INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

2016

Public sitting

held on Thursday, 22 September 2016, at 10 a.m.,

at the International Tribunal for the Law of the Sea, Hamburg,

President Vladimir Golitsyn presiding

THE M/V "NORSTAR" CASE

Preliminary Objections

(Panama *v*. Italy)

Verbatim Record

Present:	President	Vladimir Golitsyn
	Vice-President	Boualem Bouguetaia
	Judges	P. Chandrasekhara Rao
		Joseph Akl
		Rüdiger Wolfrum
		Tafsir Malick Ndiaye
		José Luís Jesus
		Jean-Pierre Cot
		Anthony Amos Lucky
		Stanislaw Pawlak
		Shunji Yanai
		James L. Kateka
		Albert J. Hoffmann
		Zhiguo Gao
		Jin-Hyun Paik
		Elsa Kelly
		David Attard
		Markiyan Kulyk
		Alonso Gómez-Robledo
		Tomas Heidar
	Judges *ad hoc*	Tullio Treves
		Gudmundur Eiriksson
	Registrar	Philippe Gautier

Panama is represented by:

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as Agent;

and

Mr Hartmut von Brevern, Attorney at Law, Hamburg, Germany,
Dr Olrik von der Wense, LL.M., ALP Rechtsanwälte (Partner), Attorney at Law, Hamburg, Germany,
Ms Swantje Pilzecker, ALP Rechtsanwälte (Associate), Attorney at Law, Hamburg, Germany,

as Counsel;

Ms Janna Smolkina, M.A./M.E.S., Ship Registration Officer, Consulate General of Panama in Hamburg, Germany,
Mr Arve Einar Mörch, owner of the *Norstar*, Norway,
Mr Magnus Einar Mörch, Norway,

as Advisers.

Italy is represented by:

Ms Gabriella Palmieri, Deputy Attorney General,

as Agent;

and

Minister Plenipotentiary Stefania Rosini, Deputy Head, Service for Legal Affairs, Diplomatic Disputes and International Agreements, Ministry of Foreign Affairs and International Cooperation,
Commander Massimo di Marco, Italian Coast Guard Headquarters – International Affairs Office,

as Senior Advisers;

Dr Attila Tanzi, Professor of International Law, University of Bologna,
Dr Ida Caracciolo, Professor of International Law, University of Naples 2, Member of the Rome Bar,
Dr Francesca Graziani, Associate Professor of International Law, University of Naples 2,
Mr Paolo Busco, LL.M. (Cantab), Lawyer, Member of the Rome Bar,

as Counsel and Advocates;

Dr Gian Maria Farnelli, Research Fellow of International Law, University of Bologna,

Dr Ryan Manton, University of Oxford, United Kingdom, Member of the New Zealand Bar,

as Legal Assistants.

THE PRESIDENT: Good morning. The Tribunal will continue today the hearing in the *M/V "Norstar" Case*. This morning we will hear the second round of oral arguments presented by Italy. I now give the floor to the Agent of Italy, Ms Palmieri, to begin her statement.

MS PALMIERI *(Interpretation from French)***:** Thank you, Mr President.

Mr President, Members of the Tribunal, it is an honour and a privilege for me to come before you again as Agent for the Italian Republic on the final day of this hearing.

Mr President, Members of the Tribunal, with your permission, I will now present our pleadings.

Our conclusion might surprise you to some extent, as you will perhaps hear arguments which Italy has already put forward either in the written phase or in our oral pleadings.

It is not our intention to repeat what we have already submitted and what, in truth, Italy thought it had explained sufficiently and in good faith, and certainly without any intention of taking advantage of the situations in which others find themselves.

However, having heard the oral pleadings of the Agent for Panama, Mr Carreyó, we need to return to the Preliminary Objections in order to clarify Italy's position in the present case.

Mr President, Members of the Tribunal, first of all I would like to emphasize that the present case must be examined only within the framework of the United Nations Convention on the Law of the Sea and in light of the case law of this esteemed Tribunal.

In this respect, Italy wishes to reiterate that the provisions of the United Nations Convention on the Law of the Sea invoked by Panama are without any relevance to this case. As has already been said, this is a point which must be taken seriously when deciding both whether the Tribunal has jurisdiction and whether the Application is admissible.

Mr President, Members of the Tribunal, Italy listened carefully to the arguments put forward yesterday by the Agent for Panama. Today, Professor Tanzi will further explain Italy's arguments in this case, which I will now summarize briefly.

First of all, I wish to stress that Panama has not successfully shown that the Tribunal has jurisdiction.

On this point, Professor Tanzi will maintain, first of all, that all the preliminary objections raised by Italy are indeed perfectly admissible.

He will then show that the Republic of Panama has not successfully rebutted Italy's arguments on the private nature of the case, either with respect to the manner in which the Application was presented or with respect to its content.

On both of these aspects Italy will demonstrate that Panama's arguments are unfounded. This is clear from the overlap between the protection of public interests and the protection of individual interests.

Mr President, Members of the Tribunal, with regard to the inadmissibility of the Application filed by the Republic of Panama, Italy will underline again that Panama's claim is based predominantly, if not exclusively, on damage caused to the owner of the *M/V Norstar*. Therefore, as Italy has asserted several times, the rule on exhaustion of local remedies is applicable in this case.

Lastly, Professor Tanzi will address the questions of acquiescence, extinctive prescription and time-bar or estoppel.

With regard to prescription, I will merely refer to article 293, paragraph 1, of the previously mentioned United Nations Convention, which stipulates that

> A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.

It will also be made clear that, for reasons of legal certainty and certainty of rights, acquiescence must always be considered a fundamental element in our discussions.

Thank you for your attention, Mr President. I would now ask you to call Professor Tanzi.

THE PRESIDENT: I thank the Agent of Italy for her statement and I now invite Mr Tanzi to make a statement. You have the floor, sir.

MR TANZI: Mr President, Members of the Tribunal, it is an honour for me to be appearing before you on behalf of Italy, my country, for the second time during these proceedings.

In line with the Agent from Italy in her opening statement, I shall begin by recalling that article 75, paragraph 1, of the Rules of the Tribunal prevents a party from

> go[ing] over the whole ground covered by the pleadings or merely repeat[ing] the facts and arguments these contain.

Therefore, I shall address some of the arguments made yesterday by the Agent from Panama that, more than others, are indicative of the significant confusions which have characterized the present case since its inception.

Mr President, I should like to stress how such confusions revolve around the basic distinction between the pursuit of public and private interests under the Convention. As I shall illustrate, such confusions account for the motives and the grounds of most of the Italian Preliminary Objections, both to the jurisdiction of this Tribunal and to the admissibility of Panama's claim. I will deal with them separately.

Mr President, Members of the Tribunal, I shall first address the basic confusion around the issue of the lack of representative character of Mr Carreyó, as it pertains equally to two objections to the jurisdiction of this Tribunal in the present case, namely, the inexistence of a dispute between the Parties and the non-fulfilment of article 283 of the Convention.

The Italian contentions on this issue cannot possibly be taken as a new objection. It is clearly an argument elaborated to substantiate the two objections in point. As I said during the first round, one should not confuse arguments with objections.

This emerges most clearly, if only, from the fact that the topic of "The irrelevance of the communications from Panama for lack of representative powers" appears as a subsection of Italy's Reply precisely on "The inexistence of a dispute between Panama and Italy". In that section, Italy elaborates the argument anticipated in its first written pleading under the section "The inexistence of a dispute between Panama and Italy". There, Italy argued that

> no complaint, or protest, bearing on the facts complained of in the Application, has been raised in any legally appropriate manner by the Government of Panama with the Government of Italy, which the latter would resist or contest.

The same lack of representative power, Mr President, also provided one of the grounds for the objection on Panama's failure to meet the conditions under article 283 "in any meaningful and legally appropriate manner". This was anticipated in Italy's Preliminary Objections (paragraph 25) and referred to in its Reply (paragraph 51).

Mr President, yesterday, Mr Carreyó repeatedly criticized Italy for failing to specify the meaning of that expression but in interstate relations it is clear that only State organs, or individuals expressly authorized, may act for the State in those relations.

On this point, next to the arguments I put forward in the first round, I would like to focus on another confusion that emerged yesterday.

> I ask myself, when a lawyer obtains a power of attorney to lift the arrest of the vessel, is it not also authorized to communicate with another party in any terms?

This may be so in domestic law when representing private clients, but in international law the power to act for a State for one specific purpose is not the same as the power to act for all purposes. In particular, the power for an individual to act "on behalf" of a State for the purpose of prompt release proceedings is a unique kind of power under article 292. It does not extend to the power to act on behalf of the State beyond those proceedings.

Mr President, Members of the Tribunal, allow me now to address Panama's contention concerning Italy's objection to the jurisdiction *ratione personae* of this Tribunal. I will not elaborate again on the grounds for this objection. Italy has already done so, both in its written pleadings and during the first round of this hearing.

The Agent from Panama told us yesterday that, in its Reply, Italy "objected" for the

first time to the fact that the order for seizure does not amount *per se* to an internationally wrongful conduct. Here, again, as I anticipated on Tuesday, we are confronted with a confusion between an objection and an argument substantiating such an objection, namely, the lack of jurisdiction *ratione personae* of this Tribunal that Italy clearly raised at paragraph 22 of its Preliminary Objections, whereby

> Italy is the improper respondent for Panama's claim.

This was the logical corollary of the argument advanced in paragraph 21 of its Preliminary Objections, Mr President, where Italy claimed that

> even though the order for seizure of the *M/V Norstar* has been issued by an Italian Public Prosecutor, the actual arrest and detention of the vessel has not been executed by Italian enforcement Officials, but by the Spanish Authorities.[1]

Yesterday, the Agent from Panama contended that

> this case involves only the actions of Italy and not those of a third state.[2]

He devoted a rather lengthy part of his speech to arguing that Italy, and Italy alone, should be the Respondent of the present case, since its conduct, and its conduct alone, is the object of the Panamanian claim.

Mr President, let me be very clear. In its Application, in which Panama has framed its claim, it is stated that

> the Application concerns a claim for damages against the Republic of Italy caused by an illegal arrest of the *M/V Norstar*.

Yet just yesterday the Agent from Panama purported to reframe its claim, when it stated that

> Panama contends that the conduct complained of was the order for the seizure.[3]

That is not the only confusion arising from yesterday's submissions on this point. In fact, Panama goes so far as to maintain that Italy was the "arresting State",[4] but of course it was not. The fact of the matter, Mr President, is that Italy has not carried out the conduct complained of by Panama in its Application.

These arguments plainly show that this case does not

> involve only the actions of Italy and not those of a third state.[5]

Panama has implausibly submitted that Spain has acted

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[1] Preliminary Objections, para. 21.
[2] Transcript ITLOS/PV16/C25/3/E, p. 4, lines 9-13.
[3] Transcript ITLOS/PV16/C25/3/E, p. 26, lines 16-17.
[4] *Ibid.*, p. 17, line 44.
[5] Transcript ITLOS/PV16/C25/3/E, p. 4, lines 9-13.

> under the exclusive direction and control of Italy as the receiving or beneficiary State.[6]

Yet Panama has failed to respond, either to the relevant passages of the ILC commentary referred to by Italy or to the fact that the 1959 Strasbourg Convention gave to the Spanish authorities ample margin to refuse the Italian letter rogatory. As long as Spain is empowered to lawfully refuse to enforce a letter rogatory from Italy, it cannot be correct to say that Spain acted under the exclusive direction and control of Italy.

Mr President, Members of the Tribunal, turning to the indispensable party principle, the argument put forward by Panama is again confusing. The Agent of Panama claimed, on the one hand, that Spain is not involved in the present case, and, on the other, that

> in the present case Panama considers that no wrong has been committed by the sending State (Spain).[7]

Mr President, by claiming that Spain has made no wrong, Panama is reviewing its conduct. In so doing, it is assuming precisely what the indispensable party principle bars the Tribunal from doing in Spain's absence from these proceedings.

Mr President, Members of the Tribunal, Italy will now address the manifest irrelevance of the UNCLOS provisions upon which Panama relied in its Application. This issue is of particular relevance, since it affects both the jurisdiction of this Tribunal and the admissibility of the Panamanian claim.

As a preliminary matter, Italy challenges Panama's assertion according to which Italy has submitted this objection in an untimely manner in its Reply. This objection was clearly made by Italy in its Preliminary Objections when it stated:

> Apart from the manifest irrelevance of the UNCLOS provisions invoked by the Applicant to sustain its claim.[8]

With that language, Italy highlighted one of the most obvious examples of confusion and incoherence in Panama's case. In fact, the incoherence is so clear that the Agent of the Republic of Panama expressly admitted it before this Tribunal. Indeed, he stated that:

> First of all, Panama takes this opportunity to concede that article 73 … and article 226 … do not apply to this case, since these provisions fall under Part XII, which is devoted to the protection and preservation of the marine environment.

Mr President, Members of the Tribunal, Italy strongly maintains that not only are articles 73 and 226 of the UN Convention irrelevant to the present case; so are all

[6] Transcript ITLOS/PV16/C25/3/E, p. 27, lines 46-48.
[7] *Ibid*, p. 28, lines 15-16.
[8] Preliminary Objections, para. 19.

the provisions Panama invoked in its Application. Even though it is not my task to reiterate the considerations extensively developed by my colleague Professor Caracciolo in her presentation, it is appropriate for me to record several key points.

Panama seems to be oblivious to how UNCLOS should be interpreted. UNCLOS provides for different regimes depending on different maritime spaces. To that end, it is worth mentioning that the recent award of the Annex VII tribunal in the case *Philippines* v. *China* stressed this point considerably. I refer you to the relevant quote in my recent speech, without going through it orally.

> 231. … The Convention establishes limits for maritime entitlements and sets out the rights and obligations of coastal States – as well as other States – within such maritime zones. … The Convention thus provides – and defines limits within – a comprehensive system of maritime zones that is capable of encompassing any area of sea or seabed.
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> 245. … the Tribunal recalls its earlier observation (see paragraph 231 above) that the system of maritime zones created by the Convention was intended to be comprehensive and to cover any area of sea or seabed. The same intention for the Convention to provide a complete basis for the rights and duties of the States Parties is apparent in the Preamble, which notes the intention to settle "all issues relating to the law of the sea" and emphasises the desirability of establishing "a legal order for the seas".[9]

Mr President, Members of the Tribunal, all the provisions referred to by Panama in its Application manifestly concern maritime zones different from internal waters. Consequently, articles 33, 87 and 111 UNCLOS clearly do not apply to the facts of the instant case.

This is particularly true for article 111, which was mentioned extensively yesterday by the Agent of the Republic of Panama. Allow me to repeat that the reference to this provision is completely unfounded. Indeed, no hot pursuit was carried on by the Italian authorities with respect to *M/V Norstar*. Further to that, any reference to article 111 made by the Public Prosecutor at the Tribunal of Savona is totally irrelevant for the present international law case. As stressed during the first round by Professor Graziani, this Tribunal is not called upon to interpret the decisions made by the Italian judicial authorities. The task of this Tribunal is just to ascertain whether Italy acted in compliance with UNCLOS.

Mr President, Members of the Tribunal, due to the predominant espousal nature of the Panamanian claim, the rule of the exhaustion of local remedies applies in the present case.

Italy does not intend to reiterate the assertions developed by Professor Graziani during the first round. However, it is necessary to clarify some arguments that Panama seems to have misunderstood.

Mr President, Italy refers to the contention made yesterday by the Agent of Panama

[9] *South China Sea Arbitration (Philippines* v. *China)*, PCA Case No. 2013-19, Award, 12 July 2016, paras. 231 and 245 (emphasis added).

that the applicability of the exhaustion of local remedies principle depends on the *locus* where the bunkering activities were carried out by the *Norstar*. This argument was already raised in identical terms in paragraph 74 of the Observations.

Italy strongly contends that this argument is moot and inconsistent. The core of the dispute between the Parties is clearly identified in the Application of the claimant State, where the subject matter of the dispute is strictly described as follows:

> A claim for damages against the Republic of Italy caused by the illegal arrest of the *M/V Norstar*.

Panama has evidently mistaken the concept of *locus* relevant in the present case according to international law. Indeed, "*locus*" does not refer to the place where the bunkering activities causing the order of seizure were conducted. "*Locus*" refers precisely to the place where the alleged internationally wrongful conduct, namely the seizure itself, took place. That place is the Spanish internal waters.

Italy considers that this confusion, too, shows that Panama is conflating issues relevant in domestic law with issues relevant in international law. Indeed, the alleged wrongful conduct in discussion consists exclusively of the enforcement measures applied on the vessel, not on the exercise of criminal proceedings.

Mr President, Members of the Tribunal, Panama is also evidently mistaken on the Italian judicial narrative. What the Agent of the Republic of Panama asserted yesterday, while commenting on the decision by the Court of Appeal of Genoa, is telling.

As Professor Graziani illustrated extensively in the first round, it is absolutely necessary to clarify two distinct points.

Firstly, the seizure was lifted once and for all by the Tribunal of Savona on 13 March 2003. The Public Prosecutor has never appealed against this lifting, since the object of his appeal was solely the acquittal of the accused. Secondly, once the Tribunal of Savona ordered the lifting of the seizure and communicated this decision to the Spanish authorities, the release to the owner of the *M/V Norstar* removed the competence of the Italian judiciary.

Mr President, Members of the Tribunal, the indirect character of the injury invoked by Panama emerges plainly from a plethora of elements, which were elaborated upon by Professor Caracciolo on Tuesday. For ease of reference, allow me to rapidly go through them: (1) the manifest irrelevance and incoherence to the present case of all UNCLOS provisions relied upon in its Application by the Republic of Panama; (2) the unofficial nature of the written communications sent by Mr Carreyó, acting in his capacity as a private lawyer; (3) the content of these communications, including the letter of 3/6 August 2004, which is focused on defending the private interests of the owner of the *M/V Norstar* by seeking redress for the damages allegedly suffered due to the seizure; (4) the content of the notes verbales sent by Panama, which do not identify any UNCLOS provision allegedly violated by Italy or invoke the international responsibility of the Republic of Italy; and (5) the nature of the claim, as inferred in the Application of Panama, expressly aimed at obtaining compensation for damages

allegedly caused to the owner of the *M/V Norstar*.

Mr President, Members of the Tribunal, yesterday the distinguished Agent of the Republic of Panama repeated several times that the *M/V "Norstar" Case* is materially the same as the *M/V "SAIGA" Case* and the *M/V "Virginia G" Case*.

Italy firmly contends that the factual circumstances of these cases are so different from the instant case that the Tribunal would reach a different conclusion concerning the applicability of the "preponderance test", if it ever came to that stage.

As for the *M/V "SAIGA" Case*, Professor Caracciolo has already stressed that the *M/V "Norstar" Case* does not present any clear parallel with that case.

Unlike in the present case, in *M/V "SAIGA"* Saint Vincent and the Grenadines filed an Application under article 292 of UNCLOS, instituting proceedings against Guinea in respect of a dispute concerning the prompt release of the vessel and its crew.

It is well known that prompt release is a procedure characterized by peculiar features, among which urgency stands out. The element of urgency is so relevant that, with regard to prompt release proceedings, there is no requirement to exhaust local remedies. I am referring specifically to the dictum in *"Camouco"* by this Tribunal:

> [n]o limitation should be read into article 292 that would have the effect of defeating its very object and purpose. Indeed, article 292 permits the making of an application within a short period from the date of detention and it is not normally the case that local remedies could be exhausted in such a short period.

Mr President, Members of the Tribunal, Italy is well aware that in *M/V "SAIGA"* the Tribunal based its decision on the direct nature of the injuries invoked by the claimant States, without taking into consideration that the Application was brought before the Tribunal under article 292. Anyhow, account must be taken of the fact that in *M/V "SAIGA"* the Tribunal was confronted with a claim under article 292 of UNCLOS.

The original purpose behind article 292 is to balance the legal interests of the coastal State with those of the flag State in preventing an excessive detention of the vessel flying its flag.

It is therefore obvious that, within the context of a prompt release procedure, any application of the preponderance test aimed at establishing whether the claim was direct or indirect should be made taking into due consideration the nature of the prompt release procedure, i.e. a compulsory proceeding having the specific purpose to permit the release of the vessel and the crew by or on behalf of the flag State. Such consideration does not apply to the instant case.

Mr President, Members of the Tribunal, the *M/V "Virginia G" Case* also presents important differences from the instant case. The most important one is that in *M/V "Virginia G"* the Tribunal recognized that some UNCLOS provisions were pertinent and were effectively infringed by the respondent State. Consequently, the

manifest violation of UNCLOS cannot but influence the application of the preponderance test in order to ascertain the direct or indirect nature of the injuries invoked by the claimant State.

Conversely, in the *M/V "Norstar" Case* the Panamanian Application relies upon UNCLOS provisions which are manifestly incoherent with respect to the facts of the present case, and therefore manifestly unfounded.

From this perspective, the manifest irrelevance of UNCLOS provisions contained in the Application corroborates that the dispute between the Parties, far from being a dispute concerning the interpretation or application of UNCLOS, is preponderantly related to the indirect violations of the rights of the owner of *M/V Norstar*.

It follows that Panama's claim is neither "genuine" nor "consistent", since Panama is trying to circumvent the exhaustion of local remedies principle by requesting the Tribunal to give a ruling on the interpretation and application of UNCLOS provisions.

Mr President, Members of the Tribunal, I will now turn to several short points related to acquiescence and extinctive prescription. Here again, some clarity is necessary as the statements made yesterday by Mr Carreyó have confused a number of issues that are in fact clear in the law, as illustrated by Mr Busco on Tuesday.

I will start with extinctive prescription. First of all, Mr Carreyó stated yesterday that there is no article in UNCLOS that delineates a time restriction after which claims are prescribed. The implication was that there was therefore no restriction at all under the Convention.

Mr President, Members of the Tribunal, this is patently wrong. According to article 293, paragraph 1, of UNCLOS, a court or tribunal having jurisdiction under section 2 of Part XV of UNCLOS shall apply the Convention and other rules of international law not incompatible with the Convention. As Mr Busco explained the day before yesterday, there is no doubt that extinctive prescription is a general principle of international law under article 38 of the Statute of the ICJ. It follows that, in accordance with article 293, paragraph 1, extinctive prescription is a rule of international law that the Tribunal must apply if its conditions are met.

I would now like to make a few points regarding those conditions. Mr Carreyó has submitted, drawing selectively on the ILC's Commentary on the Articles on State Responsibility that

> once a claim has been notified to the respondent State, delay in its prosecution will not usually be regarded as rendering it inadmissible.

But as the *Wena* and *Gentini* cases, to which Mr Busco has already referred, make clear, a dispute that is laid to rest should not be resurrected if it has been abandoned for a long period of time. In other words a claim that is made, but that is not pursued, and that gives the impression to the respondent of having been abandoned, is not admissible. This is the principle of repose, Mr President and Members of the Tribunal, a principle long established in international law.

Mr President, Members of the Tribunal, it is also of no use to Panama for it to submit that international law sets down no precise time-limit. This is true, Mr President and Members of the Tribunal, but this does not mean that tribunals should never find that a claim is extinct by prescription: indeed, tribunals have in a number of cases found that claims are extinct by prescription even in the absence of a general rule setting out in general terms what the time for prescription is.

Indeed, as we have seen two days ago, but to which Panama failed to respond yesterday, the claim that Panama now makes before this Tribunal would be extinct by way of prescription in the domestic jurisdictions of Italy and Panama, and in the vast majority of other jurisdictions.

I would also like to add that, unlike what Panama states, the purpose of extinctive prescription in international law is not just about avoiding prejudice to a respondent State. Italy rather contends the purpose of extinctive prescription and acquiescence is also providing certainty. I would like to quote, in addition to the cases mentioned by Italy two days ago, the case of *Sarropoulos* v*. Bulgarian State*, in which the Graeco-Bulgarian Mixed Claims Tribunal explained that:

> stability and security in human affairs require that a delay should be fixed outside which it should be impossible to invoke rights or obligations.

I will also just revert very briefly to record that Panama also confuses the doctrine of laches in international law and the principle of extinctive prescription. Italy, I must make clear, does not rely on laches in this case.

A number of the considerations that have been made above with respect to extinctive prescription will also apply to acquiescence, due to the fact that the two concepts, albeit distinct, share some similarities.

However, I would nonetheless like to make one key point with respect to acquiescence. Yesterday, Panama quoted authorities to the effect that mere lapse of time without a claim being resolved is not, as such, enough to amount to acquiescence, in particular where the injured State does everything that it can reasonably do to maintain its claim. Mr President, Members of this Tribunal, Italy never said that the mere passage of time without the claim being resolved amounts to acquiescence. What Italy said was that Panama's failure to act for a period of at least five years and eight months, in circumstances where Panama's action was required, amounted to acquiescence. Mr Carreyó stated in his letter of 17 April 2010 that Panama would commence proceedings within a reasonable time if Italy did not pay damages. Italy did not pay damages. Yet nothing was done for at least five years and eight months. Mr President, Members of the Tribunal, this is a situation in which a respondent State could reasonably have believed that the claim would no longer be pursued.

Finally, Mr President, Members of the Tribunal, I will now reply to Mr Carreyó's submissions late yesterday afternoon concerning the Request of the Republic of Panama for a ruling concerning the scope of the subject matter based on the Preliminary Objections filed by Italy.

On this issue I would like to begin by highlighting the confusing way in which Panama has pursued this Request during this hearing. The Tribunal, in order to accommodate Panama's concerns, granted both Parties an extra 30 minutes in which to address this issue during their first round of oral pleadings. However, it was not until the end of his submissions yesterday that Mr Carreyó belatedly returned to this issue. What puzzled us was that by then Mr Carreyó had already responded to all of Italy's Preliminary Objections. This included extensive responses to the same Preliminary Objections to which Panama had previously said that it had no time to respond. In fact, the fullness of Mr Carreyó's responses to all of Italy's Preliminary Objections served to prove the very point that I had made before you on the first morning of this hearing.

You may recall, Mr President, that on Tuesday I submitted that Italy made all of its preliminary objections in a timely manner and that therefore the equality of arms principle has been fully respected. The equality of arms principle has been fully respected because, first, Panama has had ample time to prepare its responses to these objections and, secondly, has had the opportunity to present those responses during this hearing, an opportunity of which it duly availed itself yesterday.

This may explain the brief nature of Mr Carreyó's submissions on this issue. In those submissions, Mr Carreyó basically restated that in his view six of Italy's preliminary objections were newly made in Italy's second written pleading. There was nothing new and Mr Carreyó failed to respond to the submissions that I made on the first morning of this hearing. I therefore do not propose to go through each of these allegedly new objections. I partially addressed them both on Tuesday and earlier on a number of key points.

Instead, I respectfully ask the Tribunal simply to refer back to earlier submissions where I explained that these alleged new objections were not new objections at all. Rather, each was a development or clarification of objections that Italy had already clearly made in its first written pleading. Such developments and clarifications are of course one of the most obvious rationales for having a second round of written pleadings.

Perhaps the only new point that Mr Carreyó raised yesterday, albeit in a vague and undeveloped manner, was his complaint that although Panama had clearly now had an opportunity to respond to all of Italy's arguments, it had not had a chance to respond *in writing* to some of those arguments. Mr Carreyó was not able to provide the Tribunal with any authority establishing the equality of arms principle and the reason why the arguments should be put forward both during oral proceedings and in writing. That is unsurprising. There is no reason in principle why a party must be afforded two opportunities to make the same point. All that it would do is to unnecessarily prolong the proceedings.

If Mr Carreyó is seeking an opportunity to file further written submissions following this hearing, it is again difficult to understand what purpose would be served by it.

Mr President, I therefore respectfully request the Tribunal to answer the Request of the Republic of Panama for a ruling concerning the scope of the subject matter based on the Preliminary Objections filed by Italy by confirming that all of Italy's

preliminary objections are admissible.

Mr President, this concludes my presentation. I kindly ask you to invite the Agent of Italy, Ms Gabriella Palmieri, to take the floor and present the final conclusions and submissions by Italy. I thank you for your attention, Mr President.

THE PRESIDENT: Thank you, Mr Tanzi. I understand that this was the last statement made by Italy during this hearing. Article 75, paragraph 2, of the Rules of the Tribunal provides that, at the conclusion of the last statement made by a party at the hearing, its agent, without recapitulation of the arguments, shall read the party's final submissions. The written text of these submissions, signed by the agent, shall be communicated to the Tribunal and a copy of it shall be transmitted to the other party. I now invite the Agent of Italy, Ms Palmieri, to take the floor to present the final submissions of Italy.

MS PALMIERI (*Interpretation from French*)**:** Thank you, Mr President. I shall now read the final submissions of the Italian Republic, first in French and then in English.

For the reasons given in the Preliminary Objections dated 10 March 2016, in its Written Observations and Submissions in Reply to Panama's Observations and Submissions of 8 July 2016, and in the course of the present hearing, Italy requests that the International Tribunal for the Law of the Sea adjudge and declare that:

> The Tribunal lacks jurisdiction with regard to the claim submitted by Panama in its Application filed with the Tribunal on 17 December 2015
>
> and/or that
>
> The claim brought by Panama against Italy in the instant case is inadmissible.

(*Continued in English*) For the reasons given in the Preliminary Objections dated 10 March 2016, in its Written Observations and Submissions in Reply to Panama's Observations and Submissions of 8 July 2016, and in the course of the present hearing, Italy requests that the International Tribunal for the Law of the Sea adjudge and declare that

> The Tribunal lacks jurisdiction with regard to the claim submitted by Panama in its Application filed with the Tribunal on 17 December 2015
>
> and/or that
>
> The claim brought by Panama against Italy in the instant case is inadmissible.

(*Interpretation from French*) Mr President, Members of the Tribunal, this brings me to the end of my presentation. Please accept most sincere thanks from the Italian delegation and from me personally. I would also like to thank the Registry of the Tribunal, all the Tribunal's staff and the interpreters for their conviviality and their valuable and efficient work.

Our most cordial thanks also go to the delegation of the Republic of Panama. Thank you for your attention.

THE PRESIDENT: Thank you, Ms Palmieri. This concludes the oral arguments presented by Italy and this morning's sitting. We will continue the hearing in the afternoon to hear the second round of arguments of Panama from 3 p.m. The meeting is adjourned.

(*The sitting closed at 10.50 a.m.*)