

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2018

Public sitting

held on Monday, 10 September 2018, at 10 a.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President Jin-Hyun Paik presiding

THE M/V “NORSTAR” CASE

(Panama v. Italy)

Verbatim Record

| | | |
|-----------------|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Present:</i> | President | Jin-Hyun Paik |
| | Judges | Tafsir Malick Ndiaye José Luís Jesus Jean-Pierre Cot Anthony Amos Lucky Stanislaw Pawlak Shunji Yanai James L. Kateka Albert J. Hoffmann Zhiguo Gao Boualem Bouguetaia Elsa Kelly Markiyán Kulyk Alonso Gómez-Robledo Tomas Heidar Óscar Cabello Sarubbi Neeru Chadha Kriangsak Kittichaisaree Roman Kolodkin Liesbeth Lijnzaad |
| | Judges <i>ad hoc</i> | Tullio Treves Gudmundur Eiriksson |
| | Registrar | Philippe Gautier |

Panama is represented by:

Dr Nelson Carreyó Collazos Esq. LL.M, Ph.D., ABADAS (Senior Partner),
Attorney at Law, Panama,

as Agent;

and

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

as Counsel;

Ms Mareike Klein, LL.M., Independent Legal Consultant, Cologne, Germany,
Dr Miriam Cohen, Assistant Professor of International Law, Université de
Montréal, Member of the Quebec Bar, Montreal, Canada,

as Advocates;

Ms Swantje Pilzecker, ALP Rechtsanwälte (Associate), Attorney at Law,
Hamburg, Germany,
Mr Jarle Erling Morch, Intermarine, Norway,
Mr Arve Einar Morch, Manager, Intermarine, Norway,

as Advisers.

Italy is represented by:

Mr Giacomo Aiello, State Attorney, Italy,

as Co-Agent;

and

Dr Attila Tanzi, Professor of International Law, University of Bologna, Italy,
Associate Member - 3VB Chambers, London, United Kingdom,

as Lead Counsel and Advocate;

Dr Ida Caracciolo, Professor of International Law, University of Campania "Luigi
Vanvitelli", Caserta/Naples, Member of the Rome Bar, Italy,

Dr Francesca Graziani, Associate Professor of International Law, University of
Campania "Luigi Vanvitelli", Caserta/Naples, Italy,

Mr Paolo Busco, Member of the Rome Bar, European Registered Lawyer with
the Bar of England and Wales, 20 Essex Street Chambers, London, United Kingdom,

as Counsel and Advocates;

Dr Gian Maria Farnelli, University of Bologna, Italy,
Dr Ryan Manton, Associate, Three Crowns LLP, Member of the New Zealand
Bar,

as Counsel;

Mr Niccolò Lanzoni, University of Bologna, Italy,
Ms Angelica Pizzini, Roma Tre University, Italy,

as Legal Assistants.

1 **THE PRESIDENT:** Please be seated.

2

3 **THE REGISTRAR** (*Interpretation from French*): The International Tribunal for the
4 Law of the Sea is now in session.

5

6 **THE PRESIDENT:** Good morning. I wish to welcome you to this hearing.

7

8 The Tribunal meets today pursuant to article 26 of its Statute to hear the Parties'
9 arguments on the merits of the *M/V "Norstar"* case.

10

11 At the outset, I wish to note that Vice-President Attard is prevented from sitting on
12 the bench during this hearing for reasons duly explained to me.

13

14 By Application filed in the Registry of the Tribunal on 17 December 2015, the
15 Republic of Panama instituted proceedings against the Italian Republic in a dispute
16 concerning the arrest and detention of the *M/V "Norstar"*, a Panamanian-flagged
17 vessel.

18

19 On 11 March 2016, Italy raised preliminary objections to the jurisdiction of the
20 Tribunal and to the admissibility of Panama's Application pursuant to article 97,
21 paragraph 1, of the Rules of the Tribunal. On 4 November 2016, the Tribunal
22 delivered its Judgment on the preliminary objections. In its Judgment, the Tribunal
23 found that it has jurisdiction to adjudicate upon the dispute and that the Application
24 filed by Panama is admissible.

25

26 I now call on the Registrar to summarize the procedure relating to the merits of the
27 case.

28

29 **THE REGISTRAR** (*Interpretation from French*): Thank you, Mr President.

30

31 By Order of 29 November 2016, the President of the Tribunal fixed 11 April 2017 and
32 11 October 2017 respectively as the time-limits for the filing of Panama's Memorial
33 and Italy's Counter-Memorial. The Memorial and the Counter-Memorial were filed
34 within the prescribed time-limits.

35

36 By Order of 15 November 2017, the Tribunal authorized the submission of a Reply
37 by Panama and a Rejoinder by Italy and fixed the time-limits for the filing of those
38 pleadings at 28 February 2018 and 13 June 2018 respectively. The Reply and the
39 Rejoinder were filed within the prescribed time-limits.

40

41 I will now read the submissions of the Parties.

42

43 (*Continued in English*) In paragraph 593 of its Reply, Panama makes the following
44 submissions:

45

46 Panama requests the Tribunal to find, declare, and adjudge

47

48 First: that by ordering and requesting the arrest of the *M/V "Norstar"*, in the
49 exercise of its criminal jurisdiction and application of its customs laws to
50 bunkering activities carried out on the high seas, Italy has thereby prevented
51 its ability to navigate and conduct legitimate commercial activities therein, and

1 that by filing charges against the persons having an interest on the operations
2 of this Panamanian vessel, Italy has breached

3
4 1. the right of Panama and the vessels flying its flag to enjoy freedom of
5 navigation and other internationally lawful uses of the sea related to the
6 freedom of navigation, as set forth in article 87(1) and (2) and related
7 provisions of the Convention; and

8
9 2. other rules of international law that protect the human rights and
10 fundamental freedoms of the persons involved in the operation of the
11 *M/V "Norstar"*;

12
13 Second: that by knowingly and intentionally maintaining the arrest of the
14 *M/V "Norstar"* and indefinitely exercising its criminal jurisdiction and the
15 application of its customs laws to the bunkering activities it carried out on the
16 high seas, Italy acted contrary to international law, and breached its obligations
17 to act in good faith and in a manner which does not constitute an abuse of right
18 as set forth in article 300 of the Convention;

19
20 Third: that as a consequence of the above violations, Italy is responsible to
21 repair the damages incurred by Panama and by all the persons involved in the
22 operation of the *M/V "Norstar"* by way of compensation amounting to twenty-
23 six million four hundred ninety-one thousand five hundred forty-four U.S.
24 dollars 22/100 (USD26.491.544.22) plus 145.186,68 EUR with simple interest;
25 and

26
27 Fourth: That as a consequence of the specific acts on the part of Italy that
28 have constituted an abuse of rights and a breach of the duty of good faith, as
29 well as based on its procedural conduct, Italy is also liable to pay the legal
30 costs derived from this judicial action.

31
32 Italy, in paragraph 226 of its Rejoinder, makes the following submission:

33
34 Italy requests the Tribunal to dismiss all of Panama's claims according to the
35 arguments that are articulated above.

36
37 By order dated 20 July 2018, the President fixed 10 September 2018, that is today,
38 as the date for the opening of the hearing.

39
40 Pursuant to the Rules of the Tribunal, copies of the written pleadings are being made
41 accessible to the public as of today. They will be placed on the Tribunal's website.
42 The hearing will also be transmitted live on this website.

43
44 Mr President.

45
46 **THE PRESIDENT:** Thank you, Mr Registrar.

47
48 The first round of the hearing will begin today and will close on Thursday,
49 13 September 2018. The second round of the hearing will take place on Friday,
50 14 September 2018 and Saturday, 15 September 2018.

51
52 At this morning's sitting, Panama will present the first part of its oral argument until
53 one o'clock and there will be a 30-minute break between 11.30 and noon.

1
2 I note the presence at the hearing of Agents, Counsel and Advocates of the Parties.

3
4 First, I call on the Agent of Panama, Mr Nelson Carreyó, to introduce the delegation
5 of Panama.

6
7 **MR CARREYÓ:** Good morning to everybody. Thank you, Mr President. May I
8 introduce them, and I would like them to stand up to make sure we see who she or
9 he is: Ms Mareike Klein, Advocate from Cologne, Germany; Dr Miriam Cohen,
10 Advocate, in Canada, Montreal; Dr Olrik von der Wense, who is an Attorney at Law
11 here in Hamburg; Ms Swantje Pilzecker, also an Attorney, Counsel, here in
12 Hamburg; Mr Hartmut von Brevern, Attorney at Law, Hamburg, Germany, and
13 Mr Jarle Erling Morch, from Intermarine, Norway.

14
15 **THE PRESIDENT:** Thank you, Mr Carreyó. I now call on the Co-Agent of Italy,
16 Mr Giacomo Aiello, to introduce the delegation of Italy.

17
18 **MR AIELLO:** Mr President Paik, Members of the Tribunal, it is an honour and a
19 privilege to appear before you today for the first time and to do so as Co-Agent of my
20 Country, Italy, in the merits phase of this litigation brought by the Republic of
21 Panama against Italy.

22
23 Mr President, allow me also to express my warmest congratulations on your election
24 as President of this honourable Tribunal, together with my highest esteem and
25 consideration for you and the Members of the Tribunal. Italy has a longstanding
26 history of compliance with international law and respect of the institutions of the
27 international community. My country has full confidence in the role of international
28 adjudication, as evidenced by its continued acceptance of the Tribunal's compulsory
29 jurisdiction ever since its establishment. It is on the basis of this confidence that Italy
30 takes part in the merits phase of these proceedings in a co-operative spirit in the
31 interest of justice and its administration by this honourable Tribunal.

32
33 With your permission, Mr President, I shall now briefly introduce the members of the
34 delegation representing Italy before your Tribunal: Professor Attila Tanzi, Lead
35 Counsel; Professors Ida Caracciolo and Francesca Graziani, also Counsel; and
36 Mr Paolo Busco, lawyer, also Counsel. The names and titles of the other members of
37 the Italian delegation have already been duly communicated to the Tribunal.

38
39 This ends my brief presentation, Mr President. I thank you for your attention.

40
41 **THE PRESIDENT:** Thank you, Mr Aiello.

42
43 I now give the floor to the Agent of Panama, Mr Carreyó, to make his statement.

44
45 **MR CARREYÓ:** Dear honourable Judges of this high Tribunal, Registrar, and
46 members of the Italian delegation, distinguished personnel of the support technical
47 aspects and the interpreters, I thank God I am here today and I am honoured to have
48 the opportunity to represent Panama in this case. According to the agenda of
49 Case 25 between Panama and Italy, concerning the *M/V "Norstar"*, Panama opens
50 this first round of its oral arguments by introducing its main parts starting with

1 respectfully reminding the Tribunal of the proven facts and how those facts are
2 subsumed within articles 87 and 300 of the Convention, and how Italy breached
3 them.

4
5 In the second part of this first round, Panama will also call the witnesses, Mr Silvio
6 Rossi, who will be examined by me; Mr Arve Morch, who will be examined by
7 Advocate Miriam Cohen, and Captain Tore Husefest, who will be examined by
8 Advocate Mareike Klein.

9
10 After the examination of these three witnesses, and regarding article 87,
11 paragraph 1, Panama will refer, firstly, to the location of activities for which the
12 “Norstar” was arrested and, secondly, to the location of the arrest, as well as how
13 this reflects that such arrest was unjustified.

14
15 Panama will also refer to the principle that an arresting State seizes at its own peril,
16 raising the Italian reference to the “Norstar” as a *corpus delicti* and why this
17 description does not apply to these proceedings.

18
19 We will then turn to the other rules of the Convention that refer to the right to
20 freedom of navigation, in order to clarify the nature and extent of the violation of
21 article 87.

22
23 We will also explain why article 87, paragraph 2, applies universally, and so is not
24 binding only on Panama, as Italy has suggested, before concluding this part by
25 explaining how and why the rule of *effet utile* is applicable to this case.

26
27 Panama will also analyze some of the violations of article 300 and its rules of good
28 faith and abuse of rights. It will be argued that Italy did not act in good faith by
29 delaying the arrest, thus involving both acquiescence and estoppel; that Italy has
30 been inconsistent when referring to the location of the “Norstar”’s activities as the
31 basis for the arrest, and that Italy ordered and executed a premature arrest by not
32 taking into account the requirements of a precautionary measure. This will end the
33 first part of our first round of oral arguments.

34
35 The second part of this first round will be initiated by Advocate Mareike Klein, who
36 will continue examining the acts of Italy that have failed to represent good faith,
37 particularly by using silence as a tacit defensive strategy, including an intentional
38 refusal to reply to all of Panama’s attempts to communicate prior to this case being
39 brought before this court, by not disclosing all relevant information, by contradicting
40 its own previous conduct, and by blaming others such as Spain and Panama for its
41 own inaction concerning its unfulfilled promise to effectively return the vessel and its
42 absolute lack of compliance with its duty to provide maintenance for the
43 *M/V “Norstar”*, as well as by intending to take advantage of its own wrong.

44
45 Advocate Dr Miriam Cohen will then cover the subjects of abuse of rights, the human
46 rights violations that have ensued, their influence on the damages quantum, the
47 condition of the “Norstar”, the alleged non-compliance of Italy with its own order to
48 execute the release of the *M/V “Norstar”*, which Italy has subsequently blamed
49 Panama and the shipowner for, both in 1999 and in 2003.

1 Before depositing an expert on the proper amount of reparation in such a case,
2 Dr Cohen will briefly refer to what constitutes the onus of proof, and how the
3 principles of alleged contributory negligence and duty to mitigate damages claims
4 apply to this case.

5
6 Panama will end its first round of oral statements by allowing Dr Olrik von der Wense
7 to examine Mr Horacio Estribi, a Panamanian economic expert, followed by a
8 presentation concerning the amount of reparation by way of damages.

9
10 With these concepts in mind, Panama will ask the Tribunal to declare that, by
11 arresting the “*Norstar*” while in the territory of a third State, by confiscating and
12 keeping this vessel under its jurisdiction for an indefinite period, by bringing
13 unsubstantiated charges against persons having an interest in its operations, Italy
14 improperly curtailed the “*Norstar*”’s free navigation and commercial activities, thereby
15 breaching the right of Panama to enjoy the right to freedom of navigation and other
16 international lawful uses of the sea, as set forth in paragraphs 1 and 2 of article 87
17 and related provisions of the Convention; breached its duty to act in good faith; and
18 committed an abuse of rights as set forth in article 300.

19
20 Let us review the facts.

21
22 The facts on which Panama has based the above main submissions are that
23 between 1994 and 1998 the *M/V “Norstar”* bunkered on the high seas without any
24 interference by the Italian authorities.

25
26 Italy then suddenly and unjustifiably started treating such activity as “criminal
27 association aimed at smuggling and fraud”, and on 11 August 1998 the Public
28 Prosecutor of the Court of Savona issued a Decree of Seizure against the *M/V*
29 “*Norstar*” in the context of criminal proceedings against several individuals linked to
30 the operation of the vessel for the alleged crimes of smuggling and tax evasion.

31
32 The Decree ordered the seizure of the “*Norstar*” as a “*corpus delicti*” for the alleged
33 criminal offences of smuggling and tax evasion and tax fraud, and in September of
34 the same year this order was carried out by Spain, at the request of Italy, while the
35 vessel was in Spanish waters.

36
37 In so doing, Italy made a complete confiscation of the “*Norstar*” and its effects, thus
38 completely removing its freedom to navigate and conduct legitimate business on the
39 high seas.

40
41 I would now like to start by recalling the ICJ’s Advisory Opinion in the case of
42 Treatment of Polish Nationals in Danzig, which says that

43
44 while on the one hand, according to generally accepted principles, a State
45 cannot rely, as against another State, on the provisions of the latter’s
46 Constitution, but only on international law ... , on the other hand and
47 conversely, a State cannot adduce as against another State its own
48 Constitution with a view to evading obligations incumbent upon it under
49 international law or treaties in force.

1 With this in mind, Panama will continue to refrain from addressing any of the Italian
2 legal provisions, but will use only its judgments as elements of evidence before this
3 Tribunal.

4
5 Having said that, Panama will also respectfully remind the Tribunal that Italy has
6 contested the submissions by Panama by saying that the right to freedom of
7 navigation was not breached, because the arrest of the “*Norstar*” was based on
8 investigations of crimes occurring *within* Italy.

9
10 We will therefore firstly refer to the location of the acts investigated as the *locus* of
11 the acts.

12
13 The other Italian argument to sustain that article 87 had not been breached by the
14 arrest was that the arrest took place in the port of a third State.

15
16 We will therefore refer, secondly, to this aspect as the *locus* of the arrest.
17 In paragraph 7 of its Counter-Memorial, Italy’s argument is:

18
19 an extraterritorial exercise of jurisdiction that does not determine any physical
20 interference with the movements of a ship on the high seas ... does not breach
21 article 87.

22
23 In paragraph 3(e) of its Rejoinder, Italy also stated that:

24
25 freedom of navigation does not entail freedom of a legally detained vessel to
26 reach the high seas.

27
28 Panama contends that with these statements Italy has expressly admitted the
29 exercise of its jurisdiction extraterritorially.

30
31 Panama will then reaffirm that by ordering the arrest of the “*Norstar*” for bunkering
32 activities on the high seas, and while it was in a foreign port, Italy first exercised its
33 extraterritorial jurisdiction, and, secondly, that by so doing Italy did indeed breach
34 article 87 of the Convention.

35
36 Panama will remind Italy that the exercise of one’s jurisdiction represents the
37 execution of authority to adjudicate and enforce the seizure of persons or assets,
38 and that this is, in international law, almost exclusively territorial. Such authority may
39 only be exercised within a nation’s own territory unless there is authorization granted
40 by the relevant flag States, or by a special exemption under international law.

41
42 In cross-border criminal proceedings, the question is not what the law applicable to a
43 particular country is – because this is always *lex fori* – but whether that law can
44 control extraterritorial conduct.

45
46 By continuing to differentiate, as elements of the arrest, between the Decree of
47 Seizure and the request for its execution, on the one hand, and the actual execution
48 of that Decree, on the other, Italy has ignored, all along its pleadings, what this
49 Tribunal clearly stated in paragraph 165 of its Preliminary Objection judgment by
50 saying that
51

1 the Decree of Seizure and the request for its enforcement by Italy were central
2 to the eventual arrest of the vessel. It is clear that without the Decree of
3 Seizure, there would have been no arrest.
4

5 In sum, this means that this Tribunal has clearly characterized the order of arrest, its
6 request for enforcement and its execution, as one under Italian jurisdiction.
7

8 Panama continues to take issue with some of the attempts by Italy to circumscribe its
9 arguments.
10

11 For example, Italy has also indicated that any reference made by Panama to the
12 Italian judgments is “misplaced” because the focus of the investigations of the
13 Tribunal is the Decree of Seizure and not these judgments.
14

15 In response, Panama would like to reiterate strongly, firstly, that the Italian
16 judgments and its reasoning cannot be disassociated from the Decree of Seizure
17 because such judgments reflect the final outcome of the Italian decision that is at the
18 root of this case; and secondly, that such references are made only because those
19 judgments have formed an important part of the documentary evidence that
20 demonstrates how Italy breached article 87.
21

22 Italy has also falsely accused Panama of stating that Italy’s judiciary “acted under an
23 erroneous premise”.
24

25 Panama did not accuse the Italian courts of any error, because it was the Italian
26 judiciary itself that described the arrest in this way. The Italian conduct may have
27 been either intentional or inadvertent. What cannot be contested is that the Italian
28 judiciary found that its Prosecutor acted under the misguided assumption that a
29 crime had been committed through the *M/V “Norstar”* in its territory.
30

31 That the learned Judges of this Tribunal confirmed that the Italian judiciary found that
32 no crime had been committed indicates that the claim that Panama has falsely
33 accused Italy in this regard is completely unfounded.
34

35 Italy has also argued at paragraph 8 of its Rejoinder that
36

37 no Italian court found that the arrest of the *Norstar* was unlawful, but simply
38 that the material elements of the crimes allegedly committed also through the
39 *Norstar* were not integrated.
40

41 However, it seems that Italy does not understand the meaning and results of its
42 revocation of such arrest because its unlawfulness is a natural consequence of the
43 reversal of the arrest order by the Italian authorities themselves.
44

45 Besides, the revocation order neither nullifies nor rectifies the wrongful act,
46 particularly since no compensation has been offered.
47

48 As to whether the “material elements of the crimes” were integrated or not, Italy has
49 failed to identify which elements of the crimes it is referring to.
50

1 In fact, the lack of integration of the material elements of the crimes to which Italy
2 refers not only reaffirms their nonexistence but also confirms that the only reason
3 Italy arrested the “*Norstar*” was the presumption rather than the actual occurrence, of
4 a crime.

5
6 Article 87 has been breached because Italy decided to impede the “*Norstar*”’s right to
7 navigate back to the high seas while postulating a crime that it knew, or should have
8 known, had not occurred, because the *locus* where its activities had been carried out
9 was the high seas.

10
11 Therefore, we can conclude that the “*Norstar*”’s freedom of navigation was curtailed
12 by an arrest order without justification.

13
14 Panama reaffirms that the freedom of navigation protected by article 87 has been
15 overtly hindered by Italy, not only by preventing the “*Norstar*” from regaining access
16 to the high seas but also by deciding that the bunkering activities it carried out on the
17 high seas were not supported by the international law of the sea in the first place. In
18 short, if Italy had respected this provision, it would not have ordered the arrest of this
19 vessel.

20
21 Italy has argued that if the Italian courts had “thought” that the arrest of the “*Norstar*”
22 was unlawful because it constituted an extraterritorial exercise of Italian jurisdiction,
23 the consequence would not have been an acquittal but a declination of their
24 jurisdiction.

25
26 Specifically, in paragraph 27 of its Rejoinder, Italy stated that if Panama’s argument
27 about the *locus* of the activities were true, its courts would have “declined
28 jurisdiction”, citing its Criminal Code, which precisely prohibits any application of its
29 laws to acts committed outside Italian territory.

30
31 However, that Italy did not decline jurisdiction does not mean that the seizure is
32 supported by international law.

33
34 Concerning the *locus* of the activities for which the “*Norstar*” was arrested, Panama
35 would like to stress that in paragraph 6 of its judgment the Court of Savona
36 concluded first, that:

37
38 before asserting any kind of criminal liability, a preliminary test is needed as to
39 where the provision of supplies occurred because if it took place outside the
40 line of territorial waters no one of the offences charged does actually exist.

41
42 The court went on to say that

43
44 As it came to light that the provision of supplies has always taken place
45 offshore according to the Prosecution's arguments ..., the offences ... shall be
46 regarded as unsubstantiated and consequently this leads to the defendants’
47 acquittal.

48
49 and that
50

1 the purchase of fuel intended to be stored on board by leisure boats outside
2 the territorial sea ... shall not be subject to payment of import duties.
3

4 Despite this, Italy has asserted in paragraph 29 of its Rejoinder that the legality of
5 the arrest under article 87 must be assessed on the basis of the requirements of that
6 same provision, and not under the prism of whether the alleged crimes were found to
7 have been actually committed. In fact, Italy itself has stated that the arrest could
8 have been made in violation of article 87 if the alleged crimes were found to have
9 occurred. However, this is not what actually transpired, so we are not here to
10 elucidate this.

11
12 Panama maintains that Italy's defence against the claim that the arrest of the
13 "*Norstar*" breached article 87 has been, and still is, revolving around a crime that it
14 was only *suspected* of committing in Italy, and which served as the basis for the
15 arrest.

16
17 However, what is more important at this moment is that the Italian argument is highly
18 contradictory. As we have just seen, in its Rejoinder Italy stated that the legality of
19 the arrest under article 87 should not be seen under the prism of whether a crime
20 had been committed. Italy used this same argument throughout its Counter-
21 Memorial, where it also stated that the arrest was based on the commission of the
22 crimes of smuggling and tax evasion.

23
24 When Panama argued that the arrest was made, instead, for bunkering activities on
25 the high seas, Italy repeatedly objected, arguing for instance in paragraph 3 of its
26 Counter-Memorial that

27 the plain text of the relevant judgments demonstrates that ... the *M/V "Norstar"*
28 was instead arrested in connection with the suspected crimes of smuggling
29 and tax evasion.
30

31
32 The same idea was repeated in paragraphs 117 and 151 of that same document,
33 where Italy stated again that "[t]he *M/V 'Norstar'* had been arrested and detained not
34 because of its bunkering activity, but because it was *corpus delicti* of the crimes of
35 smuggling and tax evasion" and because it was "allegedly part of a unitary criminal
36 plan concerning the commission of the crimes of tax evasion and smuggling".
37

38 Thus, according to Italy, the "*Norstar*" was arrested for crimes that were not
39 committed. This faulty line of reasoning cannot be used to argue that there was no
40 breach of the "*Norstar*"'s freedom of navigation. It is important that all parties respect
41 the fact that the freedom of navigation is *also* an obligation of result.
42

43 Italy has been trying to separate the facts about the location of the "*Norstar*"'s
44 operations on the high seas from the crimes of smuggling and tax fraud in order to
45 disassociate itself from its breach of article 87, but such a strategy does not negate
46 the facts because of their unity.
47

48 That the "*Norstar*" was, one, bunkering on the high seas, and, two, arrested on
49 suspicion of participating in smuggling and tax fraud in spite of such location of its
50 operations are facts that Italy has accepted, and they may not be separated to
51 benefit either of the Parties in this case.

1
2 They are a factual unit because both elements were taken into account when Italy
3 decided to arrest the “*Norstar*”, both led to the jurisdictional action of Italy, and both
4 form the basis for the present dispute as well.

5
6 Being about ten thirty in the morning, and after this brief introduction, Mr President,
7 we will kindly ask you to call our first witness, Mr Silvio Rossi, for his examination.
8 Thank you.

9
10 **THE PRESIDENT:** Thank you, Mr Carreyó. Now I understand that Panama wishes
11 to examine a witness.

12
13 Before proceeding to the examination of the first witness called by Panama, and in
14 light of the fact that both Parties will call several experts and witnesses, I wish to
15 explain briefly the procedure that is to be followed in this regard.

16
17 Pursuant to article 80 of the Rules of the Tribunal, a witness or expert shall remain
18 out of court before testifying. Only after a Party signals to me that it intends to call a
19 witness or expert, I will invite the witness or expert to enter the courtroom. Once the
20 witness or expert has taken his or her place, the Registrar will ask the witness or
21 expert to make the solemn declaration in accordance with article 79 of the Rules of
22 the Tribunal. Different declarations are to be made by witnesses and experts, as set
23 out in subparagraphs (a) and (b) of article 79 respectively.

24
25 Under the control of the President, witnesses and experts will be examined first by
26 the Agent, Co-Agent or Counsel of the Party who has called them. After that, the
27 other Party may cross-examine the witness or expert. If a cross-examination takes
28 place, the Party calling the witness or expert will, when the cross-examination is
29 concluded, be asked if it wishes to re-examine. I wish to emphasize that a re-
30 examination shall not raise new issues but shall limit itself to the issues dealt with in
31 cross-examination.

32
33 Thereafter, if the Tribunal wishes to put questions to the witness or expert, questions
34 will be posed by the President on behalf of the Tribunal, or by individual Judges.
35 After that, or if the Tribunal does not wish to put questions, the witness or expert will
36 be allowed to withdraw.

37
38 In accordance with article 86, paragraph 5, of the Rules of the Tribunal, witnesses
39 and experts will also have the opportunity to correct the verbatim record of their
40 testimony produced by the Tribunal. However, in no case may such corrections
41 affect the meaning and scope of the testimony given.

42
43 Now, Mr Carreyó, once again, could you confirm that you intend to examine a
44 witness?

45
46 **MR CARREYÓ:** Yes, your Honour.

47
48 **THE PRESIDENT:** Thank you, Mr Carreyó. The Tribunal will then proceed to hear
49 the witness, Mr Silvio Rossi. He may now be brought into the courtroom.

1 I call upon the Registrar to administer the solemn declaration to be made by the
2 witness.

3
4 **THE REGISTRAR:** Thank you, Mr President.

5
6 Good morning, Mr Rossi.

7
8 Mr Rossi, under article 79 of the Rules of the Tribunal, a witness is required to make
9 a solemn declaration before making any statement before the Tribunal. You have
10 been provided with the text of the declaration. May I invite you to make the solemn
11 declaration?

12
13 *(The witness made the solemn declaration)*

14
15 **THE REGISTRAR:** Thank you, Mr Rossi. Mr President.

16
17 **THE PRESIDENT:** Thank you, Mr Registrar. I give the floor to Mr Carreyó to start the
18 examination of the witness.

19
20 **MR CARREYÓ:** Thank you, Mr President. Mr Rossi, you have been called as a
21 witness in this case. Would you please introduce yourself and let this Tribunal know
22 if you are familiar with the facts of this case, and give us a brief on why you became
23 involved with the facts of this case.

24
25 **MR ROSSI:** Yes. Good morning to everybody. My name is Silvio Rossi. I am still
26 president of the company Rossmare International, which is a company that was
27 involved in this issue. Rossmare International is a trading company active in
28 bunkering worldwide, specializing in supplying fuel to mega yachts. In 1993, with the
29 single market in the EU, it happened that France and Italy became one single
30 customs territory. As I said before, we supplied fuel worldwide but our main
31 business, of course, is in our area, which is the north-west of Italy in the Ligurian
32 Sea. My town is just in the Italian Riviera, and the Italian Riviera and French Riviera
33 together are the main place for mega yachts.

34
35 With the completing of the single market, on the contrary of the other part of Italy, we
36 could not supply duty-free fuel to yachts anymore, so we lost 70 per cent of our
37 business. For this reason I thought, in order to re-establish a kind of equal situation,
38 equal opportunity between us and all the other competitors, to start offshore
39 bunkering in this area, in the north-west of the Ligurian Sea. For this reason
40 I checked which were the most important companies operating this kind of business
41 in the world, and I found that in Denmark there was a company called OW, who were
42 the leader in the offshore bunkering of Denmark, so I went to Aalborg, which was the
43 main office of this company, and speaking with the owner of the company,
44 Mr Sorensen, we decided to start a new kind of business like that in the
45 Mediterranean. For this reason the first year, the first time in 1993, Mr Sorensen sent
46 a boat, a tanker, of his fleet – the name was “*Sijla*” – and we started this kind of
47 operation.

48
49 Since the business for him was not so good, he said me that it was not going to
50 continue the next year, and by chance I was in Malta and speaking with a colleague

1 of mine from Malta. He introduced me to Mr Morch and, all together, we decided to
2 start again offshore bunkering with a boat “Norstar”. That was the time I met
3 Mr Morch.

4
5 **MR CARREYÓ:** I understand you said that the ports of the north of Italy were
6 affected.

7
8 **MR ROSSI:** Yes.

9
10 **MR CARREYÓ:** Why were they affected?

11
12 **MR ROSSI:** I am sorry. Okay, I can say that now. In our customs book – and our
13 customs book is big; it is like this (*showing a book*) – there is four articles that
14 concern the naval provision: no 252, no 253, no 254, and 255. The first article, 252,
15 describes which kind of goods, which kind of products can be considered naval
16 provision, which actually are the goods, the products, that they need to run a ship,
17 such as, for example, the food for the crew members or the spare parts, but the main
18 product that needs a ship to run is the fuel. So the fuel is included in naval provision.

19
20 Then there are the two articles 253 and 255. They concern the consumption of the
21 naval provision. Article 254 concerns the supply and, in the supply of the naval
22 provision that for the commercial ship is absolutely duty-free, there is a clause
23 regarding the yacht, the pleasure boat, and this clause gives the possibility to supply
24 duty-free fuel to those yachts on the condition that within 8 hours they leave the port
25 and they set sail for a non-Italian port, a foreign port, and when the boat arrives at
26 the foreign port the captain has to stamp a kind of paper that we give during, after
27 the supply. It is called *giornale partenze e arrivi* – it is a kind of logbook – in order to
28 demonstrate that the boat arrived in the foreign port. And with this demonstration
29 ultimately the fuel that was national and exported becomes foreign fuel. This is very
30 important to know, foreign fuel, because with foreign fuel customs law enters in
31 function. So the boat can go back, can use this fuel, either in international waters, of
32 course, but for article 255 and 253 of the customs book, it can consume the fuel
33 either in the waters and in certain conditions also in the port. In the port, 99.9 per
34 cent, they do not use fuel because they plug in and they get electricity from the
35 shore, so we can say that the fuel is only consumed in the international waters, in
36 open sea, or in the national waters. Legally.

37
38 Why we are affected? We are affected because from my area the nearest foreign
39 port westward was Gibraltar, 800 NM; southward, Malta – at that time it was not in
40 Europe, and to Malta it is another 800 NM more or less. On the contrary, all the other
41 parts of Italy, the south, they had Malta near and they had Tunisia. In the east, all the
42 ports of east Italy, the Adriatic Sea, they had the former Yugoslavia and Albania just
43 in front of them. So the only area that was affected by this new situation in Europe
44 was my area. That is why, in order to re-establish a kind of equal opportunity, we
45 started this kind of business.

46
47 **MR CARREYÓ:** Mr Rossi, are you related to the operation named Rossmare
48 International? If this is true, will you tell us what is your relationship with that
49 corporation and whether that corporation has something to do with this case and the
50 police officers?

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MR ROSSI: Yes.

MR CARREYÓ: Of the customs...

MR ROSSI: Okay. We always had a good relationship with the police, with the custom office, because we are also a physical supplier locally. We supply fishing craft, we supply dredgers, tug boats, so at that time it was not the telematics system like now, so every operation that we used to do was at the custom house, so there was a friendly relationship with the people from the custom house, and also I have to say that my office was just 30 metres away, the same street, just 20 metres near the custom building.

Of course, we had a good relationship. I always keep them aware about what we are doing, and also, in addition to supplying fishing craft and tug boats, we used to supply and we still supply the little fleet of the fiscal police and the little fleet of the coastguard. So there was good cooperation, and in order to cooperate with them I used to give the position of the boat and the arrival of the boat to the chief of the fleet, every time the boat, the tanker, was coming and the time the tanker was going, so they were aware about our operations, and our operations they were really – everybody knew because there was advertisement. They were very noted by everybody. There was nothing hidden.

MR CARREYÓ: Mr Rossi, Can you describe the bunkering operations or activities in which you and the “*Norstar*” were involved and if you ever informed the Custom *brigada* about its position?

MR ROSSI: As I said before, we are a bunker trading company, so what is our business? We have some clients – as said before, specialized in mega yachts – and these mega yachts sail all over the world; and we have in any part of the world connection with local suppliers.

I give you an example. If the boat goes to Panama, in Panama we have a couple of local suppliers. If the boat needs, for example, 50,000 litres, my people call the local supplier. They establish a price with them, and usually we have 30 days of credit line. We send a nomination in which we write the quantity, price agreed, and terms and conditions of payment, and they supply our client. Then, when they get the fuel receipt, the delivery receipt, they send off the invoice, as agreed, and with the fuel received we put our profit on what we paid, and we invoice our client. This happens all over the world.

In this case, it was exactly the same because a tanker in the middle of the sea, in international waters – and this boat was 22/23 miles off the coast, so it was far, far away from the border of the national waters – it was the same situation because, having a Panamanian flag, we sent the boat to be supplied and they sent us the invoice for the fuel supplied – and we invoiced the company that was our client. That was our business, that we do still now everywhere in the world.

MR CARREYÓ: Did you ever communicate to the police officers or to the customs the position of the vessel “*Norstar*”?

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MR ROSSI: To communicate?

MR CARREYÓ: The position.

MR ROSSI: Yes, yes I did. I said before, since there was a very good relationship between us and the fiscal police, because we supplied – and still now we supply – their fleet, local fleet. In order just to be polite, just to be correct with them, I used to advise them the position of the boat; and at the same time, when the boat was arriving and when the boat was leaving; so everything was under a reciprocal correctness.

MR CARREYÓ: But you have not mentioned about the position. Where was the boat located?

MR ROSSI: Usually it was located 22/23 miles off San Remo, which is in more or less the border between France and Italy.

MR CARREYÓ: Mr Rossi, do you know if the Public Prosecutor of Savona – Savona is the town you are from?

MR ROSSI: Yes.

MR CARREYÓ: ... asked for the opinion of the customs officers concerning the bunkering operations of the “*Norstar*” and what was their opinion?

MR ROSSI: Never. He never ask anything to the custom office, which is the main office that is entitled to manage the duty of the fuel – it is called “excise tax”. I know that when they arrested the “*Spiro F*”, speaking with the people in the customs – I told you that most of them, they are my friends – they were also my friends – the chief of the customs told me: “We had the feeling that there was something doing, but we did not know – we were not aware about what was going on.”

I just want to inform you that my office was in Rebagliati Square and in the building near my office there was, on the two first floors, the customs house, and the other two first floors there was the *Guardia di Finanza*, which is the police brigade. So everything was in this area.

MR CARREYÓ: What do you believe were the real reasons for the Public Prosecutor arresting the “*Norstar*”? What were the real reasons?

MR ROSSI: I really do not know the real reason because – I do not know the reason. There is only one thing that I want to pinpoint. As I said before, there are four articles of the customs rules, and also it is difficult to make a mistake in reading these rules because they are very simple. What they have done – I do not know if it is done for ignorance or for bad faith – I cannot say that – is that they confuse national product, national fuel, with foreign fuel. They confuse consumption with supply. This is something very – in my opinion – it is very serious, but they made all the ... I just want to tell you something. When the first judgment ..., of course, we win because the judge was very good to understand things very quickly. Then the Prosecutor

1 made the appeal in the Genoa court. In the Genoa court there was the judge – one
2 of three judges that confirmed the judgment of Savona – so against the Prosecutor’s
3 theories – said: Dr Landolfi and Maggiore Marotta seemingly confused consumption
4 with supply.

5
6 “I am coming from Milan. In Milan, I never in my life – I never dealt with maritime.”
7 I confess to you that when he said that, I was a bit concerned because it was
8 something new for this judge. He said, “but I see a castle, and the base of the castle
9 is a brick that is article 255, which is the article to be considered. Taking off this
10 brick, the castle goes down.” That is why it was done, because they had – this
11 process was not a process of action; it was a process of a customs matter, so it was
12 not necessary to arrest the ships in the middle of the sea or to arrest the ships
13 around; it was only the matter of discussing if we were legal or not legal in doing this
14 kind of business.

15
16 There is the principle that comes from the old Roman law that says: “*Qui jure suo*
17 *utitur neminem laedit*” That means that if I do something with my right, I do not
18 damage anybody. So in this case somebody probably is finding some damage, and
19 this action was done, in my opinion, in a reckless way

20
21 **MR CARREYÓ:** There are a number of pieces of evidence collected during the
22 investigation, which Italy has presented in this case. Those pieces of evidence
23 confirmed the suspicion of a criminal plan masterminded by you with the “*Norstar*”.
24 What do you have to say about this?

25
26 **MR ROSSI:** Yes, I am a mastermind, I am a criminal, I am everything what they are
27 saying here – the Italian lawyers – but it is a pity that four judges and one prosecutor
28 in Italy, they say that it was not like this. The custom officer and the VAT officer
29 never indicted me, never asked me for one penny because everything was legal.
30 I had another thing – that when the Prosecutor of Savona made an appeal in Genoa,
31 the Prosecutor of Genoa was not the same – was another prosecutor at a higher
32 level – that when the appeal was rejected did not make a further appeal in the Corte
33 di Cassazione in Rome because he was sure that there was no possibility to add
34 something different than what has been judged before. So it was so easy, these
35 things.

36
37 I can tell you that I was serene. I was confident in the justice, and the justice gave
38 me the right and so everything was fine. Of course, I felt a little bit concerned in the
39 beginning because I was in this kind of situation, that was not so nice to be in; but
40 I think that if you are correct, if you work well and everything is correct, then justice
41 will prevail – and is what happened in Italy.

42
43 **MR CARREYÓ:** Mr Rossi, were you aware that the Public Prosecutor was citing
44 some articles of the Criminal Code of Italy?

45
46 **MR ROSSI:** Yes, he was using article 40, decree 504. As I said before, he made a
47 big confusion between national fuel and foreign fuel because this article is regarding
48 national law regarding excise tax, for national fuel; but when you have a ship in the
49 middle of international waters, for sure this is not national fuel – it is foreign fuel. It
50 can be foreign because it was a boat outside of Italy, like it was some time with the

1 “Norstar” – the boat in Malta, that time was in Europe, the boat I think once a couple
2 of times in Gibraltar – so it was absolutely foreign fuel. But also, when the boat was
3 in Italy, when it is on board and the ship goes out of the port, automatically becomes
4 foreign. So the only book to use is *this*. No other book can be used – and in this case
5 they used the book that was – it is like, if there is a homicide and you use the civil
6 code rather than the penal code, it cannot work.

7
8 **MR CARREYÓ:** Can you repeat that?

9
10 **MR ROSSI:** If there is a homicide, use the penal code, the penal law, not the civil
11 law. It is a kind of different thing, you know. So when you have foreign fuel, you have
12 to use the custom book, and the custom book is four articles, and it is very easy to
13 understand.

14
15 **MR CARREYÓ:** Did you ever find out whether the arrest of the “Norstar” was
16 according to internal and international law of the sea? Was it in agreement with
17 those laws? Did you find out if the arrest breached it?

18
19 **MR ROSSI:** Yes. They didn’t find any. They arrested the boat. I do not know why
20 they arrested the boat because they thought they have to find the treasure of the
21 pirates, but they did not find anything because everything was as it should be done
22 and everything was correct.

23
24 **MR CARREYÓ:** Did you ever have a communication with the Public Prosecutor
25 about this case?

26
27 **MR ROSSI:** Yes, when they arrested the boat I made – I have here – I made a
28 memory to him explaining everything – if I can show you.

29
30 **MR AIELLO:** Excuse me, Mr President, I would like to know if this document is
31 already registered.

32
33 **MR ROSSI:** No, not registered.

34
35 **MR AIELLO:** Because we do not know this document.

36
37 **MR CARREYÓ:** Can I answer?

38
39 **MR AIELLO:** Anyway, he is making reference to a new document.

40
41 **MR CARREYÓ:** May I answer, Mr President? We do not know because he is in the
42 middle of his sworn declaration. I think we should wait until he is going to show what
43 he is going to show. Also, I thought that we had agreed yesterday, Mr President, that
44 we would not interrupt the declaration of the witnesses; so I would pray Italy to allow
45 the witness to wait to end his declaration in order for you to make the objections – if
46 there are any objections – because, as I understand, I repeat, we agreed not to
47 interrupt the sworn declarations of the witnesses.

48
49 **THE PRESIDENT:** Mr Carreyó, do you know whether this document is a document
50 that has already been introduced before closure of written proceedings?

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2 **MR CARREYÓ:** I do not have the slightest idea, Mr President, because the witness
3 is referring to something probably that he does not recall, and I think he has a right to
4 let us know what this is about.
5
6 **THE PRESIDENT:** I will not allow the introduction of a document you refer to, in light
7 of the situation.
8
9 **MR CARREYÓ:** We are not introducing any document, Mr President.
10
11 **MR ROSSI:** So if I swear, it is enough? I did – I swear that I gave this...
12
13 **THE PRESIDENT:** Mr Rossi, Mr Carreyó, you may continue your statement, but I will
14 not allow the introduction of any document the legal status of which is uncertain at
15 this moment. So, Mr Carreyó, you may continue your examination, without referring
16 to the document.
17
18 **MR CARREYÓ:** Just one question, Mr President: if a witness wants to refer to some
19 document of his own files, can he do that?
20
21 **THE PRESIDENT:** He may make a statement based on his recollection.
22
23 **MR CARREYÓ:** Okay.
24
25 **THE PRESIDENT:** Please proceed.
26
27 **MR CARREYÓ:** Continue with your declaration, referring to the document. Do you
28 want to see the document to see what does it say to refresh your memory?
29
30 **MR ROSSI:** Yes, but, anyway, since I swear that I have the document – so we made
31 a memorial to the Prosecutor, explaining that everything was neat, everything was
32 legal because there was article 255. We explained to him Italian customs law
33 regarding naval provision
34
35 **MR CARREYÓ:** Were other vessels arrested for similar reasons?
36
37 **MR ROSSI:** Yes, they arrested also at that time “*Norstar*” was operating in the
38 Balearics, and in front of San Remo there was another boat called the “*Spiro F*” –
39 Maltese flag and a Maltese owner.
40
41 **MR CARREYÓ:** Do you know the outcome of that case? What was the result of that
42 case – do you know?
43
44 **MR ROSSI:** The case – I had...
45
46 **MR AIELLO:** Excuse me, Mr President. I am so sorry, but now we are speaking
47 about a different case. We do not know anything about the “*Spiro*”.
48

1 **THE PRESIDENT:** Mr Aiello, I already informed you that you should not interject
2 unless it is really necessary. I will allow Mr Carreyó to continue his examination, so
3 please be seated and listen to the answer of the witness.

4
5 **MR CARREYÓ:** Thank you, Mr President.

6
7 Will you please continue?

8
9 **MR ROSSI:** Yes. It was arrested, this boat, "*Spiro F*", that was operating in front of
10 San Remo, more or less in the same place it was the year before "*Norstar*". The
11 owner of course was furious about this because he found that it was something
12 legal, and I got a telephone call from the responsible – the chief of the contentious
13 office of the Farnesina which is the Foreign Office of Italy – and Dr Lianza – who
14 asked me what was going because he has in front of him – he told me he has in front
15 of him the Foreign Minister of Malta, who was furious because of this arrest.

16
17 I explained to him everything by telephone and he kindly asked me to send him a
18 fax – at the time there was no internet – so I sent him a fax with all that I said by
19 telephone, and then I did not hear from him any more news. I have to say that
20 suddenly the shipowner of "*Spiro F*" never called me later. Previously he was calling
21 me every night and then no more. I thought that everything had been solved in a
22 good way between Malta and Italy.

23
24 **MR CARREYÓ:** Did the arrest proceedings offer –

25
26 **THE PRESIDENT:** Mr Carreyó, I advise you to confine your questions to the case
27 before the Tribunal, that is the *M/V "Norstar"* case.

28
29 **MR CARREYÓ:** Thank you, sir. (*To the witness*) Did the arrest proceedings of the
30 "*Norstar*" offer information different to what the Prosecutor already knew before the
31 arrest, such as the type of goods etc?

32
33 **MR ROSSI:** Yes. I did not know anything at all because, as I said before, as the
34 judgment proved, this was a matter of customs law, not a matter of anything else.
35 I have to tell you that we suffered three years of investigation at a cost to my country
36 and the taxpayers – I am an Italian taxpayer – only for recording telephone calls
37 between me and my employees, even privately. The Ministry of Justice paid about
38 €400,000 to the telephone companies to record our conversations. For three years
39 we had our conversations recorded, heavily violating our privacy, and they did not
40 find anything because there was nothing to find. Even with the arrest of the "*Norstar*",
41 they probably thought they would find something on board, but there was nothing to
42 find. I therefore think that they have spent a lot of money to try to demonstrate what it
43 was not possible to demonstrate.

44
45 **MR CARREYÓ:** If the Prosecutor had not arrested the "*Norstar*", would the evidence
46 of the case have been exactly the same as it was?

47
48 **MR ROSSI:** No, because the boat has been very efficient, an excellent boat.

1 **MR CARREYÓ:** You are referring to before and I am asking whether, if there had
2 been no arrest, the evidence of the case would have been exactly the same?
3

4 **MR ROSSI:** Yes, it did not change anything because everything is correct,
5 everything is legal, so there was nothing to find. They did not find anything on board.
6

7 **MR CARREYÓ:** Did your name ever appear in the press concerning this case?
8

9 **MR ROSSI:** Of course it happened. I have here a copy of the front page. I have to
10 say that the press were correct, they gave me a reply, but the problem was that in
11 the press there was a big line stating what the Prosecutor said and a small line about
12 my reply, but in the end I was confident that I was serene. Thank God my reputation
13 in my town, in my area of business, was good. The people and my friends were sure
14 that I was right and that the Prosecutor was wrong. Of course I was in an
15 uncomfortable situation, but in the end justice prevailed, as I always hoped would
16 happen.
17

18 **MR CARREYÓ:** Can you be a little more explicit about how you felt in this situation
19 of being exposed publicly and committed to trial as well?
20

21 **MR ROSSI:** I felt uncomfortable but serene and confident of justice. I am 70 and
22 I have to say that in my life justice always prevailed in the end.
23

24 **MR CARREYÓ:** Did you ever receive any communication from any authority to
25 effectively deliver or return the vessel?
26

27 **MR ROSSI:** No.
28

29 **MR CARREYÓ:** Were you aware of the physical conditions of the “*Norstar*” before its
30 arrest in Spain?
31

32 **MR ROSSI:** Yes. The small tanker – it is between a barge and a tanker, a barge –
33 was in good condition. In our business we supply mega yachts, which cost a fortune.
34 Some yachts cost even more than 50 million, maybe 100 million, and they do not
35 approach. The barge is in better condition, it was in very good condition, and of
36 course after staying five years, or how many years, the situation was not the same,
37 because a boat without maintenance becomes a wreck.
38

39 **MR CARREYÓ:** Did the “*Norstar*” carry out any activity different from bunkering in
40 Italy or anywhere else?
41

42 **MR ROSSI:** Only fuel. It is possible in international waters – you know better than
43 me – that the only trade that is forbidden is slavery. They can sell cigarettes, but we
44 sold only fuel. Our business is fuel, so there is no other activity than fuelling.
45

46 **MR CARREYÓ:** Would you have been informed of any technical problem that could
47 not allow the “*Norstar*” to leave from Spain before being arrested?
48

49 **MR ROSSI:** No.
50

1 **MR CARREYÓ:** You would not have been informed or you would have been
2 informed?
3

4 **MR ROSSI:** The boat was fine. The boat was operating before being arrested.
5

6 **MR CARREYÓ:** I just want to know if you had any communication with the boat.
7

8 **MR ROSSI:** No.
9

10 **MR CARREYÓ:** Have you ever been accused of fraud?
11

12 **MR ROSSI:** Before, never. This was the first time that it came out. It was ridiculous.
13

14 **MR CARREYÓ:** Based on your shipping industry knowledge, particularly in
15 bunkering operations, how high do you estimate the likelihood that the charter would
16 have been kept working until today, and how much would its charter freight cost be?
17

18 **MR ROSSI:** I am a fuel trader, so I do not know much about the management of a
19 ship like that. What I can say is that in my business, from that year to nowadays, the
20 business grew up a lot, because the mega yachts are bigger and bigger and they
21 require more and more fuel. Now I will give you an example. We operate now for
22 seven or eight years in Algeria. In Algeria they have good quality fuel, there is no
23 biodiesel, and costs 0.46-0.50 per litre. In the Balearics it costs 1.3 per litre, so more
24 than double. We supply some boats, some yachts, as they enjoy themselves in the
25 Balearics, and when the yachts are empty we try to send them to Algeria. Usually
26 Ibiza is near the main port of Algeria, but in the main port of Algeria there is utter
27 congestion because it is a big commercial port and the yachts do not like to go in
28 there because they have to wait hours and hours in a commercial port, so we try to
29 send them to Bejaia, which is another port a little further east but more comfortable
30 for the yachts, and we do some business with that. We could do five times the
31 business, having a boat like this because, first of all, many yachts do not want to go
32 to North Africa because they have to pay more insurance and they do not want to
33 lose time by staying in a commercial port. So having a boat like this, in my opinion,
34 getting the fuel in Algeria and going 45 to 60 miles away from Algeria and the
35 Balearics would be a business of over one million in three months, so it would be
36 very worth doing the job. If they did not arrest it, the boat could have done the job
37 that was very worth doing.
38

39 **MR CARREYÓ:** Did you have to invest any time, effort and money during the
40 investigations and proceedings in Italy, and did you need to hire lawyers?
41

42 **MR ROSSI:** Of course. I had to pay lawyers, which cost me I think around \$40,000
43 or something like that in total, because in three years, through recording, telephone
44 calling, writing and everything, they produced two cubic metres of paper. When we
45 had the judgment in Savona the Prosecutor came with two trolleys with at least
46 500 kilos of paper. We did not know what was written on this paper, so we had to
47 read what it said. I had one person in my office – unfortunately, he passed away –
48 our customs broker, our forwarding agent, who spent days and days in the court to
49 check all this fantasy that was narrated by the Prosecutor. Now I want to add
50 something for the Judges. I am sorry to say that I am here and after all the

1 judgments, after everything, I read the same story narrated by the Prosecutor
2 narrated here in this court. I am upset, as a taxpayer, because I think that after three
3 judgments in Italy it is useless to speak to something that is already judged; the case
4 is closed. As a taxpayer, I hope that the new government will start to check how this
5 matter has been handled, because as an Italian I am really sorry to have my country
6 in this court and as a taxpayer I am very sorry to see how much money has been
7 spent on producing things that were not supposed to be done.

8
9 **MR CARREYÓ:** Thank you. Mr President, I have finished. I would like to place the
10 witness at your and Italy's disposition. Thank you, sir.

11
12 **THE PRESIDENT:** Thank you, Mr Carreyó. We have reached 11.35. At this stage
13 the Tribunal will withdraw for a break of 30 minutes. When we resume after the break
14 I will ask the Co-Agent of Italy whether Italy wishes to cross-examine the witness.
15 The meeting is adjourned and we will resume at 12.05.

16
17 *(Break)*

18
19 **THE PRESIDENT:** Pursuant to article 80 of the Rules of the Tribunal, a witness
20 called by one Party may also be examined by the other Party. Therefore, I ask the
21 Co-Agent of Italy whether Italy wishes to cross-examine the witness.

22
23 **MR AIELLO:** Yes.

24
25 **THE PRESIDENT:** So, Mr Aiello, you will conduct the cross-examination?

26
27 **MR AIELLO:** Yes.

28
29 **THE PRESIDENT:** Now I give the floor to Mr Aiello to cross-examine the witness.

30
31 **Cross-examined by MR AIELLO**

32
33 **MR AIELLO:** Good morning, Mr Rossi.

34
35 **MR ROSSI:** Good morning.

36
37 **MR AIELLO:** I just want to make some questions, and we are only interested in
38 facts, not opinions, please. Thank you. Can you please tell the Tribunal in which
39 country is Rossmare International SAS registered?

40
41 **MR ROSSI:** In Italy.

42
43 **MR AIELLO:** Where does it have its main site of business?

44
45 **MR ROSSI:** Can you repeat, please?

46
47 **MR AIELLO:** Where does it have its main site of business?

48
49 **MR ROSSI:** In Italy.

1 **MR AIELLO:** Do you remember precisely for which suspected crimes you were
2 indicted and “*Norstar*” was subject of investigation?
3
4 **MR ROSSI:** I was indicted for smuggling fuel, but it was an indictment.
5
6 **MR AIELLO:** Have you ever been imprisoned, detained or subject of any other
7 compression of your freedom?
8
9 **MR ROSSI:** I have never been in prison in my life, and never had a fine in my life,
10 regarding smuggling. Can I make a joke? My lawyer told me if you had one day of
11 prison you could make a lot of money.
12
13 **MR AIELLO:** Yes, but it is enough for me if you can just answer. Before the
14 execution of the arrest, was the “*Norstar*” activity ever hindered, ever compressed?
15
16 **MR ROSSI:** The activity was always in the high waters, never entering Italy. Yes,
17 once it entered in Italy to be supplied, yes. Probably I did not understand well. Sorry.
18
19 **MR AIELLO:** My question is, before the execution of the arrest...
20
21 **MR ROSSI:** Of the boat?
22
23 **MR AIELLO:** Yes – was the “*Norstar*”’s activity ever hindered in relation with this
24 criminal proceeding?
25
26 **MR ROSSI:** It was doing offshore bunkering in the high seas.
27
28 **MR AIELLO:** So, yes or no?
29
30 **MR ROSSI:** Yes, it was in the high sea doing...
31
32 **MR AIELLO:** Do you remember when the decree of seizure was enforced? The
33 decree of arrest.
34
35 **MR ROSSI:** The “*Norstar*” you mean?
36
37 **MR AIELLO:** Yes.
38
39 **MR ROSSI:** It was in Palma. I never see. I never saw. I did not go to Palma.
40
41 **MR AIELLO:** But you do not remember the date of the decree enforcement?
42
43 **MR ROSSI:** No, I do not remember. No, I do not remember. I can check if you want.
44 I have here the paper. If you want, I can check.
45
46 **MR AIELLO:** Okay, I can tell you that it was enforced on 25 September 1998.
47
48 **MR ROSSI:** It is possible.
49

1 **MR AIELLO:** Can you confirm that at the moment of the arrest the vessel was
2 perfectly efficient?

3
4 **MR ROSSI:** Yes, it was.

5
6 *(Document handed to witness)*
7

8 **MR AIELLO:** Mr President, we are making reference to Annex K to the Counter-
9 Memorial, page 3. Could you please read this document to the Tribunal?

10
11 **MR ROSSI:** Yes. This comes from the maritime port authority and it says:

12
13 Our reference regarding motor tanker Norstar in Palma de Mallorca. Dear
14 Sirs...

15
16 Okay. First of all I can say that it was sent by an agency that is in Palma de Mallorca
17 called Transcoma, and the person who sent this letter was Enrique Oliver. He says:

18
19 Dear Sirs, as you are aware, last Saturday 5th current month, current year,
20 we restrained the motor vessel above specified. We informed the JA,
21 Juzgado de Instancia...

22
23 the judge

24
25 thanks to the support of the patrol of the maritime police.

26
27 However, the said circumstance does not elude the situation which occurred
28 later and is the reason of the said fax.

29
30 We were informed by the captain of the vessel that due to the bad conditions
31 of the chains aboard, and the sea and wind worsening conditions, the anchor
32 of the starboard broke the chain and the one of the portside, now moored, is
33 in very bad state. This circumstance together with the breakdown of one of the
34 main generator as well as the need to stock the boat urge us to request to the
35 port authority and maritime authority the authorisation to get into the port and
36 moor the vessel to the quay.

37
38 Without adding any other detail, and thanking in advance for your cooperation,
39 we take this opportunity to send you the expression of my highest
40 consideration.

41
42 **MR AIELLO:** Thank you, Mr Rossi. After this information, have you made any
43 activity or initiative of maintenance of the vessel?

44
45 **MR ROSSI:** But you are asking me something about the vessel. This is not my
46 vessel. I am a trader, not managing a vessel. This is more correct to speak with the
47 owner of the vessel.

48
49 **MR AIELLO:** Thank you very much. We have finished, Mr President. Thank you very
50 much.
51

1 **THE PRESIDENT:** Thank you, Mr Aiello. A witness who was cross-examined by the
2 other Party may be re-examined by the Party who had called the witness. Therefore,
3 I ask the Agent of Panama whether Panama wishes to re-examine the witness.
4

5 **MR CARREYÓ:** Yes, please.
6

7 **Re-examined by MR CARREYÓ**
8

9 **MR CARREYÓ:** Mr Rossi, just one question.
10

11 **THE PRESIDENT:** Before you start, Mr Carreyó, I wish to emphasize that no new
12 issues shall be raised in your re-examination.
13

14 **MR CARREYÓ:** Thank you. Mr Rossi, you were just asked about indictment. Who
15 do you think indicts you? The Prosecutor or the judges?
16

17 **MR ROSSI:** Not the judge, no; the Prosecutor.
18

19 **MR CARREYÓ:** Only the Prosecutor?
20

21 **MR ROSSI:** Always the Prosecutor, yes.
22

23 **MR CARREYÓ:** So the judges did not indict you?
24

25 **MR ROSSI:** The judge made a judgment at the end because the... From the arrest
26 to the judgment I think there passed three years, something like that, so when the
27 judge – there was the Prosecutor and the judge finished the case, closed the case,
28 with a judgment.
29

30 **MR CARREYÓ:** That is all.
31

32 **THE PRESIDENT:** Thank you, Mr Carreyó. According to article 80 of the Rules,
33 questions may be put to the witness by the President of the Tribunal and Judges.
34 I understand that two Judges have indicated their intention to pose questions, so
35 I invite first Judge Kulyk to pose a question to the witness.
36

37 **JUDGE KULYK:** Mr Rossi, if you could recall, how many fuel sales contracts had
38 been executed by *M/V "Norstar"* in the summer of 1998? In other words, how many
39 yachts were supplied at that period? If you also could recall, when was the last date
40 of the last yacht which was supplied by the "*Norstar*", again in the summer of 1998?
41

42 **MR ROSSI:** In 1998 the boat was in the Balearics so we did not make much
43 business with the boat. I think we supplied three or four – two or three boats,
44 because our area, as I said before, it was more around the Ligurian Sea, between
45 France and Italy, and in that time there was another boat doing this operation. It was
46 the "*Spiro F*", the one that was arrested as well, the Maltese flag.
47

48 With the "*Norstar*", she was placed off Palma de Mallorca, and I think we had done
49 two or three boats, not many.
50

1 **JUDGE KULYK:** If you remember, when was the last yacht supplied?
2
3 **MR ROSS:** I am sorry. I do not remember. I am sorry.
4
5 **JUDGE KULYK:** Thank you.
6
7 **THE PRESIDENT:** Thank you. I invite Judge Treves to pose a question to the
8 witness.
9
10 **JUDGE TREVES:** Thank you, Mr President. Good morning, Mr Rossi. When
11 Mr Carreyó asked you what was your relationship with Rossmare, you did not
12 answer; you spoke of other things. I would be grateful if you could, as is usual in
13 these proceedings for witnesses, tell us a little more about your profession, your
14 education and so on. We have heard from you a lot of views on Italian law, so
15 I wonder whether you are a qualified Italian lawyer, if you could please explain
16 whether you are or are not. Thank you.
17
18 **MR ROSSI:** Okay. Well, my relationship was as a trader, and the position of
19 charterer, because the boat was chartered before by the company, the first year by
20 the company BBL from Malta and then another company from Malta that was called
21 Nor Maritime. They were physical suppliers; they loaded the ship and placed the ship
22 in the high seas, international waters.
23
24 My position was, our position was to be trader, to find a client to send to the boat, to
25 send to the ---
26
27 **JUDGE TREVES:** When you say “our position”, you mean you personally or the
28 company, Rossmare?
29
30 **MR ROSSI:** Rossmare International was a company at that time – I just want to point
31 out that at that time it was a completely liability company so I was responsible with
32 my...
33
34 **JUDGE TREVES:** It was under Italian law.
35
36 **MR ROSSI:** Financially I was responsible personally for the company. It was – SAS
37 is a company with the full responsibility of the manager of the company. Now we
38 have – it is the same company but we changed the status of the company and now
39 we are partial liable.
40
41 **JUDGE TREVES:** SRL.
42
43 **MR ROSSI:** Yes. So at that time I was completely responsible personally for the
44 company. Anyway, of course I had some employees and they were working, trading,
45 and I said myself because I was the owner of the company at the time, but they were
46 my employees that were doing this business, trading.
47
48 You want to know my profession?
49
50 **JUDGE TREVES:** Yes.

1
2 **MR ROSSI:** I was an officer of passenger ships for ten years, and cruise ships, and
3 then in 1978 I started to do my business in my town, and this is the business I am
4 still doing now.

5
6 **JUDGE TREVES:** So you are not a lawyer?
7

8 **MR ROSSI:** No, I am not a lawyer but I have been in university in my life. I could tell
9 you that I always worked and studied, but starting this kind of business, I had to learn
10 the customs law very well. I can tell you that I know also regarding our provision the
11 French customs law, because it happened that in this situation of this offshore
12 bunkering, France was also not happy about this kind of business, and they fined
13 some client when they were coming from the tanker. They were in the port, they
14 fined them, and this client came to me and told me, "Listen, I have the fine from the
15 French customs." I checked the fine and I found that they were using the law of the
16 passenger when they arrive at the airport and they have to declare only – they can
17 take only two bottles of spirits and a carton of cigarettes. So I called, I met, I had an
18 appointment with the chief of the French customs, south France, Madame Fahm and
19 Monsieur Pasteur that was the chief of the customs brigade of south France, and
20 I had a meeting in Marseille with them, and when they went to the French law,
21 Madame Fahm was joking with me. She said, "Listen, you know the French law
22 better than me."
23

24 **JUDGE TREVES:** Well, I think you have another profession open to you.
25

26 **MR ROSSI:** I do not know the law of the French, only this provision. In fact, I have
27 the *Code des douanes* and so for doing this business you must know what you are
28 doing, and for this reason I always study it.
29

30 **JUDGE TREVES:** Yes. Of course, you gave us much broader views of Italian law
31 which are far beyond the customs law. Thank you very much. That is all from me.
32

33 **MR ROSSI:** Can I say something?
34

35 **THE PRESIDENT:** Mr Rossi, thank you for your testimony. Your examination is now
36 finished. You may withdraw.
37

38 *(The witness withdrew)*
39

40 **THE PRESIDENT:** Mr Carreyó, I understand that Panama wishes to examine the
41 next witness now. Could you please confirm that?
42

43 **MR CARREYÓ:** Yes, sir.
44

45 **THE PRESIDENT:** Thank you, Mr Carreyó. The Tribunal will then proceed to hear
46 the next witness, Mr Arve Morch. He may now be brought into the courtroom.
47

48 I call upon the Registrar to administer the solemn declaration to be made by the
49 witness.
50

1 **THE REGISTRAR:** Thank you, Mr President.

2

3 Good afternoon, Mr Morch. Mr Morch, under Article 79 of the Rules of the Tribunal, a
4 witness is required to make a solemn declaration before making any statement
5 before the Tribunal. You have been provided with the text of the declaration. May
6 I invite you to make the solemn declaration?

7

8

9

(The witness made the solemn declaration)

10

11 **THE PRESIDENT:** Thank you, Mr Registrar. I understand that this examination will
12 be conducted by Ms Cohen. I give the floor to Ms Cohen to start the examination of
13 the witness.

14

15 **MS COHEN:** Thank you, Mr President. Distinguished President and Members of the
16 Tribunal, Monsieur le Greffier, it is an absolute honour for me to appear before you
17 today for the first time on behalf of the Republic of Panama.

18

19 With your permission Mr President, I would like to examine Mr Morch, Panama's
20 second witness. Thank you, Mr President.

21

22 **Examined by MS COHEN**

23

24 **MS COHEN:** Mr Arve Morch, could you please introduce yourself to the Tribunal?

25

26 **MR MORCH:** My name is Arve Morch. I have during the past years been working in
27 various shipping companies with ships worldwide in several positions as organization
28 manager, general manager, executive director and shipbroker, and been developing
29 various shipping projects including bunkering operations, ferry- and liner-services
30 around the world.

31

32 I have also from the mid 1970s been working for the transport department with oil
33 tankers in the oil companies Hydro, Texaco, Statoil (Norol) and Shell Oil.

34

35 Formal education from Maritime High School the Norwegian Institute of Business
36 Administration and the Norwegian Shipping Academy.

37

38 In several companies I have experience as president of the board of directors, and
39 other relevant positions as executive director with responsibility for the management
40 and daily operation of most all kinds of ships.

41

42 Today my work consists mostly of property development, and development of
43 adventure centres for visitors on privately owned farms.

44

45 **MS COHEN:** Thank you, Mr Morch. Could you please explain to the Tribunal your
46 participation in the facts of this case?

47

48 **MR MORCH:** My participation in the facts of this case in the Tribunal, between
49 Panama and Italy, is related to my position as president of the board of directors in

1 the company Inter Marine & Co. AS, which also in 1998 was the owner of motor
2 tanker “*Norstar*”.

3
4 Due to my position, I had all contacts with the lawyers and authorities in any country
5 involved in this process.

6
7 **MS COHEN:** Could you please state to the Tribunal your role in relation to the
8 *M/V “Norstar”*, and whether you personally owned the vessel?

9
10 **MR MORCH:** In 1998, I was also the general manager for the shipbroker
11 KS Borgheim Shipping, which was a member of the Norwegian Shipbroker
12 Association, member of BIMCO, the world’s largest international shipping
13 organisation with around 2000 members in more than 120 countries, whose
14 members include ship-owners, managers, operators, agents and brokers.

15
16 Due to many years of experience also in the bunkering service, we were in 1998
17 very confident with the legal operation of the *M/V “Norstar”* in international waters (on
18 the high seas) 21-23 nautical miles off the coast of Italy and France.

19
20 We were familiar with the 12 nautical miles Italian national territory, the EU Istanbul
21 Convention, and other international conventions.

22
23 Based upon knowledge during the operation, and later after reading the Italian
24 judgments in Tribunale di Savona and Genoa, there was no other option that this
25 case had to be taken to the Tribunal for justice.

26
27 **MS COHEN:** Given your knowledge of the facts that gave rise to this case, I will ask
28 you some questions about the “*Norstar*” and Italy’s conduct. First, what was the state
29 of the vessel at the time of arrest by Italian authorities?

30
31 **MR MORCH:** During the operation in the offshore market with supply of gasoil to the
32 mega yachts, maintenance and presentation of a ship in good condition was always
33 important. The vessel was always clean, newly painted and very well maintained.
34 The last memo from the Classification Society was related to the anchor chain, which
35 the owners bought from China. This was changed when Captain Tore Husefest was
36 on board in 1997. There were no outstanding items from DnV when the ship arrived
37 at Palma de Mallorca with gasoil from Malta in April 1998. Just for information, also
38 the cargo tanks were completely cleaned, and, if necessary, painted prior to loading.
39 That was also done before “*Norstar*” loaded the last products of gasoil in Algeria in
40 July 1998.

41
42 Only clean products could be delivered to the mega yachts. Samples were taken
43 during each delivery, and this was a part of the routine.

44
45 **MS COHEN:** Would you say that the *M/V “Norstar”* was seaworthy in the period
46 preceding the arrest?

47
48 **MR MORCH:** The ship had, prior to the Italian arrest, all valid certificates such as
49 Panamanian national certificate, trading certificate, load line certificate, and had
50 passed the annual survey in 1997. Captain Tore Husefest was in 1997 attending the

1 inspection, and had stored all or any relevant – all certificates and documents on the
2 bridge on board the ship. These certificates should be available for the port
3 authorities and also for port state control.
4

5 The ship was during summer 1998 bunkering mega yachts in a designated position
6 given by Spanish authorities, 24 nautical miles between Mallorca and Ibiza. Between
7 any delivery the vessel was anchored in Palma Bay.
8

9 There was in 1998 no recommendation or memo from the classification society Det
10 Norske Veritas.

11
12 **MS COHEN:** I will now proceed to show you some photos of the *M/V “Norstar”*. First,
13 I will show you some photos filed in Panama’s Reply. *(Pause)*
14

15 I will now show you the photos of *“Norstar”* recently filed by Italy. *(Pause)*

16 The third set of photos contains photos retrieved from the Internet, similar to the
17 photos filed by Italy.
18

19 Looking at these three photos, Mr Morch, could you please make some comments
20 regarding the state of the vessel *“Norstar”*?
21

22 **MR MORCH:** The first set of pictures which Panama filed was from the vessel prior
23 to the arrest in 1998. They show the clean and good condition of the vessel. The
24 second part of pictures is the ones Italy filed. It is important to note that the pictures
25 of the vessel are taken many years after the arrest, dating from 2010 or 2012, that is
26 12 to 14 years after the arrest, as can be seen in the information contained in the
27 third set of photos. The vessel was actually in good condition if we consider that it
28 had been detained since 1998.
29

30 **MS COHEN:** There is a statement for estimation of value of the *M/V “Norstar”*, dated
31 April 4, 2001, issued by CM Olsen A/S, in which the value of the vessel was stated at
32 \$625,000. CM Olsen writes, and I quote: “We have not inspected the vessel and/or
33 its class records.” The statement elsewhere reads: “Based on all information on the
34 vessel available...”
35

36 Can you say what information was available to CM Olsen to assess the value of
37 *M/V “Norstar”*?
38

39 **MR MORCH:** C.M. Olsen A/S knew very well the *M/V “Norstar”* as they had fixed the
40 tanker which was under a time charter for the major oil company Brega Petroleum
41 Ltd. In addition, C.M. Olsen A/S knew the *M/V “Norstar”* before entering into the
42 charter contract of 10 May 1998 because it had been inspected prior to the signature
43 of the contract.
44

45 CM Olsen also had photos of the *M/V “Norstar”* available. Those photos of the
46 *M/V “Norstar”* had been made before the arrest.
47

48 So CM Olsen knew the *M/V “Norstar”* well, and in my opinion they were able to judge
49 its value very well at the time of the arrest.

1
2 It is also important to explain that usually shipbrokers don't inspect vessels prior to
3 valuation. During a process for sale, existing employment for a ship has also a
4 certain value. With reference to the *M/V "Norstar"*, this ship had, during the Italian
5 detention, a clean record from DnV.

6
7 **MS COHEN:** What was the nature of the activities performed by the *M/V "Norstar"*,
8 and are these common activities for a vessel like the "*Norstar*"?
9

10 **MR MORCH:** A common description of bunkering activity is normal when one ship,
11 after loading fuel, supplies another ship with the required fuel for main and/or
12 auxiliary engines. The bunkering can also take place from an installation when a ship
13 calls the port. It is common that even when a ship calls the port, the bunkering
14 activity will be carried out by another bunkering tanker and/or barge. The
15 employment for *M/V "Norstar"* in international waters off Italy and France was a
16 common offshore operation, where the mega yacht received the bunkers through
17 hoses in a ship-to-ship transfer.

18
19 This service had been carried out from 1993 in this area on the high seas, and from
20 1994 onwards by the vessel, here named "*Norstar*".
21

22 The service was fully approved by the customs office in Savona, and this office had
23 every year been informed by Rossmare International SAS, prior to the arrival of the
24 ship in the designated position.
25

26 During a previous time charter for Brega Petroleum Co. Ltd. (National Oil Company)
27 in Libya, the ship had for nearly three years been employed in port bunkering service
28 where bunkers had been carried from port installation to various ships, such as
29 ferries, cargo ships and tankers in the port.
30

31 Captain Tore Husefest knows all about this service.
32

33 **MS COHEN:** Thank you, Mr Morch. In your experience, how many more years would
34 you say the *M/V "Norstar"* could have continued performing bunkering activities if
35 she had not been arrested?
36

37 **MR MORCH:** As the bunkering activity in the Mediterranean was a profitable
38 business, it is important to understand that there had been no reason to leave this
39 market. The advantage for *M/V "Norstar"* was the extreme manoeuvring ability. The
40 ship was fitted by two schottle-propellers turnable 360 degrees under the ship. This
41 is normal for the supply ships in North Sea in 2018. As *M/V "Norstar"* was a very well
42 maintained ship, there is no limit for how long a ship can continue in bunkering
43 activity or any other kind of employment. The only question is how a vessel is
44 maintained.
45

46 Even today in the cruise market, we find ships built during the period from
47 1950-1966. In Scandinavia we still have ships built in 1950 and 1960 in operation,
48 carrying liquid cargo. The *M/V "Norstar"* was built in 1966.
49

1 We recently have been informed by the company Scan Bio Marine Group AS that
2 *M/V "Norstar"* based on its age and specification, in 2018, well maintained, would
3 have been offered a time charter rate of approx. US\$ 3,750.- in coastal trade
4 transporting liquid bio-products. They today operate six tankers from 350-3,500
5 tonnes in this market, all of them built from 1967 onwards.

6
7 **MS COHEN:** The written charter party states:

8
9 Owners agree to let and charterers agree to hire the vessel for a period of 5
10 (five) years time charter with charterers' option for further 1 (one) option 1
11 (one) year.

12
13 What was discussed verbally?

14
15 **MR MORCH:** The written contract may be misleading in that respect. In fact, the
16 contracting parties agreed that there should be two renewal options, each of one
17 year. This was specifically discussed when the charter contract was concluded
18 between myself and Mr Petter E. Vadis for Inter Marine & Co and on the other hand
19 for the charterer's Managing Director Mr Frithjof Valestrand. We all agreed that there
20 should be these two renewal options, each of one year.

21
22 **MS COHEN:** Do you assume that the charterer, Nor Maritime Bunker Co Ltd, would
23 have used the two extension options and would have extended the contract until
24 June 2005, if Italy had not prevented "*Norstar*" from bunkering activities and arrested
25 it?

26
27 **MR MORCH:** The offshore bunkering of mega yachts was a very profitable business.
28 I assume that the charterer would have used the two renewal options and extended
29 the contract until June 2005 if Italy had not arrested *M/V "Norstar"*.

30
31 We still today think that this business could have been even better after 2005 if the
32 Italian prosecutor in Savona had not prevented *M/V "Norstar"* from bunkering
33 activities and arrested the vessel. My opinion is still that the intention behind this
34 action was to "destroy this business" and elimination of competition. There must be
35 an underlying reason why the prosecutor "forgot" to inform the custom authorities
36 where the bunkering activity had been approved.

37
38 **MS COHEN:** Did you receive any prior notice from Italy concerning its understanding
39 that the activities carried out by the *M/V "Norstar"* were allegedly contrary to Italian
40 laws?

41
42 **MR MORCH:** It would be too naïve to say that after many years of experience and
43 knowledge we do not know how the system works in Italy today. Our understanding
44 is that this action was not a coincidence; it was produced. The Italian public
45 prosecutor had a reason to stop the legal bunkering business and to try to eliminate
46 a lawful competition. He knew, or at least should have known, the international
47 conventions, the Italian law, and should have been capable of reading them. We also
48 hereby confirm that this question was raised before the pleadings in Savona and
49 Genoa, but the lawyers could not bring this question to the court as they were afraid
50 of the consequence.

1
2 If, after all, the action had been made in good faith, common sense had been that
3 various questions had been raised by competent authorities to the companies and
4 persons involved in the bunkering activity. I presume also that this should have been
5 included in this case by representatives from the flag State Panama. This was never
6 the issue, and until this day we have never understood why the customs office in
7 Savona was not informed about the ongoing investigation. They had from the first
8 day approved the offshore bunkering activity, and when the chief of the customs
9 office as a witness in the Tribunale di Savona explained to the judge that the
10 business carried out offshore outside the Italian territory by the "*Norstar*" was legal,
11 the case was closed. Even though the public prosecutor understood the correct
12 content of the judgment, he again made an appeal on the last day to the Court of
13 Genoa. We presume that this was only a game to extend the process and the final
14 judgment.

15
16 After the day on which we received confirmation of the judgment, the prosecutor
17 disappeared. The prosecutor never made a new appeal to Rome.

18
19 **MS COHEN:** Could you please describe how the arrest took place and whether you
20 were informed of the reasons for the arrest?

21
22 **MR MORCH:** We were first informed by the customers and later also by Mr Silvio
23 Rossi about the arrest of the Maltese motor tanker "*Spiro F*" in international waters
24 off the coast of Italy outside the Italian territory some weeks before the arrest of
25 *M/V "Norstar"*. Later, we understood that the Decree of Seizure for both ships had
26 the same content. The rumours in the market very clearly gave an impression that
27 also the *M/V "Norstar"* could meet the same fate as the *M/V "Spiro F"*.

28
29 We were informed by the captain of the *M/V "Norstar"* about the arrest in a telex, and
30 later also received the Decree of Seizure dated Savona 11/8/98, signed by
31 Prosecutor Alberto Landolfi.

32
33 As all involved in this business were very familiar with the Italian law, the
34 international conventions and the rules of the bunkering service, everybody was very
35 surprised that in this situation it was possible to arrest any ship flying a foreign flag
36 for activity based upon legal business outside Italian territory and jurisdiction in
37 international waters (on the high seas).

38
39 As it was obvious that the bunkering service outside the territory was legal, we all
40 had a reason to believe that this action, after five years of operation, and also after
41 public marketing, which also included articles in the public, local newspaper in
42 Savona, was only a part of an unknown game. We all knew very well that the most
43 important competitor was the marina in San Remo.

44
45 **MS COHEN:** Did you, and respectively Inter Marine Company A/S, suffer moral or
46 material damages as a result of Italy's conduct?

47
48 **MR MORCH:** The company Inter Marine Company had in 1998 only the ship
49 *M/V "Norstar"*. It was obvious that the company was out of business as a result of the

1 Italian detention of the vessel. The company was at that time without income from
2 the time charter and still had to fulfil any responsibility and economical obligations.

3
4 The loss of the ship, loss of revenue from the charter, continuation of payment
5 related to the detention, and also the moral damage due to the Italian detention, was
6 very difficult to handle for the company and the persons involved. As the bank was
7 not in a position to give any further credit or guarantee, the only way to survive was
8 the economic support from the shareholders and board of directors.

9
10 **MS COHEN:** What were the legal fees that Inter Marine Company A/S had to pay for
11 the behaviour of Italy and the arrest?

12
13 **MR MORCH:** In order to obtain the release of the *M/V "Norstar"*, Inter Marine
14 Company engaged a number of legal services, the legal firm Abogados Bufete Feliu
15 in Palma de Mallorca.

16
17 In 2002 Inter Marine Company A/S, together with Panama, engaged the lawyer
18 Nelson Carreyó to obtain the return of the *M/V "Norstar"* to gain compensation.
19 Because that was not successful, in preparation for bringing the case before the
20 Tribunal, the law firm Remé Rechtsanwälte were additionally engaged in 2003.

21
22 Later, for the procedure before the Tribunal, other lawyers have been engaged.

23
24 Furthermore, in the proceedings before the Tribunal we already had translation and
25 expert fees of \$4,000.

26
27 I can confirm that the amounts submitted in the written proceedings are correct.

28
29 **MS COHEN:** What were the legal fees that you, Mr Morch, had to pay personally?

30
31 **MR MORCH:** I had assigned the lawyer Aurelio Palmieri in Savona to represent me
32 at the Court of Savona and release the *M/V "Norstar"* from the arrest. I paid at least
33 \$4,000 to lawyer Aurelio Palmieri.

34
35 During the past years from 1998 until today, due to my position in the company, I
36 personally have paid between \$300,000 and \$400,000 to keep the company alive
37 and to cover any relevant expenses on behalf of the company.

38
39 **MS COHEN:** Do you know if the defendants before the Court of Savona, and later
40 Genoa, suffered mental stress because of the procedure?

41
42 **MR MORCH:** Yes. The process dragged on for a long time and all the defendants
43 could not be sure that they would be acquitted. This has meant mental stress for
44 everyone. Affected were Silvio Rossi, Renzo Biggio, Emil Petter Vadis, Tore
45 Husefest and myself.

46
47 **MS COHEN:** Did anybody suffer professional disadvantages?

48
49 **MR MORCH:** Yes. The captains Odd Falck and Tor Tollefsen, employed at the time
50 of the arrest of the *"Norstar"*, lost their jobs due to the arrest of the *"Norstar"*. After

1 the Italian detention of the vessel, I think they both stayed at home without
2 employment until late 1999 – nearly one year. Also, Captain Tore Husefest was in the
3 same position.

4
5 **MS COHEN:** Can you tell the Tribunal, please, what monthly or yearly expenses
6 Inter Marine Company A/S had in connection with the *M/V “Norstar”* before it was
7 arrested?

8
9 **MR MORCH:** I can confirm that the amounts already stated in the written pleadings
10 are correct.

11
12 **MS COHEN:** Were there any costs that went on after the arrest, even though the
13 Inter Marine Company A/S had no revenue due to the arrest?

14
15 **MR MORCH:** Yes, those were the wages, which still had to be paid for some time. In
16 addition, the fees and taxes for the *M/V “Norstar”* have not been paid to the Panama
17 Maritime Authority and are therefore still open.

18
19 In addition, I expect that the Palma de Mallorca Port Authority still charges for the
20 period from August 1998 until the auction in 2015, because in this period the
21 *M/V “Norstar”* lay in the port of Palma. Here, no fees have yet been requested and
22 have not been paid.

23
24 **MS COHEN:** Do you know much gasoil the *M/V “Norstar”* had on board at the time of
25 the arrest?

26
27 **MR MORCH:** Yes. It was 177,566 metric tonnes. This is what Mr Petter Vadis, the
28 managing director of Inter Marine Company A/S, confirmed to me by email on
29 17 May 2001. These were the remaining products loaded by Captain Tor Tollefsen in
30 Alger in July 1998.

31
32 **MS COHEN:** What was the value of the gasoil on board at the time of the arrest?

33
34 **MR MOCH:** At that time, \$612 per metric tonne – the market value.

35
36 **MS COHEN:** Did the owners or the charterers get back the gasoil or did you or the
37 charterer have an opportunity to get it out of the *“Norstar”* during the arrest?

38
39 **MR MORCH:** No. We now understand that this gasoil was discharged under the
40 control of the Port Authority in Palma de Mallorca in 2015, still under Italian
41 jurisdiction.

42
43 I presume that this gasoil has later been contaminated or sold.

44
45 During the arrest it was impossible to discharge the gasoil as it also was in Italian
46 jurisdiction.

47
48 **MS COHEN:** To your knowledge, what happened to the vessel after the arrest?

1 **MR MORCH:** According to the charter party, charterers had the right to cancel the
2 remaining time of the charter. They were not even after the Italian detention in a
3 position to pay for the vessel, which from the date of the Italian detention was without
4 employment.

5
6 We all knew that even if the ship had been released, also if the owners had been
7 capable of raising the requested bond for continuation of the existing trade, she
8 would have been arrested again by Italy.

9
10 I also have to mention that the same trade outside Spanish territory, on the high
11 seas and covered by the same European Union Istanbul Convention, the bunkering
12 service was approved by Spanish authorities.

13
14 One way or another, the owners had to release the officers and crew from their
15 contracts. They were given a notice of termination and later, after the arrest, sent
16 home. Only the Spanish chief engineer living in Palma was available on short notice.

17
18 During the Italian detention the vessel was anchored in Palma Bay. The owners also
19 made several attempts to bring the vessel alongside, but any request was refused by
20 the Palma Port Authority, and the explanation was that the vessel had dangerous
21 cargo on board. The owners' reply to this information was that no ship with any
22 engine would call the Port of Palma de Mallorca without gasoil on board.

23
24 The owners' last attempt to berth the vessel was through the local agent Transcoma
25 and to convince the port captain about any pollution problem that this situation could
26 create. The owners sent a message to the Port Authority and stated that if the
27 anchor chain should break and the ship drifted, it could be a disaster for the Port of
28 Palma, the beaches and the tourist industry.

29
30 The new anchor chain, purchased in China the year before and changed under the
31 supervision of Captain Tore Husefest, was used during the stay at the anchorage.
32 This was brand new and was in very good condition. When the captain and the crew
33 had left the ship, the owners had the idea that the Port Authority would call the chief
34 engineer in Palma to start the auxiliary engine and generator and use the anchor
35 winch to bring the vessel alongside. We were all surprised when they sent a small
36 tug, cut the new anchor chain and towed the vessel alongside without giving any
37 notice. The vessel remained alongside this berth under Italian custody until 2015,
38 and we now understand that it is sold on public auction also without notice to the flag
39 State or the owners.

40
41 **MS COHEN:** Could you please describe your efforts to mitigate the damages and
42 find a resolution to this dispute?

43
44 **MR MORCH:** First of all, the communication through Spanish, Italian and German
45 lawyers, and then also the owners' contact through the Italian Embassy in Oslo, the
46 Panamanian Consulate in Venice and the lawyers in Panama.

47
48 On behalf of the company, we first established contact through Spanish lawyers,
49 Italian lawyers, the Italian Consulate in Oslo, the Panamanian Consulate in Venice,

1 and later also through Panamanian lawyers and lawyers in Germany with experience
2 from the Tribunal.

3
4 It was never possible to resolve the dispute with Italy as they never after confirmation
5 of the judgment in Savona and Genoa made any attempt to establish any kind of
6 contact or answer any request or official communication.

7
8 Any further effort to mitigate the ongoing damage was completely dependent on the
9 Italian reaction to any attempts to communicate. As Italy never communicated for
10 years, it was impossible to do anything more in this situation.

11
12 Also, finally, through Dr Nelson Carreyó, who was appointed as agent on behalf of
13 the Panamanian Government. He made several attempts to obtain communication
14 with Italy, without success.

15
16 No attempt to communicate in this case and resolve the conflict could be a success
17 as long as Italy never answered any letters, private or public, or any form of
18 requests.

19
20 I was personally very surprised when the Italian ambassador in Panama City one
21 day in 2016 showed up in the Foreign Department and asked if it was possible to
22 start negotiations. On the next day, when the Panamanian agent called the
23 embassy, he was gone and later probably disappeared.

24
25 I presume that it is correct to say that the Italian delegation knows more about this
26 strange action than me.

27
28 **MS COHEN:** Were you given any opportunity to retrieve or access the *M/V "Norstar"*
29 after its arrest by Italy? More specifically, why was the vessel not retrieved after the
30 Italian court issued the release order in 2003?

31
32 **MR MORCH:** The owners were working hard to retrieve the vessel after the
33 detention in September 1998. I believe that it was for Italy to deliver the vessel and
34 allow us to confirm its condition, as well as the existence of the effects and ship's
35 papers that were there at the moment of the arrest. In respect of this strange action
36 and Italian detention of the vessel, we all knew that the problem was created based
37 upon false accusations.

38
39 All who in this situation were capable of reading were familiar with the contents of
40 Italian law and the international conventions.

41
42 After several attempts to have the vessel released, we received from the court a
43 letter dated 18 January 1999 in which Italy offered to release the *M/V "Norstar"*
44 against a bond of 250,000,000 lira.

45
46 The owners had no option. They could not pay the bond. In this situation all involved
47 had to wait until the public prosecutor had lost his case that he had to start in the
48 Tribunale di Savona. This was exactly what happened.

1 **MS COHEN:** Did Inter Marine Company A/S have the opportunity to provide the
2 security requested amounting to 250,000,00 lira at this time?
3

4 **MR MORCH:** No. The *M/V "Norstar"* could not continue its commercial activity after
5 the arrest and thus was not in a position to secure its release. Inter Marine Company
6 A/S had no other ships to compensate for the loss of income; they had only one ship
7 – the *M/V "Norstar"*.
8

9 Inter Marine Company A/S also did not have any option to provide security through
10 its bank. When the "*Spiro F*" was arrested, Inter Marine Company A/S also feared
11 that its vessel could be arrested and asked its bank if it was possible to obtain a
12 guarantee in case of arrest. The bank announced by fax dated 16 September 1998
13 that this was not possible. Therefore, the owner had neither the opportunity to pay
14 the bond or to provide a bank guarantee.
15

16 **MS COHEN:** Thank you very much, Mr Morch. I have no further questions, Mr
17 President.
18

19 **THE PRESIDENT:** Thank you. We have reached 1.05 p.m., which brings us to the
20 end of this morning's sitting. The examination of the witness will be continued this
21 afternoon when the hearing is resumed at 3 p.m. When we resume the hearing this
22 afternoon I will ask the Co-Agent of Italy whether Italy wishes to cross-examine the
23 witness.
24

25 The sitting is now closed.
26
27

(Lunch break)