INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

THE M/V “NORSTAR” CASE

THE REPUBLIC OF PANAMA/THE ITALIAN REPUBLIC

REJOINDER OF ITALY

Volume 2
List of Annexes

13 JUNE 2018
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ANNEX</th>
<th>TITLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annex A</td>
<td>Italian Note Verbale of 11 October 2017</td>
</tr>
<tr>
<td>Annex B (Confidential Annex)</td>
<td>Seizure order by the Public Prosecutor of the Tribunal of Savona, 11 August 1998</td>
</tr>
<tr>
<td>Annex C (Confidential Annex)</td>
<td>Decree refusing the release of confiscated goods by the Public Prosecutor of the Tribunal of Savona, 18 January 1999</td>
</tr>
<tr>
<td>Annex D (Confidential Annex)</td>
<td>Appeal by the Public Prosecutor, 20 August 2003</td>
</tr>
<tr>
<td>Annex F</td>
<td>Judgment by the Tribunal of Savona, 13 March 2003</td>
</tr>
<tr>
<td>Annex G</td>
<td>Italian Criminal Code, Article 6</td>
</tr>
<tr>
<td>Annex H</td>
<td>Italian Code of Criminal Procedure, Articles 20, 253, 548 and 606</td>
</tr>
<tr>
<td>Annex I</td>
<td>Communication from the Tribunal of Savona to Mr Morch concerning the restitution of the <em>M/V Norstar</em>, 21 March 2003</td>
</tr>
<tr>
<td>Annex J</td>
<td>Letter sent by Mr Carreyó to the Italian Minister of Foreign Affairs, 15 August 2001</td>
</tr>
<tr>
<td>Annex K</td>
<td>Document of full powers issues by the Republic of Panama in favour of Mr Carreyó with regard to a prompt release procedure before ITLOS, 2 December 2000</td>
</tr>
<tr>
<td>Annex L</td>
<td>Note Verbale A.J. 2227 sent by the Ministry of Foreign Affairs of Panama to Italy, 31 August 2004</td>
</tr>
<tr>
<td>Annex M</td>
<td>Letter sent by Mr Carreyó to the Italian Embassy in Panama, 3 August 2004</td>
</tr>
<tr>
<td>Annex N</td>
<td>Italian Court of Cassation, Sixth Criminal Section, Judgment No. 182, 14 November 1991 (Maxim)</td>
</tr>
<tr>
<td>Annex</td>
<td>Description</td>
</tr>
<tr>
<td>-------</td>
<td>-------------</td>
</tr>
<tr>
<td>O</td>
<td>Tribunal of Milan, Judgment of 18 October 2002 (Maxim)</td>
</tr>
<tr>
<td>P</td>
<td>Italian Court of Cassation, Second Criminal Section, Judgment No. 3273, 20 November 1999 (Maxim)</td>
</tr>
<tr>
<td>Q</td>
<td>Italian Court of Cassation, Third Criminal Section, Judgment No. 15177, 14 April 2011 (Maxim)</td>
</tr>
<tr>
<td>R</td>
<td>Panamanian Code of Criminal Procedure, Article 259</td>
</tr>
<tr>
<td>S</td>
<td>Letter sent by Sparebanken NOR to the ship-owner by fax denying a guarantee to lift the arrest, 16 September 1998</td>
</tr>
<tr>
<td>T</td>
<td>Statement for estimation of value of <em>M/V Norstar</em> by C.M. Olsen, 4 April 2001</td>
</tr>
<tr>
<td>W</td>
<td>E-mail of Mr Petter Vadis, Managing Director of Inter Marine A.S., 27 May 2001</td>
</tr>
<tr>
<td>X</td>
<td><em>M/V Norstar</em> Ship Details sheet</td>
</tr>
</tbody>
</table>
ANNEX A

ITALIAN NOTE VERBALE OF 11 OCTOBER 2017
RE: C25 The M/V Norstar Case. Request to produce documents.

Dear Mr. Gautier,

I acknowledge receipt of your communication dated 6 October 2017 attaching a letter of the same date in which Panama reiterates its request to Italy to produce documents with regard to the M/V Norstar case.

At the outset, Italy wishes to stress once again that it intends to act cooperatively with Panama, in the interest of justice and of its expeditious administration by this Tribunal. In this regard, Italy is not in general averse to Panama’s requests for the production of documents.

However, Italy cannot overlook the fact that Panama’s request is anomalous, and nothing like an ordinary request for the production of documents, to which Italy would immediately accede. Panama is effectively asking Italy to share the entirety of the documents concerning M/V Norstar case. The cooperation between the Parties before the Tribunal should not go to the detriment of fundamental principles of procedure that also deserve to be safeguarded, in the interest of this case, and of international litigation in more general terms.

While not directly applicable in this case, the IBA Rules on the Taking of Evidence in International Arbitration of 2010 provide guidance as to the current trend in international procedural law. Article 3(a) and (b) of those rules provides that a request to produce documents shall contain:

   a) a description of each requested Document sufficient to identify it, or
   b) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; (…);
   c) a statement as to how the Documents requested are relevant to the case and material to its outcome; […]”.

In comparison to this, and to the more general trend in international litigation, Panama’s request for documents is remarkably unqualified and generic. In particular, Italy wishes to note the following:

   a) Panama is asking Italy to produce “the file regarding the arrest M/V Norstar”. Since the entire case before the Tribunal concerns the arrest of the M/V Norstar, Panama is asking Italy to share all of the documents in its possession.
   b) Panama claims that the request concerns “specific and precisely identified files”. However, asking for a “file” is not the same as asking for a “document”, as a file may contain - as it does in this case - several documents. A request to produce a file is therefore by definition generic and unqualified.
c) Specifying three different branches of the Italian Government from which the same unqualified file is requested does not render the request any more specific. Panama is still asking for the entirety of Italy’s documents concerning the arrest of the M/V Nostar.
d) Panama’s request dated 6 October is no more qualified, or specific, than its previous request to which Italy responded on 19 September.

Italy also wishes to point out that it finds it surprising and indeed worrying that Panama, as the applicant in this case, is to turn to Italy, after it filed its Application, to prove its own case, a case that it had almost 20 years to prepare. While cooperation between the Parties is a fundamental principle of international litigation, a respondent should not be asked to unqualifiedly assist a claimant in proving the case that it has brought against it, and in discharging the evidentiary burden that is placed on such claimant.

In light of this, Italy cannot agree to share the entirety of its evidentiary material concerning the M/V Norstar case, so that Panama may inspect it and decide what is relevant and useful for its own case.

In the interest of the expeditious administration of justice and in a spirit of cooperation, Italy would propose to submit Panama’s request for document production to the assessment of this Tribunal pursuant to Article 77 of its Rules. Italy is aware that the matter is of great systemic importance and transcends the specificities of Panama’s case against Italy and that, for these reasons, the Tribunal may wish to state its position on this aspect.

In the alternative, and after consultations with the Tribunal and Panama as appropriate, Italy would also be prepared to share a list of the documents that Italy’s files contain, subject to conditions of reciprocity with Panama with respect to its own files. It would then consider a specific and qualified request from Panama, made in accordance with the IBA Rules indicated above, and reserves the right to make a similar request to Panama.

Yours sincerely,

Avv. Gabriella Palmieri
Agent of the Republic of Italy
ANNEX B

SEIZURE ORDER BY THE PUBLIC PROSECUTOR OF THE TRIBUNAL OF SAVONA, 11 AUGUST 1998
ANNEX C

DECREE REFUSING THE RELEASE OF CONFISCATED GOODS BY THE PUBLIC PROSECUTOR OF THE TRIBUNAL OF SAVONA, 18 JANUARY 1999
ANNEX D

APPEAL BY THE PUBLIC PROSECUTOR, 20 AUGUST 2003
ANNEX E

INTERNATIONAL LETTER ROGATORY OF THE TRIBUNAL OF SAVONA TO THE SPANISH AUTHORITIES,
11 AUGUST 1998
ANNEX F

JUDGMENT BY THE TRIBUNAL OF SAVONA, 13 MARCH 2003
TRIBUNALE DI SAVONA

SEZIONE RITO MONOCRATICO

(art. 544 e segg., 549 c.p.p.)

REPUBBLICA ITALIANA

IN NOME DEL POPOLO ITALIANO

Il Giudice dr. EMILIO FOIS - Sez. Penale all'udienza del 14.03.2003 ha pronunciato e pubblicato mediante lettura del dispositivo la seguente sentenza

SENTENZA

nei confronti di:

1) ROSSI SILVIO, nato a Savona l'8.06.1948
   - residente in Savona, Via Montegrappa, 1/4

   LIBERO PRESENTE –

2) BIGGIO RENZO, nato a Porto Scuso il 13.10.1937
Annex F

- residente in Savona, Via Giaccherò, 20/9

3) MELEGARI BRUNO, nato a Savona il 09.03.1939  
   LIBERO PRESENTE
   residente in Varazze (SV), Via S. Caterina, 43/8
   LIBERO PRESENTE

4) MORCH ARVE EINAIR, nato a Drammen (Norvegia) il 10.02.1952
   residente in Kana (Norvegia), Storegene, 2  
   elettivamente domiciliato c/o lo Studio dell'Avv. Daniela GIACARDI del  
   Foro di Savona.
   CONTUMACE

5) VADIS EMIL PETER, nato a Porsgrunn (Norvegia) il 26.07.1958
   residente in Sandfjord Hemsbakken, 50
   CONTUMACE

6) HUSEFEST TORE, nato a Bremanger (Norvegia) il 12.01.1949
   residente in Haugesund Saltveitv, 12/A
   CONTUMACE

7) BOCCHIOLA MASSIMO, nato a Torino il 10.05.1961
   residente in Cavi di Lavagna (GE), Via Tigula, 12
   LIBERO PRESENTE

8) FALZON JOSEPH, nato a Birkinkara (Malta) il 07.09.1950
   residente a Naxxar (Repubblica di Malta) Il Palma, Triq San Pawl
   elettivamente domiciliato c/o lo Studio dell'Avv. Maria MELLANO del
   Foro di Savona.
   CONTUMACE
IMPUTATI

PER R.G. TRIB. 327/02 – FALZON JOSEPH:

Del reato di cui agli artt. 81 cpv. e 110 c.p., 292 D.P.R. 23/1/73 n. 43 perché, in concorso con ROSSI SILVIO e MELEGARI BRUNO, in tempi diversi e con più azioni esecutive del medesimo disegno criminoso, il ROSSI in qualità di totolare della ROSSMARE INTERNATIONAL s.a.s., esercitante l’attività di commercio all’ingrosso di prodotti petroliferi e lubrificanti ed in particolare dedita alla fornitura di gasolio da trazione ed olio lubrificante unicamente a natanti da diporto in acque internazionali, il FALZON in qualità di titolare della SPIRO MARITIME l.t.d., proprietaria della motocisterna SPIRO F., il MELEGARI in qualità di comandante della detta nave, il primo acquistando dal secondo, in esenzione in territorio extrautunistico (Malta), i precitati prodotti per poi smerciarli nel territorio dello Stato, così sottraendoli al pagamento dei diritti doganali e di imposta, il secondo procurandosi i detti oli minerali e fornendo la motocisterna per il trasporto e la cessione e la relativa documentazione fiscale, il terzo predisponendo e rilasciando, a favore degli acquirenti, ricevute di rifornimento di comodo ideologicamente false, e segnatamente tutti utilizzando la segnente condotta fraudolenta volta a simulare l’esercizio di un’attività di bunkeraggio in realtà non sussistente:

- noleggiando dalla società facente capo al FALZON la motocisterna de qua e posizionandola poco al di là del mare territoriale allo scopo di approvvigionare puntualmente natanti da diporto il cui successivo approdo era costituito unicamente da porti dello Stato o, comunque, unionisti, in tal modo fornendo consapevolmente al prodotto venduto una destinazione chiaramente volta alla soruzione del pagamento dei dovuti diritti, stante la piena consapevolezza della successiva scomita introduzione nel territorio dello Stato, unita all’omessa dichiarazione a fini doganali da parte dei cessionari (dichiarazione dovuta, in base alla convenzione di Istanbul del 26/6/90, ratificata con legge n. 479/95, sia dai diporisti unionisti, sia da quelli extrautunistici, ancorché meri utilizzatori, se residenti nei territori dell’UE);
- pilotando la successiva fatturazione del prodotto fornito ai diporisti, diretti in porti unionisti, a mezzo di fattura cumulativa a favore di soggetti interposti, quali società di comodo, ed in particolare alla società di GIBILTERRA denominata OFF SHORE FUELS SERVICE l.t.d., in caso di pagamento in contante, e alla società di Malta denominata MERIDIAN, in caso di pagamento a mezzo di titolo di credito, con contestuale emissione di bunkers receipts intestati a quest’ultima società, sottraeva la predetta merce al pagamento dei dovuti diritti di confine.

Negli specchi d’acqua antistanti i porti di Savona e Sanremo fino all’11/7/98.

— VADIS – HUSEFEST – BOCCHIOLA:

Del reato di

BIGGIO RENZO, ROSSI SILVIO, MORCH ARVE, VADIS EMIL, PETER e HUSEFEST TORE:

A) del delitto di cui agli artt. 81 cpv. e 110 c. p., 40 comma 1° lett. c) e comma 4° D.Lv. 26/101985 n. 504, 292 D.P.R. 231/73 n. 43 perche', in concerto tra loro, in tempi diversi e con più azioni esecutive del medesimo disegno criminale, il ROSSI in qualità di titolare della ROSSMARE INTERNATIONAL s.a.s., esercita l'attività di commercio all'ingrosso di prodotti petrolieri e lubrificanti ed in particolare dedica alla fornitura di gasolio da trazione ed olio lubrificanti unicamente a navatari da dipinto in acque internazionali, il MORCH ed il VADIS in qualità di titolari della società norvegese INTERMARINE a.s., proprietaria della motocisterna NORSTAR, fornita in noleggio alla NORMARITIME BUNKER COMPANY Ltd di Malta (società quest'ultima, controllata, unitamente alla INTERMARINE a.s., della società norvegese BORGEIM SHIPPING, facente sempre capo a MORCH), HUSEFEST ed il BIGGIO in qualità di comandanti della detta nave succedutisi nel tempo, sottraeva la suddetta merce al pagamento dei dovuti diritti di confine, nonché destinava ad uso, soggetti ad imposta, prodotti essi, ed in particolare:

ROSSI, acquistando, a mezzo di società norvegesi di comodo (ARJA s.a. e SCANDINAVIAN BUNKERING a.s., che a loro volta facevano alla NORMARITIME) in esecuzione (quala provvida di bordo in esportazione dalla NORSTAR) da depositi doganali sia dello Stato (Livorno, in due diverse occasioni, per un complessivo quantitativo di 839.230 litri di gasolio), sia di altri Stati unionisti (Barcellona), oppure acquistando in terzi estranei (Gibilterra), i prodotti per poi smaltirli nel territorio dello Stato, così sottraendo al pagamento dei diritti doganali e di imposta;

MORCH e VADIS, fornendo la motocisterna per il trasporto e la cessione ad una relativa documentazione fiscale;

HUSEFEST e BIGGIO, predisponendo e rilasciando, a favore degli acquirenti, una documentazione contabile idonea a permettere al ROSSI, a mezzo della sua società, di emettere fatture di comodo ideologicamente false;

TUTTI, ponendo in essere la seguente condotta fraudolenta vista a simulare l'esercizio di un'attività di bunkering in realtà non sussistente:

noleggiano dalla società, di fatto facente capo al MORCH, la motocisterna de qua e posizionandola poco al di là del mare territoriale allo scopo di approvvigionare puntualmente notanti da dipinto, il cui successivo approdo era costituito unicamente da porti dello Stato o, comunque, unionisti, in tal modo fornendo consciamente al prodotto venduto una destinazione chiaramente volta alla sottrazione del pagamento dei dovuti diritti, stante la piena consapevolezza della successiva sconsacrata introduzione nel territorio dello Stato, unita all'omessa dichiarazione a fini doganali da parte dei cessionari (dichiarazione dovuta, in base alla convenzione di Istanbul del 26/09/90, ratificata con legge n. 479/95, sia dai dipartisti unionisti, sia da quelli estranei), ancorché meri utilizzatori, se residenti nei territori dell'U.E.),
Annex F

pilotando la successiva fatturazione del prodotto fornito ai dipatristi, effettuata dalla società del ROSSI, a mezzo di fatture cumulative emesse a favore di manutentori in reale non riforniti, allo scopo di legittimare fiscalmente la deposizione del prodotto rifornimento, in effetti consegnato a manutenti da dipartimento di porti unionisti, con contestuale emissione di bunkers receipt inverificatamente intestati, a seguito di preventivi accordi tra ROSSI ed ARVE.

con l'aggiornamento del quantitativo di oli minerali superiore ai 2000 Kg.

Negli specchi d'acqua antistanti i porti di Savona e Sanremo fino all'11/8/98.

ROSSI, MELEGARI

B) - del delitto di cui agli artt. 81 cpv. e 110 cpv. 292 D.P.R. 23/1/73 n. 43 perche', in concorso tra loro, e con Falzon Joseph - sospendato al n° 8938/01 - in tempi diversi e con più azioni esecutive del medesimo disegnato criminoso, il ROSSI in qualità di titolare della ROSSANE INTERNATIONAL s.s.s., esercente l'attività di commercio all'ingrosso di prodotti petrolieri e lubrificanti ed in particolare dedicata alla fornitura di gasolio da trazione ed olie lubrificanti unicamente a manutenti da dipartimento in acqua internazionali, il FALZON in qualità di titolare della SPIRO MARITIME I.d.t., proprietaria della motocisterna SPIRO F. il MELEGARI in qualità di comandante della detta nave, il primo acquistando dal secondo, in esenzione in territori extraterritoriali (Malta), i prodotti petrolieri per poi smaltirli nel territorio dello Stato, così sottraendosi al pagamento dei diritti doganali e di imposte, il secondo procurandosi i detti oli minerali e fornendo la motocisterna per il trasporto e la consegna e la relativa documentazione fiscale, il terzo predisponendo e rilasciando, a favore degli acquirenti, ricevute di rifornimento di comodo ideologicamente false, e segnemente tutti utilizzando la segreta condotta fraudolenta volta a simulare l'esercizio di un'attività di bunkering in realtà non sussistente:

- noleggiando della società' facente capo al FALZON la motocisterna de qua e posizionandola poco al di là del mare territoriale allo scopo di approvvigionare puntualmente manutenti da dipartimento il cui successivo approdo era costituito unicamente da porti dello Stato o, comunque, unionisti, in tal modo fornendo costantemente al prodotto venduto una destinazione chiaramente volta alla sottrazione del pagamento dei dovuti diritti, stende la piena conseqvacosa della successiva scontata introduzione nel territorio dello Stato, unita all'omessa dichiarazione a fini doganali da parte dei cessionari (dichiarazione dovuta, in base alla convenzione di Istanbul del 26/6/90, ratificata con legge n. 473/95, sia dei dipartisti unionisti, sia da quelli extraterritoriali, ancora' meri utilizzatori, se residenti nei territori dell'U.E.);

- pilotando la successiva fatturazione del prodotto fornito ai dipartisti, diretti in porti unionisti, a mezzo di fattura cumulative a favore di soggetti intermedi, quali società' di comodo, ed in particolare alla società' di GIBILTERRA denominata OFF SHORE FUELS SERVICE I.d.t., in caso di pagamento in contante, o alla società' di Malta denominata MERIDIAN, in caso di pagamento a mezzo di titolo di credito, con contestuale emissione di bunkers receipt intestati a quest' ultime società', sottraevano la predetta merce al pagamento dei dovuti diritti di confine.

Negli specchi d'acqua antistanti i porti di Savona e Sanremo fino all'11/7/98.

BOCCIOLA:

C) - del delitto di cui all'art. 292 D.P.R. 23/1/73 n. 43 perche', acquistando dalla motocisterna SPIRO F. in esenzione liri 14.000 di gasolio da trazione, per l'imbarcazione HARMONY e destinati ad un manutente da dipartimento per il consumo in acqua territoriale, omettendone la dichiarazione a fini doganali al momento del rientro in un porto italiano o unionista (dichiarazione dovuta, in base alla convenzione di Istanbul del 26/6/90, ratificata con legge n. 473/95, sia dei dipartisti unionisti, sia da quelli extraterritoriali, ancora' meri utilizzatori, se residenti nei territori dell'U.E.), sottraeva la predetta merce al pagamento dei dovuti diritti di confine.

Con l’intervento del Pubblico Ministero dr. LANDOLFI

Dell’Avv. A.L. GERMANO e P. GIANNELLA del Foro di Savona, difensori di fiducia per Rossi; Avv. M. MELLANO del Foro di Genova difensore di fiducia per Biggio, Melegari e Falzon; Avv. D. GIACCARDI del Foro di Savona, difensore di fiducia per Morch, Vadis e Husefest; Avv. BOTTA del Foro di Savona, difensore di fiducia per Bocchiola.

Le parti hanno concluso come segue: il P.M.:

- per Vadis Emil Peter: assoluzione per non aver commesso il fatto;
- per Rossi Silvio e Morch Arve Einair: ritenuto esistente il vincolo della continuazione tra i reati contestati e concesse le attenuanti generiche equivalenti alle contestate aggravante, reato più grave art. 40 D.Lgs del 95 pena di 1 anno di reclusione ed € 700,00 di multa;
- per Husefest Tore e Biggio Renzo: ritenuto più grave il reato ex art. 40 D.Lgs del 95, concesse le attenuanti generiche ritenute prevalenti sull’aggravante contestata pena di mesi 8 di reclusione ed € 300,00 di multa;
- per Falzon Joseph e Melegari Bruno: concesse le attenuanti generiche pena di € 700,00 di multa;
- per Bocchiola Massimo: concesse le attenuanti generiche pena di € 800,00 di multa.
confisca delle navi in sequestro.

Il difensore: Avv. Germano e Avv. Giannella per Rossi; assoluzione con la formula più ampia;

l'Avv. Mellano conclude chiedendo l'assoluzione con formula piena per Falzon, Melegari e Bigio;

l'Avv. Giaccardi chiede l'assoluzione nella formula più ampia per Morch, Vadis e Husefest;

l'Avv. Botta per Bocchiola chiede assoluzione per mancanza dell'elemento psicologico del reato e comunque con formula più ampia.
MOTIVAZIONE

1. Gli odieri imputati sono stati inviati a giudizio per rispondere dei reati rispettivamente loro ascritti in rubrica. L'istruttoria dibattimentale si è svolta mediante la trascrizione di intercettazioni telefoniche, l'assunzione dei testi indicati dalle parti, l'esse di imputato Rossi e la lettura degli interrogatori degli imputati commissari. All’esito le parti hanno concluso ed il Tribunale ha emesso sentenza dando lettura del dispositivo.

2. Ai capi a) e b) dell’imputazione l’accusa contesta l’ipotesi residuale del delitto di contrabbando (altri casi di contrabbando) ed il delitto di evasione dell’accisa sull’olio minerale (limitatamente al capo a).

Il nucleo essenziale della condotta sarebbe costituito dall’acquisto di prodotti petrolieri in territori extracomunitari ovvero in Italia ed in altri porti dell’Unione, ma in regime di franchigia doganale per poi destinarlo ad operazioni di rifornimento di navi o natanti al di fuori del limite delle acque territoriali italiane.

I moli svolti in tesi d’accusa da ciascuno degli imputati nel reato contestato al capo a) sono i seguenti:

a) Rossi Silvio, titolare della ROSSMARE INTERNATIONAL S.a.s. viene indicato come organizzatore e dominus dell’intero commercio, sebbene formalmente intermediario rispetto a singoli rifornimenti di carburante;

b) Morch Arve Einar e Yadis Emil Peter quali titolari della società norvegese INTERMARINE A.S. proprietaria della motocisterna Norstar che avrebbero noleggiato alla società maltese NORMARITIME BUNKER COMPANY Ltd. (società controllata dalla Intermarine A.S. ed alla norvegese Borgheim Shipping facente capo al Morch) consapevoli dell'uso illegittimo che ne sarebbe stato fatto;

c) Husefest e Biggio quali comandanti della nave succedevisi nel tempo fino all’agosto 1998 avrebbero provveduto a rilasciare fatture ideologicamente false in relazione a ciascuna cessione di carburante.

Analoghe le condotte contestate al capo b) che vede imputati il Rossi, Joseph Falzon (il cui procedimento è stato riunito al presente):

a) il Falzon, per il tramite della società SPIRO MARITIME LTD avrebbe fornito la motocisterna SPIRO F. ed il carburante acquistato all’estero (Malta);

b) il Rossi avrebbe curato che detta nave si posizionasse in acque internazionali, vicino alla linea del mare territoriale italiano, affinché essa provvedesse al rifornimento di imbarcazioni che avrebbero successivamente introdotto il carburante nel mare territoriale e ad all’interno del territorio doganale senza dichiararlo ai fini doganali;

c) il Melegari, comandante della nave, avrebbe curato le operazioni di vendita e fatturazione (falsa) eseguite in alto mare.

Al capo c) si contesta a Massimo Bocchiola, quale comandante della nave Harmony di avere acquistato ed introdotto all’interno del mare territoriale un
quantitativo di gasolio pari a 14.000 litri, acquistato in acque internazionali dalla Spiro F. e non formante oggetto di dichiarazione doganale.

3. Per brevità appare opportuno premettere la ricostruzione giuridica delle fattispecie normative da applicare all'individuazione delle circostanze di fatto rilevanti.

Va in primo luogo chiesto che in questa fase del procedimento non si pongono problemi di giurisdizione, né sotto il profilo del diritto internazionale del mare, né del diritto interno.

Le norme internazionali invocate dalla difesa (ed in particolare la Convenzione di Montego Bay del 10/12/82, ratificata con lege 689/94) non vengono in considerazione in questa fase in cui non si discute della legittimità dei sequestri, che ha già formato oggetto di procedimento incidentale di riesame e di ricorso per Cassazione, ma solo della responsabilità penale degli imputati per i delitti contestati.

Anche con riguardo alle norme interne sui limiti della giurisdizione penale, va evidenziato che intanto il reato sussiste, in quanto gli imputati abbiano contribuito, sia pure mediante condotte commesse all'estero, alla sottrazione di merce ai diritti di confine dovuti allo Stato italiano. Non vi è spazio logico per ipotizzare che il reato sussista ma sia stato commesso senza alcun collegamento con il territorio nazionale.

Rientra invece nel "doveroso esercizio della giurisdizione interna l'accertamento della introduzione di merce all'interno della linea doganale o nel mare territoriale in violazione delle norme doganali. Esercizio che può concludersi con l'affermazione della penale responsabilità degli imputati, ancorché singole condotte siano state compiute all'estero, ovvero con l'assoluzione degli stessi ove non risultassero provate le predette violazioni o il consapevole contributo di ciascuno.

Deve dunque essere confermata l'infondatezza dell'eccezione di difetto di giurisdizione, già respinta preliminarmente all'apertura del dibattimento, poiché essa in parù è estranea al merito del giudizio, che concerne l'accertamento della responsabilità penale e non la legittimità dei sequestri, in parte prospetta erroneamente come questione di giurisdizione quella che è una questione di merito concernente la sussistenza del reato.

4. Il combustibile necessario per l'alimentazione del motore della nave è assoggettato alla disciplina delle provviste di bordo ai sensi dell'art. 252 lett. b) TU 43/73.

Gli articoli 253 – 255 del TU dettano il regime giudicale delle provviste di bordo distinguendo a seconda del luogo in cui si trovi la nave (all'interno della linea doganale o nel mare territoriale), del tipo e nazionalità della nave (militare, da diporto od altro genere) ed infine a seconda che si tratti di provviste già presenti nella nave all'arrivo nel porto o caricate o trasbordate.

Fintanto che la nave transiti nel mare territoriale senza approdare in un porto o rada le provviste di bordo estere o nazionali esportate sono considerate
fuori dal territorio doganale (art. 255), tanto se imbarcate su nave italiana che
straniera.

Allorché la nave oltrepassa la linea doganale e sosta in porti o rade l’art. 253 distingue tra:
a) le navi italiane militari e da diporto, a cui è consentito conservare le merci in
franchigia, tanto se si tratta di merce estera che italiana esportata, ma non
consumare o sbarcare detta merce;
b) le altre navi a cui è consentito anche il consumo delle merci purché ciò
avvenga durante le soste ordinarie.

Ne deriva che la nave da diporto può imbarcare all’estero carburante
costituen
de provvista di bordo (si tratti di merce estera o italiana esportata) e non
è tenuta a pagarsi il dazio al rientro in acque i porti italiani, salvo che esso venga
sbarcato o consumato all’interno della linea doganale.

5. L’esenzione non è condizionata all’inclusione delle provviste di bordo nel
manifesto di carico.

Gli artt. 105 - 107 TULLDD prescrivono che il manifesto di carico deve
indicare anche le provviste di bordo (art. 106 comma 4). Esso deve essere
formato al momento in cui la nave entra nella zona di vigilanza doganale
marittima (il cui confine esterno coincide, in Italia, con il limite del mare
territoriale) ed esibito alla dogana all’approdo.

Ma la mancata indicazione delle provviste di bordo nel manifesto di carico
non costituisce contravvenzione come si desume:
a) dalla non riconducibilità di una violazione formale qual è quella della mera
mancata indicazione di merci esenti nel manifesto alla, pur ampiamente formulata
dell’art. 292 TU che sanziona la sottrazione di merce al pagamento di diritti di
confine.
b) dall’esplicita previsione di un reato punito con pena pecuniaria proporzionata
all’ammontare dei diritti di confine evasi – conseguentemente non applicabile alle
merci importate in esenzione - per l’ipotesi in cui il manifesto di carico ometta di
indicare alcuni colli (art. 302 DPR 43/73);

b) dall’assenza nel TU 43/73 di una disposizione analoga a quella dell’art. 3 L. 1409/56 che sanziona, mediante un rinvio recettizio alle norme sul
contrabbando, il trasporto di tabacchi lavorati esteri senza la predisposizione del
manifesto di carico.

Deve concludersi che le esenzioni dal dazio delle provviste di bordo non
sono subordinate ad alcuna preventiva dichiarazione ed operano, secondo il
tenore testuale della legge, per il solo fatto della riconducibilità della merce alla
categoria anzi
detta.

Tale regime non appare innovato dalla convenzione di Istanbul
26/6/1990 richiamata nel capo d’imputazione. Si tratta infatti di convenzione
internazionale diretta a disciplinare l’ammissione o importazione temporanea,
definita dall’art. 1 lett. a) come "il regime doganale che consente di ricevere in un territorio
doganale, in regime di esenzione da dazi e tasse all’importazione e senza prohibizioni o
restrizioni all’esportazione di carattere economico, talune merci (sui compresi i mezzi di

11
Annex F

trasporto), importate a determinati fini e destinate ad essere restituite, entro un dato termine, senza avere subito alcuna modifica, se se ne escluda il normale deperimento per l'uso che se ne è fatto".

Dato l'oggetto specifico della convenzione, essa accenna al tema dei combustibili solo nella parte concernente l'importazione temporanea dei mezzi di trasporto e non innova le disposizioni del vigente diritto doganale concernenti le provviste di bordo di navi straniere ed italiane (queste ultime per definizione estranee alla nozione di importazione temporanea).

Del resto la stessa convenzione non prevede l'obbligatorietà di una dichiarazione per i carburanti dei mezzi di trasporto, ma si limita a prevedere:

a) la facoltà per gli stati contraenti di "subordinare l'ammissione temporanea delle merci (sui compresi i mezzi di trasporto) alla presentazione di un documento doganale e alla costituzione di una garanzia" ed alla "condizione che possano essere identificate" (artt. 4 e 7 capitolo terzo);

b) l'ammissione in franchigia di combustibili e carburanti contenuti nei normali serbatoi dei mezzi di trasporto ammessi temporaneamente (art. 4 all. C);

c) il divieto per gli stati contraenti di richiedere alcun documento doganale per l'ammissione temporanea dei mezzi di trasporto (artt. 6 allegato C in parziale deroga alle disposizioni generali).

5. Dalle considerazioni che precedono ne deriva che l'acquisto di carburante destinato a provvista di bordo da parte di navi da diporto al di fuori del limite del mare territoriale e la sua successiva introduzione al suo interno non comporta l'assoggettamento a dazio, fintanto che il carburante non sia consumato all'interno della linea doganale o sbarcato sulla terraferma.

Conseguentemente non commette reato colui che organizza il rifornimento in alto mare – poco importa se vicino o lontano dal limite delle acque territoriali – anche nella piena consapevolezza che il carburante venga utilizzato da dipirotisti facenti rota verso il costa italiana.

Né è configurabile il reato di cui all'art. 40 comma 1 lett. c) D.Lvo 504/95 qualora il carburante, venduto e trasbordato in alto mare, sia stato acquistato in territorio italiano in esenzione dal pagamento dell'accisa perché provvista di bordo. Tale merce acquista sicuramente natura di merce estera una volta che la nave abbandoni il porto o, quantomeno, col superamento del limite delle acque territoriali (Cass. 1/2/69 n. 1554). In ogni caso, attesa l'irrilevanza fiscale della reintroduzione dello stato attuata dai dipirotisti acquisitori, non vi sarebbe alcuna differenza di imposta (necessaria per configurare la violazione dell'art. 40 lett. c) tra la destinazione all'esportazione e la destinazione a provvista di bordo.

6. Sulla base delle considerazioni che precedono si deve ritenere pregiudiziale rispetto all'affermazione di qualsiasi responsabilità penale, la verifica del luogo in cui vennero effettuati i rifornimenti, poiché se essi sono avvenuti fuori dal limite delle acque territoriali non sussiste alcun dei reati contestati.

Poiché è emerso, coerentemente con la stessa impostazione dell'accusa, che essi sono stati sempre effettuati in alto mare (v. deposizione M.Lli Ferrari e
Serratore) deve concludersi per l’insussistenza dei reati di cui ai capi a) e b) con conseguente assolutoria degli imputati.

Identiche le conclusioni con riguardo al Bocchiola per il quale deve farsi una precisazione ulteriore. Se il fatto contestato (contrabbandio di 14.000 litri di gasolio) non sussiste per le considerazioni già svolte, non può acersi che una piccola parte del carburante dev’essere stata verosimilmente consumata nelle successive manovre in porto. Sul punto l’istruttoria non ha offerto dati precisi. Ma se anche si ritenesse provata tale circostanza, dovrebbe comunque convenirsi che l’ammontare dei ditti di confine evasi, di difficile quantificazione, non supererebbe l’attuale soglia di rilevanza penale fissata in L. 7.500.000 (€ 3873) dall’art. 295 bis DPR 43/73 (introdotto con il D.L.vo 507/99).

All’assoluzione degli imputati perché il fatto non sussiste consegue il dissequestro e la restituzione della M/n Norstar e la liberazione della cauzione versata in relazione alla M/n Spiro F, già dissequestrata dal P.M.

P.Q.M.

visto l’art. 530 c.p.p.

ASSOLVE

ROSSI Silvio, BIGGIO Renzo, MELEGARI Bruno, MORCH Arve Einair, VADIS Emil Peter, HUSEFEST Tore, BOCCHIOLA Massimo e FALZON Josef dai reati a ciascuno rispettivamente ascritti perché il fatto non sussiste; visti gli artt. 262 e segg. c.p.p.

ORDINA

il dissequestro e la restituzione alla società INTERMARINE A.S. della motonave Norstar e la liberazione della cauzione versata;


RISERVA

il deposito della sentenza nel termine di giorni novanta.
Savona, 13/3/2003

Il Giudice

TRIBUNALE DI SAVONA - CANCELLERIA PENALE
Deposito in cancelleria il 7 LUG. 2003

IL CANCELLERE C. F. DI MABRIO
Sentenza comunicata al P.G. il 21/07/2003
Sentenza comunicata al P.M. IL 18/07/2003

SENTENZA IRREVOCABILE IL 21/10/2003 per Vadis Emil Peter


[Signature]
COURT OF SAVONA  
DIVISION FOR MONOCRATIC PROCEEDINGS  
(Articles 544 et seq., 549 of the Code of Criminal Procedure)  

ITALIAN REPUBLIC  
IN THE NAME OF THE ITALIAN PEOPLE  

Judge Emilio FOIS – Criminal Division – at the hearing of 14.03.2003 published and pronounced by reading out the decision the following  

JUDGEMENT  

against:  

1) ROSSI SILVIO, born in Savona on 08.06.1948  
   - residing in Savona, Via Montegrappa 1/4  
   
   NOT IN CUSTODY, PRESENT  

2) BIGGIO RENZO, born in Porto Scuso on 13.10.1937  
   - residing in Savona, Via Giacchero 20/9  
   
   NOT IN CUSTODY, PRESENT  

3) MELEGARI BRUNO, born in Savona on 09.03.1939  
   - residing in Varazze (SV), Via S. Caterina 43/8  
   
   NOT IN CUSTODY, PRESENT  

4) MORCH ARVE EINAIR, born in Drammen (Norway) on 10.02.1952  
   - residing in Kana (Norway), Storengene 2,  
   - with elected domicile c/o law firm of lawyer Daniela Giaccardi practising in Savona  
   
   FAILED TO APPEAR  

5) VADIS EMIL PETER, born in Ppsgrunn (Norway) on 26.07.1958  
   - residing in Sandfjord Hemsbakken 50  
   
   FAILED TO APPEAR  

6) HUSEFEST TORE, born in Bremanger (Norway) on 12.01.1949  
   - residing in Haugesund Saltveitv 12/A  
   
   FAILED TO APPEAR
7) BOCCHIOLA MASSIMO, born in Turin on 10.05.1961
- residing in Cavi di Lavagna (GE), Via Tigula 12
  NOT IN CUSTODY, PRESENT

8) FALZON JOSEPH, born in Birkinkara (Malta) on 07.09.1950
- residing in Naxxar (Republic of Malta) Il Palma, Triq San Pawl
- with elected domicile c/o law firm of lawyer Maria MELLANO practising in Savona
  FAILED TO APPEAR

Charged with:

In relation to R.G. TRIB. 327/02 – FALZON JOSEPH:

the offence provided for, and punishable under, Article 81 paragraph 2, Article 110, of the Criminal Code, Article 292 of Presidential Decree No. 43 of 23.1.1973, for having, in complicity with ROSSI SILVIO and MELEGARI BRUNO, at different times, and by more than one act in furtherance of the same criminal plan, specifically Mr. ROSSI as owner of the company ROSSMARE INTERNATIONAL S.a.s. [limited partnership], exercising activities of wholesale trade of petroleum and lubricating products, in particular engaged in supplying diesel fuel and lubricating oils to recreational vessels in international waters; Mr. FALZON as owner of the company SPIRO MARITIME ltd, proprietor of the motor tanker SPIRO F; Mr. MELEGARI as captain of the said vessel; Mr. ROSSI having purchased from Mr. FALZON the products indicated above in non-EU duty free territories (Malta), with a view to selling them in the territory of the State, thus avoiding to pay customs duties and taxes; Mr. FALZON having procured the said mineral oils and having provided the motor tanker for the transport and transfer of the products and the relevant tax documents, whereas MELEGARI prepared and issued false receipts to purchasers,
all of them through the following fraudulent behaviour aimed at simulating the provision of non-existent bunkering services:

☐ by chartering the motor tanker specified above from the company owned by FALZON, and by anchoring it a little beyond the territorial sea in order to supply regularly diesel fuel to yachts, which subsequently landed solely in ports of the State or, in any case, in ports of EU Member States, thus providing knowingly a destination for the product sold, which manifestly aimed at avoiding to pay the duties due, given the full awareness of the following entry into the territory of the State and the suppliers’ failure to make the declaration for customs purposes (declaration required under the Istanbul Convention of 26 June 1990, ratified by Law No. 479/95, both from EU and from non-EU leisure boaters, even if they only use the boats, if they are resident in the EU territories);
☐ by masterminding the following invoicing of the product supplied to leisure boaters
bound for ports of EU Member States through cumulative invoices issued to third parties, such as shell companies, and in particular to a company based in GIBRALTAR called OFF SHORE FUELS SERVICE ltd. in case of cash payments, and to a company based in Malta called MERIDIAN in case of payment by means of credit instruments, issuing at the same time bunker receipts to the above-mentioned companies, avoided to pay the border tax due for the aforesaid goods.

In the tract of sea in front of the ports of Savona and Sanremo until 11 July 1998.

IN RELATION TO R.G. TRIB. NO. 415/02 - ROSSI – BIGGIO – MELEGARI – MORCH – VADIS - HUSEFEST – BOCCHIOLA:

charged with:

BIGGIO RENZO, ROSSI SILVIO, MORCH ARVE, VADIS EMIL PETER and HUSEFEST TORE:

A) The offence provided for, and punishable under, Article 81 paragraph 2, Article 110, of the Criminal Code, Article 40, paragraph 1, lit. c), and paragraph 4 of Legislative Decree No. 504 of 26.10.95, Article 292 of Presidential Decree No. 43 of 23.1.1973, for having, in complicity with ROSSI SILVIO and MELEGARI BRUNO, at different times, and by more than one act in furtherance of the same criminal plan, specifically Mr. ROSSI as owner of the company ROSSMARE INTERNATIONAL S.a.s. [limited partnership] exercising activities of wholesale trade of petroleum and lubricating products, in particular engaged in supplying diesel fuel and lubricating oils to recreational vessels in international waters; MORCH and VADIS as owners of the Norwegian company INTERMARINE a.s. [limited partnership], proprietor of the motor tanker NORSTAR, which had been hired to NORMARITIME BUNKER COMPANY ltd. based in Malta (a subsidiary, along with INTERMARINE a.s., of the Norwegian company BORGHEM SHIPPING, led by MORCH); HUSEFEST and BIGGIO as captains of the said vessel one after the other, avoided to pay the border tax due for the above-mentioned goods, and destined products exempt from tax for uses subject to tax. In particular:

ROSSI purchased through Norwegian shell companies the products indicated above (ARIA s.a. and SCANDINAVIAN BUNKERING, which, in turn, transferred them to NORMARITIME), which were exempt from duties as ship’s stores exported by NORSTAR, from customs warehouses both of the State (Livorno, on two different occasions, for a total amount of 839,520 diesel fuel liters), and of other EU-States (Barcelona), or in non-EU territories (Gibraltar), in order to sell them on the territory of the State, thus avoiding to pay customs duties and taxes; MORCH and VADIS provided the motor tanker for the transport and transfer of the products and the relevant tax documents; HUSEFEST and BIGGIO prepared and issued accounting documents to purchasers, which enabled ROSSI, through his company, to issue false invoices; ALL OF THEM carrying out the following fraudulent actions:

□ they chartered the motor tanker in question from the company headed de facto
by MORCH and anchored it a little beyond the territorial sea in order to regularly supply diesel fuel to recreational vessels, which subsequently landed solely in ports of the State or, in any case, in ports of EU Member States, thus knowingly providing a destination for the product sold, which manifestly aimed at avoiding to pay the fees due, given the full awareness of the following entry into the territory of the State and the suppliers’ failure to make the declaration for customs purposes (declaration required under the Istanbul Convention of 26 June 1990, ratified by Law No. 479/95, both from EU and from non-EU leisure boaters, even if they only use the boats, if they are resident in the EU territories);

- they masterminded the following invoicing of the product supplied to leisure boaters, which was carried out by ROSSI’s company through cumulative invoices issued to vessels, which in reality were not refuelled, with a view to justifying the disposal of the oil product for tax purposes, which was indeed supplied to recreational boaters bound for EU ports, issuing at the same time bunker receipts to false persons, according to previous arrangements between ROSSI and ARVE. With the aggravating circumstance that the amount of mineral oils exceeded 2,000 kg.

In the tract of sea in front of the ports of Savona and Sanremo until 11 August 1998.

ROSSI, MELEGARI:

B) The offence provided for, and punishable by, Article 81 paragraph 2, Article 110, of the Criminal Code, Article 292 of Presidential Decree no. 43 of 23.1.1973, for having, in complicity with one another (and with FALZON Joseph, tried separately under No. 8938/01) at different times, and by more than one act in furtherance of the same criminal plan, specifically Mr. ROSSI as owner of the company ROSSMARE INTERNATIONAL S.a.s. [limited partnership] exercising activities of wholesale trade of petroleum and lubricating products, in particular engaged in supplying diesel fuel and lubricating oils to recreational vessels in international waters; Mr. FALZON as owner of the company SPIRO MARITIME Ltd, proprietor of motor tanker SPIRO F; Mr. MELEGARI as captain of the said vessel; ROSSI having purchased from FALZON the products indicated above in non-EU duty free territories (Malta), with a view to selling them in the territory of the State, thus avoiding to pay customs duties and taxes; FALZON having procured the said mineral oils and providing the motor tanker for the transport and transfer of the products and the relevant tax documents, whereas MELEGARI prepared and issued false receipts to purchasers, all of them through the following fraudulent behaviour aimed at simulating the exercise of non-existent bunkering services:

- by chartering the motor tanker specified above from the company owned by FALZON, and by anchoring it a little beyond the territorial sea in order to supply regularly diesel fuel to recreational vessels, which subsequently landed solely in ports of the State or, in any case, in ports of EU Member States, thus knowingly providing a destination for the product sold, which manifestly aimed at avoiding to pay the fees due, given the full awareness of the following entry into the territory of the State and the suppliers’ failure to make the declaration for customs purposes (declaration required under the Istanbul
Convention of 26 June 1990, ratified by Law No. 479/95, both from EU and from non-EU leisure boaters, even if they only use the boats, if they are resident in the EU territories;

☐ by masterminding the following invoicing of the product supplied to leisure boaters bound for ports of EU Member States, through cumulative invoices issued to third parties, such as shell companies, and in particular to a company based in GIBRALTAR called OFF SHORE FUELS SERVICE ltd. in case of cash payments, and to a company based in Malta called MERIDIAN in case of payment by means of credit instruments, issuing at the same time bunker receipts to the above-mentioned companies, thus avoiding to pay the border tax due for the aforesaid goods.

In the tract of sea in front of the ports of Savona and Sanremo until 11 July 1998.

BOCCHIOLA:
C) the offence provided for, and punishable under, Article 292 of Presidential Decree No. 43 of 23.1.1973, in that he, by purchasing duty-free 14,000 litre of diesel fuel from the motor tanker SPIRO for the vessel HARMONY, destined for a leisure boat, and to be consumed in territorial waters, and failing to make the customs declaration upon return to an Italian or EU port (declaration required under the Istanbul Convention of 26 June 1990, ratified by Law No. 479/95, both from EU and from non-EU pleasure boaters, even if they only use the boats, if they are resident in EU territories), avoided to pay the border tax due for the aforesaid goods.

Offence committed in Lavagna on 8 June 1998.

At the presence of Public Prosecutor LANDOLFI
Lawyer A.L. GERMANO and P. GIANNELLA practising in Savona, Rossi’s defence lawyers of choice; lawyer M. MELLANO practising in Genoa, defence lawyer of choice for Bigio, Melegari and Falzon; lawyer D. GIACCARDI practising in Savona, defence lawyer of choice for Morch, Vadis and Husefest; lawyer BOTTA practising in Savona, defence lawyer of choice for Bocchiola.

The parties to the proceedings submitted the following conclusions: the Public Prosecutor:
- for Vadis Emil Peter: he shall be acquitted because he did not commit the offence;
- for Rossi Silvio and Morch Arve Einair: the offences charged shall be considered to be continuous offences and general mitigating circumstances shall be granted and considered to be equivalent to the aggravating circumstance charged; the more serious offence under Article 40 of Legislative Decree of 95 attracts a term of imprisonment of 1 year and a fine of € 700.00;
- for Husefest Tore and Biggio Renzo: the offence under Article 40 of Legislative Decree of 95 shall be considered to be more serious, the general mitigating circumstances to be prevailing over the aggravating circumstance charged thus imposing a term of imprisonment of 8 months and a fine of € 300;
- for Falzon Joseph and Melegari Bruno: general mitigating circumstances shall be granted and a fine of € 700 imposed;
- for Bocchiola Massimo: general mitigating circumstances shall be granted and a fine of € 800 imposed;
- the seized ships shall be confiscated. The defence lawyer: Lawyer Germano and Lawyer Giannella for Rossi; full acquittal; Lawyer Mellano asks for Falzon’s, Melegari’s and Bigio’s full acquittal; Lawyer Giaccardi asks for Morch’s, Vadis’ and Husefest’s full acquittal; Lawyer Botta asks for Bocchiola’s acquittal due to the lack of the mental element of the offence, in any case for his full acquittal.

**GROUNDS**

1. The defendants have been committed to trial to answer for the offences they have respectively been charged with as described above. Evidence was taken during the trial by the transcript of telephone interception, hearing the witnesses indicated by the parties to the proceedings, examining defendant Rossi and reading out the interviews of the defendants who failed to appear. Then the parties have submitted their conclusions and the Court delivered its judgment by reading out the decision.

2. According to counts a) and b) of the charges, the offence charged is included in one of the cases of smuggling (other cases of smuggling) and evading the excise duty on mineral oil (only related to count a).

The essential elements of the conduct apparently consisted in the purchase of oil products in non EU countries or in Italy and in other EU ports but under a customs-free regime, for such products to be then used to refuel ships or vessels outside Italian territorial waters.

The roles played by each defendant in the commission of the offence as per count a) are the following according to the Prosecution:

a) Rossi Silvio, owner of ROSSMARE INTERNATIONAL S.a.s., is indicated as the organiser and *dominus* of the whole trade, even though he was formally an intermediary with respect to the single supplies of fuel;

b) Morch Arve Einair and Vadis Emil Peter, in their capacities as owners of the Norwegian INTERMARINE A.S., proprietor in turn of motor tanker Norstar that they apparently hired to Maltese NORMARITIME BUNKER COMPANY Ltd. (a company controlled by Intermarine A.S. and to Norwegian Borgheim Shipping headed by Morch) and in doing so they were aware of the unlawful use it would be done of the ship;

c) Husefest and Biggio, as captains of the ship in turn until August 1998, apparently issued false invoices for each supply of fuel.

Similar charges have been levelled in count b) where Rossi, Joseph Falzon (the proceedings against him have been united to these proceedings) are involved as defendants:

a) Mr. Falzon, through SPIROMARITIME LTD company, apparently supplied fuel for motor tanker SPIRO F. and the fuel purchased abroad (Malta);

b) Mr. Rossi apparently saw to it that that ship was located in international waters close to the Italian territorial sea line, for it to be able to refuel vessels that would subsequently introduce the fuel in the territorial sea and inside the customs territory without making a declaration for customs purposes;

c) Mr. Melegari, the captain of the ship, apparently dealt with sale operations and the (false) issuance of invoices offshore.

In count c) Massimo Bocchiola, in his capacity as captain of Harmony ship, has been
accused of having purchased, and introduced into the territorial sea, an amount of diesel fuel totalling 14,000 litres that had been purchased in international waters by Spiro F. and was not declared for customs purposes.

3. A legal classification of the facts and circumstances of the case is set out below very concisely.

First of all it is worth clarifying that in this stage of the proceedings there are no problems of jurisdiction, either by virtue of the international law of the sea or of the domestic system.

The international rules invoked by the defence (in particular the Convention of Montego Bay of 10.12.82, ratified by Law 689/94) shall not be taken into account in this stage where it does not come to discussing the legitimacy of seizures, which has already been dealt with in the interlocutory review and appeal proceedings with the Court of Cassation, but only the criminal liability of the defendants for the offences charged.

Also with respect to domestic rules governing the scope of criminal jurisdiction, it should be highlighted first of all that an offence does exist because the defendants have contributed to evade border tax on goods to be paid to the Italian State even though their conduct occurred abroad. There are no logical reasons for believing that an offence does exist but it has been committed without any connection to the national territory.

On the contrary, it is up to domestic jurisdiction to establish whether goods have been introduced into a customs area or the territorial sea in breach of customs rules. This test may lead to the conclusion either that the defendants are criminally liable even though single types of conduct have occurred abroad, or that they shall be acquitted if there is no evidence of the aforementioned breaches or the conscious contribution by each defendant.

Therefore the plea of lack of jurisdiction shall be confirmed as unsubstantiated, and it had already preliminarily been rejected upon opening of the trial, because in part it does not fall within the merits of the case, which concerns the guilty finding rather than the legitimacy of seizure, and in part it erroneously deals with an issue on the merits concerning the existence of the offence as an issue on jurisdiction.

4. The fuel necessary to supply the engine of the ship is regulated by the rules governing stores under Article 252, letter b) of Consolidated Text 43/73.

Articles 253 – 255 of the Consolidated Text cover the legal regime of stores and make distinctions depending on the place where the ship is located (within the customs area or the territorial sea), the type and nationality of the ship (military, yachts or other types) and finally depending on whether the supplies had already been there upon arrival of the ship in port or they were loaded or transhipped.

As long as a ship is passing through the territorial sea without landing in a port or roadstead, the exported stores, either foreign or national, shall be considered to be outside the customs territory (Article 255) both when they have been loaded on an Italian or foreign ship.

When a ship crosses the customs area and waits in port or roadstead, a distinction is made under Article 253 between:

a) Italian military ships and leisure boats that are allowed to hold goods under a customs-free regime both in case of exported foreign and Italian goods, but they are not allowed to consume or unload such goods;

b) the other ships that are also allowed to consume goods provided this happens during ordinary stops.

Consequently, a leisure boat may take fuel aboard in foreign countries that constitutes stores (be they exported foreign or Italian goods) and shall not be under an obligation to pay duties upon
returning to Italian ports unless it is unloaded or consumed within the customs area.

5. The exemption shall not be made conditional upon the inclusion of stores in the ship’s manifest.

Under Articles 105-107 of TULLDD the ship’s manifest shall also provide an indication of the stores (Article 106, paragraph 4), and it shall be drawn up when the ships enters the maritime customs supervision area (whose external border coincides in Italy with the territorial sea line) and produced to the customs upon landing.

However, the lack of an indication of the stores in the ship’s manifest does not amount to smuggling as emerging from the following:

a) a formal violation such as the simple lack of an indication of customs-free goods in the manifest may not be included in the actually wide wording of Article 292 of the Consolidated Text punishing the evasion of border tax;

b) express provision is made for an offence punishable by a fine that is proportionate to the amount of evaded border tax – consequently it may not be applied to the goods imported under a customs-free regime – when the ship’s manifest fails to indicate some of the items (Article 302 of Presidential Decree 43/73);

c) in the Consolidated Text 43/73 there is not a provision in place that is similar to Article 3 of Law 1409/56 punishing the transport of foreign manufactured tobacco without drawing up a ship’s manifest by making reference to the provisions covering smuggling.

In conclusion the exemption from duties for stores shall not be made conditional upon any preventive declaration and according to the literary wording of the relevant provisions it shall be applied just because the goods may be included in the aforementioned category.

Such a regime has not been apparently amended by the Istanbul Convention of 26/06/1990 that has been mentioned in the charges. This is an international convention aimed at regulating the concept of temporary admission or import defined under Article 1, letter a) as “the customs procedure under which certain goods (including means of transport) can be brought into a customs territory conditionally relieved from payment of import duties and taxes and without application of import prohibitions or restrictions of economic character; such goods (including means of transport) must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them”.

Considering the specific scope of the Convention, mention is made of fuels only in the part concerning the temporary import of means of transport and there is no legislative novelty as to the existing customs provisions covering stores loaded on both foreign and Italian ships (the latter being excluded by definition from the notion of temporary import).

As a matter of fact, the Convention does not contemplate a compulsory declaration for fuels in respect of means of transport, and provision has only been made for the following:

a) each Contracting Party shall have the right to “make the temporary admission of goods (including means of transport) subject to the production of a customs document and provision of security” and “to the condition that they be identifiable” (Articles 4 and 7, chapter 3);

b) the application of customs-free regime to the fuel contained in the normal tanks of the means of transport temporarily admitted (Article 4, attachment C);

c) a prohibition for the Contracting Parties to ask for any customs document for the temporary admission of means of transport (Article 6, attachment C partially derogating from the general provisions).
5. In light of the above considerations, the purchase of fuel intended to be stored on board by leisure boats outside the territorial sea line and for its subsequent introduction into the territorial sea shall not be subject to the payment of import duties as long as the fuel is not consumed within the customs territory or unloaded on the mainland.

Therefore whoever organises the supply of fuel offshore – it does not really matter whether this occurs close to, or far from, the territorial waters line – does not commit any offence even though he/she is aware that the diesel fuel is used by leisure boaters sailing for the Italian costs.

Nor is there an offence under Article 40, paragraph 1, letter c) of Legislative Decree 504/95 when diesel fuel, either sold or transhipped offshore, has been purchased on the Italian territory with a relief from the payment of excise duties because the fuel was regarded as a store. These goods are then considered to be foreign goods once the ship leaves the port or at least the territorial waters line (Court of Cassation 1/2/69 no. 1154). In any case, as the re-introduction into the State of the goods by leisure boaters who purchase these goods is fiscally irrelevant, there would be no difference as to the taxes to be paid (which is necessary for the fact to amount to a violation under Article 40, letter c) between the goods intended to be exported and those intended to be stored on board.

6. In light of the above remarks, before asserting any kind of criminal liability, a preliminary test is needed as to where the provision of supplies occurred because if it took place outside the line of territorial waters no one of the offences charged does actually exist.

As it came to light that the provision of supplies has always taken place offshore according to the Prosecution’s arguments (see evidence given by Marshals Ferraro and Serratore), the offences as per counts a) and b) shall be regarded as unsubstantiated and consequently this leads to the defendants’ acquittal.

Similar final remarks shall be made for Bocchiola, and in this case a further clarification is needed. If the fact charged (smuggling of 14,000 litres of diesel fuel) does not exist on the basis of the considerations outlined above, however mention should be made of the circumstance that a small part must presumably have been consumed during the subsequent manoeuvres in port. No accurate data have been provided on this point during the taking of evidence.

However even though this circumstance turned out to be substantiated, the amount of border tax that has been evaded, which is hardly to be determined, would in any case not exceed the current threshold of 7,500,000 Lire (€ 3873) for it to be criminally relevant under Article 295 bis of Presidential Decree 43/73 (introduced by Legislative Decree 507/99).

As a consequence of the defendants’ acquittal because the fact does not exist, the seizure of motor vessel Norstar shall be revoked and the vessel returned, and the caution money paid in relation to motor vessel Spiro F shall be released as its seizure has already been revoked by the Public Prosecutor.

ON THESE GROUNDS

given Article 530 of the Code of Criminal Procedure,

ROSSI Silvio, BIGGIO Renzo, MELEGARI Bruno, MORCH Arve Einair, VADIS Emil Peter, HUSEFEST Tore, BOCCHIOLA Massimo and FALZON Josef shall be

ACQUITTED

of the offences respectively charged because the fact does not exist, given Articles 262 et seq. of
the Code of Criminal Procedure,

IT IS HEREBY ORDERED

that the seizure of motor vessel Norstar be revoked and the vessel returned to INTERMARINE A.S., and the caution money released;
given Article 544 of the Code of Criminal Procedure,

The Court

RESERVES THE RIGHT

to file the judgment within ninety days. Savona, 13.03.2003 the

Judge

signature

COURT OF SAVONA – CLERK’S OFFICE FOR CRIMINAL MATTERS filed with the Clerk’s Office on 7 July 2003  F. Di Mambro  Clerk


THE JUDGMENT BECAME FINAL ON 21.10.2003 for Vadis Emil Peter

The case file was sent to the Court of Appeal on 04.03.2004 for Rossi Silvio, Biggio Renzo, Melegari Bruno, Morch Arve Einair, Husefest Tore, Bocchiola Massimo and Falzon Joseph.

illegible signatures

Rome, 1 March 2016

A true translation

[Signature]
ANNEX G

ITALIAN CRIMINAL CODE, ARTICLE 6
Codice Penale

Pubblicato in Gazzetta Ufficiale n.251 del 26 ottobre 1930

Articolo 6

Reati commessi nel territorio dello Stato.

1. Chiunque commette un reato nel territorio dello Stato è punito secondo la legge italiana.

2. Il reato si considera commesso nel territorio dello Stato, quando l'azione o l'omissione, che lo costituisce, è ivi avvenuta in tutto o in parte, ovvero si è ivi verificato l'evento che è la conseguenza dell'azione od omissione.

Source: Altalex

Criminal Code

Published on the Italian Official Gazette, n.251, of 26 October 1930

Article 6

Crimes committed in the territory of the State.

1. Whosoever commits a crime on the territory of the State shall be punished in accordance with the laws of Italy.
2. The crime is deemed to have been committed on the territory of the State when the action or omission that constitutes the crime occurred therein, wholly or in part, or the event that is a consequence of said action or omission has therein arisen.
ANNEX H

ITALIAN CODE OF CRIMINAL PROCEDURE, ARTICLES 20, 253, 548 AND 606
Codice di procedura penale

Articolo 20
Difetto di giurisdizione

1. Il difetto di giurisdizione è rilevato, anche di ufficio, in ogni stato e grado del procedimento.
2. Se il difetto di giurisdizione è rilevato nel corso delle indagini preliminari, si applicano le disposizioni previste dall'articolo 22 commi 1 e 2. Dopo la chiusura delle indagini preliminari e in ogni stato e grado del processo il giudice pronuncia sentenza e ordina, se del caso, la trasmissione degli atti all'autorità competente.

[...]
c) inosservanza delle norme processuali stabilite a pena di nullità, di inutilizzabilità, di inammissibilità o di decadenza;
d) mancata assunzione di una prova decisiva, quando la parte ne ha fatto richiesta anche nel corso dell’istruzione dibattimentale limitatamente ai casi previsti dall’articolo 495, comma 2;
e) mancanza, contraddittorietà o manifesta illogicità della motivazione, quando il vizio risulta dal testo del provvedimento impugnato ovvero da altri atti del processo specificamente indicati nei motivi di gravame.

1. Il ricorso, oltre che nei casi e con gli effetti determinati da particolari disposizioni, può essere proposto contro le sentenze pronunciate in grado di appello o inappellabili.

2. Il ricorso è inammissibile se proposto per motivi diversi da quelli consentiti dalla legge o manifestamente infondati ovvero, fuori dei casi previsti dagli articoli 569 e 609 comma 2, per violazioni di legge non dedotte con i motivi di appello.

Source: Normattiva. Il Portale della legge vigente

Article 20

Lack of Jurisdiction

1. Lack of jurisdiction shall be raised, also of the court’s own motion, at any stage and instance of the proceedings.
2. If lack of jurisdiction is raised during the preliminary investigations, the provisions of Article 22, paragraphs 1 and 2, shall apply. After the conclusion of the preliminary investigations and at any stage and instance of the proceedings, the court shall issue a judgment and shall order, if applicable, that the case file be forwarded to the competent authority.

[...]

Article 253

Object and formalities of a seizure

1. The judicial authority adopts, with motivated order, the seizure of the corpus delicti and of any other thing related to the crime and necessary to the assessment of the factual background of the case.
2. The things on or through which the crime was committed, as well as the product, profit or price of the crime, are to be considered corpus delicti.
3. The seizure is conducted either personally by the judicial authority, or by a law enforcement officer designated by the same order.
4. A copy of the order of seizure is delivered to the interested person, if present.

[...]

Article 548

Filing of the judgment

1. The judgment shall be filed with the Court Registry immediately after its delivery or within the time limits provided for in Article 544, paragraphs 2 and 3. The public official in charge of the filing shall sign it and place the date of the filing.
2. When the judgment is not filed within the thirtieth day or within a different time limit set by the court under Article 544, paragraph 3, the notice of filing shall be forwarded to the Public Prosecutor and serve on the private parties who are entitled to apply for appellate remedies. It shall also be served on the accused person’s lawyer at the time of the filing of the judgment.
3. The notice of filing including the extract of the judgment shall, in any case, be notified to the Prosecutor General attached to the Court of Appeal.

[...]

Article 606

Cases of Appeal to the Court of Cassation

1. The Appeal to the Court of Cassation may be lodged if it is based on the following arguments:
   a) the judge exercises a power that is granted by law to legislative or administrative bodies or not allowed to public authorities;
   b) failure to comply with or misapplication of criminal law or other legal rules which must be considered in the application of criminal law;
c) failure to comply with the procedural rules established under penalty of nullity, exclusion of evidence, inadmissibility or expiry;

d) decisive evidence is not gathered, when a party has requested its gathering also during the trial evidentiary hearing, exclusively in the cases provided for in Article 495, paragraph 2;

e) the grounds of the judgment are lacking, contradictory or manifestly illogical, when the defect results from the text of the appealed decision or from other documents of the proceedings specified in the arguments for the appeal to the Court of Cassation.

2. In addition to the cases and effects established in specific provisions, the appeal to the Court of Cassation may be lodged against judgments which are delivered at the appeal stage or are not appealable.

3. The appeal in Cassation is inadmissible if it is based on arguments other than those allowed by law or which are manifestly groundless or on breaches of law that are not raised in the arguments for the appeal, with the exception of the cases provided for in Articles 569 and 609, paragraph 2.
ANNEX I

COMMUNICATION FROM THE TRIBUNAL OF SAVONA TO MR MORCH CONCERNING THE RESTITUTION OF THE M/V NORSTAR, 21 MARCH 2003
OGGETTO: procedimento penale n. 1155/97 RgNr - 415/02 R.G.
   - Morch Arve Einar
   Provvedimento 14/3/2003 di restituzione della motonave Norstar

Comunico che il Giudice del Tribunale di Savona - con provvedimento del 14/3/03 - ha ordinato il dissequestro della Motonave “Norstar” e la sua restituzione alla società Intermarine A.S.

La motonave era stata sequestrata il 25/9/98 a Bahia di Palma di Maiorca su ordine del Procuratore della Repubblica di Savona e si trova tuttora in deposito in tale località.

Secondo la legge italiana, il termine per ritirare la nave è di trenta giorni dalla data del ricevimento di questa comunicazione. In caso di mancato ritiro, il Giudice ordinerà la vendita.

Allego copia del provvedimento del 14/3/03.
Annex I

TRANSLATION
TRIBUNALE DI SAVONA
CANCELLERIA PENNALLE DIVENTIMENTALE
Criminal Court hearing

N415/02 R.G.

SAVONA, 21 MAR 2003
Intermarine & Co, AS
Storegene 2/4
N-3483 Kana
Norway

Object: criminal proceedings n. 1155/97 RgNr - 415/02 R. G. - Morch Arve Einar
proceeding 14/3/2003 m/v NORSTAR restitution

I hereby, inform that the court of Savona - by proceeding of 14/03/03 - has ordered the
release of the M/V "Norstar" and its restitution to Intermarine AS Corporation.

The vessel was seized on 25/09/98 in Bahia of Palma de Mallorca by the orders of the
Republic of Savona Prosecutor and it is still deposited therein.

According to the Italian Law, the deadline to withdraw the vessel is thirty days from the
date of receipt of this communication. In case of non-withdrawal, the judge will order the sale.

I enclose a copy of the decision of 14/03/03.
ANNEX J

LETTER SENT BY MR CARREYÓ TO THE ITALIAN MINISTER OF FOREIGN AFFAIRS, 15 AUGUST 2001
Panama, August 15th, 2001

Ilmo. Signor
Ministro degli Esteri
C/o Ministero degli Esteri
Piazza Farnesina
00194 ROMA

SUBJECT: Panamanian Republic/Italian Republic

Dear Minister,

The undersigned is honored to inform You that has obtained the authorization from the Ministry of Foreign Affairs of Panama Republic, to start a legal action against the Republic of Italy, at the International Tribunal of the Sea in Hamburg, in order to obtain a damage compensation for damages caused by the arrest of M/C Norstar in Palma de Majorca Port (Baleari Spain), still occurring at the moment.

The arrest, which has taken place in Spain, has been disposed by A.G. in Savona. The arrest is proposed according to art. 297 of United Nations Convention concerning Law of the Sea, to which Italy has adhered.

The undersigned is here briefly resuming the facts. M/C Norstar, of Panama flag, owned by Inter Marine & Co. As., represented by Mr. Arve Einar Morch, born in Drammen-Norway on 10.02.1952, has been seized through ordinance dated 11/8/1998 by the Sostituto Procuratore della Repubblica at Savona's Tribunal Dott. A. Landolfi.

The above mentioned arrest was connected to the penal proceedings against Rossi Silvio and others for crimes as per artt. 81 cpv and 110 c.p., 40 co. 1 lett. B) and comma 4° D.L.vo n. 504/95, 292-295 comma 1° D.P.R. 43/73 and comma 1° lett. F) law nbr. 516/82, crimes allegedly perpetrated in Savona and other ports of Italy during 1997.

Substantially the Procura of the Repubblica in Savona considers as guilty the legal representative of the owning Company M/C Norstar, the charterer (Nord Maritime Bunker Limited) and the Captain, because during Summer 1997 above mentioned M/C had bunkered offshore outside of the Italian territorial waters. The arrest ordinance issued by the Italian Authority on 11/08/98 for the activity carried out by Norstar in 1997 was later performed, after pressure by the Italian Authority, by the Spanish Authority and the above mentioned vessel was forced under arrest, in the port of Palma de Majorca, where it is still now unutilised with relevant loss, due to a lack of earnings and incurring damages.

The vessel has been stationary for the last three years and is now not far from a wreckage. The damages, roughly calculated, amount to no less than 6 millions dollars. They increase day by day, due to the lack of use of the M/C and due to its continuous degrade. The herewith arrest is illegal, according both to the international regulations and to Italian normative.
It has been disposed due to an activity (trade of gasoil), as a foreign provision, which has taken place in international waters to pleasure boats. The trade of gasoil in extra territorial waters, (in Italy there is not a contiguous zone) does not represent smuggling. As per the effects of the consummation of the foreign provisions and of the national ones exported, the Italian and foreign vessels navigating in the territorial waters are considered as outside of the Customs territory.

The gasoil embarked on the pleasure boats was not destined to be consumed on the mainland (as per smuggled cigarette) but destined to be totally consumed during navigation. The principle of Freedom of Commerce outside territorial waters and Contiguous Zone has already been affirmed by the International Tribunal of the Sea Law in Hamburg, particularly with the sentences concerning M/V Saiga on 04/12/97 and 01/07/99 in the cause between Saint Vincent and Grenadines against Guineen. The undersigned therefore respectfully requests that the Italian State, within reasonable time decides if it wants to release the vessel and pay the damages caused by the illegal procedure. Were above mentioned not to happen, Panama State will apply to the Hamburg Tribunal. We take this opportunity to send You our Kindest Regards.

Respectfully yours,

[Signature]

Nelson Carreyo Collazos

Manual Cupos Fernandez, Notario Publico Subdelegado Del Circuito de Panama, con Cadena de Identidad Personal No 8-167-343

CERTIFICA:

Que le(s) firmado(s) que apare[ce[n] en el presente documento ha[n] sido reconocido[s] por el(s) Notario[s] a cargo y/o por convalidante dicho[s] firmado[s] el [los] instante[s].

Panama, 16 AGO 2001

[Signature]

APOSTILLE

(Conventión de La Haya du 5 octobre)

1. En Panamá el presente documento público
2. ha sido firmado por MANUEL CUPAS FERNANDEZ
3. quien actúa en calidad de NOTARIO
4. y está revestido del sello / timbre de NOTARIO PRIMERO DEL CIRCUITO DE PANAMA.
5. En el Ministerio de Relaciones Exteriores 6. el día 16 AGOSTO 2001
ANNEX K

DOCUMENT OF FULL POWERS ISSUES BY THE REPUBLIC OF PANAMA IN FAVOUR OF MR CARREYÓ WITH REGARD TO A PROMPT RELEASE PROCEDURE BEFORE ITLOS, 2 DECEMBER 2000
Señor Secretario:

Tengo el agrado de dirigirme a usted en ocasión de hacer de su conocimiento que el abogado NELSON CARREJO, ciudadano panameño con cédula de identidad personal número 8-371-729, ha sido autorizado para interceder en nombre del Gobierno panameño ante este Honorable Tribunal conforme lo establece el artículo 292 de la Convención de las Naciones Unidas sobre el Derecho del Mar.

El Licenciado NELSON CARREJO representará ante el Tribunal Internacional del Derecho del Mar, los intereses de la Nave de bandera panameña NORSTAR portadora de Patente de Navegación N° 2399597, con letras de radio 3FH57, sin perjuicio de los procesos que se encuentren pendientes ante los tribunales de Savona, Italia, el 11 de agosto de 1998.

Aprovecho la oportunidad para reiterarle las seguridades de mi consideración.

HARRODIO ARIAS CERJACK
Ministro Encargado

Al Señor
GRITAKUMAR E., CHITTY
Secretaria
Tribunal Internacional del Derecho del Mar.
Hamburgo – Alemania.

JB/jb
APOSTILLE
(Convention de La Haye du 5 octobre 1961)

1. En Panamá el presente documento público
2. ha sido firmado por HARMODIO ARIAS CERJACK
3. quien actúa en calidad de Ministro Encargado
4. y está sello del sellos/timbre de Ministerio de Relaciones Exteriores

CERTIFICADO
5. Firmado por el Ministro de Relaciones Exteriores el día 6-12-2000

10. Firma
Dear Mr. Secretary,

I am honored to inform you that lawyer NELSON CARREYO, Panamanian national with identification document number 8-371-729 was authorised to represent the Panamanian Government before this Honorable Tribunal as laid down in Article 292 of the United Nations Convention on the Law of the Sea.

Lawyer NELSON CARREYO will represent before the International Tribunal for the Law of the Sea the interests of the Motor vessel NORSTAR flying Panamanian flag with navigation licence No. 2399597, radio letters 3FHB7, without prejudice to the proceedings pending before the Court of Savona, Italy, on 11 August 1998.

I take this opportunity to send you the expression of my highest consideration.

HARNODIO ARIAS CERHACK
Minister in charge

To Mr.
GRITAKUMAR E. CHITTY
Secretary
International Tribunal for the Law of the Sea
Hamburg – Germany
APOSTILLE  
(Convention de La Haye du 5 octobre 1961)

2. This document has been signed by Manuel Cupas Fernandes  
3. Acting in the capacity as Minister in charge of the case  
4. bears the stamp of Ministry of Foreign Affairs

CERTIFICATE

5. by the Ministry of Foreign Affairs  
7. by Authentication and Legalisation Office  
8. seal and stamp illegible  
9. seal and stamp illegible  
10. signature illegible seal

[Signature]

(Translation: Roberto Gallego)
ANNEX L

NOTE VERBALE A.J. 2227 SENT BY THE MINISTRY OF FOREIGN AFFAIRS OF PANAMA TO ITALY, 31 AUGUST 2004
El Ministerio de Relaciones Exteriores - Dirección General de Asuntos Jurídicos y Tratados - saluda atentamente a la Honorable Embajada de la República de Italia en ocasión de hacer referencia al caso de la nave de bandera panameña NORSTAR, la cual fue secuestrada por el Tribunal de Savona, Italia, el 11 de agosto de 1998.

El Ministerio de Relaciones Exteriores - Dirección General de Asuntos Jurídicos y Tratados - sobre el particular, tiene a bien hacer del conocimiento de la Honorable Embajada de Italia que mediante Nota D.M.No. A.J 2387 de 2 de diciembre de 2000, el Licenciado NELSON CARREYO, funge como representante en nombre del Estado panameño y de los intereses de la Nave de bandera panameña NORSTAR, ante Tribunal Internacional del Derecho del Mar, con sede en Hamburgo, Alemania.

En ese sentido, mediante Memorial recibido en esta Cancillería el 23 de agosto de 2004, el precitado, solicitó la remisión, por los canales diplomáticos, de la Nota de Reclamo dirigida al Ministerio del Exterior italiano, la cual guarda relación con el secuestro judicial de la nave de bandera panameña NORSTAR, solicitado por el Tribunal de Savona, Italia y ejecutado en el Puerto de Palma de Mallorca, Baleares, España, el 11 de agosto de 1998.

El Ministerio de Relaciones Exteriores - Dirección General de Asuntos Jurídicos y Tratados - en atención a lo anterior, tiene a bien adjuntar la nota a la que se ha hecho referencia, la cual cuenta con sus respectivas traducciones al francés, inglés e italiano, para que por vuestro conducto le sea remitida al Ilustrado Gobierno de Italia, para los fines pertinentes.

El Ministerio de Relaciones Exteriores - Dirección General de Asuntos Jurídicos y Tratados - aprovecha la oportunidad para reiterar a la Honorable Embajada de Italia las seguridades de su más alta y distinguida consideración.

Panamá, 31 de agosto de 2004.

A la Honorable
EMBAJADA DE ITALIA
Ciudad.

ESR/estr
REPUBLIC OF PANAMA
Ministry of Foreign Affairs
Panama 4, Panama

N/V A.J. No. 2227

The Ministry of Foreign Affairs – Directorate General of Justice Affairs and Treaties, presents its compliments to the Honourable Embassy of the Italian Republic and has the honour to refer to the case of the motor vessel NORSTAR flying Panamanian flag, which was detained by order of the Court of Savona, Italy, on 11 August 1998.

The Ministry of Foreign Affairs – Directorate General of Criminal Affairs and Treaties, in relation to the case at issue informs the Honourable Embassy of Italy that by means of note D.M. no. AJ 2387 of 2nd December 2000, Lawyer NELSON CARREYO acts as representative of the Republic of Panama and of the interests of the m/v NORSTAR flying Panamanian flag, before the Court of International Tribunal for the Law of the Sea, based in Hamburg, Germany.

In this respect, by advice received by this Foreign Ministry on 23rd August 2004, the aforementioned person requested the transmission via diplomatic channels of the claim note addressed to the Italian Ministry of Foreign Affairs, regarding the detention of the Panamanian flagged vessel NORSTAR, at the request of the Court of Savona, Italy and enforced in the Port of Palma de Mallorca, Balearic Islands, Spain on 11 August 1998.

The Ministry of Foreign Affairs Directorate General of Judicial Affairs and Treaties, regarding to the above exposed, annexes the mentioned note with its respective translations to French, English and Italian to be delivered to the Government of Italy to the pertinent aims.

The Ministry of Foreign Affairs Directorate General of Judicial Affairs and Treaties, takes this opportunity to send to the Honourable Embassy of Italy the expression of the highest consideration.

Panama, 31 August 2004

To the Honourable
Embassy of Italy
City

Seal of the Republic of Panama – Ministry of Foreign Affairs
ANNEX M

LETTER SENT BY MR CARREYÓ TO THE ITALIAN EMBASSY IN PANAMA, 3 AUGUST 2004
Annex M

Nelson Carreyo
Abogado – attorney at law

Illmo. Signor
Ministro degli Esteri
C/o Ministero degli Esteri
Piazzale Farnesina
00194 ROMA

OBJECTIVE: Panamanian Republic/Italian Republic

Damage claim at the International Tribunal of the Sea in Hamburg for the seizing, subsequent to cautionary ordinance, in the Port of Palma de Mallorca (Baleari, Spain) of the M/C Norstar who, in the year prior to the seizing, had carried out offshore bunkering operations in the international waters of the Ligurian Sea.

Dear Minister,

This is a letter from the Panamanian Government to the Italian Government in accordance with Article 283 of the United Nations Convention on the Law of the Sea.

With letter dated 15.08.2001, the undersigned had inform You to have obtained the authorization from the Ministry of Foreign Affairs of Panama Republic, to start a legal action against the Republic of Italy, at the International Tribunal of the Sea in Hamburg, in order to obtain a damage compensation for damages caused by the arrest of M/C Norstar in Palma de Mallorca Port (Baleari Spain).

The arrest, which has taken place in Spain, had been disposed by A.G. in Savona. The arrest was proposed according to art. 297 of United Nations Convention concerning Law of the Sea, to which Italy has adhered.

The undersigned is here briefly resuming the facts.

M/C Norstar, of Panama flag, owned by Inter Marine & Co. AS., a Norwegian company represented by Mr. Arve Einar Mørch, Chairman of the Board, born in Drammen-Norway on 10.02.1952, had been seized through ordinance dated 11/8/1998 by the Sostituto Procuratore della Repubblica at Savona's Tribunal Dott. A. Landolfi.

The above mentioned arrest was connected to the penal proceedings against Rossi Silvio and others for crimes as per artt. 81 cpv and 110 c.p., 40 co. 1 lett. B) and comma 4° D.L.vo n. 504/95, 292-295 comma 1° D.P.R. 43/73 and comma 1° lett. F) law ncr. 516/82, crimes allegedly perpetrated in Savona and other ports of Italy during 1997.

Substantially the Procura of the Repubblica in Savona considers as guilty the legal representative of the owning Company M/C Norstar, the charterer (Nord Maritime Bunker Limited) and the Captain, because during Summer 1997 above mentioned M/C had bunkered offshore outside of the Italian territorial waters.

Calle Primera C Norte, El Carmen. No. 94. Tel 264-6920/6966/ Fax 264-6932
E-mail: astro@cablonda.net
The arrest ordinance issued by the Italian Authority on 11/08/98 for the activity carried out by Norstar in 1997 was later performed, after pressure by the Italian Authority, by the Spanish Authority and the above mentioned vessel was forced under arrest, in the port of Palma de Majorca, where is still now unutilized with relevant loss, due to a lack of earnings and incurring damages.

As a consequence of the sentence of Savona Tribunal dated 13.03.2003, the vessel has been released, but, being a wreckage due to the long seizing period, the owners cannot take hold of her before all necessary repair works which will enable her to navigate again.

The amount of damages increase day by day, due to the lack of use of the M/C and due to its continuous degradation caused by the impossibility of using her. This can also create several serious problems in the port.

If there would be a general consent of the Italian Government to pay damages the undersigned would be prepared to meet representatives of the Italian Government to explain the amount of damages.

The seizing was illegal, according to both international (the ones Panama is quoting) and Italian rules, as confirmed by the Tribunal in Savona and its sentence.

The seizing had been disposed due to an activity (trade of gasoil), as a foreign provision, which has taken place in international waters to pleasure boats, a perfectly legal procedure according to law 689/94.

The supply of gasoil in international waters (Italy does not have a contiguous zone) cannot considered as smuggling, as confirmed by Savona’s Tribunal.

The principle of Freedom of Commerce outside territorial waters and Contiguous Zone has already been affirmed by the International Tribunal of the Sea Law in Hamburg, particularly with the sentences concerning M/V Saiga on 04/12/97 and 01/07/99 in the cause between Saint Vincent and Grenadines against Guinea.

The undersigned therefore respectfully requests that the Italian State, within reasonable time, decides whether it wants to pay the damages caused by the illegal procedure, so that the owners can start all necessary repairs to restore the vessel to the condition she was prior to the illegal seizing carried forward by Sostituto Procuratore della Repubblica at Savona’s Tribunal Dott. A. Landolfi and promptly leave the port of Palma de Mallorca.

In case the Italian Government would prefer to have the dispute between the two Governments decided in accordance with the means for the settlement of disputes concerning the interpretation or application of the United Nations Convention on the Law of the Sea as mentioned in Article 287 of the Convention, the Government of Panama is ready to settle the conflict through the procedures given for the International Law of the Sea Tribunal, agreeing with the Italian government. If the Italian Government does not give its consentment, the Panamanian Government will be forced to start the necessary proceedings for arbitration as declared in the Annex VII of the International Convention of the Law of the Sea.

The Government of Italy will understand that failing to respond to the demand of the Government of Panama by August 30th 2004 Panama will have no other choice than to

We take this opportunity to send You our Kindest Regards.

Respectfully yours,

[Signature]

Nelson Carrey Collazos

Annex M
ANNEX N

ITALIAN COURT OF CASSATION, SIXTH CRIMINAL SECTION, JUDGMENT NO. 182, 14 NOVEMBER 1991 (MAXIM)
Annex N

ItalgiureWeb

CORTE SUPREMA DI CASSAZIONE
CENTRO ELETTRONICO DI DOCUMENTAZIONE
Sez. 6, Sentenza n. 182 del 14/11/1991 Ud. (dep. 10/01/1992 ) Rv. 189420

Presidente: Salafia V. Estensore: Santilli R. Imputato: Santoro. P.M. Geraci. (Conf.)


680020 Udienza preliminare - Fascicolo per il dibattimento - Atti raccolti - Verbale di sequestro - Inserimento nel fascicolo dibattimentale - Legittimità - Ragione.

Il verbale di sequestro può essere inserito nel fascicolo dibattimentale, ai sensi dell'art. 431 cod.proc.pen., ed utilizzato quale fonte di prova. Infatti, il sequestro rientra nella categoria degli atti non ripetibili quale tipico atto di indagine a sorpresa, il cui risultato è per natura condizionato dalla segretezza della sua disposizione e dalla tempestività della sua esecuzione, non potendo essere nuovamente posto in essere in modo utile dato che, una volta sfruttata, la sorpresa, che ne costituisce essenziale connotazione, si esaurisce e non può essere più rinnovata.

Section 6, Judgment No. 182 dated 14/11/1991 (filed on 10/01/1992) Reference 189420

President: Salafia V.
Drafter: Santilli R.
Indicted: Santoro.
Prosecutor: Geraci.
(Conf.)

(Rejected, Court of Appeal of Genoa, 5 February 1991).


Pursuant to Article 431 of the [Italian] Code of Criminal Procedure, the report of a seizure is attached to the case file, and can constitute evidence; as a sudden act lacking prior notice, seizure cannot be repeated. The effectiveness of seizure depends upon the secrecy of its issuance and promptness of its execution. It cannot be effectively repeated, since the element of surprise is its inherent feature and may not be renewed.


Source: ItalGiureWeb – Corte di Cassazione

http://www.italgiure.giustizia.it/
Annex O

Tribunal of Milan, Judgment of 18 October 2002 (Maxim)
Archivio selezionato: Massime

Autorità: Tribunale Milano
Data: 18/10/2002
n.
Fonti: Foro ambrosiano 2003, 32
Classificazioni: INDAGINI PRELIMINARI AL PROCESSO PENALE - Voce storica "INDAGINI PRELIMINARI E UDIENZA PRELIMINARE" - - pubblico ministero

Non costituisce condizione di legittimità per l'esecuzione di un sequestro probatorio la preventiva o contestuale notifica dell'informazione sul diritto di difesa alla persona sottoposta alle indagini, di cui all'art. 369 bis c.p.p., atteso che l'effetto del sequestro, quale atto a sorpresa, ne risulterebbe vanificato.
The contemporary notification of impending investigations pursuant to Article 369bis of the Code of Criminal Procedure to the person under investigation is not a precondition for the lawful execution of a probative seizure, since it would frustrate the effectiveness of the seizure, which is an unexpected act of investigation.

Source: DeJure – Aggiornamento giuridico quotidiano – Giurisprudenza
https://www.iusexplorer.it/giurisprudenza/Ricerca
ANNEX P

ITALIAN COURT OF CASSATION, SECOND CRIMINAL SECTION, JUDGMENT NO. 3273, 20 NOVEMBER 1999 (MAXIM)
Sez. 2, Sentenza n. 3273 del 21/06/1999 Cc. (dep. 20/11/1999) Rv. 214660


(Rigetta, Trib.Torino, 13 marzo 1999).

673122 PROVE (COD. PROC. PEN. 1988) - MEZZI DI RICERCA DELLA PROVA - SEQUESTRI - IN GENERE - Corpo di reato e cose pertinenti al reato - Presupposti per il sequestro - Mera possibilità del rapporto con il reato - Sufficienza.

Il sequestro probatorio, in quanto mezzo di ricerca della prova dei fatti costituenti reato, non può per ciò stesso essere fondato sulla prova del carattere di pertinenza ovvero di corpo di reato delle cose oggetto del vincolo patrimoniale, ma solo sul "fumus" di esso, cioè sulla mera possibilità del rapporto di esse con il reato. Qualora quindi dal complesso delle prime indagini tale "fumus" emerga, il sequestro si appalesa non solo legittimo ma opportuno, in quanto volto a stabilire, di per sè o attraverso le successive indagini che da esso scaturiscono, se esiste il collegamento pertinenziale tra "res" e illecito. (Fattispecie in tema di sequestro probatorio, disposto nell'ambito di indagini preliminari concernenti il delitto di usura, di documentazione varia di cui il ricorrente sosteneva il difetto di capacità rappresentativa e quindi l'impossibilità di considerarla "cosa pertinente al reato").


Massime precedenti Conformi: N. 2331 del 1994,
Massime precedenti Vedi: N. 4306 del 1995 Rv. 203119
Section 2, Judgment No. 3273 dated 21/06/1999 (filed on 20/11/1999) reference 214660

President: Zingale N.
Drafter: Laudati D.
Indicted: Lechiancole.
Prosecutor: Di Zenzo C.


673122 EVIDENCE IN CRIMINAL PROCEEDINGS (Code of Criminal Procedure 1988) – Means for gathering evidence – Seizure – In general – Corpus commissi delicti and other things pertaining to an offence – Requirement for seizure - Mere possibility of a relationship with the offence - Sufficiency.

Given that probative seizure aims at gathering evidence in respect of facts which may constitute an offence, it cannot itself rely on the certainty of the relevance of the seized good as body of evidence. The existence of a fumus, that is the mere possibility of a relationship between the good and the offence, is sufficient for lawful seizing. Therefore, whenever the ongoing investigation substantiates a fumus, the seizure is lawful and appropriate, since it is aimed at establishing, in itself or through further investigation, whether a relationship exists between the good and the offence. (Case concerning probative seizure of documents ordered during the preliminary investigation on the alleged offence of usury. The applicant claimed that the documents subject to seizure lacked any representative value and, therefore, were not to be considered as “things pertaining to the offence”).

Relevant legislation: Italian Code of Criminal Procedure, Article 253; Law No. 447 of 22/09/1988, Article 253

Similar previous maxims: No. 2331 of 1994,
Previous maxims: No. 4306 of 1995 reference 203119

Source: ItalGiureWeb – Corte di Cassazione
http://www.italgiure.giustizia.it/
ANNEX Q

ITALIAN COURT OF CASSATION, THIRD CRIMINAL SECTION, JUDGMENT NO. 15177, 14 APRIL 2011 (MAXIM)
CORTE SUPREMA DI CASSAZIONE
CENTRO ELETTRONICO DI DOCUMENTAZIONE
Sez. 3, Sentenza n. 15177 del 24/03/2011 Cc. (dep. 14/04/2011) Rv. 250300


(Annulla con rinvio, Trib. lib. Viterbo, 08/11/2010)

673122 PROVE - MEZZI DI RICERCA DELLA PROVA - SEQUESTRI - IN GENERE - Sequestro probatorio - Presupposti - Valutazione del "fumus commissi delicti" - Fattispecie.

La legittimità del sequestro probatorio deve essere valutata non già nella prospettiva di un giudizio di merito sulla fondatezza dell'accusa, ma in riferimento all'idoneità degli elementi su cui si fonda la notizia di reato a rendere utile l'espletamento di ulteriori indagini, per acquisire prove certe o prove ulteriori del fatto, non esperibili senza la sottrazione all'indagato della disponibilità della "res" o l'acquisizione della stessa nella disponibilità dell'A.G.


Massime precedenti Vedi: N. 33873 del 2006 Rv. 234782, N. 3692 del 2011 Rv. 249695
Section 3, Judgment No. 15177 dated 24/03/2011 (filed on 14/04/2011) Reference 250300

President: Petti C.
Drafter: Lombardi AM.
Reporting Judge: Lombardi AM.
Indicted: -.
Prosecutor: Rocchino (during the proceedings); D’Angelo G. (Conf.)

(Overturned, Trib. lib. Viterbo, 08/11/2010)

673122 EVIDENDE – MEANS TO GATHER EVIDENCE – SEIZURE – IN GENERAL-
Probative seizure – Requirements – Assessment of the “fumus commissi delicti” - Cases.

The lawfulness of probative seizure is not to be assessed on the basis of the merits of the claim. Rather, it is to be assessed by looking at the extent to which the constitutive elements of the notitia criminis reasonably require further investigation aimed at gathering further forms of evidence, which may not be obtained without either depriving the indicted person of the availability of the good, or making the latter available to Judicial Authority.

Relevant legislation: Italian Code of Criminal Procedure Article 253

Previous Maxims: No. 33873 of 2006 reference 234782; No. 3692 of 2011 reference 249695

Source: ItalGiureWeb – Corte di Cassazione

http://www.italgiure giustizia.it/
ANNEX R

PANAMANIAN CODE OF CRIMINAL PROCEDURE, ARTICLE 259
Código Procesal Penal

Ley No. 63 De 28 de agosto de 2008 (Gaceta Oficial Digital No. 26.114 de 29 de agosto de 2008)

Sección 2ª Secuestro Penal

Artículo 259
Motivos
Cuando las exigencias cautelares de la investigación penal así lo requieran, el Juez de Garantías a solicitud del Fiscal podrá decretar el secuestro penal, sin más trámites, de las cosas relacionadas con el delito para evitar el peligro de la eventual disposición, desaparición o destrucción de los bienes sujetos a comiso.

Source: Procuraduría General de la Nación, República de Panamá

Code of Criminal Procedure


Section 2 Criminal Seizure

Article 259
Motivation
Whenever precautionary reasons so require during a criminal investigation, the Supervisory Judge, upon request by the Prosecutor, may order the judicial seizure of the corpus commissi delicti in order to avoid the disposal, disappearance or destruction of the seized goods.

Source: Procuraduría General de la Nación, República de Panamá

ANNEX S

LETTER SENT BY SPAREBANKEN NOR TO THE SHIP-OWNER BY FAX DENYING A GUARANTEE TO LIFT
THE ARREST, 16 SEPTEMBER 1998
Re.: Bankgaranti til «Nordstar»

Viser til gårddagen telefonsamtale samt din fax nevndt.

Devere må vi meddele at vi ikke kan stille den ønskede bankgaranti til "Nordstar". Årsaken er først og fremst at dette er en sak som må håndteres ved avdelingskontor i Hurum, og det må da stilles en form for sikkerhet som kan overvåkes og stilles i håndtere, eksempelvis kontantkort eller pænt i faste medlem. I tillegg vedkjenner oss eventuell pænt i skipet som behøver med takts i denne sammenheng, gjennom enig tilfølgelig kloke avstøt INTER MARINE's finansielle stilling med dårlig bevissthet og hev korrekte pæt og dekse pætene.

Dersom du kan stille en annen sikkerhet for garantier, vil vi videre på saken.  Avt. Trygve Ellingsen

Med hilse
for Sparbanken NOR

Esben Kier

Esben Kier
Re.: Bankgaranti M/V 'Nordstar'

Viser til gårdsagens telefonsamtale samt din fax m/vedlegg.

Desverre må vi meddele at vi ikke kan stille den ønskede bankgaranti med sikkerhet i M/V 'Nordstar'. Årsaken er først og fremst at dette er en sak som må håndteres gjennom vårt avdelingskontor i Hurum, og det må da stilles en form for sikkerhet som kontoret er vant med å håndtere, eksempelvis kontantdepot eller pant i fast elendom. I tillegg vurderer vi en eventuell pant i skipet som behøftet med risiko i denne sammenheng grunnet mulig tilbakeholdelse/arrest. INTER MARINE's finansielle stilling med dårlig likviditet og høy kortsiktig gjeld gjør ikke saken lettere.

Dersom du kan still annen sikkerhet for garantien vil vi se på saken på nytt. Ta i så fall kontakt med Tom Pettersen (tlf. 32793734) eller Stein Enger (tlf. 32793736) ved vårt kontor på Sætre.

Med hilsen
For Sparebanken NOR

[Signatur]
Espen Klær

Certified to be a true copy of the attached telefax.
Oslo, 5 February 2018
Alison Sollie
Government Authorized Translator
Markalleen 28
1368 Stabekk
Norway
Translated from Norwegian

Annex S

sparebanken

NOR

TELEFAX

SHIPPING & OFFSHORE

To: INTER MARINE Co. AS
Attn.: Arve Einar Mørch
Fax no.: 32794140

From: Espen Klær
Company: Sparebanken NOR
Tel. no.: 22-31-93-88
Fax: 22-31-98-30
Date: 16 September 1998
No. of pages: 1
(including this one)

Re.: Bank guarantee M/V 'Nordstar'

Reference is made to yesterday's telephone conversation and your fax with attachments.

Unfortunately, we must inform you that we cannot provide the desired bank guarantee with security in M/V 'Nordstar'. The reason for this is primarily that this is a matter which must be handled by our branch office in Hurum and in such case a form of security that the office is used to dealing with, such as a cash deposit or security in real estate, must be provided. In addition, we consider any security interest in the ship as being risky in this regard due to a possible detention/arrest. INTER MARINE's financial position, with poor liquidity and a high level of short-term debt, does not make this matter any easier.

If you can provide other security for the guarantee, we will take another look at the matter. In such case, contact Tom Pettersen (tel. no. 32793734) or Stein Enger (tel. no. 32793736) at our office in Sætre.

Best regards
For Sparebanken NOR

[Signature]
Espen Klær

Certified to be a true translation of the attached document.
Oslo, 5 February 2018
Alison Sollie
Government Authorized Translator
Markalleen 28
1368 Stabekk
Norway
ANNEX T

STATEMENT FOR ESTIMATION OF VALUE OF M/V NORSTAR BY C.M. OLSEN, 4 APRIL 2001
C M OLSSEN A/S
SHIP BROKERS
Pob 175 Tele 3106 Trondheim, Norway
Telephone 47 - 33 38 23 00  Fax 47 - 33 32 38 03
Tclex 70230 olsc n - E-mail address: post@cmolsen.no
Org.no. 959019215

STATEMENT FORESTIMATION OF VALUE

OF

M/T "NORSTAR" (Ex "Norsupply","Polartank","Vestshell")

Shiptype : Motortanker
Flag : Panama
Deadweight/draught : 480,0 mts on 3,05 m moulded draught
Dimensions : 39,52 m length/ 7,40 m beam
Class : Det Norske Veritas, Tanker for oil, ESP
Cargotanks : 2 x 4 cargotanks
Cargo-capacity : 573,14 cubicmeter.
Speed : Abt 9 knots service speed
Other : The vessel is solid buildt and well maintained product tanker.
The vessel was considered as a efficient small product/bunkertanker with good loading and discharging capacity.
The vessel can segregate 3 grades which is very unusual for a tanker of this size. The coating in the cargotanks is in a good especialy taking into consideration the long period of time since the vessel last was coated.
The vessel is built with 2 main engines and azimuth system which means the vessel does not have any rudder but are manouversing with the propellersystem. This gives the vessel a extremly high maneouverability. The vessel is in addition equipped with larg dry-provision/freezing storage capacity.
These factors are vital elements in her ability to operate as a bunker/supply/product tanker.
Statement of value M/T "Norstar"

There are very few bunkering/supply vessels, with a high quality, left being able to operate world wide.

This estimation of value is given under the condition that the vessel is entartained under a minimum 4 years timecharter at a rate of US Dollar 2,850,- (two thousand and eighty-five hundred) per day for the first year and with natural/normal escalation for each additional year and that Charterers can present reasonable credability.

In addition that her equipment is stated to be in good working order and that the vessel is maintained in a condition which should be normal for a vessel of this age and type. Further that the class is maintained without any recommendation and that the vessel have valid national and international trading certificates.

Based on all information of the vessel available and in addition to relevant marketinformation for this size of vessel we estimate that the makedvalue for the vessel to be

USDOLLAR 625,000,- (Usdollarsixhundredandtwentyfivethousand 00/100)

We are of the opinion that this assessment of value is reasonably accurate, although it is a estimation and not an expression of facts.
We have not physically inspected the vessel and/or her class records.
Any person or company who wishes to have a more accurate estimation ought to inspect the vessel and her class records in order to make sure that the relevant information given is correct.

C M Olsen A/S repudiate any responsibility by presentation of this estimation of value.

Regards
For C M OLSEN A/S

Tønsberg, Norway 04.04.2001
ANNEX U

ACTA DE INMOVILIZACIÓN DE UNA EMBARCACIÓN

PALMA, provincia de BALEARIAS, las 11h15, horas del día 25 de septiembre de 1998, por la fuerza actuante, que al margen se indica, pertenecientes a las Unidades arriba indicadas, por medio de la presente acta hacer constar:


Preguntado al Capitán del buque por el lugar y forma de su localización al objeto, manifiesta: QUE RESIDEN EN EL BARCO "NORSTAR" EN SU LUGAR DE FONDEO.

El Capitán de la embarcación, respecto a los hechos que nos ocupan, alega lo que sigue:

AQUEL LE CUBRÍA QUE SE SUBVENCIONA TODO COBRADO AHORRÓ Y NO ACCIDENTE AL CASA.

Y para que conste, se levanta la presente acta de inmovilización, que una vez leída por todos los que en la misma interviienen y hallándola conforme en todos sus términos, la firma en el lugar y fecha al principio consignados.
Como continuación al Fax número 219 de fecha 25 del actual remitido por esta Unidad; adjunto remito a V.L., ACTA DE INMOBILIZACIÓN número 2649, del buque NORSTAR, de bandera Panameña, propiedad de INTER MARINE CO. AS, en cumplimiento a lo ordenado por el Ilmo. Sr. Magistrado del Juzgado de Instrucción núm. TRES de Palma de Mallorca, Procedimiento: EXHORTO 375/98 cinco y que ya fue inmovilizado por orden del Juzgado de Primera Instancia número 11 (negociado 6) de Palma y que quedara a disposición de la Procura Bella República Preso Il Tribunale Di Savona, en virtud de comisión rogatoria remitida a ese Juzgado y que se tarmita con el número de registro que figura en el encabezamiento de este oficio.

Asimismo se notifica que el Capitán ha quedado enterado al objeto de ser localizado para recibirle declaración como imputado en presencia del Fiscal Instructor de la Procuradoría del Tribunale Di Savonia; según copia adjunta. Asimismo puede localizarse en el buque donde reside o mediante el teléfono móvil número 07.47.905.30.894.

Palma de Mallorca, a 25 de Septiembre de 1998

[Señalización y firma]

TENIENTE JFUE ACCTAL. DEL S.M.P.,

Fdo. [Señalización y firma]
TO/A:        FROM/DIE:
SRD. ANGEL MATIAS ( DTOR.        ENRIQUE OLIVER
TECNICO APB)
SRD. JOSE ESCALAS (CAPITAN        
MARITIMO)

ORGANIZATION/EMPRESA:
AUTORIDAD PORTUARIA DE
BALEARES
CAPITANIA MARITIMA

DATE/FECHA:
07/09/98

FAX NUMBER/FAX NUMERO:
MEM

NBR. PAGES, INCLUDING THIS/N ° PAG. INCL. ESTA:
1

OUR REF./N/REF:
MT NORSTAR EN PALMA DE MALLORCA

MUY SRES. NUESTROS:

COMO SEGUURAMENTE CONOCERAN, EL PASADO SABADO DIA 5 DE LOS CTES, PROCEDIMOS
EMBARCAR JUDICIALMEN TE EL BUQUE DE LA REFERENCIA LO QUE FUE NOTIFICADO POR EL JUZGADO
DE 1° INST Nº11 CON EL SOPORTE DE LA PATRULLERA DE LA GUARDIA CIVIL DE MAR.

ESTA CIRCUNSTANCIA, NO OBSTANTE, NO ELUDE LA SITUACION QUE, CON POSTERIORIDAD SE
PRODUZCO Y, ES EL MOTIVO DEL PRESENTE FAX.

HEMOS SIDO NOTIFICADOS POR EL CAPITAN DEL BUQUE QUE, DEBIDO AL MAL ESTADO DE LA
CADENA ABORDO Y, EL INCREMENTO DE MAR Y VIENTO, EL ANCLA DE ESTRIBOR A ROTO
CADENA Y, LA DE BABOR, EN ESTE MOMENTO EN FONDEO, SE ENCUENTRA EN MUY MAL ESTA;
ESTA CIRCUNSTANCIA, UNIDA A LA AVERIA DE UNO DE LOS GENERADORES PRINCIPALES Y,
NECESIDAD DE APROVISIONAR AL BUQUE, ES LO QUE LLEVA A SOLICITAR DE ESA AUTORIDAD
PORTUARIA Y CAPITANIA MARITIMA LA AUTORIZACION URGENTE PARA ENTRAR EN PUERTO
ATRACAR A MUERTE.

SIN OTRO PARTICULAR Y, AGRADECIENDO DE ANTEMANO SU ATENTA COLABORACION
APROVECHAMOS LA OCASION PARA REITERARLE NUESTROS MAS RESPECTUOSOS SALUDOS.

ATENTAMENTE,
TRANSOMA BALEARES, S.A.
ENRIQUE OLIVER
**STATEMENT OF DETENTION OF A VESSEL**

In Palma, province of Balearic Islands, at 11.45 of 25th September 1998, the operating unit, whose details are indicated, belonging to the Unit specified above, hereby declares:


The Captain questioned as to where and how to locate him, replies: that he resides in the mv “Norstar” where she is moored.

Telex no. 435110710 ILLEGIBLE
Tel. mobile 07 47 905 30 894 (personal)

**DOCUMENTS RESTRAINED:**
The documents of MV NORSTAR are in the central port authority of Palma de Mallorca (boat office unit)

**PLACE OF DEPOSIT:**
PORT: BAHIA DE PALMA
Hawser:
DEPOSIT: IT IS MOORED ... ILLEGIBLE

<table>
<thead>
<tr>
<th>ILLEGIBILE</th>
<th>STATEMENT OF DETENTION OF A VESSEL</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OWNER</strong></td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>NAME AND SURNAME ARVE MOERCH</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>BORGEIM SHIP</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>IDENTITY DOCUMENT: /</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>DOMICILE: FAX: 074732714140</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>TELEX 5670990</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>PLACE: P.O.BOX 1 N 3140 BERGEM</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td><strong>CAPTAIN OF MV NORSTAR:</strong></td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>NAME AND SURNAME: ODD ARYD BJORN FALK</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>IDENTITY DOCUMENT: PASS. 98_K096964618 (illegible)</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>Place: illegible</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>Telephone: 07 47 33390429</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td><strong>MOTOR VESSEL SUBJECT TO DETENTION</strong></td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td><strong>CLASS:</strong></td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>NAME: NORSTAR</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>LENGHT: between 41.20 mts</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>BEAM:</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>TRB: 465</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>COLOUR: RED</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>NUMBER OF ENGINES: 2</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>BRAND ENGINE NO.1:</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>BRAND ENGINE NO.2:</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>ENGINE POWER:</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>FLAG: PANAMA</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>MAIN PORT: PANAMA</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td><strong>DOCUMENTS RESTRAINED:</strong></td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>THE DOCUMENTS OF MV NORSTAR ARE IN THE CENTRAL PORT AUTHORITY OF PALMA DE MALLORCA (BOAT OFFICE UNIT)</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td><strong>PLACE OF DEPOSIT:</strong></td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>PORT: BAHIA DE PALMA</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>Hawser:</td>
<td><strong>Illegible</strong></td>
</tr>
<tr>
<td>DEPOSIT: IT IS MOORED ... ILLEGIBLE</td>
<td><strong>Illegible</strong></td>
</tr>
</tbody>
</table>
FOLLOWING TO FAX NO. 219 DATED 25 SEPTEMBER 1998 FORWARDED BY THIS UNIT, I DO
HEREBY FORWARD THE STATEMENT OF DETENTION, NUM. 2649, OF THE MOTORVESSEL
NORSTAR, FLYING PANAMANIAN FLAG, BELONGING TO INTERMARINE CO., as ordered by
the Judge of the Court [Juzgado de Instrucción 3] of Palma de Mallorca, proceedings:
LETTER OF REQUEST 375/98 FIVE and given that was detained as ordered by the Judge
of the Court of Palma [Juzgado de Primera Instancia] number 11 (unit 6) that will
remain at the disposal of the Office of the Public Prosecutor attached to the Court of
Savona, by virtue of the letter of request submitted by this Court and herein forwarded
by means of register number indicated above.

It is reported that the Captain was tracked with a view to being served the declaration
as defendant before the Public Prosecutor attached to the Court of Savona, according to
the copy herein enclosed. Moreover, it is possible to locate him at the vessel where he
lives or through the mobile phone number 07 47 905 30 894.

Palma de Mallorca 25th September 1998

Lieutenant of the Provincial Maritime Service

Illegible signature

seal of the Provincial Maritime Service - Baleari Island
DEAR SIRS,

AS YOU ARE AWARE, LAST SATURDAY 5TH CURRENT MONTH, CURRENT YEAR, WE RESTRAINED THE MOTOR VESSEL ABOVE SPECIFIED. WE INFORMED THE JA [JUZGADO DE INSTANCIA II] THANKS TO THE SUPPORT OF THE PATROL OF THE MARITIME POLICE.

HOWEVER, THE SAID CIRCUMSTANCE DOES NOT ELUDE THE SITUATION WHICH OCCURRED LATER AND IS THE REASON OF THE SAID FAX.


WITHOUT ADDING ANY OTHER DETAIL, AND THANKING IN ADVANCE FOR YOUR COOPERATION, WE TAKE THIS OPPORTUNITY TO SEND YOU THE EXPRESSION OF MY HIGHEST CONSIDERATION.

REGARDS

TRANSCOMA BALEARES S.A.

ENRIQUE OLIVER
ANNEX V

TIME CHARTER PARTY BETWEEN INTER MARINE & CO. A/S AND NOR MARITIME BUNKER CO. LTD,
10 MAY 1998
Annex V

Code word for this Charter Party
"SHELLTIME 4"

Issued December 1964

Borgheim, Norway 10th May 1998

Time Charter Party

IT IS THIS DAY AGREED between Inter Marine & Co A/S, Borgheim, Norway (hereinafter referred to as "Owners"), being owners of the good vessel called M/T "Norstar" See additional clause 43, (hereinafter referred to as "the vessel") described as per main terms Clause 1 hereof and, Nor Maritime Bunker Co. Ltd, Valletta, Malta (hereinafter referred to as "Charterers":)

Description and Condition of Vessel

1. At the date of delivery of the vessel under this charter
   (a) she shall be placed; DNV oil tanker
   (b) she shall be in every way fit to carry See additional clause 44 and/or its products;
   (c) she shall be tight, staunch, strong in good order and condition, and in every way fit for the service, with her machinery, boilers, hull and other equipment (including, but not limited to hull stress calculator and radar) in a good and efficient state;
   (d) her tank, valves and pipelines shall be oil-tight;
   (e) she shall be in every way fitted for burning gasoil for main engine, boilers and auxiliary – See additional clause 64

at sea—fueloil with a minimum viscosity of —Centistokes at 50 degrees—Centigrade as per any commercial grade of fueloil

("ACGFO") for main propulsion,

ACGFO for auxiliaries

in port—marine diesel /ACGFO for auxiliaries

(f) she shall comply with the regulations in force so as to enable her to pass through the St. Nazaire and Panama Canal by day and night without delay;
   (g) she shall have on board all certificates, documents and equipment required from time to time by any applicable law to enable her perform the charter service without delay;
   (h) she shall comply with the description Form B as per additional clause 44 appended here to provided however that if there is any conflict between the provisions of Form B and as per additional clause 44 any other provisions, including this Clause 1, of the charter such other provisions shall govern.

Shipboard Personnel and their duties

2. (a) At the date of delivery of the vessel and throughout the period under this charter
   (b) she shall have a full and efficient complement of master, officers and crew for a vessel of her tonnage, who shall in any event be not less than the number required by the laws of the flag state and who shall be trained to operate the vessel and her equipment competently and safely;
   (i) all shipboard personnel shall hold valid certificates of competence in accordance with the requirements of the law of the flag state;
   (ii) all shipboard personnel shall be trained in accordance with the relevant provisions of the International Convention of Standards of Training, Certification and Watchkeeping for Seafarers, 1978;
   (iii) there shall be on board sufficient personnel with a good working knowledge of the English language to enable cargo operations at loading and discharging places to be carried out efficiently and safely and to enable communications between the vessel and those loading the vessel or accepting discharge therefore to be carried out quickly and efficiently.
   (b) Owners guarantee that throughout the charter service the master shall with the vessel’s officers and crew, unless otherwise ordered by Charterers,
      (i) prosecute all voyages with the utmost despatch;
      (ii) render all customary assistance; and
      (iii) load and discharge cargo as rapidly as possible when required by Charterers or their agents to do so, by night or by day, but always in accordance with the laws of the place of loading or discharging (as the case may be) and in each case in accordance with any applicable laws of the flag state.

Duty to Maintain

3. (i) Throughout the charter service Owners shall, whenever the passage of time, wear and tear or any event (whether or not coming within Clause 27 hereof) requires steps to be taken to maintain at a mutually convenient time or restore the conditions stipulated in Clauses 1 and 2(a), exercise due diligence so to maintain or restore the vessel.
   (ii) If at any time whilst the vessel is on hire under this charter the vessel fails to comply with the requirements of Clauses 1, 2(a) or 10 then hire shall be reduced to the extent necessary to indemnify Charterers for such failure. If and to the extent that such failure affects the time taken by the vessel to perform any services under this charter, hire shall be reduced by an amount equal to the value, calculated at the rate of hire, of the time so lost.

Any reduction of hire under this sub-Clause (ii) shall be without prejudice to any other remedy available to Charterers, but where such reduction of hire is in respect of time lost, such time shall be excluded from any calculation under Clause 24.
Annex V

2. (iii) If Owners are in breach of their obligation under Clause 3(f) Charterers may so notify Owners in writing; and if, after the expiry of 30 days following the receipt by Owners of any such notice, Owners have failed to demonstrate to Charterers' reasonable satisfaction the exercise of due diligence as required in Clause 3(f), the vessel shall be off-hire, and no further hire payments shall be due, until Owners have so demonstrated that they are exercising such due diligence.

Furthermore, at any time while the vessel is off-hire under this Clause 3 Charterers have the option to terminate this charter by giving notice in writing with effect from the date on which such notice of termination is received by Owners or from any later date stated in such notice. This sub-Clause (iii) is without prejudice to any rights of the Charterers or obligations of Owners under this charter or otherwise (including without limitation Charterers' rights under Clause 21 hereof).

Period Trading Limits

4. Owners agree to let and Charterers agree to hire the vessel for a period of 5 (five) years timecharter with Charterers option for further 1 (one) option 1 (one) year. Each period to be 15 days more or less in charters option. Commencing from the time and date of delivery of the vessel, for the purpose of carrying lawful merchandise (subject always to Clause 28) including in particular See additional clause 44

in any port of the world, as Charterers shall direct Offshore bunkering and/or stop sailing in Western Mediterranean around Baleric Islands, Excluding Israel, Lebanon, subject to the limits of the current British Institute Limits and any subsequent amendments thereof. Notwithstanding the foregoing, but subject to Clause 35, Charterers may order the vessel to be bound to waters or to any part of the world outside Inclusive Warranty Limits such limits to be provided that Owners consent thereto (such consent not to be unreasonably withheld) and that Charterers pay for any insurance premium required by the vessel's underwriters as a consequence of such order. See additional clause 45

Charterers shall use due diligence to ensure that the vessel is only employed between and at safe places (which expression when used in this charter shall include ports, berths, wharves, docks, anchorages, submarine lines, alongside vessels or lighters, and other locations including locations at sea) where she can safely lie always afloat. Notwithstanding anything contained in this or any other clause of this charter, Charterers do warrant the safety of any place to which they order the vessel and shall be under no liability in respect thereof except for loss or damage caused by their failure to exercise due diligence in so doing. Subject as above, the vessel shall be loaded and discharged at any places as Charterers may direct, provided that Charterers shall exercise due diligence to ensure that any ship-to-ship transfer operations shall conform to standards not less than those set out in the latest published edition of the ICS/SOCIFM Ship-to-Ship Transfer Guide. See additional clause 64

The vessel shall be delivered by Owners at a port in Palma de Mallorca, Spain at Owners' option and redelivered to Owners at a Western Mediterranean port.

At Charterers' option

5. The vessel shall not be delivered to Charterers before 20th June 1998 except with Charterers consent and Charterers shall have the option of cancelling this charter if the vessel is not ready and at their disposal on or before 10 July 1998. See additional clause 52.

Laydays/ Cancellating

Owners to Provide

6. Owners undertake to provide and to pay for all provisions, wages and shipping and discharging fees and all other expenses of the masters, officers and crew; also, except as provided in Clauses 4 and 34 hereof, for all insurance on the vessel, for all deck, cabin and engine-room stores, and for water for crew, for all drydocking, overhaul, maintenance and repairs to the vessel, and for all fumigation expenses and de-rat certificates. Owners' obligations under this Clause 6 extend to all liabilities for customs or import duties arising at any time during the performance of this charter in relation to the personal effects of the master, officers and crew, and relation to the stores, provisions and other matters aforesaid which Owners are to provide and pay for and Owners shall refund to Charterers any sums Charterers or their agents may have paid or been compelled to pay in respect of any such liability. Any amounts allowable in general average for wages and provisions and stores shall be credited to Charterers insofar as such amounts are in respect of a period when the vessel is on hire.

Charterers to Provide

7. Charterers shall provide and pay for all fuel (except fuel-used for domestic services), towage and pilotage and shall pay all agency fees, port charges, commissions, expenses of loading and unloading cargoes, canal dues and all charges other than those payable by Owners in accordance with Clause 6 hereof, provided that all charges for the said items shall be for Owners' account when such items are consumed, employed or incurred for Owners' purposes or while the vessel is off-hire (unless such items reasonably relate to any service given or distance made good and taken into account under Clause 21 or 22); and provided further that any fuel used in connection with a general average sacrifice or expenditure shall be paid for by Owners.

Rate of

8. Subject as herein provided, Charterers shall pay for the use and hire of the vessel at the rate of $\text{Usd}
Annex V

Hire

2.850 per day, and pro rata for the first year, for any part of a day, from the time and date of her delivery (local time) until the time and date of her redelivery (local time) to Owners.

5 percent escalation for each year thereafter with commencement June 1999. See additional clause 36.

Payment of Hire

9. Subject to Clause 3(iii), payment of hire shall be made in immediately available funds to:

Owner's designated bank account

in calendar-month every 30 days in advance, less:

(i) any hire paid which Charterers reasonable estimate to relate to off-hire periods and charges which are for Owners account pursuant to any provision hereof, and

(ii) any amounts due or reasonable estimate to become due to Charterers under Clause 3(ii) or 24 hereof,

any such adjustments to be made at the due date for the next semi-monthly payment after the facts have been ascertained. Charterers shall not be responsible for any delay or error by Owners' bank in crediting Owners' account provided that Charterers have made proper and timely payment.

In default of such proper and timely payment:

(a) Owners shall notify Charterers of such default and Charterers shall within seven working days of receipt of such notice pay to Owners the amount due including interest, failing which Owners may withdraw the vessel from the service of Charterers without prejudice to any other rights Owners may have under this charter or otherwise; and

(b) Interest on any amount due but not paid on the due date shall accrue from the date after that due date up to and including the day when payment is made, at the rate per annum which shall be 1% above the U.S. Prime Interest Rate as published by the Chase Manhattan Bank in New York at 12.00 New York time on the due date or, if no such interest rate is published on that day, the interest rate published on the next preceding day on which such a rate was so published, computed on the basis of a 360 day year of twelve 30-day months, compounded semi-annually.

Space Available to Charterers

10. The whole deck, bulwark and decks of the vessel and any passenger accommodation (including Owners' suite) shall be at Charterers' disposal, reserving only proper and sufficient space for the vessel's master, officers, crew, tackle, apparel, furniture, provisions and stores, provided that the weight of stores on board shall not, unless specially agreed, exceed 40 tonnes at any time during the charter period.

Overtime

11. Overtime pay of the master, officers and crew in accordance with ship's articles shall be for Charterers' account when incurred, as a result of complying with the request of Charterers or their agents, for loading, discharging, heating of cargo, bunkering or tank cleaning.

Instructions and Logs

12. Charterers shall from time to time give the master all requisite instructions and sailing directions, and he shall keep a full and correct log of the voyage or voyages, which Charterers or their agents may inspect as required. The master shall require furnish Charterers or their agents with a true copy of such log and with properly completed loading and discharging port sheets and voyage reports for each voyage and other returns as Charterers may require. Charterers shall be entitled to take copies at Owners' expense of any such documents which are not provided by the master.

Bills of Lading

13. (a) The master (although appointed by Owners) shall be under the orders and direction of Charterers as regards employment of the vessel, agency and other arrangements, and shall sign bills of lading as Charterers or their agents may direct (subject always to Clauses 35(a) and 40) without prejudice to this charter. Charterers hereby indemnify Owners against all consequences or liabilities that may arise

(i) from signing bills of lading in accordance with the directions of Charterers, or their agents, to the extent that the terms of such bills of lading fail to conform to the requirements of this charter, or (except as provided in Clause 13(b)) from the master otherwise complying with Charterers' or their agents' orders;

(ii) from any irregularities in papers supplied by Charterers or their agents.

(b) Notwithstanding the foregoing, Owners shall not be obliged to comply with any orders from Charterers to discharge all or part of the cargo

(i) at any place other than that shown on the bill of lading and/or

(ii) without presentation of an original bill of lading

unless they have received from Charterers both written confirmation of such orders and an indemnity in a form acceptable to Owners. See additional clause 63.

14. If Charterers complains of the conduct of the master or any of the officers or crew. Owners shall 

for INTER MARINE & Co. A/
Annex V

Conduct of Vessel’s Personnel

Immediately investigate the complaint. If the complaint proves to be well founded, Owners shall, without delay, make a change in the appointments and Owners shall in any event communicate the result of their investigations to Charterers as soon as possible.

Bunkers at Delivery and Redelivery

15. Charterers shall accept and pay for all bunkers on board at the time of delivery, and Owners shall on redelivery (whether it occurs at the end of the charter period or on the earlier termination of this charter) accept and pay for all bunkers remaining on board, at the then current market prices at the port of delivery or redelivery, as the case may be, or if such prices are not available payment shall be at the then-current market prices at the nearest port at which such prices are available; provided that if delivery or redelivery does not take place in a port payment shall be at the price paid at the vessel's last port of bunkering before delivery or redelivery, as the case may be. Owners shall give Charterers the use and benefit of any fuel contracts they may have in force from time to time, if so required by Charterers, provided suppliers agree. See additional clause 48.

Stevedores, Pilots, Tugs

16. Stevedores when required shall be employed and paid by Charterers, but this shall not relieve Owners from responsibility at all times for proper stowage, which must be controlled by the master who shall keep a strict account of all cargo loaded and discharged. Owners hereby indemnify Charterers, their servants and agents against all losses, claims, responsibilities and liabilities arising in any way whatsoever from the employment of pilots, tugboats or stevedores, who although employed by Charterers shall be deemed to be the servants of and in the service of Owners and under their instructions (even if such pilots, tugboats personnel or stevedores are in fact the servants of Charterers or their agents or any affiliated company); provided, however, that (i) the foregoing indemnity shall not exceed the amount to which Owners would have been entitled to limit their liability if they had themselves employed such pilots, tugboats or stevedores, and (ii) Charterers shall be liable for any damage to the vessel caused by or arising out of the use of stevedores, fair wear and tear excepted, to the extent that Owners are unable by the exercise of due diligence to obtain redress therefrom from stevedores.

Supernumeraries

17. Charterers may send representatives in the vessel’s available accommodation upon any voyages made under this charter, Owners finding provisions and all requisites as supplied to officers, except liquors. Charterers paying at the rate of $10 per day for each representative while on board the vessel.

Sub-letting

18. Charterers may sub-let the vessel, but shall always remain responsible to Owners for due fulfilment of this charter.

Final Voyage

19. If when a payment of hire is due hereunder Charterers reasonably expect to redeliver the vessel before the next payment of hire would fall due, the hire to be paid shall be assessed on Charterers’ reasonable estimate of the time necessary to complete Charterers’ program up to redelivery, and from which estimate Charterers may deduct amounts due or reasonably expected to become due for (i) disbursements on Owners’ behalf or charges for Owners’ account pursuant to any provision hereof, and (ii) Bunker on board at redelivery pursuant to Clause 15. See also clause 48 for prompt payment of any overpayment shall be refunded by Owners or any underpayment made good by Charterers.

If at the time this charter would otherwise terminate in accordance with Clause 4 the vessel is on a ballast voyage to a port of redelivery or is upon a laden voyage, Charterers shall continue to have the use of the vessel at the same rate and conditions as stand herein for as long as necessary to complete such ballast voyage, or to complete such laden voyage and return to a port of redelivery as provided by this charter, as the case may be.

Loss of Vessel

20. Should the vessel be lost, this charter shall terminate and hire shall cease at noon on the day of her loss; should the vessel be a constructive total loss, this charter shall terminate and hire shall cease at noon on the day on which the vessel’s underwriters agree that the vessel is a constructive total loss; should the vessel be missing, this charter shall terminate and hire shall cease at noon on the day on which she was last heard of. Any hire paid in advance and not earned shall be returned to Charterers and Owners shall reimburse Charterers for the value of the estimated quantity of bunkers on board at the time of termination, at the price paid by Charterers at the last bunkering port.

Off-Hire

21. (a) On each and every occasion that there is loss of time (whether by way of interruption in the vessel’s service or, from reduction in the vessel’s performance, or in any other manner) (i) due to deficiency of personnel or stores; repairs; gas-freeing for repairs; time in and waiting to enter dry dock for repairs; breakdown (whether partial or total) of machinery, boilers or other parts of the vessel or her equipment (including without limitation tank coatings); overhaul, maintenance or survey; collision, stranding, accident or damage to the vessel; or any other similar cause preventing the efficient working of the vessel; and such loss continues for more than three consecutive hours (if resulting from interruption in the vessel’s service) or cumulates to more than three hours (if resulting from partial loss of service); or
(ii) due to industrial action, refusal to sail, breach of orders or neglect of duty on the part of the master, officers or crew or

(iii) for the purpose of obtaining medical advice or treatment for or landing any sick or injured person (other than a Charterers' representative carried under Clause 17 hereof) or for the purpose of landing the body of any person (other than a Charterers' representative), and such loss continues for more than three consecutive hours; or

(iv) due to any delay in quarantine arising from the master, officers or crew having had communication with the shore at any infected area without the written consent or instructions of Charterers or their agents; or to any detention by customs or other authorities caused by smuggling or other infraction of local law on the part of the master, officers, or crew; or

(v) due to detention of the vessel by authorities at home or abroad attributable to legal action against or breach of regulations by the vessel, the vessel's owners, or Owners (unless brought about by the act or neglect of Charterers); then

without prejudice to Charterers' rights under Clause 3 or to any other rights of Charterers hereunder or otherwise the vessel shall be off-hire from the commencement of such loss of time until she is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which such loss of time commenced; provided, however, that any service given or distance made good by the vessel whilst off-hire shall be taken into account in assessing the amount to be deducted from hire

(b) If the vessel fails to proceed at any guaranteed speed pursuant to Clause 24, and such failure arises wholly or partly from any of the causes set out in Clause 21(a) above, then the period for which the vessel shall be off-hire under this Clause 21 shall be the difference between

(i) the time the vessel would have required to perform the relevant service at such guaranteed speed, and

(ii) the time actually taken to perform such service (including any loss of time arising from interruption in the performance of such service).

For the avoidance of doubt, all time included under (ii) above shall be excluded from any computation under Clause 24

(c) Further and without prejudice to the foregoing, in the event of the vessel deviating (which expression includes without limitation putting back, or putting into any port other than that to which she is bound under the instructions of Charterers) for any cause or purpose mentioned in Clause 21(a), the vessel shall be off-hire from the commencement of such deviation until the time when she is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which the deviation commenced, provided, however, that any service given or distance made good by the vessel whilst off-hire shall be taken into account in assessing the amount to be deducted from hire. If the vessel for any cause or purpose mentioned in Clause 21 (a), enters into any port other than the port to which she is bound on the instructions of Charterers, the port charges, pilotage and other expenses at such port shall be borne by Owners. Should the vessel be driven into any port or anchorage by stress of weather hire shall continue to be due and payable during any time lost thereby

(d) If the vessel's flag state becomes engaged in hostilities, and Charterers in consequence of such hostilities find it commercially impracticable to employ the vessel and have given Owners written notice thereof from the date of receipt by Owners of such notice until the termination of such commercial impracticability the vessel shall be off-hire and Owners shall have the right to employ the vessel on their own account.

(e) Time during which the vessel is off-hire under this charter shall count as part of the charter Period.

22. Owners have the right and obligation to drydock the vessel at regular intervals of 24 months. On each occasion Owners shall propose to Charterers a date on which they wish to drydock the vessel, not less than 3 weeks before such date and Charterers shall offer a port for such periodical dry docking and shall take all reasonable steps to make the vessel available as near to such date as practicable.

Owners shall put the vessel in drydock at their expense as soon as practicable after Charterers place the vessel at Owners' disposal clear of cargo other than tank washings and residues. Owners shall be responsible for and pay for the disposal into reception facilities of such tank washings and residues and shall have the right to retain any moneys received therefor, without prejudice to any claim for loss of cargo under any bill of lading or this charter.

(b) If a periodical dry docking is carried out in the port offered by Charterers (which must have suitable accommodation for the purpose and reception facilities for tank washings and residues), the vessel shall be off-hire from the time she arrives at such port until dry docking is completed and she is in every way ready to resume Charterers' service and is at the position at which she went off-hire or a position no less favourable to Charterers, whichever she first attains. However,

(i) Provided that Owners exercise due diligence in gas-freeing, any time lost in gas-freeing to the standard required for entry into drydock for cleaning and painting the hull shall not count as off-hire, whether lost on passage to the dry docking port or after arrival there (notwithstanding Clause 21), and

(ii) any additional time lost in further gas-freeing to meet the standard required for hot work or
entry to cargo tanks shall count as off-hire, whether lost on passage to the drydocking port or after arrival there.

Any time which, but for sub-Clause (i) above, would be off-hire, shall not be included in any calculation under Clause 24.

The expenses of gas-freeing, including without limitation the cost of bunkers, shall be for Owners account.

(c) If Owners require the vessel, instead of proceeding to the offered port, to carry out periodical drydocking at a special port selected by them, the vessel shall be off-hire from the time when she is released to proceed to the special port until she next presents for loading in accordance with Charterers’ instructions, provided, however, that Charterers shall credit Owners with the time which would have been taken on passage at the service speed had the vessel not proceeded to drydock. All fuel consumed shall be paid for by Owners but Charterers shall credit Owners with the value of the fuel which would have been used on such notional passage. Calculated at the guaranteed daily consumption for the service speed, and shall further credit Owners with any benefit they may gain in purchasing bunkers at the special port.

(d) Charterers shall insofar as cleaning for periodical drydocking may have reduced the amount of tank-cleaning necessary to meet Charterers’ requirements, credit Owners with the value of any bunkers which Charterers calculate to have been saved thereby, whether the vessel drydocks at an offered or a special port.

Ship Inspection

23. Charterers shall have the right at any time during the charter period to make such inspection of the vessel as they may consider necessary. This right may be exercised as often and at such intervals as Charterers in their absolute discretion may determine and whether the vessel is in port or on passage. Owners affording all necessary co-operation and accommodation on board provided, however,

(i) that neither the exercise nor the non-exercise, nor anything done or not done in the exercise or non-exercise, by Charterers of such right shall in any way reduce the master’s or Owners’ authority over, or responsibility to Charterers or third parties for, the vessel and every aspect of her operation, nor increase Charterers’ responsibilities to Owners or third parties for the same and

(ii) that Charterers shall not be liable for any act, neglect or default by themselves, their servants or agents in the exercise or non-exercise of the aforesaid right. See also clause 47.

Detailed Description and Performance

24. (a) Owners guarantee that the speed and consumption of the vessel shall be as follows: Minimum 9 knots at maximum beaufort 4, with consumption of maximum 3.0 mtday.

<table>
<thead>
<tr>
<th>Average speed</th>
<th>Maximum average bunker consumption</th>
</tr>
</thead>
<tbody>
<tr>
<td>in knots</td>
<td>main propulsion</td>
</tr>
<tr>
<td>fuel oil/diesel oil</td>
<td>fuel oil marine</td>
</tr>
<tr>
<td>Laden</td>
<td>tonnes</td>
</tr>
</tbody>
</table>

Ballast

See additional clause 43.

The foregoing bunker consumptions are for all purposes except cargo heating and tank cleaning and generator consumption in port and shall be pro-rated between the speeds shown.

The service speed of the vessel is 9 knots laden and in ballast. Beaufort 4 and in the absence of Charterers’ orders to the contrary the vessel shall proceed at the service speed. However, if more than one laden and one ballast speed are shown in the table above Charterers shall have the right to order the vessel to steam at any speed within the range set out in the table (the “ordered speed”).

If the vessel is ordered to proceed at any speed other than the highest speed shown in the table, and the average speed actually attained by the vessel during the currency of such order exceeds such ordered speed plus 0.5 knots (the “maximum recognised speed”), then for the purpose of calculating any increase or decrease of hire under this Clause 24 the maximum recognised speed shall be used in place of the average speed actually attained.

For the purposes of this charter the “guaranteed speed” at any time shall be the then-current ordered speed or the service speed, as the case may be.

The average speeds and bunker consumptions shall for the purposes of this Clause 24 be calculated by reference to the observed distance from pilot station to pilot station on all sea passages during each period stipulated in Clause 24 (c), but excluding any time during which the vessel is (or but for Clause 22 (b) (i) would be) off-hire and also excluding “Adverse Weather Periods”, being (i) any periods during which reduction of speed is necessary for safety in congested waters or in poor visibility (ii) any days, noon to noon, when winds exceed force 4 on the Beaufort Scale for more than 12 hours.

(b) If during any year from the date on which the vessel enters service (anniversary to anniversary) The vessel falls below or exceeds then performance guaranteed in Clause 24 (a) and additional Clause 41 the if
such shortfall or excess results
(i) from a reduction or an increase in the average speed of the vessel, compared to the speed
guaranteed in Clause 24 (a) then an amount equal to the value at the hire rate of the time so lost or gained, as the
case may be, shall be deducted from or added to the hire paid.
(ii) from an increase or a decrease in the total bunkers consumed, compared to the total
bunkers which would have been consumed had the vessel performed as guaranteed in Clause 24 (a) and amount
equivalent to the value of the additional bunkers consumed or the bunkers saved, as the case may be, on
the average price paid by Charterers for the vessel's bunkers in such period, shall be deducted from or added to
the hire paid.

The addition to or deduction from hire so calculated for laden and ballast mileage respectively
shall be adjusted to take into account the mileage steamed in each such condition during Adverse Weather
periods, by dividing such addition or deduction by the number of miles over which the performance has been
calculated and multiplying by the same number of miles plus the miles steamed during the Adverse Weather
periods, in order to establish the total addition to or deduction from hire to be made for such period.

Reduction of hire under the foregoing sub Clause (b) shall be without prejudice to any other
remedy available to Charterers.

Calculations under this Clause 24 shall be made for the yearly 6 month periods terminating on
each successive anniversary of the date on which the vessel enters service, and for the period between the last
such anniversary and the date of termination of this charter if less than a year. Claims in respect of reduction of
hire arising under this Clause during the final year or part year of the charter period shall in the final instance be
settled in accordance with Charterers' estimate made two months before the end of the charter period. Any
necessary adjustment after this charter terminates shall be made by payment to Owners by Charterers or by
Charterers to Owners as the case may require.

Payments in respect of increase of hire arising under this Clause shall be made promptly after receipt by
Charterers of all the information necessary to calculate such increase.

Salvage

25. Subject to the provisions of Clause 21 hereof, all loss of time and all expenses (excluding any
damage to or loss of the vessel or tortious liabilities to third parties) incurred in saving or attempting to save life or in
successful or unsuccessful attempts at salvage shall be borne equally by Owners and Charterers provided that
Charterers shall not be liable to contribute towards any salvage payable by Owners arising in any way out of
services rendered under Clause 25.

All salvage and all proceeds from dereicts shall be divided equally between Owners and Charterers
after deducting the master's, officers' and crew's share.

Lien

26. Owners shall have a lien upon all cargoes and all freights, sub-freights and demurrage for any
amounts due under this charter; and Charterers shall have a lien on the vessel for all monies paid in advance and
not earned, and for all claims for damages arising from any breach by Owners of this charter.

Exceptions

27. (a) The vessel, her master and Owners shall not, unless otherwise in this charter expressly
provided,
be liable for any loss or damage or delay or failure arising or resulting from any act, neglect or default of the
master, pilots, mariners or other servants of Owners in the navigation or management of the vessel and cargo;
fire, unless caused by the actual fault or privity of Owners; collision or stranding; dangers and accidents of the
sea; explosion, bursting of boilers, breakage of shafts or any latent defect in hull, equipment or machinery;
provided, however, that Clauses 1, 2, 3 and 24 hereof shall be unaffected by the foregoing. Further, neither the
vessel, her master or Owners, nor Charterers shall, unless otherwise in this charter expressly provided, be liable
for any loss or damage or delay or failure in performance hereunder arising or resulting from acts of God, act of
war, seizure under legal process, quarantine restrictions, strikes, lock-outs, riots, restrains of labour, civil
commotions or arrest or restraint of princes, rulers or people.
(b) The vessel shall have liberty to sail with or without pilots, to tow or go to the assistance of vessels
in distress and to deviate for the purpose of saving life or property.
(c) Clause 27(a) shall not apply to or affect any liability of Owners or the vessel or any other relevant
person in respect of
(i) loss or damage caused to any berth, jetty, dock,, basin, mooring line, pipe or crane
or other works or equipment whatsoever at or near any place to which the vessel may proceed under this charter,
whether or not such works or equipment belong to Charterers, or
(ii) any claim (whether brought by Charterers or any other person) arising out of any loss of or
damage to or in connection with cargo. All such claims shall be subject to the Hague-Visby Rules, or the Hague
Rules, as the case may be, which ought pursuant to Clause 38 hereof to have been incorporated in the relevant
bill of lading (whether or not such Rules were so incorporated) or, if no such bill of lading is issued, to the
Hague-Visby Rules.
(d) In particular and without limitation, the foregoing subsections (a) and (b) of this Clause shall not
apply to or in any way affect any provision in this charter relating to off-hire or to reduction of hire.

Annex V
Annex V

Injurios Cargoes 28. No acids, explosives or cargoes injurious to the vessel shall be shipped and without prejudice to the foregoing any damage to the vessel caused by the shipment of any such cargo, and the time taken to repair such damage, shall be for Charterers’ account. No voyage shall be undertaken, nor any goods or cargoes loaded, that would expose the vessel to capture or seizure by rulers or governments.

Grade of Bunkers 29. Charterers shall supply gasoil oil/diesel oil with a maximum viscosity of 1000 Centistokes at 50 degrees Centigrade/AGMFO for main propulsion and diesel oil AGMFO for the auxiliaries. It is agreed for main engine, boilers and auxiliaries, in accordance to additional clause 64. If Owners require the vessel to be supplied with more expensive bunkers they shall be liable for the extra cost thereof.

Charterers warrant that all bunkers provided by them in accordance herewith shall be of a quality complying with the International Marine Bunker Supply Terms and Conditions of Shell International Trading Company and with its specification for marine fuels as amended from time to time.

Disbursements 30. Should the master require advances for ordinary disbursements at any port, Charterers or their agent shall make such advances to him, in consideration of which Owners shall pay a commission of two and one-half per cent, and all such advances and commission shall be deducted from hire.

Laying-up 31. Charterers shall have the option, after consultation with Owners, of requiring Owners to lay up the vessel at a safe place nominated by Charterers, in which case the hire provided for under this charter shall be adjusted to reflect any net increases in expenditure reasonably incurred or any net saving which should reasonably be made by Owners as a result of such lay-up. Charterers may exercise the said option any number of times during the charter period.

Requisition 32. Should the vessel be requisitioned by any government, de facto or de jure, during the period of this charter, the vessel shall be off-hire during the period of such requisition, any hire paid by such government in respect of such requisition period shall be for Owners’ account. Any such requisition period shall count as part of the charter period.

Outbreak of War 33. If war or hostilities break out between any two or more of the following countries: U.S.A., U.S.S.R., P.R.C., U.K., Russia or countries of the EEC both Owners and Charterers shall have the right to cancel this charter.

Additional War Expenses 34. If the vessel is ordered to trade in areas where there is war (de facto or de jure) or threat of war, Charterers shall reimburse Owners for any additional insurance premium, crew bonuses and other expenses which are reasonably incurred by Owners as a consequence of such orders, provided that Charterers are given notice of such expenses as soon as practicable and in any event before such expenses are incurred, and provided further that Owners obtain from their insurers a waiver of any subrogated rights against Charterers in respect of any claims by Owners under their war risk insurance arising out of compliance with such orders.

War Risks 35. (a) The master shall not be required or bound to sign bills of lading for any place which in his or Owners’ reasonable opinion is dangerous or impossible for the vessel to enter or reach owing to any blockade, war, hostilities, warlike operations, civil war, civil commotions or revolutions.

(b) If in the reasonable opinion of the master or Owners it becomes, for any of the reasons set out in Clause 35(a) or by the operation of international law, dangerous, impossible or prohibited for the vessel to reach or enter, or to load or discharge cargo at, any place to which the vessel has been ordered pursuant to this charter (a “place of peril”), then Charterers or their agents shall be immediately notified by telex or radio messages, and Charterers shall thereupon have the right to order the cargo, or such part of it as may be affected, to be loaded or discharged, as the case may be, at any other place within the trading limits of this charter (provided such other place is not itself a place of peril). If any place or discharge is or becomes a place of peril, and no orders have been received from Charterers or their agents within 48 hours after dispatch of such messages, then Owners shall be at liberty to discharge the cargo or such part of it as may be affected at any place which they or the master may in their or his discretion select within the trading limits of this charter and such discharge shall be deemed to be due fulfilment of Owners’ obligations under this charter so far as cargo so discharged is concerned.

(c) The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stopping, destinations, zones, waters, delivery or in any other wise whatsoever given by the government of the state under whose flag the vessel sails or any other government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or local authority or by any committee or person having under the terms of the war risk insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations anything is done or is not done, such shall not be deemed a deviation.

If by reason of or in compliance with any such direction or recommendation the vessel does not
proceed to any place of discharge to which she has been ordered pursuant to this charter, the vessel may proceed to any place which the master or Owners in his or their discretion select and there discharge the cargo or such part of it as may be affected. Such discharge shall be deemed to be due fulfillment of Owners' obligations under this charter so far as cargo so discharged is concerned.

Charterers shall procure that all bills of lading issued under this charter shall contain the Chamber of Shipping War Risks Clause 1952.

36. If the liability for any collision in which the vessel is involved while performing this charter fails to be determined in accordance with the laws of the United States of America, the following provision shall apply:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the cargo carried hereunder will indemnify the carrier against all loss, or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said cargo, paid or payable by the other or non-carrying ship or her owners to the owners of the said cargo and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier."

"The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contact."

Charterers shall procure that all bills of lading issued under this charter shall contain a provision in the foregoing terms to be applicable where the liability for any collision in which the vessel is involved fails to be determined in accordance with the laws of the United States of America.

37. General average contributions shall be payable according to the York/Antwerp Rules, 1924 as amended 1994, and shall be adjusted in London in accordance with English law and practice but should adjustment be made in accordance with the law and practice of the United States of America, the following provision shall apply:

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible by statute, contract or otherwise, the cargo, shippers, consignees or owners of the cargo shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo."

"If a salvaging ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salvaging ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the carrier before delivery."

Charterers shall make endeavours to ensure that all bills of lading issued under this charter shall contain a provision in the foregoing terms, to be applicable where adjustment of general average is made in accordance with the laws and practice of the United States of America.

38. Charterers shall procure that all bills of lading issued pursuant to this charter shall contain the following clause:

"(1) Subject to sub clause (2) hereof, this bill of lading shall governed by, and have effect subject to, the rules contained in the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 23rd February 1924 (hereinafter the "Hague Visby rules"). Nothing contained herein shall be deemed to be either a surrender by the carrier of any of his rights or immunities or any increase of any of his responsibilities or liabilities under the Hague Visby Rules.

"(2) If there is governing legislation which applies the Hague Rules compulsorily to this bill of lading to the exclusion of the Hague Visby rules, then this bill of lading shall have effect subject to the Hague Rules. Nothing herein contained shall be deemed to be either a surrender by the carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the Hague Rule.

"(3) If any term of his bill of lading is repugnant to the Hague Visby rules, or Hague Rules if applicable, such term shall be void to that extent but no further."

"(4) Nothing in this bill of lading shall be construed as in any way restricting excluding or waiving the right of any relevant party or person to limit his liability under any available legislation and/or law."

TOVALOP

39. Owners warrant that the vessel is:
(i) a tanker in TOVALOP ITOPP and
(ii) properly entered in

and will so remain during the currency of this charter.

for. INTER MARINE & Co. A/S
Annex V

10. When an escape or discharge of Oil occurs from the vessel and causes or threatens to cause Pollution Damage, or when there is the threat of an escape or discharge of Oil (i.e. a grave and imminent danger of the escape or discharge of Oil which, if it occurred, would create a serious danger of Pollution Damage, whether or not an escape or discharge in fact subsequently occurs), then Charterers may, at their option, upon notice to Owners or owner, undertake such measures as are reasonably necessary to prevent or minimize such Pollution Damage or to remove the Threat, unless Owners promptly undertake the same. Owners shall be advised of the nature and extent of any such measures taken by them and, if time permits, the nature of the measures intended to be taken by them. Any of the aforementioned measures taken by Charterers shall be deemed taken on Owners’ authority as Owners’ agent, and shall be at Owners’ expense except to the extent that:

(1) any such escape or discharge of Threat was caused or contributed to by Charterers, or
(2) by reason of the exceptions set out in Article III, paragraphs 2, of the 1969 International Convention on Civil Liability for Oil Pollution Damage, Owners are, or, had the said Convention applied to such escape or discharge or to the Threat, would have been exempt from liability for the same, or
(3) the cost of such measures together with all other liabilities, costs and expenses of Owners arising out of or in connection with such escape or discharge of Threat exceeds one hundred and sixty United States Dollars (US $160) per ton of the vessel’s Tonnage or sixteen million eight hundred thousand United States Dollars (US $16,800,000), whichever is the lesser, save and except as Owners shall be entitled to recover such excess under any of the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage or under CRISTAL; PROVIDED ALWAYS that, if Owners in their absolute discretion consider said measures should be discontinued, Owners shall so notify Charterers and thereupon Charterers shall have no right to continue said measures under the provisions of this Clause 39 and all further liability to Charterers under this Clause 39 shall thenceforth cease.

The above provision are not in derogation of such other rights as Charterers or Owners may have under this charter or may otherwise have or acquire by law or any international Convention or TOVALOP.

40. The master shall not be required or bound to sign bills of lading for the carriage of cargo to any place to which export or such cargo is prohibited under the laws, rules or regulations of the country in which the cargo was produced and/or shipped.

Charterers shall procure that all bills of lading issued under this charter shall contain the following clause:

"If any laws rules or regulations applied by the government of the country in which the cargo was produced and/or shipped, or any relevant agency thereof, impose an obligation on the export of the cargo to the place of discharge designated in or ordered under this bill of lading, carries shall be entitled to require cargo owners forthwith to nominate an alternative discharge place for the discharge of the cargo, or such part of it as may be affected, which alternative place shall not be subject to the prohibition, and carries shall be entitled to accept orders from cargo owners to proceed to and discharge at such alternative place. If cargo owners fail to nominate an alternative place within 72 hours after they or their agents have received from cargo owners notice of such prohibition, carries shall be at liberty to discharge the cargo at such alternative place at the risk and expense of the cargo owners." The foregoing provision shall apply mutatis mutandis to this charter, the references to a bill of lading being deemed to be references to this charter.

Law and Litigation

41. (a) This charter shall be construed and the relations between the parties determined in accordance with the laws of England.

(b) Any dispute arising under this charter shall be decided by the English Courts to whose jurisdiction the parties hereby agree.

Notwithstanding the foregoing, but without prejudice to any party's right to arrest or maintain the arrest of any maritime property, either party may, by giving written notice of election to the other party, elect to have any such dispute referred to the arbitration of a single arbitrator in London in accordance with the provisions of the Arbitration Act 1950, or any statutory modification or re-enactment thereof for the time being in force.

(i) A party shall lose its right to make such an election only if it receives from the other party a written notice of dispute which

(ii) states expressly that a dispute has arisen out of this charter;
Annex V

II

(2) specifies the nature of the dispute; and
(3) refer expressly to this clause 41(e)
and
(b) it fails to give notice of election to have the dispute referred to arbitration not later than 30 days from the date of receipt of such notice of dispute.

(ii) The parties hereby agree that either party may—
(a) appeal to the High Court on any question of law arising out of an award;
(b) apply to the High Court for an order that the arbitrator state the reasons for his award;
(c) give notice to the arbitrator that a reasoned award is required; and
(d) apply to the High Court to determine any question of law arising in the course of the reference.

(d) It shall be a condition precedent to the right of any party to a stay of any legal proceedings in which maritime property has been, or may be, arrested in connection with a dispute under this charter, that such party furnishes to the other party security to which that other party would have been entitled in such legal proceedings in the absence of a stay.

Construction

42. The side headings have been included in this charter for convenience of reference and shall in no way affect the construction hereof.

Additional clauses 45-70 as per rider to be incorporated in this Charter Party and form a integrated part of this charterparty

For:

Inter Marine & Co. AS

for INTER MARINE & CO. AS

Authorised signatory
(Owner)
Name: Peter E. Vadis
Title: Managing Director

For:

Nor Maritime Banker Co. Ltd.

Authorised signatory
(Charterers)
Name: Trygve Vedvik
Title: Managing Director

ADDITIONAL CLAUSES
TO

Clause 43:

Main details
M/T "NORSTAR"
Flag : Panama
Call sign: 3F9H7
Deadweight/draught : 480,0 mts on 3,05 m moulded draught
Dimensions : 39,52 m length/ 7,40 m beam
Build/delivered : Setuelven Yard, Fredrikstad, Norway.
Delivered 11/1966
Class : Det Norske Veritas, Tanker for oil, ESP
Cargotanks : 2 x 4 cargotanks
Cargocapacity : 573,14 cubicmeter.
cargopumps : 3 x 115 cbm/hr borneman pumps
1 deckcrane : swl abt 1 tns
main engines : 2 x deutz 12 cyl 4 stroke each abt 300 bhp -
- 1.800 rpm
auxiliary engines : 2 x lister 38 bhp - 1500 rpm
generators : 2 x Thinge gt/ge 21 kw
Cabin : 6 cabins
Speed : Abt 9 knots servicespeed
Dry cargo hold : abt 2,300 cub. ft bale with freezing cap.
( new 1989)
Vessel is equipped with marpol oil monitor and acc. to conv. + iopp certificate.
Vessel is equipped with azimuth propeller/rudder system making her highly flexible regarding manoeuvring.

Clause 44

Vessel is at any time able to load cargoes in accordance with the trading products as per vessels certificate of fitness
(marpol 73/78).

Clause 45

Offshore bunkering and/or slop trading. Western Mediterranean/area around Balearic Islands excluding Libya, Israel,
Lebanon, Albania and Adriatic. Otherwise always within IWL.
The vessel is not to be ordered to nor bound to enter any places where fever or epidemics are prevalent

Clause 46

The daily t/c hire:
Usdollar 2.850,- for the first year until until June 1999
5 (five) percent annual escalation thereafter.

Included in hire: All overtime onboard and tank cleaning.
Special cleaning chemicals/detergent for tank cleaning and freshwater for tank cleaning to be for charterers account.
Annex V

Communication costs for Owners' account
Charterers may deduct from hire payments of any cash to master or any outlays for provision, stores etc. made by charterers on owners' behalf and any amount covering off-hire.

Clause 47
Charterers have the right at any time during this charter period to make inspection of the vessel as they may consider necessary after giving the master/owners 1 days notice. This may be exercised at such intervals as charterers in their absolute discretion may determine, owners affording all necessary co-operation provided, however, that neither the exercise nor the non-exercise by charterers of such right, shall in any way reduce the masters or owners liability and responsibility, or impose on charter any responsibility for the condition or operation of the vessel under this charter or otherwise.

Clause 48
Vessel to be delivered with sufficient bunkers to reach first loading port. Vessel to be redelivered with approximately same amount of bunkers as onboard on delivery.

Clause 49
Vessel/master/crew must carry out commercial operations with utmost dispatch. Any failure to continuously perform in accordance with the terms and condition of this charter party will entitle the charterers to declare vessel off-hire.

Clause 50
Owners warrant that the vessel is in all respects eligible under laws and regulations for trading to the ports and places specified in the trading area, and that at all necessary times she shall have on board all certificates, records and other documents required for such service. Owners will be responsible for knowledge of and compliance with all port restrictions at the ports that the vessel might call, related to safety and operational matters provided due notice is given to the master/owners for obtaining such knowledge. Charterers guarantee to call only safe accessible ports.

Clause 51
Vessel/crew will maintain watch on all communication equipment on board in order to enable flexible and fast responses concerning cargo plans, alterations of destinations, deviations and any other similar kind of commercial requirements.

Clause 52
Owners to give Charterers 15/10/5/3/2/1 days notice of delivery. Failing to do so, the charterers are not obliged to take delivery before these notices have been correctly given by the owners.

Clause 53
It is masters duty to secure to his best efforts that the vessel is always clean, dry, free of smell and suitable when loading the concrete cargo using the procedures and methods chosen by the master. In case there is any doubt whether a product is of a finer or less fine quality the master always to use the cleaning procedure for the finest possible grade.

Clause 54
Vessel to be equipped with minimum 2 cargo hoses each of 6 inch and each of 20 meters. All flanges to be of DIN standard. Sufficient number and size of reducers and y-pieces to be onboard. Sufficient personnel on board is always
to be made available to charterers to load or discharge as many grades of cargo simultaneously as the vessel physically can.

Clause 55

Owners warrant during the currency of this charter that:
A) The vessel is fully P and I covered
B) Premiums are correctly paid
C) Vessel is covered for oil spillage at U.S. Dollars 500 million
D) The vessel will be owned or demise-chartered by a member of the international tanker owners pollution federation ltd
E) The owners will give the charterers the full use and coverage of its P and I club service as far as the P and I rules permit.
The vessel is entered and covered by:
- Hull and Machinery value:
- Total loss value:

Clause 56

Owners undertake to employ tanker experienced people only onboard the vessel.
During sea voyages and throughout loading and discharging owners warrant that vessels master, chief engineer and chief officer speak, write and read English.
Owners warrant that all other crewmembers have good enough working knowledge of the English language to enable effective cargo operations and safe communication with shore personnel.

Clause 57

The vessel can discharge a full cargo 1 grade within 3 hours provided shore facilities permit. It is agreed that the vessel is off-hire during any period in excess of 3 hours it may take for the vessel to discharge a full cargo, shore facilities permitting. If shore facilities do not permit discharge within the agreed time, then master to have pumping logs and issue letter of protest to receivers - same to be duly countersigned by the receivers/terminal.

Clause 58

Owners warrant that the vessel carries on board a certificate furnished as evidence pursuant to article VII of the 1969 international convention on civil liability for oil pollution damage. Owners further warrant that the said certificate will be maintained and effective throughout the duration of this charter. Any delays and/or consequences arising from non-compliance with this clause to be for owners account.

Clause 59

Owners agree to follow Charterers instructions with respect to handling of oily residues and tank washings and otherwise throughout the period of this charter, provided such instructions are not in breach of local law and international conventions.

Clause 60

Owners shall accept delivery of cargo without presentation of original bill of lading but against letter of indemnity as per P and I wording with or without bank guarantee and to release cargo on receipt of letter of indemnity in the same manner as the charter do for their own vessels but charterers always to remain responsible for delivery of cargo without Bill of Lading provided master/owners instructed by charterers to deliver cargo without original Bill of Lading.

Clause 61

Owners agree that the master/crew will connect/disconnect cargo and bunker hoses on board vessel if required.
Clause 62

Charterers have the option to trade vessel basis reduced speed and owners will exercise their best endeavours under such reduced speed to maximise the vessels performance, but reduced speed always to be harmless to vessels main engine and in masters discretion.

Clause 63

The vessel is operated in accordance with the recommendations contained in the latest edition of ICS, and the international safety guide for oil tankers and terminals (ISGOTT).

Failure to comply any loss of time and/or costs to be for owners account.

Clause 64

Charterers to supply gasoil of quality according to ISO-F-DMA max specific gravity 0.86 max sulphur 0.5 per cent.

Clause 65

During the currency of this charter owners to meet charterers company policy of keeping a good house-holding onboard the vessel and keep vessel clean on deck, the outside, the accommodation and in the engine room.

Clause 66

The owners warrant to have a policy on drug and alcohol applicable to the vessel which meets or exceeds the standard in the oil companies international marine forum guidelines for the control of drug and alcohol onboard ship I O C I M F., January 1990. An objective of the policy should be that the frequency of the unannounced testing is adequate to act as an effective abuse deterrent and that all crew shall be tested at least once a year through a combined program of unannounced testing and routine medical examinations.

Owners warrant that this policy will remain in full force and effect during this charter and the owners will exercise due diligence to ensure that the policy is complied with.

Clause 67

Owners warrant that vessel fully complies with all ITF requirements and vessel has a valid ITF certificate or equivalent onboard.

Clause 68

Owners have no obligation neither to obtain nor to keep vessel in compliance with the requirements of major oil companies and vessel cannot be declared off-hire by charterers due to missing or withdrawn oil company vetting approvals.

Charterers are, however, permitted to obtain and maintain vetting approvals and owners will cooperate with charterers to reach charterers aims in this respect.

All communication with oil companies and/or their vetting offices to go via the charterers.

All proven costs imposed on owners in connection with or as a consequence of oil company approvals and CDI inspections imposed by charterers to be reimbursed by charterers.

The requirements of such oil companies never to exceed basic concept of vessel and never to compromise safety rules.

Clause 69

The Owner grant the charterers first refusal for any time-charter period (s) owners may be offered after expiry of this charter at the same proved money and terms the owners are offered by others.

The Owner grant the charterers first refusal to buy the vessel at the end of this charter at the same proved price and terms the owners are offered for the vessel by other parties. Charterers first refusal right is null and void as
from the time this charter is expired.
Charterers have the option to purchase the ship after 5 years charter at a salesprice to be mutually agreed.

Clause 70

All contents of this charter party shall be kept strictly private and confidential by all parties involved.

End of additional clauses
ANNEX W

E-MAIL OF MR PETTER VADIS, MANAGING DIRECTOR OF INTER MARINE A.S., 27 MAY 2001
Gas oil loaded on Algeria 273.776mt

Gas oil sold to different owners:

<table>
<thead>
<tr>
<th>No.</th>
<th>Vessel</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>01.</td>
<td>Angle B</td>
<td></td>
</tr>
<tr>
<td>02.</td>
<td>Space Master</td>
<td></td>
</tr>
<tr>
<td>03.</td>
<td>Auriga</td>
<td></td>
</tr>
<tr>
<td>04.</td>
<td>Alena</td>
<td></td>
</tr>
<tr>
<td>05.</td>
<td>Tejati</td>
<td></td>
</tr>
<tr>
<td>06.</td>
<td>Vagabondo</td>
<td></td>
</tr>
<tr>
<td>07.</td>
<td>Faste parnaut</td>
<td></td>
</tr>
<tr>
<td>08.</td>
<td>K. Serrai</td>
<td></td>
</tr>
<tr>
<td>09.</td>
<td>Gattoardo</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Scarleti</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>113.865 liter</td>
</tr>
</tbody>
</table>

Total Gas oil onboard when mv “Norstar” was arrested 177.566mt

Broker:
Scandinavian Bunkering AS

Loading port:
Algeria

sg 0.8450
high quality MGO

28.03.01
ANNEX X

M/V NORSTAR SHIP DETAILS SHEET
### Ship Particulars / IMO 6703056

**NORSTAR**

<table>
<thead>
<tr>
<th>Name:</th>
<th>NORSTAR (effective 1997-04)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Norsupply (effective 1989)</td>
</tr>
<tr>
<td></td>
<td>Polartank (effective 1987)</td>
</tr>
<tr>
<td></td>
<td>Vestshell (effective 1985)</td>
</tr>
<tr>
<td></td>
<td>Rodskjell (effective 1966)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>IMO Number:</th>
<th>IMO 6703056</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flag:</td>
<td>Panama (effective 1997-04)</td>
</tr>
<tr>
<td></td>
<td>Malta (effective 1993-02)</td>
</tr>
<tr>
<td></td>
<td>NIS (Norway) (effective 1991-09)</td>
</tr>
<tr>
<td></td>
<td>Norway (effective 1980)</td>
</tr>
</tbody>
</table>

| Call sign: | 3FHB7 |
| MMSI:      | 351107000 |

### Characteristics

<table>
<thead>
<tr>
<th>Type:</th>
<th>Tanker (unspecified) (effective 1966)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of build:</td>
<td>1966</td>
</tr>
<tr>
<td>Gross tonnage:</td>
<td>405</td>
</tr>
</tbody>
</table>

### Companies

<table>
<thead>
<tr>
<th>Registered owner:</th>
<th>Inter Marine &amp; Co AS (effective 1997-04)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>IMO Company Number 1310119</td>
</tr>
<tr>
<td></td>
<td>Nationality of registration Norway</td>
</tr>
<tr>
<td></td>
<td>Address Storegene 2/4, 3483 Kana, Norway.</td>
</tr>
<tr>
<td></td>
<td>Company status Active</td>
</tr>
</tbody>
</table>

Information on ship and company particulars is made available under the terms of the Shipping Information Agreement between IHS Maritime and the IMO Secretariat.

©2017 International Maritime Organization [Disclaimer | Terms of Use]  
† Notes on nomenclature