompatible with this Convention.”

34  
35 It is thus necessary to emphasize that article 293 conditions the possibility that this  
36 Tribunal can apply other rules of international law not incompatible with the  
37 Convention, to the requirement that it has jurisdiction over the case. Therefore, given  
38 that this condition is not met in the present case, neither the ICCPR, nor the  
39 ICESCR, nor the MLC, can be applied here.

40  
41 In relation to the above, I want to highlight that Luxembourg’s obligations under the  
42 Maritime Labour Convention are relevant only to that State. Article 34 of the Vienna  
43 Convention on the Law of Treaties establishes that “[a] treaty does not create either  
44 obligations or rights for a third State without its consent.” Accordingly, and as  
45 Luxembourg acknowledges in paragraph 59 of its request, Mexico is not a party to  
46 that treaty.

47  
48 Furthermore, if Applicant were to claim the protection of any rights owed to  
49 individuals, it would need to exhaust local remedies available in Mexico before  
50 resorting to an international tribunal. This is not only recognized in article 295 of

1 UNCLOS, but also under general international law.<sup>17</sup> In this sense, the local  
2 remedies to which Luxembourg resorted are still under consideration by Mexican  
3 authorities and, in any case, they relate only to the confiscation of the vessel, not any  
4 human right.

5  
6 Considering the aforesaid, Mexico claims that the case submitted by Luxembourg  
7 does not fall within the jurisdiction of this Tribunal, not even *prima facie*. It would not  
8 be the first instance where a case is dismissed as a result from the analysis of the  
9 requirements to prescribe provisional measures. The International Court of Justice  
10 has dismissed the indication of provisional measures and even ordered the removal  
11 of a case from the list when it “manifestly lacks jurisdiction”,<sup>18</sup> between Yugoslavia  
12 and the USA.

13  
14 As has been argued, the case submitted by Luxembourg does not relate to the  
15 application or interpretation of UNCLOS. It relates to acts performed by European  
16 Dredging Company and JVV Logistics in contravention of Mexican Customs Laws.

17  
18 All in all, honourable members of the Tribunal, even if you were somehow convinced  
19 that this Tribunal has *prima facie* jurisdiction, the requirements set out in article 283  
20 of UNCLOS are not met.

21  
22 Article 283, paragraph 1, specifies that in the event of a dispute between States  
23 regarding the interpretation or application of the Convention, they must proceed  
24 promptly to an exchange of views on its resolution through negotiation or other  
25 peaceful means.

26  
27 Although it is not necessary for a State to refer expressly to a specific treaty in its  
28 exchanges with the other State in order to subsequently invoke that instrument, “the  
29 exchanges must refer to the subject matter of the treaty with sufficient clarity to  
30 enable the State against which a claim is made to identify that there is, or may be, a  
31 dispute with regard to that subject matter.”<sup>19</sup> Which was considered by *Marine*  
32 *Protected Areas, Chagos Arbitration*.

33  
34 In this case, the exchanges between Luxembourg and Mexico only referred to the  
35 seizure of the vessel “*Zheng He*” and its crew. It never involved freedom of  
36 navigation, unequal treatment, nor any mistreatment of the ship’s crew. In this point,  
37 I kindly refer your Excellencies to the content of annexes 35 to 40 of Mexico’s  
38 submissions, which show the diplomatic exchanges between both States.

39  
40 To throw light on this, I want to draw this Tribunal’s attention to a judgment of 2024,  
41 rendered by the ICJ in the case called *Application of the International Convention for*

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<sup>17</sup> *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Preliminary Objections, Judgment, I.C.J. Reports 2007, p. 582, at para. 42.

<sup>18</sup> *Legality of Use of Force (Yugoslavia v. United States of America)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 916, at paras. 29 and 34.

<sup>19</sup> *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award of 18 March 2015, at para. 379; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation) Preliminary Objections, Judgment, I.C.J. Reports 2011*, p. 70 at p. 85, para. 30; See also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 392 at pp. 428-429, para. 83.

1 *the Suppression of the Financing of Terrorism and of the International Convention on*  
2 *the Elimination of All Forms of Racial Discrimination*, between Ukraine and Russia.

3  
4 There, at paragraphs 127 and 128, the Court had to determine whether requests for  
5 legal assistance made by Ukraine fell within the scope of article 12 of the Convention  
6 for the Suppression of the Financing of Terrorism. In that case, the ICJ stated that all  
7 that was necessary for an investigation to fall within the scope of that article was that  
8 the subject matter of the investigation pertained to the offenses covered by the  
9 Convention; thus, no explicit mention of the Convention had to be made. However,  
10 the Court found that out of 12 requests, only three made reference to the offenses  
11 covered by that treaty. The other nine were not considered as falling within the scope  
12 of article 12, since they referred to different hypotheses.

13  
14 Here, even if no specific mention of UNCLOS provisions was necessary, at least it  
15 would be required that the subject matter arose in the diplomatic exchange, which  
16 did not. Luxembourg advances issues never brought in an exchange of views. This  
17 shows that Luxembourg never considered them to be applicable, until now that tries  
18 to mischaracterize the case at hand.

19  
20 Mr President, members of the Tribunal, as demonstrated, the *prima facie* jurisdiction  
21 cannot be established for this Tribunal to entertain the present request for provisional  
22 measures.

23  
24 Regardless of that submission, Mexico submits that the present request for  
25 provisional measures lacks of: the existence of plausible rights for which  
26 Luxembourg seeks relief; a link between the requested measures and such plausible  
27 rights; and existence of an imminent risk of irreparable damage. As mentioned, I will  
28 address the plausibility test and the link between rights and the requested measures.  
29 Mr Ascencio will follow me and present the absence of an imminent risk of  
30 irreparable damage.

31  
32 Let me start with the test of plausibility. As noted, this Tribunal has examined the  
33 fulfilment of this test in recent requests for provisional measures. A sitting member of  
34 this Tribunal rightly pointed out in a dissenting opinion to the order rendered in the  
35 “*Enrica Lexie*” case: “[...] The fulfilment of the test of plausibility of rights asserted by  
36 the applicant in provisional measures proceedings, which is closely linked to the  
37 analysis of *prima facie* jurisdiction, is one of the requirements for admissibility.”<sup>20</sup>

38  
39 Along with the necessity to establish a plausible existence of the alleged rights,  
40 Luxembourg must prove that there is a link between the rights whose protection is  
41 sought and the provisional measures being requested.<sup>21</sup>

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<sup>20</sup> “*Enrica Lexie*” (*Italy v. India*), *Provisional Measures, Dissenting Opinion of Judge Heidar*, ITLOS Reports 2015, p. 287, para. 18.

<sup>21</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, *Provisional Measures, Order of 16 March 2022*, I.C.J. Reports 2022 (I), p. 224, para. 51.

1 At the outset, the rights that Luxembourg seeks to protect are “a central element of  
2 the law of the sea and are intended to guarantee freedom of navigation and other  
3 internationally lawful uses of the sea.”<sup>22</sup>

4  
5 *In concreto*, Luxembourg seeks to establish such rights under articles 2, 17, 18, 19,  
6 21, 58, 87, 90, 92, 131 and 300 of the Convention.<sup>23</sup>

7  
8 I will examine each of the categories of each provision in light of the arguments  
9 submitted by Luxembourg and demonstrate that a plausible right on those provisions  
10 is simply untenable.

11  
12 First I will refer to articles 2 in connection to article 300 of the Convention.

13  
14 Luxembourg seeks to establish a right under article 2, paragraph 3, of the  
15 Convention. Before turning to that particular paragraph, it is pertinent to examine  
16 article 2, paragraph 1, which reads: “The sovereignty of a coastal State extends  
17 beyond its land territory and internal waters and, in the case of an archipelagic State,  
18 its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.”

19  
20 A reading of this provision allows a clear distinction between internal waters, which  
21 are subject to the full sovereignty of the coastal State, and the adjacent belt of sea,  
22 called the territorial sea. This distinction is cardinal in the present case. Internal  
23 waters are neither synonyms nor cannot be characterized as part of the territorial  
24 sea. Internal waters must be closely linked with land and are subject to the  
25 sovereignty of the coastal State<sup>24</sup> as held in the arbitration between the Republic of  
26 Croatia and the Republic of Slovenia under Annex VII of the Convention.

27  
28 Yet, Luxembourg seems to suggest that article 2, paragraph 3, of the Convention,  
29 and the entire regime of territorial sea, applies *mutatis mutandis* to internal waters.

30  
31 Article 2, paragraph 3, of the Convention reads as follows: “[...] 3. The sovereignty  
32 over the territorial sea is exercised subject to this Convention and to other rules of  
33 international law.”

34  
35 At the outset, one can already note that this provision exclusively applies to the  
36 territorial sea and no reference is made to its application to internal waters.

37  
38 For instance, in the *Chagos Marine Protected Area Arbitration*, the Arbitral Tribunal  
39 determined that article 2, paragraph 3, imposes an obligation to exercise  
40 sovereignty, “subject to, or with regard to, the rights and duties of other States or  
41 rules of international law beyond the Convention itself.” In coming to such a  
42 conclusion, the Tribunal examined “the structural context of the Convention”. And the  
43 consistency concerning other maritime areas, such as the territorial sea, international  
44 straits, the exclusive economic zone, the continental shelf and the high seas.  
45 However, the Tribunal did not include in its assessment internal waters. It was simply  
46 excluded from its analysis for obvious reasons.

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<sup>22</sup> Request for Provisional Measures, para. 41.

<sup>23</sup> Request for Provisional Measures, para. 36.

<sup>24</sup> *Arbitration between the Republic of Croatia and the Republic of Slovenia*, Final Award 29 June 2017, para. 867.

1  
2 In the present case, the actions subject to the present proceedings occurred entirely  
3 in Mexican internal waters, in the port of Tampico. The detention of the “*Zheng He*”  
4 occurred while it was docked after it voluntarily requested entry into Mexican ports.  
5

6 As such, Luxembourg cannot claim a plausible right under article 2, paragraph 3,  
7 because the subject matter of these proceedings entirely occurred in internal waters  
8 and not in the territorial sea. In other words, the detention of the “*Zheng He*” falls  
9 outside the scope of article 2 in its entirety.  
10

11 Mr President, members of the Tribunal, notwithstanding the above submission on  
12 article 2 of the Convention, let me now examine those provisions of the Convention  
13 on which Luxembourg seeks to establish a plausible right in connection with article 2,  
14 namely, article 300 and external rules of international law.  
15

16 Luxembourg seeks to establish a plausible right under article 2 in connection to  
17 article 300, concerning good faith and abuse of rights. In particular, Luxembourg  
18 argues that the confiscation of the “*Zheng He*” was arbitrary and discriminatory.  
19

20 Arbitrariness has been defined by the International Court of Justice as “a wilful  
21 disregard of due process of law, an act which shocks, or at least surprises, a sense  
22 of juridical propriety”.<sup>25</sup> Moreover, the ICJ has explained that in examining the  
23 reasonableness of a regulation: “[...] It will not be enough in a challenge to a  
24 regulation simply to assert in a general way that it is unreasonable. Concrete and  
25 specific facts will be required to persuade a court to come to that conclusion.”<sup>26</sup>  
26

27 In the present case, Luxembourg has failed to establish how the enforcement of  
28 customs regulations against the “*Zheng He*” was arbitrary and discriminatory.  
29

30 Finally, Luxembourg further seeks a plausible right under article 2 to protect its  
31 duties under the ICCPR, the ICESCR and the MLC. Mexico is not even party to the  
32 latter.  
33

34 Mexico recognizes the role that external rules of international law plays in the  
35 interpretation and application of the Convention under article 293, as recently  
36 recognized in your latest advisory opinion, insofar they are not incompatible with the  
37 Convention, as the applicable law to a dispute.  
38

39 However, external rules cannot establish a plausible right for a request for  
40 provisional measures. Article 290, paragraph 1, is clear in establishing the role of  
41 provisional measures to preserve the rights of the parties pending the final decision.  
42 The existence of plausible rights is what matters for the present proceedings, not the  
43 duties of Luxembourg under external instruments. On this point, Judge *ad hoc*  
44 Murphy, in the “*San Padre Pio*” case, stated: “[...] Article 290 of the Convention  
45 contemplates that a tribunal may prescribe provisional measures to preserve the

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<sup>25</sup> *Eletronica Sicula S.P.A. (ELSI)*, Judgment, I.C.J. Reports 1989, p. 15, para. 128.

<sup>26</sup> *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)* Judgment, 2023 Unreported, para. 146; *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment, I.C.J. Reports 2009, p. 253, para. 101.

1 respective “rights” of the parties to the dispute pending the final decision; it says  
2 nothing about protecting a party’s “duties” or “obligations”.<sup>27</sup>

3  
4 In conclusion, article 2 cannot substantiate a plausible right since the factual and  
5 legal background of this case occurred in internal waters. Outside the scope of  
6 article 2. Similarly, a plausible right is untenable under article 300 and external rules.

7  
8 Mr President, I think this could be another good time to have a coffee, if you please.

9  
10 **THE PRESIDENT:** I think this would be an appropriate time for the Tribunal to  
11 withdraw for a break of 30 minutes. We will continue the hearing at five o'clock, when  
12 you may continue.

13  
14 **MR CRUZ CARRILLO:** Thank you.

15  
16 (Short break)

17  
18 **THE PRESIDENT:** Please be seated. We will now continue the hearing. I give the  
19 floor to Mr Cruz Carrillo, please.

20  
21 **MR CRUZ CARRILLO:** Thank you, Mr President, your Excellencies. I will now  
22 continue with my analysis on the plausibility of rights and the present request for  
23 provisional measures. I will continue with the alleged plausible right to leave internal  
24 waters under articles 17, 18, paragraph 1(b), 19 and 21 of the Convention.

25  
26 Luxembourg attempts to establish a plausible right of innocent passage as  
27 recognized in the territorial sea. In paragraph 77 of the request, Luxembourg claims  
28 that the “*Zheng He*” is “prevented from resuming its maritime voyage and exercising  
29 the right of innocent passage through Mexican territorial waters”.

30  
31 On this point, three considerations should be made. First, the right of innocent  
32 passage in the territorial sea does not apply *mutatis mutandis* to internal waters.  
33 Second, the present case does not concern the interruption of innocent passage.  
34 Third, the “*Zheng He*” was detained in internal waters as a result of breaching  
35 customs regulations. I will elaborate on each of these considerations.

36  
37 First, concerning innocent passage not applicable in internal waters. UNCLOS  
38 recognizes the right of all States to exercise a right of innocent passage through the  
39 territorial sea.<sup>28</sup> On the contrary, innocent passage does not exist in internal waters.  
40 The only exceptions are: first, article 8, paragraph 2, of the Convention, concerning  
41 the establishment of a straight baseline which encloses as internal waters areas  
42 which had not previously been considered as such. Such provision is not applicable  
43 to the present case. Second exception, the existence of a situation of distress.  
44 However, as demonstrated in the authorization to entry into port, the “*Zheng He*”  
45 entered the port voluntarily and not as a consequence of a situation of distress. The  
46 third exception, the immunity of a warship or an official vessel as recognized by this  
47 Tribunal. None of these exceptions of innocent passage apply in this case.

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<sup>27</sup> *M/T “San Padre Pio” (Switzerland v. Nigeria), Provisional Measures, Separate Opinion of Judge ad hoc Murphy, ITLOS Reports 2018–2019, p. 424, para. 25.*

<sup>28</sup> UNCLOS, Article 17.

1  
2 Second consideration concerning that Luxembourg was not exercising innocent  
3 passage. As has been established in the written response and clarified earlier by  
4 Mr Ascencio, the “*Zheng He*” had clear intentions to stay in Mexican ports and to  
5 start the required administrative proceedings for a temporal importation. Hence, the  
6 purpose of the “*Zheng He*” was not incidental to ordinary navigation. As to the  
7 innocent passage to leave the port, this can only be authorized by the coastal State.  
8 In particular, article 18, paragraph 1(b), recognizes a right of innocent passage for  
9 “proceeding to or from internal waters or a call at such roadstead or port facility”.<sup>29</sup>  
10 Moreover, innocent passage is subject to the regulations of the coastal State,  
11 including customs regulations.<sup>30</sup>

12  
13 In sum, there is no plausible right to exercise innocent passage in internal waters.  
14 And, even if such right exists, Luxembourg is not entitled to exercise it due to the  
15 breaches to customs regulation currently under review by the Mexican judiciary.

16  
17 Mr President, members of the Tribunal, I will now turn to my analysis on the  
18 implausibility of rights concerning articles 58, 87 and 90. Luxembourg submits that  
19 the detention of the “*Zheng He*” violates its freedom of navigation. In particular,  
20 Luxembourg argues that, by not allowing the “*Zheng He*” to leave Mexican ports,  
21 Mexico is breaching its freedom of navigation.

22  
23 Mr President, members of the Tribunal, such an argument cannot be sustained in  
24 fact and law. The freedom of navigation, indeed, has been one of the cornerstones  
25 of the law of the sea since its very early stages. However, the law of the sea, as  
26 codified in the Convention, and as has been further implemented and interpreted by  
27 judicial and arbitral bodies, has developed a freedom of navigation subject to certain  
28 limitations in areas within and beyond national jurisdiction.

29  
30 The freedom of navigation, as established in articles 58 and 87 of the Convention,  
31 applies in the Exclusive Economic Zone and the high seas subject to the obligation  
32 to have due regard to the rights and freedoms of other States.<sup>31</sup> Moreover, article 90  
33 establishes a right for all States to navigate the high seas.

34  
35 However, Luxembourg attempts to expand the scope of articles 58, 87 and 90 in  
36 such a manner as to find a plausible right to leave internal waters and navigate to the  
37 high seas. Such a proposal is untenable. Suggesting an exercise of the freedom of  
38 navigation, as established in those provisions, in internal waters, will completely  
39 expose a coastal State to abuses and even threats to national security, particularly in  
40 a time when maritime security is facing new challenges.

41  
42 As mentioned, this Tribunal has already dismissed similar suggestions in the  
43 *M/V “Louisa”* case<sup>32</sup> which I won’t quote because I did before.  
44

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<sup>29</sup> UNCLOS, Article 18(1)(b).

<sup>30</sup> UNCLOS, Article 21(1)(h).

<sup>31</sup> UNCLOS, Articles 58(3) and Article 87(2).

<sup>32</sup> *M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Judgment, ITLOS Reports 2013, p. 4, para. 109.

1 And in the *M/V “Norstar”* case, where the Tribunal stated: “To interpret the freedom  
2 of navigation as encompassing a right to leave port and gain access to the high seas  
3 would be inconsistent with the legal regime of internal waters.”<sup>33</sup>

4  
5 Similarly, in the present case, Luxembourg attempts to seek a right to leave port in  
6 articles 58 and 87. A plausible right may exist if Luxembourg manages to prove that  
7 the “*Zheng He*” was deprived of the freedom of navigation in the EEZ or the high  
8 seas as a result of an enforcement measure of the coastal State in those maritime  
9 areas. For instance, in the *M/V “Norstar”* case, this Tribunal stated: “[...] any act  
10 which subjects activities of a foreign ship on the high seas to the jurisdiction of  
11 States other than the flag State constitutes a breach of the freedom of navigation,  
12 save in exceptional cases expressly provided for in the Convention or in other  
13 international treaties.”<sup>34</sup>

14  
15 In the absence of such a scenario, a plausible right under articles 58 and 87 is  
16 untenable. Hence, the right that Luxembourg seeks to protect under articles 58 and  
17 87 doesn’t exist in the present case.

18  
19 Let me turn now to the plausibility right under article 131 concerning equal treatment  
20 under the Convention.

21  
22 Article 131 reads: “Ships flying the flag of landlocked States shall enjoy treatment  
23 equal to that accorded to other foreign ships in maritime ports.”

24  
25 Your Excellencies, the Virginia Commentary to article 131 of the Convention  
26 considers this provision as a non-discrimination provision.<sup>35</sup>

27  
28 In practice, a right under article 131 requires the assertion of discriminatory  
29 treatment by providing an analysis of fact and law. A reference point could be made  
30 from the *Duzgit Integrity Arbitration (Malta v. Sao Tome and Principe)*. In that case,  
31 Malta argued that São Tomé and Príncipe violated the principle of unequal treatment  
32 and treated Duzgit Integrity in a discriminatory and arbitrary manner.<sup>36</sup> It is worth  
33 noting that, to substantiate its claim, Malta provided three examples to show such  
34 alleged differentiated treatment.<sup>37</sup> However, when examining the factual evidence  
35 provided by the applicant, the Tribunal concluded: “Accordingly, the Tribunal is not  
36 satisfied that it should draw such an inference, and even if it did, it would not  
37 necessarily equate to a finding that São Tomé was not still acting within the  
38 discretion it enjoys as part of its law enforcement jurisdiction.”<sup>38</sup>

39  
40 Moreover, the test under article 131 requires in addition to establish that the  
41 “*Zheng He*” was unequally treated as a ship flying the flag of a landlocked State.

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<sup>33</sup> *M/V “Norstar” (Panama v. Italy)*, Judgment, ITLOS Reports 2018–2019, p. 10, para. 221.

<sup>34</sup> *M/V “Norstar” (Panama v. Italy)*, Judgment, ITLOS Reports 2018–2019, p. 10, para. 224.

<sup>35</sup> Myron H. Nordquist/Satya N. Nandan/Shabtai Rosenne (eds.), *United Nations Convention on the Law of the Sea 1982: A Commentary*, vol. III (1995), p.454.

<sup>36</sup> *Duzgit Integrity Arbitration (Malta v. Sao Tome and Principe)* PCA-2014-07, Award of 5<sup>th</sup> September 2016, paras. 269.

<sup>37</sup> *Duzgit Integrity Arbitration (Malta v. Sao Tome and Principe)* PCA-2014-07, Award of 5<sup>th</sup> September 2016, paras. 270-271.

<sup>38</sup> *Duzgit Integrity Arbitration (Malta v. Sao Tome and Principe)* PCA-2014-07, Award of 5<sup>th</sup> September 2016, para. 277.

1 Which is not the case. In a nutshell, Luxembourg has merely referred to article 131  
2 without explaining how a right under such a provision can be established for the  
3 present request for provisional measures.  
4  
5 In conclusion, Luxembourg has not established the existence of a plausible right  
6 within the Convention.  
7  
8 Mr President, members of the Tribunal, let me now turn to the submission on the  
9 lack of a link between the requested measures and the attempted plausible rights:  
10 my last point of my presentation.  
11  
12 Luxembourg asks you to prescribe 11 provisional measures organized in four  
13 clusters. The requested measures are identified in paragraph 73 of Luxembourg's  
14 application and are grouped in four categories:  
15  
16 First measures, in order to preserve the fundamental rights and freedoms of the  
17 crew;  
18  
19 Second, in order to preserve the rights of Luxembourg as the flag State;  
20  
21 Third, in order to avoid aggravating or extending the dispute;  
22  
23 And fourth, in order to ensure equality of the parties in the proceedings before the  
24 Tribunal.  
25  
26 Your Excellencies, the question before you is whether the requested measures seek  
27 to protect a plausible right clearly identified within the Convention. I will examine  
28 briefly each of the requested group of measures.  
29  
30 Concerning the fundamental rights and freedoms of the crew. Luxembourg has failed  
31 to identify a right under the Convention which can be associated to this measure. As  
32 above-mentioned, external rules of international law may play a role as applicable  
33 law. Yet, they cannot constitute the basis for a plausible right for the present  
34 proceedings. In this vein, the Convention does not contain a right to seek redress to  
35 the rights of the crew members. In any event, it would be a duty of Luxembourg but  
36 not a right to protect with provisional measures.  
37  
38 Turning to Luxembourg's rights as a flag State: let me remember how the alleged  
39 plausible rights attempted by Luxembourg concerned the freedom of navigation,  
40 innocent passage, and alleged unequal and discriminatory treatment. Yet,  
41 Luxembourg has failed to establish how this cluster of measures relate to those  
42 alleged plausible rights.  
43  
44 Concerning aggravation or extending the dispute: Luxembourg has failed to identify  
45 a right which could be related to this measure. In particular, Luxembourg does not  
46 identify which rights would be protected with the adoption of these measures. As  
47 further explained by Mr Ascencio, this cluster of requested measures given  
48 undermine the rights of Mexico as a sovereign State over internal waters.  
49

1 Turning to the equality of the parties in the proceedings: Luxembourg seeks to obtain  
2 information from Mexico for the preparation of this case. However, Luxembourg fails  
3 to demonstrate which plausible right would be associated with these measures. In  
4 fact, under article 27 of the Statute and 81 of the Rules of this Tribunal, Luxembourg  
5 could request to obtain evidence related to the case.  
6

7 In sum, the requested measures are not clearly associated to any right under the  
8 Convention. The missing of such association would be enough for this Tribunal to  
9 dismiss the present request.  
10

11 Mr President, members of the Tribunal, the present request for provisional measures  
12 lacks of at least two required elements. First, Luxembourg has failed to provide facts  
13 and circumstances to identify plausible rights under the Convention. Second, the  
14 requested measures are not linked to any plausible right under the Convention.  
15

16 Hence, in light of these hurdles, and in the absence of plausibility right and a link to  
17 the requested measures, the present request should be dismissed.  
18

19 Mr President, members of the Tribunal, this concludes my presentation, and I kindly  
20 thank you for your attention and I request you to call Mr Ascencio to the podium to  
21 continue with the final part of Mexico's submissions.  
22

23 Thank you very much.  
24

25 **THE PRESIDENT:** Thank you, Mr Cruz Carrillo. I now give the floor to Mr Ascencio  
26 Herrera. You may begin your statement.  
27

28 **MR ASCENCIO HERRERA:** Thank you, Mr President. Mr President, members of the  
29 Tribunal, even if Luxembourg manage to surpass the hurdles of establishing a *prima*  
30 *facie* jurisdiction and the existence of plausible rights linked to the requested  
31 measures, Mexico wishes to underscore that there is no "risk of an imminent harm".  
32

33 Hence, I will now demonstrate that there is no risk of irreparable prejudice, first, upon  
34 the crew; second, the vessel; third, the flag of Luxembourg and, fourth, its alleged  
35 procedural rights as a Party to this case.  
36

37 First, in this section of the requested measures, Luxembourg asks the Tribunal three  
38 measures to preserve the fundamental rights and freedom of the crew.  
39

40 At the outset, I want to draw your attention to the wording used by Luxembourg in  
41 these requested measures. As you can see, the Applicant already agrees that  
42 Mexico is providing protection of the most basic and fundamental rights of the crew.  
43 The Applicant requests "to order Mexico to continue to ensure", which indicates the  
44 existence of ongoing measures adopted by Mexican authorities.  
45

46 Mr President, as explained earlier by Mr Cruz, the Mexican authorities have already  
47 adopted significant measures to ensure the well-being and freedom of movement of  
48 the crew of the "*Zheng He*". I don't intend to repeat them now, but only highlight the  
49 most relevant for the present analysis.  
50

1 As outlined in annex 33 of the Statement in Response, since the vessel's docking,  
2 Mexican authorities have facilitated the crew's ability to enter and exit the terminal  
3 freely. They have also ensured that the crew receives essential supplies, including  
4 provisions, fuel and garbage collection services. Additionally, the vessel has been  
5 provided with drinking water supply services and the collection of oily and  
6 wastewaters.

7  
8 Moreover, judicial remedies have been invoked by the owner of the "*Zheng He*" to  
9 further protect the integrity of the crew. As a result of these proceedings, judicial  
10 authorities inspected the vessel to verify its location, the conditions of the crew  
11 members and their access to supplies. Despite not finding evidence of harm, a  
12 Mexican tribunal, considering the detention situation of the vessel and with due  
13 regard to the crew's human rights, ordered a precautionary measure to facilitate  
14 unrestricted access to supplies and services for the crew as long as they remained  
15 on board. This can be seen in annex 34 of the Statement in Response, which  
16 remains in force to this day.

17  
18 Your Excellencies, it is important to note that this judicial decision obliges Mexican  
19 authorities to facilitate unrestricted access to supplies for the crew, further  
20 demonstrating that the requested provisional measures by Luxembourg are already  
21 being addressed, thus negating any urgency in the present case.

22  
23 For Mexico, it is important to clarify that the crew members hold the status of visitors  
24 without permission to engage in remunerated activities, as seen in annex 47 of the  
25 Statement in Response, which allows them to transit and stay in Mexican territory,  
26 and, of course, embark and disembark the vessel. Additionally, the Mexican  
27 authorities have permitted the owner the renewal and rotation of the crew whenever  
28 it deems necessary.

29  
30 In this context it is important to recall that in the *M/V "Louisa"* case, the Tribunal  
31 considered that the circumstances are not such to require the exercise of its powers  
32 to prescribe provisional measures under article 290, paragraph 1, of the Convention  
33 due to the actions carried out by the Spanish authorities to comply with the  
34 measures requested by the applicant.<sup>1</sup>

35  
36 In the present case, Mexico is already adopting measures to address Luxembourg's  
37 concerns to preserve the fundamental rights and freedoms of the crew. For these  
38 reasons, Mexico sustains that there is no risk of irreparable harm to the crew in the  
39 present case.

40  
41 Mr President, Mexico wishes to emphasize its commitment regarding the protection  
42 of the mental health of all seafarers that enter into Mexican ports.

43  
44 In sum, Mexico submits to this Tribunal that there is no clear evidence of an  
45 imminent risk that might cause irreparable prejudice to the crew of the "*Zheng He*".  
46

---

<sup>1</sup> *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, paras. 72-75.*

1 Mr President, this brings me to the second point, with regards to the requested  
2 measures to preserve the alleged rights of Luxembourg as a flag State. In this  
3 connection we would like to highlight the current situation of the vessel.  
4

5 First, as referred to in annex 28, it is located in a designated area for its custody and  
6 safeguarding, since November 2023. And second, special regard should be paid to  
7 annex 31, which shows the record of port service providers for repair and  
8 maintenance that, upon request, have been granted to the “*Zheng He*”. Mexico has  
9 taken all steps to facilitate the preventive and corrective maintenance of the vessel.  
10

11 In fact, several requests were granted in November and December 2023, as well as  
12 in January, April and May 2024. The services have included maintenance of the  
13 working platform for containers, the starboard-side crane and its piping, ladder  
14 railing, and welding in the deck area on board. Similarly, maintenance work has been  
15 provided for mechanical and electrical systems, along with the supply of materials,  
16 fuel, lubricating oil, and recharge of the oxygen tank. In addition, inspections  
17 included an underwater examination of the “*Zheng He*” hull, and the freezing  
18 chamber evaporator. I must underline that during these operations, Mexican  
19 authorities required compliance with security and safety measures.  
20

21 Additionally, annex 32 indicates the records of the crew that have entered and exited  
22 the vessel from November 2023 to June 2024. Moreover, annex 33 shows the steps  
23 taken to facilitate the provision of supplies and services to the “*Zheng He*”, such as  
24 organic and inorganic waste disposal, wastewater collection, and oily water  
25 collection.  
26

27 These measures, certainly, address the concerns advanced by Luxembourg in its  
28 request regarding the possible lack of maintenance of the vessel, including  
29 Luxembourg’s concerns in paragraph 58 of its request.  
30

31 With this, Mr President, Mexico demonstrates that there is no real and imminent risk  
32 of irreversible prejudice for the “*Zheng He*”.  
33

34 Mr President, now moving to Luxembourg’s last two requested measures concerning  
35 its alleged flag State rights. And in this connection we would like to raise two points.  
36

37 First, as you have heard earlier, national proceedings in the highest Mexican courts  
38 have not ended. They remain *sub judice*. Luxembourg is still the flag State. The legal  
39 status of the vessel is yet to be determined.  
40

41 Second, to reinforce the latter point, the competent Mexican authorities in charge of  
42 registering seized property rejected an application to that effect in view that the  
43 judicial proceedings are still ongoing. For details on this, may I refer you to  
44 paragraph 83 of the statement of response submitted by Mexico.  
45

46 Mr President, moving on to my fourth point regarding measures requested by  
47 Luxembourg concerning its alleged rights as party to the present case, Mexico would  
48 like to comment that this is a peculiar measure. It asks this Tribunal to ensure the  
49 collection of evidence and to enable the inspection of the vessel. Furthermore, it  
50 requests the transmission of documents and information related to the case.

1  
2 However, may I recall that under article 27 of the Statute and article 81 of the Rules  
3 of this Tribunal, a Party to a case can request, at any time, for this Tribunal to  
4 exercise “its functions with regard to the obtaining of evidence at a place or locality to  
5 which the case relates, subject to such conditions as the Tribunal may decide upon  
6 after ascertaining the views of the parties.”  
7

8 As pointed out by Mr Cruz, by requesting this information by way of provisional  
9 measures would be rendering superfluous and with no effect those two provisions  
10 established in the Statute and the Rules.

11  
12 I would also like to take the opportunity to assure this Tribunal and to our learned  
13 colleagues of Luxembourg, that any request for information, strictly related to this  
14 case, will be duly assessed and answered – of course, having due regard to the  
15 rights of Luxembourg in the present proceedings.  
16

17 In sum, the requested measure to ensure the equality of the parties, as  
18 characterized by Luxembourg, lacks a risk of irreparable damage.  
19

20 Mr President and members of the Tribunal, as a final point for your consideration,  
21 Mexico would like to underscore that the purpose of provisional measures is to  
22 protect the rights of both parties to a case.  
23

24 As former Judge Paik mentioned in his declaration in the “*Enrica Lexie*” case, given  
25 the exceptional nature of provisional measures, the Tribunal should exercise caution  
26 in assessing not only whether to prescribe provisional measures but also what  
27 measures to prescribe, in order to preserve the respective rights of both Parties.  
28

29 In light of what I just mentioned, Mexico submits that this cardinal element of the  
30 procedure of request for provisional measures should be considered in assessing  
31 the present request.  
32

33 Yet, it is the third cluster of requested measures by Luxembourg, where Mexico’s  
34 rights could be undermined. Luxembourg requests that the Tribunal prohibits Mexico  
35 from enforcing its jurisdiction upon other vessels related to the “*Zheng He*” flying the  
36 flag of Luxembourg, whether they be the property of EDC, SOFIDRA or any of its  
37 subsidiary companies. Moreover, it requests to prohibit Mexico from instituting new  
38 national proceedings or actions against the vessel.  
39

40 Mexico considers that the Tribunal shall analyse whether the rights of the  
41 Respondent could be affected by the adoption of the requested provisional  
42 measures.  
43

44 In this regard, Mexico established in its statement of response, the critical  
45 importance of preserving its sovereignty over its internal waters.  
46

47 In addition, if the Tribunal were to grant the measure prohibiting Mexico to enforce its  
48 jurisdiction upon other vessels, it will immediately create a situation in which Mexico  
49 will not be able to enforce its custom, tax and maritime regulations in areas within its  
50 jurisdiction, as established in the Convention.

1  
2 As sitting Judge Kolodkin rightly established in his declaration in the case of  
3 “*San Padre Pio*”, the coastal State’s prerogative to enforce its sovereign rights in a  
4 particular maritime zone are not less plausible than the rights asserted by a flag  
5 State. Thus, they must be appropriately protected by the provisional measures  
6 alongside the rights of the requesting Party.  
7

8 Distinguished members of the Tribunal, along with this problematic situation, the  
9 measure will create a more favourable treatment for vessels related to EDC and  
10 flying the flag of Luxembourg, in detriment of other foreign vessels, which will  
11 constitute a real discriminatory context.  
12

13 Regarding the measure requesting the prohibition from instituting new proceedings  
14 against the vessel, Mexico submits that the granting of such a measure will  
15 irreparably interfere with ongoing administrative and judicial proceedings intended to  
16 have a proper enforcement of Mexican laws and regulations.  
17

18 Through its history, the Tribunal has demonstrated a great degree of caution  
19 regarding a prescription of a measure that interferes with domestic procedures. For  
20 example, in the case of “*San Padre Pio*”, Switzerland requested the Tribunal “to  
21 suspend all court and administrative proceedings and refrain from initiating new ones  
22 which might aggravate or extend the dispute”. However, the Tribunal prescribed a  
23 different measure, without interfering or suspending any domestic proceedings, even  
24 the measure prescribed was intended to provide an assurance to Nigeria that  
25 Switzerland was going to comply with the ongoing domestic procedures.  
26

27 In light of what I have exposed, should this Tribunal determine it has *prima facie*  
28 jurisdiction and the existence of a plausible right linked to the requested measure,  
29 Mexico considers that a balance of interests should be established by this Tribunal.  
30 Under these considerations, the adoption of less intrusive measures may serve the  
31 purposes of article 290, paragraph 1, of the Convention.  
32

33 And this, Mr President, brings me to the conclusion of our presentation this  
34 afternoon. Mr President, Madam Vice-President, and members of the Tribunal, I  
35 thank you for your attention.  
36

37 **THE PRESIDENT:** Thank you, Mr Ascencio Herrera.  
38

39 The first round of oral arguments presented by both Parties is now concluded. The  
40 hearing will continue tomorrow with a second round of arguments. We will hear the  
41 arguments of Luxembourg in the morning from 9:30 to 11:00 a.m., and the  
42 arguments of Mexico from 4:30 to 6:00 p.m.  
43

44 I wish you all a good evening. This hearing is now closed.