

# INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2018

Public sitting

held on Tuesday, 11 September 2018, at 3 p.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)

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**Verbatim Record**

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<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
		Markiyan 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

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*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, London, United Kingdom,  
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:** Good afternoon everyone. Before the lunch break  
2 Mr von der Wense was speaking. I therefore give the floor again to  
3 Mr von der Wense to continue his statement.

4  
5 **MR VON DER WENSE:** I would now like to address the question of continued  
6 payment of wages and payment due for fees and taxes to the Panama Maritime  
7 Authority. In paragraph 204 of its Rejoinder, Italy referenced the judgment in the *M/V*  
8 *“Saiga”* Case, where the Tribunal did not recognize the expenses incurred by Saint  
9 Vincent and the Grenadines in respect of its officials as damages, as these  
10 expenses “must be borne by it as having been incurred in the normal functions of a  
11 flag State”.

12  
13 However, this only shows that expenses which the injured party also would have  
14 incurred in the absence of the loss cannot be claimed as damages. In the present  
15 case, however, we are talking about something completely different, namely the  
16 correction within the damage calculation. As we heard, the calculation of the loss of  
17 profit was based on the lost revenue and the expenses not incurred were deducted  
18 from this. Notably, the wages of the crew were deducted as of the time of the arrest.

19  
20 However, the owner did have to continue paying these wages for a brief period  
21 following the arrest, as the employment contracts could not be terminated  
22 immediately. This fact along with the exact amounts were confirmed by the witness  
23 Mr Arve Morch. So these wages cannot be deducted from the lost revenue as they  
24 were in fact not eliminated; so they must therefore be added as an adjustment item.

25  
26 Based on all this, a comparison with the *“Saiga”* Case does not hold in this case.

27  
28 I will now address “costs and legal fees”.

29  
30 Panama is aware the Tribunal can only deviate from the convention of article 34 of  
31 its Statute and order a party to compensate the other party for its expenses under  
32 special circumstances.

33  
34 However, Panama believes these special circumstances apply in the present case.  
35 At this point I will reference the statements of Mr Nelson Carreyó, who stated in  
36 detail that Italy breached its duty to act in good faith in several blatant ways, further  
37 increasing the loss for Panama, particularly also with respect to costs and legal fees,  
38 notably by stalling any attempt by Panama to resolve the matter in a reasonable  
39 amount of time and achieve reparation or limit damages. As a result, Panama and  
40 the owner and other parties involved had to hold prolonged litigation requiring  
41 extensive legal assistance. This probably could have been avoided had Italy at least  
42 responded to Panama’s attempts to resolve the matter and also concluded the  
43 criminal proceedings within a reasonable amount of time. Having said this, Panama  
44 is petitioning the court to order Italy to also reimburse the costs and legal fees in this  
45 case.

46  
47 Apart from this, I would like to point out that article 34 of the ITLOS Statute, to be  
48 found in section 3 which, under its heading, refers to “Procedure”, only applies to the  
49 costs of proceedings before the Tribunal. However, in this case Panama is also  
50 asserting costs and legal fees outside of these proceedings. This particularly

1 pertains to the expenses for criminal proceedings before the Tribunal of Savona and  
2 the Court of Appeal of Genoa. These expenses are not covered by article 34 and  
3 therefore need to be reimbursed by Italy at any rate.

4  
5 Hence Italy must in this case reimburse all costs and legal fees the owner and other  
6 natural persons incurred.

7  
8 I will now address the loss and damages suffered by the charterer of the “*Norstar*”.

9  
10 Italy argues that the loss of revenue asserted is too remotely linked to the alleged  
11 wrongful conduct and that Panama further has not provided any conclusive evidence  
12 pertaining to the amount of the loss of revenue.

13  
14 It should be noted that from the start, Panama has made it very clear that it can only  
15 estimate the amount of the loss of profit suffered by the charterer for lack of exact  
16 numbers, particularly since the charterer, the Nor Maritime Bunker Co. Ltd., no  
17 longer exists; and yet this fact cannot result in Italy therefore being relieved of any  
18 compensation. Instead, the compensation must be estimated in such a case.

19  
20 As we will show at a later stage, the calculation followed a conservative approach by  
21 calculating annual revenue of only US\$150,000. The witness Rossi confirmed that in  
22 reality the revenue was higher. He is an excellent expert in the business, although  
23 Italy attempted to question his credibility as he was involved in the operation of the  
24 *M/V “Norstar”* and the “alleged criminal plan”. However, this is not at all convincing,  
25 as this was in fact not a “criminal plan” but an entirely legal and successful business  
26 model.

27  
28 The loss is therefore in no way too remotely linked to the alleged wrongful conduct.  
29 My prior statement also applies here: If a vessel is removed from service, it is  
30 entirely evident, or even compelling, that the charterer will as a result suffer a loss of  
31 revenue.

32  
33 Please allow me a few words on the amount of gasoil on board at the time of the  
34 seizure. Here, Italy is arguing that the email from Mr Petter Vadis does not provide  
35 any evidence, as it was written almost three years after the seizure and because of  
36 the conflict of interest of its sender. I must disagree with this. There is no such  
37 conflict of interest, because the amount of the gasoil on board was not important to  
38 the owner. Also, Italy failed to forward any argument why the amount of gasoil could  
39 no longer be established almost three years after the seizure. Companies typically  
40 keep their business records for more than three years, so exact information about  
41 purchases, sales and inventory is available during this time. It is quite evident this  
42 was also the case here. Otherwise, Mr Vadis would not have been able to provide so  
43 many details including the names of the yachts refuelled. Based on all this, there is  
44 no reason to challenge the accuracy of the information provided by Mr Vadis.

45  
46 As I approach the end of my statement, please allow me a few words on the material  
47 and non-material damages to natural persons. Italy argues there is no causal  
48 connection between the criminal proceedings against natural persons and the  
49 alleged violation by Italy of article 87 of the Convention. Furthermore, the Tribunal  
50 had limited the object of the present dispute to the request of execution of the decree

1 of seizure. The Italian domestic criminal proceedings with regard to natural persons  
2 would therefore not be an object of the present dispute. Panama's claim concerning  
3 material and non-material damage to natural persons would therefore be outside the  
4 scope of the present dispute.

5  
6 This interpretation of the judgment of 4 November 2016, however, is false. The fact  
7 the Tribunal found it reasonable that the decree of seizure and the request for its  
8 execution constitute an infringement of the rights of Panama under article 87 does  
9 not preclude Italy's other actions related to the seizure being able to constitute an  
10 infringement of these rights.

11  
12 Panama believes the unlawful accusations against natural persons in connection  
13 with criminal proceedings accordingly also constitute such infringement. The rights of  
14 a state under article 87 of UNCLOS cannot only be infringed by the seizure of a  
15 vessel, but for example also by preventing the natural persons employed on the  
16 vessel from continuing their duties, whether it be by detaining these persons or  
17 through criminal charges. This too can prevent the flag State from exercising its  
18 rights under article 87.

19  
20 This was certainly the case here. By prosecuting natural persons for legal bunkering  
21 activities aboard the "*Norstar*" on the high seas, Italy also infringed Panama's rights  
22 under article 87 with this action.

23  
24 Now moving to the last points in my pleading, Italy's argument that, by advancing a  
25 claim for non-material damage, Panama is attempting to make up for its inability to  
26 prove actual economic damage.

27  
28 This allegation is false alone due to the fact that Panama is claiming both material  
29 and non-material damages and has further provided compelling facts for both the  
30 reason for as well as the amount of the damages. After all, with respect to Mr Rossi  
31 and Mr Morch, in addition to non-material damages, material damages, namely  
32 lawyers' fees, are also being claimed.

33  
34 Also, there is no rule prohibiting individual natural persons from only claiming non-  
35 material damages and abandon material damages so long as they in fact are non-  
36 material damages and not actually disguised material damages. This requirement  
37 has been met in this case, as the psychological stress of seven-year criminal  
38 proceedings is clearly of a non-material nature.

39  
40 The legal action is therefore justified with respect to material and non-material  
41 damage to natural persons.

42  
43 As regards the level of interest, Italy's objections are not justified. Panama's interest  
44 rates are reasonable given the expert's convincing calculation.

45  
46 In closing, I would like to summarize that Italy's attempt of disputing the existence of  
47 a causative link, the amount of loss of the individual items is under no circumstances  
48 reasonable and Panama's claim is justified.

49  
50 Thank you, Mr President.

1  
2 **THE PRESIDENT:** Thank you, Mr von der Wense. I understand that Panama next  
3 wishes to call and examine an expert. May I ask the Agent of Panama to confirm  
4 this?

5  
6 **MR CARREYÓ:** That is true.  
7

8 **THE PRESIDENT:** Thank you, Mr Carreyó. The Tribunal will then proceed to hear  
9 the expert, Mr Horatio Estribí. He may now be brought into the courtroom.  
10

11 I call upon the Registrar to administer the solemn declaration to be made by the  
12 expert.  
13

14 **THE REGISTRAR:** Good afternoon, Mr Estribí. Mr Estribí, an expert appearing  
15 before the Tribunal is required to make a solemn declaration pursuant to article 79 of  
16 the Rules of the Tribunal. You have been received the text of the declaration. May  
17 I invite you to make the declaration?  
18

19 *(The expert made the solemn declaration)*  
20

21 **THE PRESIDENT:** I understand that examination of the expert will be conducted by  
22 Mr von der Wense. I therefore give the floor again to Mr von der Wense.  
23

24 **Examined by Mr von der Wense**  
25

26 **MR VON DER WENSE:** Good afternoon, Mr Estribí. I would now like to start the  
27 questioning. Mr Estribi, would you please introduce yourself?  
28

29 **MR ESTRIBÍ:** Yes. My name is Horacio Estribí. I am an economic advisor to the  
30 Ministry of Finance in Panama. I also hold a degree from Boston University and  
31 I have been a private consultant also for a number of years and been involved in  
32 several forensic examinations in Panama.  
33

34 **MR VON DER WENSE:** Have you been, or are you, in any personal or business  
35 relationship with the companies or persons whose damage is the subject of this  
36 proceeding?  
37

38 **MR ESTRIBÍ:** I do not have a personal business relationship with the owner of the  
39 "Norstar". Through a Panamanian legal firm I was hired to estimate damages  
40 regarding the arrest of the aforementioned vessel.  
41

42 **MR VON DER WENSE:** I now come to Panama's demands for compensation from  
43 Italy for the arrest of the "Norstar". The owner of the "Norstar" was, until its  
44 destruction, Inter Marine & Co AS, a corporation registered in Norway. In your  
45 opinion, what damage did the owner suffer because of the arrest of the "Norstar"?  
46

47 **MR ESTRIBÍ:** Okay, slide 1. As you can appreciate from the slide, the loss and  
48 damage suffered by the owner includes damage for the loss of the vessel, damage  
49 resulting from the loss of revenue, continuing payment of wages, legal fees, payment



1 due for fees and taxes to the Panama Maritime Authority, and payment due for fees  
2 and taxes to the Palma de Mallorca Port Authority.

3  
4 **MR VON DER WENSE:** What was the damage due to the loss of the vessel?

5  
6 **MR ESTRIBÍ:** The total amount was US\$ 1,641,670.06. This amount includes both  
7 the principal and the interest.

8  
9 **MR VON DER WENSE:** Could you specify the amount again?

10  
11 **MR ESTRIBÍ:** Yes, the total amount was US\$ 1,641,670.06; and this amount  
12 included the principal, which represented US\$ 625,000 plus interest, which  
13 represented US\$ 1,016,670.

14  
15 **MR VON DER WENSE:** On what are you basing this assessment concerning the  
16 value of the “*Norstar*”?

17  
18 **MR ESTRIBÍ:** On the statement for estimation of value issued by CM Olsen A/S  
19 dated 4 April 2001. Essentially, it indicated that the “*Norstar*” at the time of its seizure  
20 was a solidly built and well-maintained product tanker, with good loading and  
21 discharging capacity. It also states that such factors were vital elements in her ability  
22 to operate as a bunker tanker.

23  
24 **MR VON DER WENSE:** Do you consider the estimation of value from C M Olsen  
25 A/S to be convincing?

26  
27 **MR ESTRIBÍ:** Yes, I do, because it is based on a technical analysis of the features  
28 and conditions of the vessel at the time that the value estimation was conducted. On  
29 the other hand, CM Olsen is a well-established and recognized company that  
30 specializes in the shipping industry, mainly in sales and purchase of vessels and as  
31 an agent of crude oil products and related shipping vessels.

32  
33 **MR VON DER WENSE:** The estimation of value states that CM Olsen did not  
34 inspect the vessel and/or her class records. Does this, in your opinion, reduce the  
35 persuasive power of the estimation of value?

36  
37 **MR ESTRIBÍ:** CM Olsen is a company that was very well-acquainted with the  
38 “*Norstar*” because it had inspected the vessel prior to the signature of the charter  
39 contract, which took place in 1988, and on that occasion it issued an estimation of  
40 value which is, in my view, sufficiently convincing and persuasive on the basis of the  
41 reasons that I mentioned before.

42  
43 **MR VON DER WENSE:** What do you say to the objection of Italy that the estimation  
44 of value “is given under the condition that the vessel is entertained under a minimum  
45 four years’ time charter at a rate of \$2,850 per day for the first year and with  
46 natural/normal escalation for each additional year” and that this is why Panama  
47 confuses the criteria used for estimation of damage for the direct loss with the criteria  
48 used for estimation of *lucrum cessans*?

1 **MR ESTRIBÍ:** With all due respect, I think that the objection has no basis; it is  
2 unfounded, since the value of the ship also depends on its future commercial value  
3 or its potential use. The future revenue estimation of the vessel, on the other hand,  
4 was based on the existing charter contract, which was signed, as I mentioned earlier,  
5 in 1998. Thus, in my view, there should be no confusion regarding the criteria used  
6 for estimation of the damage resulting from the direct loss of the vessel in  
7 comparison to the loss stemming from the revenues that were foregone. In my view,  
8 neither damages would have occurred if Italy had returned the ship at an earlier time  
9 or Italy had reimbursed the full value of the ship to its owner. Under this  
10 circumstance, the loss of profits would simply have not taken place. Since Italy did  
11 not act accordingly, the ship became a complete loss, which gave place to the  
12 occurrence of both damages.

13  
14 **MR VON DER WENSE:** I proceed now with the issue of damages stemming from  
15 the loss of revenue of the owner of the “*Norstar*”. Could you please share with us the  
16 total amount of such damage?  
17

18 **MR ESTRIBÍ:** Certainly. The total loss of revenue pertaining the owner was  
19 \$42,856,882 at future value.  
20

21 **MR VON DER WENSE:** What are the individual factors or components of this loss?  
22

23 **MR ESTRIBÍ:** There were several used in my model, which I will explain in more  
24 detail further, but it included gross revenue per day, operational expenses, such as  
25 crew-related expenses as well as insurance expenses. The other factors included as  
26 well the application of interest rate and the time span that we assumed for the  
27 operation of the vessel, the time that the vessel operated commercially; or the  
28 estimation that we made – I am sorry – of the time the vessel would have operated.  
29

30 **MR VON DER WENSE:** How did you determine such calculations?  
31

32 **MR ESTRIBÍ:** Well, the basic procedure was to deduct from gross revenue the cost  
33 of operation of the vessel. Later we applied to the net revenue the compound interest  
34 to determine the future value of the yearly cash flows.  
35

36 **MR VON DER WENSE:** Okay. Thank you. What life or operating time span of the  
37 “*Norstar*” did you base your calculations on?  
38

39 **MR ESTRIBÍ:** Damage estimations are based on the assumption that the vessel  
40 could have operated at least until the present day. Just for practical purposes, we  
41 assumed December 2018, for practical purposes.  
42

43 **MR VON DER WENSE:** Why do you assume that the vessel could have been used  
44 or chartered during this period?  
45

46 **MR ESTRIBÍ:** My assumption is based on a report issued by Mr Karsten  
47 Himmelstrup, he is director of Procurement and Logistics in Scanbio Marine Group  
48 A/S (Scanbio). They issued important information regarding the “*Norstar*” at the  
49 moment of its arrest, indicating that it had a high technical standard. The  
50 confirmation issued by Mr Karsten also indicates that, provided the vessel would

1 have received the adequate and timely maintenance, it could have been used in their  
2 fleet, for example, even until today, the present time. This, in our view, is a  
3 reasonable proof of a high probability or likelihood of continued operations of the  
4 “Norstar” during the 1998-2018 period, which is equivalent to 20 years of operations.  
5

6 Furthermore, this source additionally indicated that for the purpose of offshore  
7 bunkering services and provision for transport of naval provision – gasoil, for  
8 example – the ship could have been alternatively used for other purposes, which  
9 include, for example, transportation of liquid bio-products such as vegoils and even  
10 fresh water.

11  
12 As explained by Karsten, the employment of the ship is based on the standard Time  
13 Charter agreement (T4). According to the same source, the revenue that the vessel  
14 could have generated would have most likely been very stable or constant  
15 throughout the aforementioned operating period.  
16

17 **MR VON DER WENSE:** Why do you consider Karsten Himmelstrup an authoritative  
18 source?  
19

20 **MR ESTRIBÍ:** Scanbio Marine Group is a leading producer of food ingredients for  
21 sustainable marine and aquaculture sources. The company operates also six tankers  
22 and uses these ships for transportation of waste products for the fish farming  
23 industry in Norway and Northern Europe in general.  
24

25 **MR VON DER WENSE:** Would the vessel have required any sort of overhaul or  
26 revamping to operate during this time span?  
27

28 **MR ESTRIBÍ:** The vessel only would have needed an adequate and timely  
29 maintenance to operate until the present day, according to Scanbio.  
30

31 **MR VON DER WENSE:** Have you also taken into account the times when the ship  
32 was unable to generate revenue due to periodical dry docking for maintenance and,  
33 if so, to what extent did this affect total damage estimations?  
34

35 **MR ESTRIBÍ:** Yes, I did, in fact. Based on the information provided by the owner,  
36 Mr Morch, we took into consideration that the vessel had to receive dry docking  
37 services every five years. However, the model discounts five operating days on a  
38 yearly basis, which implies that we only estimated 360 operating days yearly, which  
39 means, yes, we did take into account the fact that the vessel needs to undergo dry  
40 docking services  
41

42 **MR VON DER WENSE:** Have you also considered the owner’s operational costs  
43 such as maintenance costs?  
44

45 **MR ESTRIBÍ:** Yes, indeed I have.  
46

47 **MR VON DER WENSE:** I would now like to address the continued payment of  
48 wages item. How high is this damage, in your estimation?  
49

1 **MR ESTRIBÍ:** Total damage in this regard was US\$ 19,100, and the payment period  
2 corresponds to the time elapsed between the arrest of the vessel on 24 September  
3 1998 until the end of December 1998.

4  
5 **MR VON DER WENSE:** Have you specialized the single items in your calculation?  
6

7 **MR ESTRIBÍ:** Yes. In my model there is a clear segregation of the different members  
8 of the crew and the amounts that they received.

9  
10 **MR VON DER WENSE:** How did you determine this information and why do you  
11 affirm that this damage stems from the arrest of the vessel?  
12

13 **MR ESTRIBÍ:** The information was provided by the owner, Mr Arve Morch, to me,  
14 and it is based on the assumption that this was an outflow of cash or money that the  
15 owner had to pay from his own pocket, a situation which would not have occurred  
16 under the condition that the arrest had not taken place. Given the fact that the arrest  
17 took place, this was an obstacle for the vessel to generate revenues and therefore to  
18 finance the wages out of the abnormal operations of the vessel.

19  
20 **MR VON DER WENSE:** I would now like to address the legal fees item. How high is  
21 this damage of the owner, in your estimation?  
22

23 **MR ESTRIBÍ:** For the owner specifically, the total amount as of 13 June 2018 was  
24 equivalent to a total of €140,571, and US\$ 102,401. There are more details in the  
25 report that I filed and the different fees that have been paid out to different firms and  
26 lawyers.

27  
28 **MR VON DER WENSE:** How did you determine this information?  
29

30 **MR ESTRIBÍ:** It was provided essentially by the invoices of payments issued to each  
31 lawyer.  
32

33 **MR VON DER WENSE:** Now I proceed to address payment due for fees and taxes  
34 to the Panama Maritime Authority. What is your estimation of this amount?  
35

36 **MR ESTRIBÍ:** We have a very recent certificate issued by the Panama Maritime  
37 Authority. In fact, it is dated 29 August 2018, where essentially they make an update  
38 and also they make a projection of the amount owed to them by “*Norstar*”. As of  
39 December 2018, the amounts are 135,111.93. I am sorry, I am going to correct that.  
40 The amount due as of December 2018 would be 136,899.49, and the amount due on  
41 30 September 2018 would be 135,111.93.  
42

43 **MR VON DER WENSE:** US dollars?  
44

45 **MR ESTRIBÍ:** Yes.  
46

47 **MR VON DER WENSE:** Thank you. How did you determine this amount?  
48

1 **MR ESTRIBÍ:** As I mentioned earlier, the entity recently issued a certification of the  
2 amount owed, and that certification was dated 29 August. There was a previous  
3 certification as well dated 30 March 2017, but we have more recent information.  
4

5 **MR VON DER WENSE:** As for the payment due to the Palma de Mallorca port  
6 authority, what is your estimation of this amount?  
7

8 **MR ESTRIBÍ:** According to the information provided to me, it is not known at this  
9 time the amount that the “*Norstar*” would have to pay to the Palma port authority.  
10 However, if the authority were to demand any payments or fees, then this would  
11 represent an additional amount to the claim that we have brought today.  
12

13 **MR VON DER WENSE:** With regard to the charter of the Nor Maritime Bunker  
14 Company Limited, a company registered in Malta, what damage did it incur because  
15 of the arrest of the vessel according to your estimation?  
16

17 **MR ESTRIBÍ:** Namely the following: loss of cargo and loss of revenue. Other factors  
18 also obviously included the application of interest rate and the revenues that were  
19 estimated would have taken place during the operating period of the vessel.  
20

21 **MR VON DER WENSE:** According to you, what is the damage caused by the loss of  
22 the cargo?  
23

24 **MR ESTRIBÍ:** The value of the cargo on the date of the arrest was US\$ 108,670.39.  
25 This gasoil should have been surrendered by Italy to the charterer but the fuel was  
26 recycled or disposed of. The total amount then would be US\$ 285,441.48 owed to  
27 the charterer. This amount obviously would include the above-mentioned principal of  
28 US\$ 108,670.39 and interests, which would represent in this case US\$ 176,771.09.  
29

30 **MR VON DER WENSE:** How did you determine this?  
31

32 **MR ESTRIBÍ:** It is based on the estimated price of a cubic metre of gasoil at the  
33 time, which was estimated at \$612 per cubic metre on board.  
34

35 **MR VON DER WENSE:** How many tonnes was the amount of the cargo?  
36

37 **MR ESTRIBÍ:** It was 177,566 cubic metres of gasoil.  
38

39 **MR VON DER WENSE:** Cubic metres or metric tonnes?  
40

41 **MR ESTRIBÍ:** Metric tonnes, I am sorry.  
42

43 **MR VON DER WENSE:** How did you determine the amount of gasoil on board at the  
44 moment of the vessel’s arrest?  
45

46 **MR ESTRIBÍ:** It was based on the information contained in Annex 1 of the Reply of  
47 Panama, dated 27 May 2001, and the information was contained in an email issued  
48 by Mr Petter Vadis.  
49

50 **MR VON DER WENSE:** How did you determine the price of the gasoil?

1  
2 **MR ESTRIBÍ:** The information was provided to me by Mr Arve Morch. He asserted  
3 that the price of the gasoil is based on a naval provision that establishes a price of  
4 between US\$ 500 and US\$ 600 per metric tonne. It would also be useful to provide  
5 an example of the sales price that the marina in San Remo was charging at the time  
6 for the same product, which was US\$ 1,000 per metric tonne.

7  
8 **MR VON DER WENSE:** What is your estimate of the charterer's loss of revenue?  
9

10 **MR ESTRIBÍ:** As a consequence of the seizure of the "Norstar", the charterer was  
11 unable to use the vessel to generate further business activity. Therefore, he  
12 sustained damage in the form of lost profits, foregone profits. The total loss of  
13 revenue pertaining to the owner was US\$ 6,438,646. This amount would include  
14 essentially a portion of interests of US\$ 3,080,547 and interests accrued in an  
15 amount of US\$ 3,358,098.29.

16  
17 **MR VON DER WENSE:** How did you determine this amount?  
18

19 **MR ESTRIBÍ:** The calculations were made applying essentially the model and the  
20 corresponding interest rates, which I will explain in more detail in a moment, to  
21 determine the future value of the estimated cash flows during this 20-year time  
22 period. In this case such estimations reveal that the annual revenues were  
23 equivalent to at least US\$ 150,000 per year as a result of the offshore bunkering  
24 activity.

25  
26 **MR VON DER WENSE:** In relation to the material and non-material damage to  
27 natural persons, which individuals suffered this damage?  
28

29 **MR ESTRIBÍ:** The individuals that suffered such damage would include the  
30 following: Silvio Rossi, Renzo Biggio, Arve Einar Morch, Emil Petter Vadis,  
31 Tore Husefest, Odd Falck and Tor Tollefsen.  
32

33 **MR VON DER WENSE:** What damage did these individuals suffer?  
34

35 **MR ESTRIBÍ:** Well, they endured, they suffered, namely, the following items:  
36 material damages, including legal fees and other professional fees, and immaterial  
37 damages, which included pain and suffering.  
38

39 **MR VON DER WENSE:** What is the total legal and other professional fees  
40 generated in relation to their defence?  
41

42 **MR ESTRIBÍ:** Total legal fees in this case were €56,117, of which €29,797 were  
43 principal and €26,320 corresponds to accumulated interests.  
44

45 **MR VON DER WENSE:** How did you determine these amounts?  
46

47 **MR ESTRIBÍ:** Essentially, the amounts were paid out to the lawyers, so I based my  
48 calculations on invoices, and also, just to simplify the calculations, I made an  
49 assumption, which is that interests were accrued as of November 2005. Although

1 some of the invoices were paid earlier, just to simplify the calculations I took as a  
2 basis November 2005.

3  
4 **MR VON DER WENSE:** What are your estimates of immaterial damages?

5  
6 **MR ESTRIBÍ:** My figures indicate that total claim is for the amount of US\$ 219,844,  
7 of which US\$ 87,000 correspond to principal and US\$ 132,844 would correspond to  
8 interests.

9  
10 **MR VON DER WENSE:** Principal was, once again?

11  
12 **MR ESTRIBÍ:** I will say that again. Total claim was US\$ 219,844 and principal was  
13 US\$ 87,000, and interests were US\$ 132,844.

14  
15 **MR VON DER WENSE:** What is the total damage you have estimated and what  
16 portions correspond to interest rates and what to principal?

17  
18 **MR ESTRIBÍ:** In a while I will show the total figures in a slide I have but total damage  
19 was estimated to be US\$ 51,882,358, of which US\$ 24,873,091 corresponded to  
20 interests, and US\$ 27,009,266 to principal. Also, the total damages include a portion  
21 denominated in euros and the amount would be €196,688, of which €26,320  
22 correspond to interest and €170,368 correspond to principal.

23  
24 **MR VON DER WENSE:** Why did you apply compound interest instead of simple?

25  
26 **MR ESTRIBÍ:** It is slide 2. I will get to those figures in a while. Why was compound  
27 interest applied in this case? Based on essentially technical literature that states that  
28 for large periods of damage estimations, interests should be compounded because  
29 of the numerous alternatives of investment that gain benefits on a compounded  
30 basis. For this statement I used several papers that specifically address the issue of  
31 when and why compound interests are applied in cases similar to the one we are  
32 seeing today. For example, in his paper *Approaches to the Award of Interest by*  
33 *Arbitration Tribunals* by Mark Beeley Richard E. Walck asserts that: "There is, then,  
34 no logical support for the awarding of simple interest, unless the time from the cause  
35 of action to the payment of the award is very short", which is not the case now. Mr  
36 Beeley is, by the way, a solicitor-advocate and barrister in the London office of  
37 Vinson & Elkins RLLP and a member of its International Dispute Resolution Group.  
38 He is also a partner in Global Financial Analytics LLC and specializes in the  
39 assessment of damages in international commercial and treaty arbitrations. By the  
40 way, his paper also contains information from other specialists, for example, in  
41 discussing *Norway v. United States*, F A Mann notes in his paper *Compound Interest*  
42 *as an Item of Damage in International Law* that "there at least is an indication that if  
43 proper reasons had been advanced, the Tribunal might have awarded compound  
44 interest."

45  
46 By the way, Mann also concludes that compound interest should be the norm absent  
47 special circumstances that would dictate otherwise. Mann was an influential  
48 German-born scholar of his generation and a noted authority on international law.  
49

1 Also, the literature indicates, for example, that there is a paper called *Compound*  
2 *Interest in International Disputes (2004)* written by Mr John Yuko Gotanda, who  
3 essentially states that up until recently the longstanding and well settled rule was that  
4 award of interests was to be on a simple, as opposed to compound, basis. Later Mr  
5 Gotanda in his paper *Assessing Damage in International Commercial Arbitration:*  
6 *A Comparison with Investment Treaty Disputes* states the following:

7  
8 Starting in the early 2000s, however, there was a trio of cases – *Santa Elena,*  
9 *Maffezini,* and *Wena Hotels* – in which the tribunals awarded compound  
10 interest. These decisions have been followed most recently by the tribunals in  
11 other cases such as *PSEG Global Inc,* *Siemens* and *Azurix.* As the tribunals  
12 noted in the latter two cases, compound interest “reflects the reality of financial  
13 transactions and best approximates the value lost by an investor”.

14  
15 **MR VON DER WENSE:** Why did you choose to apply US Prime rate as opposed to  
16 Libor, for example, or other rates?

17  
18 **MR ESTRIBÍ:** Yes, in fact, Prime rate was applied as a proxy or as a variable for  
19 interest rates in our model. However, Libor was not considered because Libor, in my  
20 view, represents an interest rate applied between banks; it is an interbank rate, as  
21 opposed to Prime rate, which is essentially the amount that would be paid to a  
22 potential investor or to a final client or depositor.

23  
24 **MR VON DER WENSE:** How did interest vary now in comparison to rates applied in  
25 chapter 4?

26  
27 **MR ESTRIBÍ:** This is a very important question. Damage in chapter 4 was based on  
28 the *M/V “Saiga”* Case essentially, which was also discussed and seen by this Court.  
29 Estimations in such case were based on a shorter timespan than the *M/V “Norstar”*  
30 Case, therefore we needed to apply a more realistic interest which would be more  
31 objective in the estimation of total damages caused to the owner and the charterer.

32  
33 **MR VON DER WENSE:** Why did your estimations of damage vary with respect to  
34 original estimates presented in chapter 4?

35  
36 **MR ESTRIBÍ:** For several reasons, but the main one is that the estimations in  
37 chapter 4 only were done on the assumption that the vessel would operate until June  
38 2005, and therefore we needed to update this estimation.

39  
40 **MR VON DER WENSE:** Why are you now assuming the vessel could have operated  
41 all the way until 2018 as opposed to June 2005, as assumed originally in chapter 4?

42  
43 **MR ESTRIBÍ:** This is the essential reason why we extended the amount. It was  
44 based on Mr Karsten, information provided recently, so we did a new estimation,  
45 more technical and based on more, new assumptions. The additional element was  
46 that the “*Norstar*” could have operated until present days provided, as we mentioned  
47 earlier, that it received the appropriate maintenance, and also on another important  
48 premise, which is the fact that the “*Norstar*” could have also been used alternatively  
49 in other commercial operations, which I already mentioned earlier. So there were two  
50 basic new premises which needed to be accounted for: essentially, that the “*Norstar*”



1 could have operated until today and, second, that the “Norstar” had and has several  
2 alternative commercial uses, not only to distribute and sell bunker.

3  
4 **MR VON DER WENSE:** Why did you use the median of the interest to estimate  
5 certain future values but applied individual yearly interest rates to, for example, loss  
6 of revenue estimates?  
7

8 **MR ESTRIBÍ:** This is a very important part of the estimations. In effect, we applied a  
9 simple average and a moving average for the 1998/2018 Prime rate time series. So  
10 what we did was we calculated a simple mean, but we wanted to be very meticulous  
11 statistically speaking, and we also calculated so-called moving average, which is a  
12 method just to smoothen the sample, especially when you have samples that are  
13 subject to variations or fluctuations, which in fact Prime rate was.  
14

15 This is important, the fact that we used the moving average of 4.8 as opposed to a  
16 simple mean of 5.6. Another important issue is that the sample gave us a standard  
17 deviation of 2.8, which we would consider is a low deviation of the different samples.  
18 Why is this important? Because of the following: although to begin with the difference  
19 between the two means used was relatively small, we opted for the smallest one, to  
20 be fair in our calculations. Secondly, although standard deviation was relatively low,  
21 we followed the following method in order to minimise the impact that could derive  
22 from the fluctuations of the Prime rate we already mentioned. We did the following.  
23 In order to calculate the loss of revenue that derived from cash flows, like the loss of  
24 revenue of the owner and the loss of revenue of the charterer, we applied the Prime  
25 rate of the year to that basic year. We applied the Prime rate registered during the  
26 year to the calculation of cash flow, so cash flow estimations were based on a year  
27 to year basis. This was done in order to reduce the distortion that statistically could  
28 derive from the fact of using an average. It is not recommended to use an average if  
29 you have important variations, although variations were low in this case. We tried to  
30 correlate as closely as we could the Prime rate that prevailed that year with regard to  
31 the net revenue that was created. In a moment I will explain this more graphically.  
32

33 So it is important to state that we tried to minimize the distorting impact that could  
34 result from applying an average to the time series of Prime rates. We applied the  
35 Prime rate on a yearly basis corresponding to the yearly estimated net revenue.  
36

37 We took the simple, the moving mean, 4.8, and applied that to cases only where we  
38 had lump sum payments, as in the case of legal fees and so forth. We did this based  
39 on the fact that this would also have a minimum distorting impact since we were  
40 using the moving mean.  
41

42 I would like to summarize. What we did was we used the series of Prime rate, we  
43 calculated the standard deviation to see if the sample presented important deviations  
44 – it did not. However, we were very meticulous in applying Prime rate on a yearly  
45 basis for the estimation of the loss of revenues on a yearly basis, and we used the  
46 moving mean to lump sum payments such as legal fees and the losses deriving, for  
47 instance, from the loss of cargo.  
48

1 **MR VON DER WENSE:** Thank you, Mr Estribí. Is there any other parameter or proxy  
2 which you consider determines that the interest rate that you applied in the financial  
3 model is conservative and realistic?  
4

5 **MR ESTRIBÍ:** Yes. This is very important. There was a paper we submitted as proof  
6 or evidence called *Systematic Risk and the Cost of Equity Capital in the Shipping*  
7 *Industry*, written by Professor Wolfgang Drobetz and Hennin Schröder – sorry for the  
8 mispronunciation of the last name – and they both teach at the Department of  
9 Finance at the University of Hamburg Business School. Why is that paper important?  
10 That paper estimates through the so-called capital asset pricing model. It is one of  
11 the methods they use. They use another alternative model but I will centre my  
12 dissertation on the capital asset pricing model (CAPM), and basically what they do is  
13 they use this method, which is widely known, to estimate what the equity capital of  
14 the shipping industry should be in European countries. He estimates the same  
15 values for other markets, but it is important that the paper contains both an  
16 estimation of the equity capital in the shipping industry, and it does it in Europe, to  
17 isolate, so to speak, the estimation of damages that would apply to the *M/V “Norstar”*  
18 Case since it operated precisely in the European market.  
19

20 Why is this important? Essentially because this parameter allows us to estimate two  
21 important factors: one, the value of money as a function of time and, secondly, the  
22 value of money in terms of the risk that an investor would typically take in an  
23 industry, in the shipping industry in this case.  
24

25 So what this comes down to is that they estimate the following co-efficients for the  
26 European market. They calculate an equity capital of the shipping industry for  
27 Europe of 6.53, corresponding to a June 1984 to July 2003 period; and they also  
28 calculate 8.49 for the August 2003 through November 2013 period. What is  
29 important is that both indicators are greater than the average of Prime rate we used  
30 of 4.9. I guess the point I want to stress is that we were quite conservative in the  
31 application of the Prime rate, which was below the estimated co-efficients in the  
32 above-mentioned paper.  
33

34 **MR VON DER WENSE:** Why are interests applied on payments made by the owner  
35 or charterer such as fees?  
36

37 **MR ESTRIBÍ:** Well, interests are applied to such outflows of cash since they  
38 represent an opportunity cost. Let me explain. Such outlays of cash could have been  
39 invested at a reasonable interest and generate returns to the owner, as opposed to  
40 allocating such resources to pay fees and legal services that stemmed or derived  
41 from the seizure of the *“Norstar”* vessel.  
42

43 **MR VON DER WENSE:** Thank you. I am now moving to my last questions. Are there  
44 any important estimations or factors that you consider were not included in your  
45 calculations of damage, and what are the implications?  
46

47 **MR ESTRIBÍ:** Well, yes, there is a factor which was not accounted for in the model,  
48 and essentially it is related to the impact that inflation would have on the estimated  
49 revenues and loss of profits. So we did an exercise and we took essentially the  
50 global inflation rate from information provided by the World Bank and the

1 International Monetary Fund, and we tried approximating the impact that this would  
2 have had on our estimations – and what we obtained was that we were roughly  
3 underestimated by 2 per cent total amount of damages as a result of not correcting  
4 for inflation.

5  
6 **MR VON DER WENSE:** Thank you. Now moving to my last question, what is the  
7 extent of such underestimation in light of, for example, the European inflation rate  
8 during the assumed operation time span of the vessel?

9  
10 **MR ESTRIBÍ:** Well, like I mentioned, roughly what we estimate is that we  
11 underestimated total revenues in approximately 2 per cent, since we did not account  
12 for the impact of inflation on the estimations.

13  
14 **MR VON DER WENSE:** Do you want to make any additional comments?

15  
16 **MR ESTRIBÍ:** Well, just address the graph we have up on the screen. Can we see  
17 the other graph? Is there a previous one? Okay. These graphs essentially reflect two  
18 estimations, and the estimations are essentially the loss of revenue. First, we can  
19 observe the loss of revenue endured by the owner. I think what is interesting is that  
20 we can appreciate how interest rates, as well as principals, were accumulated or  
21 estimated along the period of analysis – and we can clearly see that, yes, there is an  
22 important impact stemming from the application of interest rates, which in turn is a  
23 result of the variations of interest rates along the different years. As you can  
24 appreciate, we had very high interest for instance during 1999, 2000, 2001; then  
25 interest rates dropped in the market during 2002 to 2003. As you can observe, after  
26 the economic crisis of 2008/2009 interest rates have been pretty much stable and  
27 low, and therefore the impact that that had on the model is much more moderate.

28  
29 Also, it is important to mention that the damages are a result essentially of the time  
30 period elapsed between the seizure of the vessel and the payment of the reparation  
31 of the damages.

32  
33 The next graph will basically show the same, except for the charterer's loss of  
34 revenue, but I think you can appreciate pretty much the same principles of the  
35 impact that interest rates had on the calculation of damages, and also how interest  
36 rate represented an important share or portion of the damages as a result of the time  
37 that transpired between the seizure and the reparation of the damages.

38  
39 My final slide is a summary of some of the figures we have already used. I won't go  
40 into details but essentially you can see there the different items which I was asked  
41 about along the questionnaire. You can easily appreciate that the most important  
42 damage reparations stem, or are related to, the loss of revenue both of the owner  
43 and of the charterer. In this case we can see the total amount – and I mentioned this  
44 amount earlier – is US\$ 51,681, the total reparations denominated in dollars. The  
45 next slide resumes the total amounts of damages that are denominated in euro.  
46 That's about it.

47  
48 **MR VON DER WENSE:** Thank you very much, Mr Estribi. Thank you, Mr President.

1 **THE PRESIDENT:** Pursuant to article 80 of the Rules of the Tribunal, an expert  
2 called by one Party may also be examined by the other Party. Therefore, I ask the  
3 Co-Agent of Italy whether Italy wishes to cross-examine the expert and, if so, to  
4 indicate who will be conducting the cross-examination.  
5

6 **MR AIELLO:** Yes, Mr President, we would like to cross-examine the witness, and I  
7 would like to cross-examine him.  
8

9 **THE PRESIDENT:** Thank you. I give the floor to Mr Aiello to cross-examine the  
10 expert.  
11

### 12 **Cross-examined by MR AIELLO**

13

14 **MR AIELLO:** Good evening, Mr Estribí. A while ago we heard from you that you had  
15 no relationship with the people who allegedly suffered damages from the Italian  
16 conduct. Especially you mentioned Mr Rossi and Mr Morch. But, as you know, the  
17 client is the Government of Panama. So I want to know what is your relationship with  
18 the Government of Panama.  
19

20 **MR ESTRIBÍ:** I am an advisor, economic advisor, consultant, to the Ministry of  
21 Finance.  
22

23 **MR AIELLO:** Economic advisor is what kind of relationship? Are you a public  
24 servant?  
25

26 **MR ESTRIBÍ:** I am a consultant for the Panamanian Government.  
27

28 **MR AIELLO:** But your relationship, it is not for a specific period of time – you are  
29 until your retirement a consultant of the Ministry?  
30

31 **MR ESTRIBÍ:** Yes, it is not specified in terms of time – yes; it's not a contract.  
32

33 **MR AIELLO:** So the most part of your earnings comes from the Ministry of Economic  
34 Finance of Panama?  
35

36 **MR ESTRIBÍ:** I derive – yes – income from being a consultant and an advisor to the  
37 Government of Panama.  
38

39 **MR AIELLO:** Thank you. Have you ever made evaluations of other vessels before  
40 these proceedings?  
41

42 **MR ESTRIBÍ:** No, I haven't. Excuse me, can you repeat the question – evaluation  
43 of?  
44

45 **MR AIELLO:** I am wondering if you are an expert on this subject, and my question is  
46 if you have ever made other expertise about the value of vessels.  
47

48 **MR ESTRIBÍ:** I have made several expertise in my country. I have been an  
49 economic expert in several trials, and I have never made an estimation directly of a  
50 vessel case. This is the reason why I was very careful in finding papers, and

1 specialized papers, about the subject, since in any event there aren't many cases  
2 related to evaluation of vessels. Most of them are seen by this court.  
3

4 **MR AIELLO:** So this is your first time in which you are giving us your advice about  
5 evaluation of a vessel. It is a very specific sector.  
6

7 **MR ESTRIBÍ:** This is my first time. In terms of a case related to a vessel, it is not my  
8 first time as an economic expert in legal cases.  
9

10 **MR AIELLO:** Are you aware that the total amount of the loss and damages allegedly  
11 suffered by Panama has been considerably increased during this proceeding?  
12

13 **MR ESTRIBÍ:** They have been increased with regard to – relative to the estimations  
14 made earlier in chapter 4. They have.  
15

16 **MR AIELLO:** Have you advised Panama about the preparation of its Pleadings?  
17

18 **MR ESTRIBÍ:** Can you please repeat the question and be more specific?  
19

20 **MR AIELLO:** Yes, have you helped Panama in the preparation of its Memorial and  
21 Pleadings in this case?  
22

23 **MR ESTRIBÍ:** Not directly, no. I have been involved more specifically in the  
24 preparation of the estimations regarding the damages.  
25

26 **MR AIELLO:** Here, we have an estimation dated 13 June 2018 that has your  
27 signature.  
28

29 **MR ESTRIBÍ:** Yes.  
30

31 **MR AIELLO:** Do you recognize this one?  
32

33 **MR ESTRIBÍ:** Yes, I do, yes.  
34

35 **MR AIELLO:** It is yours, I suppose, with all documents.  
36

37 **MR ESTRIBÍ:** Yes.  
38

39 **MR AIELLO:** But we have another expertise sent by Mr Nelson Carreyó to this  
40 honourable Tribunal on 9 October 2017.  
41

42 **MR ESTRIBÍ:** Yes.  
43

44 **MR AIELLO:** This one has not been signed. I would like to know if you are the  
45 author also of this one.  
46

47 **MR ESTRIBÍ:** There was information sent to the Tribunal on 13 June, which I signed.  
48 That is the information I would like to consider as valid for the purpose of this trial.  
49

50 **MR AIELLO:** I do not understand. Is this yours or not?

1  
2 **MR ESTRIBÍ:** What I can account for is the one I signed.  
3  
4 **MR AIELLO:** It is not signed by you.  
5  
6 **MR ESTRIBÍ:** Precisely. The one I signed was the one that was sent out on 13 June.  
7 The other sheets are similar to the ones we issued, but they are simply not signed.  
8  
9 **MR AIELLO:** Yes, because reading this message there is written: “Panama hereby  
10 finds the attached economic report to be sustained by an expert witness at the oral  
11 proceeding.” Are you this expert?  
12  
13 **MR ESTRIBÍ:** Well, like I said, I signed a – different copies of the model on 13 June,  
14 and this is the one that I am presenting today.  
15  
16 **MR AIELLO:** But not on 9 October 2017?  
17  
18 **MR ESTRIBÍ:** Well, I am responsible for the one sent and signed on 13 June.  
19 I cannot account for the...  
20  
21 **MR AIELLO:** Thank you. Coming back to your financial model – I suppose this is the  
22 correct name – this has no representation of your reasoning. Today you have  
23 illustrated, maybe for the first time, how you could evaluate all the damages,  
24 because we have any citation or reference of your sources here. And so I have to  
25 make some questions. First of all, how did you evaluate the amount of the damage  
26 and substitution of the vessel? I think it is on page 2, the first section: loss and  
27 damage suffered by owner; damage and substitution of the vessel etc.  
28  
29 **MR ESTRIBÍ:** Well, I think I addressed this question earlier, but I will be happy to do  
30 this again.  
31  
32 **MR AIELLO:** Yes, please.  
33  
34 **MR ESTRIBÍ:** The damage due to the loss of the vessel was for a total amount of  
35 US\$ 1,641,670. This amount included both the principal, which in this case  
36 represented the \$625,000, and interest rates for \$1,016,670. The information  
37 regarding the value of the vessel at the time of the arrest was provided to us by  
38 Mr Arve Morch.  
39  
40 **MR AIELLO:** Was provided by?  
41  
42 **MR ESTRIBÍ:** Well, this information was essentially provided from C M Olsen and  
43 also in conversations we had with Mr Arve Morch, which provided us with information  
44 about the vessel at the time.  
45  
46 **MR AIELLO:** Okay. Have you ever seen or inspected the “*Norstar*” vessel?  
47  
48 **MR ESTRIBÍ:** No, I haven’t. I have seen pictures of it – and, again, based my  
49 estimations on information provided by the owner as well as by the report issued by  
50 CM Olsen, which I already mentioned.

1  
2 **MR AIELLO:** How is it possible to perform this kind of estimation, having never seen  
3 the vessel?  
4  
5 **MR ESTRIBÍ:** Like I said, the information that I included in the model was based on a  
6 report issued by CM Olsen, as well as by information provided directly to me by  
7 Mr Arve Morch, based on pictures and the report that I mentioned.  
8  
9 **MR AIELLO:** I suppose that you are speaking about this record, CM Olsen, dated  
10 4 April 2001. Is that correct?  
11  
12 **MR ESTRIBÍ:** Yes, there was a report issued on that date by CM Olsen, which gave  
13 indications regarding the value of the vessel.  
14  
15 **MR AIELLO:** Do you know if CM Olsen had inspected the “*Norstar*” and when?  
16  
17 **MR ESTRIBÍ:** Yes, my understanding is that they did. I think I mentioned this earlier.  
18  
19 **MR AIELLO:** Your understanding?  
20  
21 **MR ESTRIBÍ:** Well, the information that was provided to me.  
22  
23 **MR AIELLO:** From who – sorry?  
24  
25 **MR ESTRIBÍ:** Was provided by Arve Morch, and also was included in chapter 4.  
26  
27 **MR AIELLO:** Mr Morch?  
28  
29 **MR ESTRIBÍ:** Yes.  
30  
31 **MR AIELLO:** Sorry, but I do not understand.  
32  
33 **MR ESTRIBÍ:** Oh, I am sorry – Mr Morch, Arve – was provided by him and also the  
34 information was contained in chapter 4, and that is where I obtained these figures  
35 from.  
36  
37 **MR AIELLO:** So Mr Morch told you that CM Olsen made this record, having  
38 inspected the ship – on which date?  
39  
40 **MR ESTRIBÍ:** That question I answered before. I did not answer it now. The Olsen  
41 report was based on an inspection that they made prior to the signature of the  
42 charter contract in 1998. As for the exact dates on which the inspections were made,  
43 I do not have that information available, but I do have the information that Olsen was  
44 well acquainted with the “*Norstar*” as a result of the fact that they inspected the  
45 vessel prior to the signature of the charter contract in 1988.  
46  
47 **MR AIELLO:** But we do not know if the vessel was inspected before or after the  
48 arrest?  
49

1 **MR ESTRIBÍ:** What I know is what I just mentioned. I cannot speculate further than  
2 that. I can repeat what I said earlier regarding the Olsen information that was  
3 contained in the case in chapter 4, which states that the “*Norstar*” was in fact  
4 inspected prior to the signature of the charter contract in 1998.  
5  
6 **MR AIELLO:** Turning to chapter 2 of your expertise – for me it is page 3 but there is  
7 no numeration of the pages, but you can easily find the chart – this is related to loss  
8 of revenues. What is the period of time that you have taken into account?  
9  
10 **MR ESTRIBÍ:** Basically, from September 1998 to December 2018.  
11  
12 **MR AIELLO:** That is coming?  
13  
14 **MR ESTRIBÍ:** I am sorry?  
15  
16 **MR AIELLO:** That is coming?  
17  
18 **MR ESTRIBÍ:** Yes, as it was an approximation because we are not entirely sure  
19 when the reparations will take place, so it was an estimation.  
20  
21 **MR AIELLO:** Why 31 December of this year and not 31 December of 2044?  
22  
23 **MR ESTRIBÍ:** I guess because one needs to make fair assumptions for the purpose  
24 of the estimations. I cannot make projections that are not logical or not based on  
25 facts. I doubt that the vessel could have operated under any circumstances to that  
26 point, and that would have been highly speculative on my part. I tried to be objective  
27 and logical and base my assumptions on feasible and reasonable facts.  
28  
29 **MR AIELLO:** You are not an expert in the vessel or maritime field. Do you know  
30 what could be the normal period of life of a small tanker like the “*Norstar*”?  
31  
32 **MR ESTRIBÍ:** I am not an expert, but my information is based on information  
33 provided by specialists. Like I said, the assumption regarding the possibility or high  
34 likelihood that the vessel could still be operating was not my assumption; it was  
35 made by an expert. Second, I do understand from information that I discussed with  
36 Arve that there are several vessels that currently have the same age that the  
37 “*Norstar*” has and are still fully operational and working and have commercial  
38 operations today. In the company that we just mentioned, I think the Scanbio  
39 Company would be operating vessels with very similar specifications and a similar  
40 time of construction.  
41  
42 **MR AIELLO:** Which expert did you consult on this argument?  
43  
44 **MR ESTRIBÍ:** I did not consult an expert directly. I took the information from reports  
45 issued by experts who I have mentioned. I can mention them again. CM Olsen was  
46 one of them and the Scanbio Marine Group was another.  
47  
48 **MR AIELLO:** So you made research on the internet maybe, or something like that?  
49



1 **MR ESTRIBÍ:** I did research but not for the purpose of the assumption that you  
2 mention, which is regarding the operation at the time. This was not research that I  
3 made directly. This is information that was provided in a report that stated that in fact  
4 – and I mentioned this earlier – there was a very high likelihood that if the “*Norstar*”  
5 had received timely and proper maintenance, it could still be operating even until  
6 today.

7

8 **MR AIELLO:** Do you know when the “*Norstar*” was built?

9

10 **MR ESTRIBÍ:** Yes, I have an approximate date. I think it was 1966 or 1967.

11

12 **MR AIELLO:** 1966?

13

14 **MR ESTRIBÍ:** That is correct.

15

16 **MR AIELLO:** So at the moment of the arrest this ship was 32 years old?

17

18 **MR ESTRIBÍ:** I guess, yes, my presumption is that it was.

19

20 **MR AIELLO:** In your evaluation, it could operate from 1998 to 2018, 20 years more,  
21 which means 52 years?

22

23 **MR ESTRIBÍ:** In my view, that was the view of the expert who provided the  
24 information, and I have already mentioned both experts.

25

26 **MR AIELLO:** Fifty-two years?

27

28 **MR ESTRIBÍ:** According to their view, yes.

29

30 **MR AIELLO:** In chapter 3 or section 3, as you like, you said –

31

32 **MR ESTRIBÍ:** Of the questionnaire, I am sorry?

33

34 **MR AIELLO:** Of *this*, chapter 3.

35

36 **MR ESTRIBÍ:** Give me one minute to get the printout of the model. Okay.

37

38 **MR AIELLO:** In this chapter you suggest the cost of the personnel, the crew, of the  
39 “*Norstar*” until 19 November 1998. Is that correct?

40

41 **MR ESTRIBÍ:** Yes. The item refers to the wages that had to be paid by the owner of  
42 the vessel from his own pocket as a result of the fact that the vessel was not  
43 operating because it had been arrested, and the information that I got directly from  
44 Mr Arve Morch is based on his report regarding the crew that was paid continuously  
45 until December or November, and it represented an amount – I think we mentioned it  
46 – of approximately \$19,000.

47

48 **MR AIELLO:** How many people were working on the vessel at the moment of the  
49 arrest?

50

1 **MR ESTRIBÍ:** The details are contained in the information that was sent, and I  
2 believe you have a copy of that. I can look it up. From the information that I have  
3 related to the case, there were six members of the crew.  
4  
5 **MR AIELLO:** Six, not five? I see one master and –  
6  
7 **MR ESTRIBÍ:** I am sorry, yes, five.  
8  
9 **MR AIELLO:** One chief engineer, a cook and able seamen?  
10  
11 **MR ESTRIBÍ:** That is correct, sir.  
12  
13 **MR AIELLO:** I very much like to eat because I am an Italian, so I am very curious  
14 about the cook. When does this cook finish his work? We do not have any date.  
15  
16 **MR ESTRIBÍ:** I think you are asking questions that an economic expert is not entitled  
17 to know regarding the direct involvement of the crew and exact operations or  
18 functions that they perform. My estimations were based on the information contained  
19 in the case and provided also by Mr Arve Morch.  
20  
21 **MR AIELLO:** For the chief engineer you say “paid until the end of December 1998”.  
22 What about the cook? Until which date was he paid by Mr Morch?  
23  
24 **MR ESTRIBÍ:** I am not in a position to provide details regarding the exact date that  
25 the crew that worked back in 1998 ceased from the vessel. I think there are much  
26 more entitled people in this room to respond about that, but I could say, with all due  
27 respect, that at the end of the day the assumptions, if they vary, the ones that you  
28 are making, would have a very negligible impact on the model. The model really  
29 would not change much in its final amounts if the cook stayed one week or two or  
30 three or four. I understand that probably it is very important but from my damage  
31 estimation the impact of the cook who earned \$300 per month is quite negligible.  
32  
33 **MR AIELLO:** You could say the same about the able seamen?  
34  
35 **MR ESTRIBÍ:** Again, what I could say is that I do not have this information in detail.  
36 I have the information that was contained in chapter 4, and there was a detail  
37 contained in my estimations that is identical to the one contained in chapter 4.  
38  
39 **MR AIELLO:** Have you ever seen the contract between Mr Morch and the cabin  
40 crew?  
41  
42 **MR ESTRIBÍ:** I must admit, no, I have not seen it. I have not seen the contract. My  
43 understanding is that there are several documents that were lost in the vessel when  
44 it was arrested, and this might have been one of them, but my answer to your  
45 question is: no, sir, I have not seen the copy of the contract that was signed between  
46 the crew and the owner.  
47  
48 **MR AIELLO:** How can you give to the Tribunal an evaluation of the wages of the  
49 cabin crew if you have never seen the contract or other kinds of document? I cannot  
50 understand it. Can you explain this, please?

1  
2 **MR ESTRIBÍ:** Let me limit it to your statement about me not seeing other  
3 documents. You will have to specify what other documents. I just said that I have not  
4 seen a document pertaining to the contract between the owner of the vessel and the  
5 crew. I have not seen that. I have seen other documents, but that one I have not  
6 seen. I am guessing that perhaps this is one of the documents that was not  
7 recovered as a result of the fact that some of the documents were lost in the vessel.  
8  
9 **MR AIELLO:** Can you tell the Tribunal what kind of documents you are speaking  
10 about, because these documents are not alleged in this case, so we are very curious  
11 at this moment?  
12  
13 **MR ESTRIBÍ:** Can you be more specific in your question?  
14  
15 **MR AIELLO:** What kind of document did you use to evaluate this amount, for  
16 example for the master, 6,600?  
17  
18 **MR ESTRIBÍ:** The document that I used, the basis of the information was the  
19 information contained in chapter 4, where there is a detail of the different salaries  
20 earned by the crew, and the information that I have in my report is identical to the  
21 one contained there.  
22  
23 **MR AIELLO:** In general or in this case?  
24  
25 **MR ESTRIBÍ:** I will try to rephrase my answer. Your question was: where did I get  
26 the information regarding the different salaries earned by each member of the crew?  
27 My answer was that I got this from chapter 4, where there was a detail regarding the  
28 salaries earned by each member.  
29  
30 **MR AIELLO:** Do you remember the names of the members of the crew?  
31  
32 **MR ESTRIBÍ:** No, I do not.  
33  
34 **MR AIELLO:** Have you ever met them?  
35  
36 **MR ESTRIBÍ:** No, I have not, sir, not that I know of.  
37  
38 **MR AIELLO:** Going to the legal fees, section 4, you seem to have included the  
39 expenses sustained for this proceeding, but this honourable Tribunal will take these  
40 into consideration in the light of the result of this case. For example, what I see is  
41 that from 2011, if I am correct, there are a lot of legal fees – Nelson Carreyó and  
42 others – but do you know if these legal fees were paid for the criminal proceedings in  
43 Italy?  
44  
45 **MR ESTRIBÍ:** Again, this information is taken from chapter 4 and it is identical in that  
46 sense, on the one hand, and on the second hand ... Can you restate the question,  
47 please?  
48  
49 **MR AIELLO:** The question is very easy.  
50

1 **MR ESTRIBÍ:** I am sure it is.  
2  
3 **MR AIELLO:** I would like to know whether you have checked that these legal fees  
4 were paid for criminal proceedings in Italy?  
5  
6 **MR ESTRIBÍ:** Like I mentioned earlier, the information that is contained in my model,  
7 accounted for in the model, essentially I took from information that was contained in  
8 chapter 4. Secondly, some invoices have been sent recently by each lawyer and  
9 I have tried to include some of them because some of those invoices were generated  
10 recently, so they could not be incorporated; they were generated ex-post on 13 June,  
11 so they are not included here.  
12  
13 **MR AIELLO:** I can imagine that if they have sent some invoices a little before, these  
14 are obviously related to different proceedings, not the Italian criminal proceedings  
15 that had finished before?  
16  
17 **MR ESTRIBÍ:** From my understanding, there are two legal fees: ones that pertain to  
18 the owner and legal fees also for the charterer. My understanding – and again this is  
19 not information that I came up with but I took it from chapter 4 – is that part of that  
20 was related to the events that occurred immediately after the arrest of the vessel.  
21 The other part of the invoices and services rendered by each lawyer is related  
22 perhaps to other stages of the process.  
23  
24 **MR AIELLO:** I am sorry, we are just speaking about legal fees, section 4. These  
25 fees were apparently sustained not immediately after the arrest of the vessel, so if  
26 you want to make more precise your last answer, you can.  
27  
28 **MR ESTRIBÍ:** To what question, if you are kind enough to repeat it?  
29  
30 **MR AIELLO:** These legal fees were not paid for the Italian criminal process?  
31  
32 **MR ESTRIBÍ:** When you say “these”, to which ones do you refer? There is a large  
33 list of invoices.  
34  
35 **MR AIELLO:** *This one, from 2011. (Document handed to the witness)*  
36  
37 **MR ESTRIBÍ:** I will try to reply to my best knowledge. There are different invoices  
38 contained in the Annexes of the case. They pertain to different legal services during  
39 different periods. As an economist, I cannot account exactly for what was the nature  
40 of the services or the time at which they were rendered. I could go over each detail  
41 but from the perspective of damage calculations I simply added up all the information  
42 regarding invoices and legal fee payments that were contained in chapter 4, and I  
43 have added more recent information regarding invoices that were generated  
44 recently. The exact nature of the expenditure and purpose is something that I  
45 respectfully find is not within my competence as an expert estimating damages.  
46  
47 **MR AIELLO:** On the third section you speak about material and non-material  
48 damage to natural persons.  
49  
50 **MR ESTRIBÍ:** Yes, sir.

1  
2 **MR AIELLO:** Can you explain to us what does it mean, which are material, which  
3 are non-material – moral, for example, I suppose?  
4

5 **MR ESTRIBÍ:** Yes, in fact there is a section on material and non-material damage to  
6 natural persons. I already accounted for the amount and how the interest rate  
7 applied. The information I took, again, from documents contained in chapter 4 and  
8 information contained in chapter 4, so the information that is contained in my  
9 estimations is identical to the ones that are already contained in chapter 4, so I could  
10 not account exactly for the criteria that prevailed in the calculations and estimations. I  
11 took the figures as they were provided to me and they were provided to me  
12 essentially through chapter 4 and information that was there. It is there, and there  
13 are abundant details in the chapter that you can cross-examine with. The information  
14 I have is exact. So I think we should refer this to the person that put up the case,  
15 chapter 4. I, as an economist, simply took the damages that were accounted for,  
16 applied the interest rate, and estimated the damage.  
17

18 **MR AIELLO:** I have to say that non-material damage is one of the most difficult  
19 arguments in jurisprudence in each country.  
20

21 **MR ESTRIBÍ:** I am sure it is.  
22

23 **MR AIELLO:** Are you a lawyer?  
24

25 **MR ESTRIBÍ:** No, I am not, sir. I am an economist.  
26

27 **MR AIELLO:** How did you make this quantification of non-material damages?  
28

29 **MR ESTRIBÍ:** I think I will rephrase myself. I did not make them. I took them, and  
30 I took them from chapter 4, and that is where the information is, essentially, and it is  
31 identical to the one I have in the estimations that were submitted to the Court by  
32 myself.  
33

34 **MR AIELLO:** When in the section 3 of chapter 3 you speak about pain and suffering,  
35 what do you refer to? Pain and suffering?  
36

37 **MR ESTRIBÍ:** I in particular am not referring to anything. Like I said, this information  
38 is contained in chapter 4 and I took it exactly as it is there in terms of the  
39 specification of the expenditure and the amounts. The only thing I modified, if you  
40 wish, was to apply in this case the interest, and estimate what the total amount of  
41 damage would be, including the principal, which I did not estimate, and the interest,  
42 which I did estimate according to the methodology I have already explained.  
43

44 **MR AIELLO:** Have you any medical documents just to demonstrate that there was  
45 pain and suffering like psychological or other form of illness? Have you any  
46 documentary evidence of medical problems of the present claimants – not the  
47 present claimants; sorry. The present claimants are Panama. Panama does not  
48 suffer. But of Mr Morch, Mr Rossi and someone else. Can you show this medical  
49 documentation?  
50

1 **MR ESTRIBÍ:** Like I said, this information was not generated by me. It was taken by  
2 me. I used it in my model and it was contained in chapter 4. As for your question,  
3 have I seen any documentation of a medical nature regarding this item or other, my  
4 answer would be no, I have not seen medical documentation in this regard.

5  
6 **MR AIELLO:** About fees and taxes to the Panama Maritime Authority – can you  
7 explain to which period of time they are related?

8  
9 **MR ESTRIBÍ:** Yes, gladly. I have a certification here that I mentioned earlier dated  
10 23 August 2018. If I may, I will try to translate as best I can. “It is a pleasure for me to  
11 reply this letter.”

12  
13 This was addressed, by the way, by Dr Nelson Carreyó to Fernando Solorzano,  
14 General Director of *Autoridad Marítima de Panamá* – Panama Maritime Authority –  
15 where he essentially says the following.

16  
17 According to your memorial of 22 August through which you request we certify  
18 the amount owed to us, to Autoridad Marítima de Panamá, for the “*Norstar*”  
19 vessel, here is the following information.

20  
21 Then there is a certification which is numbered 106117 of 23 August corresponding  
22 to the “*Norstar*” vessel and essentially what they says is:

23  
24 We take this opportunity to submit the communiqué issued on August 16 2018,  
25 and that certificate essentially establishes the following: that –

26  
27 Oh, this is in English. Good.

28  
29 that according to the statements of account issued by consular assistance and  
30 maritime contributor division of the department of ship registry, the ship  
31 “*Norstar*” with IMO 6703056 keeps a balance owed to the Panama Maritime  
32 Authority for the total amount of \$135,111.95 calculated up to September 30,  
33 2018.

34  
35 And then the same certificate shows another figure in the following way:

36  
37 that the ship “*Norstar*” with the already mentioned IMO keeps a balance owed  
38 to the Panama Maritime Authority for the local amount of \$136,899 calculated  
39 up to December 31, 2018.

40  
41 **MR AIELLO:** 2018?

42  
43 **MR ESTRIBÍ:** Yes. So the information is contained in an official document, from what  
44 I can see. I am not sure that answers your question as to where I got the figure from.

45  
46 **MR AIELLO:** Thank you. How did you estimate the compensation for the cargo, not  
47 having inspected the vessel?

48  
49 **MR ESTRIBÍ:** Can you repeat the question?  
50

1 **MR AIELLO:** Yes. You spoke a while ago about the damage for the loss of the  
2 cargo.  
3  
4 **MR ESTRIBÍ:** That is correct, yes.  
5  
6 **MR AIELLO:** Can you explain how did you estimate this value, not having inspected  
7 the vessel?  
8  
9 **MR ESTRIBÍ:** So this is a different subject from the one that we discussed about the  
10 – okay.  
11  
12 **MR AIELLO:** Yes. Can you repeat something?  
13  
14 **MR ESTRIBÍ:** Sure, I will be glad to. I think I went over this but I will be happy to  
15 repeat the information I provided earlier. You are referring to the estimation that was  
16 made regarding the value of the cargo, which in this case was fuel.  
17  
18 Let me just find the answer right here. I have all the facts.  
19  
20 **MR AIELLO:** Which is the source of your information?  
21  
22 **MR ESTRIBÍ:** The source of the information is provided by the owner of the vessel,  
23 Mr Arve Morch, essentially, one, two. There is also an annexe, Reply of Panama,  
24 email from Mr Petter Vadis dated 27 May 2001, where he determined the amount of  
25 gasoil on board at the moment of the arrest of the vessel. So, according to Mr Arve  
26 Morch, the price of gasoil in cargo tanks is based on a naval provision that  
27 establishes a price in 1998 at the time of the arrest of approximately 500-600 per  
28 metric ton.  
29  
30 **MR AIELLO:** So the source is an email sent to Mr Morch three years after the  
31 seizure of the vessel from a third person? You have not any bill or document able to  
32 attest the quantity and the price of the gasoil?  
33  
34 **MR ESTRIBÍ:** I do not have it and, as far as my knowledge is concerned, this could  
35 be the result of the fact already mentioned that some of the documentation was lost  
36 when the vessel was arrested.  
37  
38 **MR AIELLO:** So we have a mail sent three years after but we do not know how  
39 much, which was the quantity effectively inside the vessel at the moment of the  
40 seizure?  
41  
42 **MR ESTRIBÍ:** Well, I have not made that affirmation, sir. The affirmation I made is  
43 the facts I have stemmed from Mr Arve Morch and the email.  
44  
45 **MR AIELLO:** Yes, thank you.  
46  
47 **THE PRESIDENT:** Mr Aiello, we have reached already 4.50 p.m. If you are able to  
48 finish your cross-examination in a few minutes, I will allow you to continue, but if you  
49 need more than five minutes, I will take a break.  
50

1 **MR AIELLO:** Thank you, Mr President. I am able to finish in one minute, if you  
2 consent.

3

4 **THE PRESIDENT:** You may proceed.

5

6 **MR AIELLO:** Thank you. (*To the witness*) Have you taken into account how the  
7 cargo would have been used? Which was the end of the cargo?

8

9 **MR ESTRIBÍ:** In my knowledge –

10

11 **MR AIELLO:** If you have any information about this.

12

13 **MR ESTRIBÍ:** Let me see if I understand the question. The question is: what do I  
14 know would be the purpose of having cargo on the vessel?

15

16 **MR AIELLO:** We do not know what was the final destination of this cargo. Do you  
17 know anything about this?

18

19 **MR ESTRIBÍ:** I can make an educated guess, an assumption. My assumption is that  
20 it was destined to sell to yachts. That is the only thing I can account for in terms of  
21 the –

22

23 **MR AIELLO:** No.

24

25 **MR ESTRIBÍ:** Geographic destiny? I am not sure I can account for that.

26

27 **MR AIELLO:** No, no, no. I am sorry. The question is about the cargo existent on the  
28 vessel at the moment of the arrest. Do you know what kind of sort had this cargo?

29

30 **MR ESTRIBÍ:** What was the nature of the cargo?

31

32 **MR AIELLO:** No; how it was used, if it was used.

33

34 **MR ESTRIBÍ:** My understanding is that the “*Norstar*” was in the business of  
35 bunkering, selling fuel to yachts.

36

37 **MR AIELLO:** Okay, okay. That is all. Thank you, Mr President. I have finished.

38

39 **THE PRESIDENT:** Thank you, Mr Aiello. At this stage the Tribunal will withdraw for a  
40 break of 30 minutes. The hearing will continue at 5.20 p.m.

41

42 (Break)

43

44 **THE PRESIDENT:** An expert who was cross-examined by the other Party may be  
45 re-examined by the Party who had called the expert. Therefore, I ask the Agent of  
46 Panama whether Panama wishes to re-examine the expert.

47

48 **MR CARREYÓ:** That is correct, your Honour. Mr von der Wense will do that.

49



1 **THE PRESIDENT:** Thank you. I then give the floor to the Mr von der Wense to  
2 re-examine the expert. I wish to emphasize that no new issues shall be raised during  
3 re-examination.

4  
5 **MR VON DER WENSE:** Thank you very much, Mr President.

6  
7 **Re-examined by Mr von der Wense**

8  
9 **MR VON DER WENSE:** Mr Estribí, I only have a few questions to you.

10  
11 In the cross-examination Italy has indicated that there might be a kind of conflict of  
12 interests. For the sake of clarification, is there any relation to your other work for the  
13 Government of Panama in this case? For example, have you received any orders or  
14 so?

15  
16 **MR ESTRIBÍ:** None whatsoever. They are completely unrelated. I mean, the tasks  
17 I was hired for regarding the “*Norstar*” and the daily duties that I fulfil as a consultant  
18 for the Government are, I repeat, completely unrelated, and I have received in no  
19 form, implicit or explicit, any instruction from any official from the Government of  
20 Panama regarding this case.

21  
22 **MR VON DER WENSE:** We also have learnt that you have had contact with  
23 Arve Morch. Just for the sake of clarification, to avoid misunderstanding, are you  
24 aware that the owner of the vessel was the Inter Marine Company, and not  
25 Mr Morch?

26  
27 **MR ESTRIBÍ:** Yes, I must clarify: my understanding is that Mr Arve is the general  
28 manager of Inter Marine, and an administrator, not the direct owner of the vessel. I  
29 must clarify that for the record – I am sorry.

30  
31 **MR VON DER WENSE:** Thank you very much. My next question would be: we have  
32 learned, for example, that you do not recall the names of the crew, and for example  
33 that you did not inspect the vessel. Irrespective of the fact that the ship was  
34 demolished already in 2015, so as a consequence it would have been quite  
35 impossible for you to inspect the vessel, did you feel that you have had enough  
36 information to make your estimations and calculations?

37  
38 **MR ESTRIBÍ:** Yes, I did, sir, because I was hired specifically to estimate the  
39 damages resulting from the arrest of the vessel, and I based many of the estimations  
40 on the information that was provided to me; and one of those was the vessel *per se*  
41 – the value of the vessel. The same is true, for example, regarding the value of an  
42 amount of the fuel that was on board at the time of the arrest. I think it is important to  
43 clarify that I was not hired to estimate the value of the vessel *per se*; I was hired to  
44 take that as a basis to make an estimation of the damages that derived from the  
45 arrest, which is, in turn, based on several assumptions, which I assumed are correct  
46 and I take as certain.

47  
48 **MR VON DER WENSE:** Do you feel that this procedure applied here, in providing  
49 you with information, is kind of unusual, and is it according to your experience in  
50 other cases?

1  
2 **MR ESTRIBÍ:** That is an important issue because I was asked a moment ago if I was  
3 an expert in evaluating how much a vessel is worth, and regardless of whether I  
4 have experience or not I was actually not hired to do that task. I was hired, like I said,  
5 to estimate damages stemming from the arrest. On the other hand, I am familiar with  
6 the elaboration of financial and economic models. I have done econometrics both as  
7 a teacher and also I have been involved as an expert in several legal cases in  
8 Panama which have involved econometric models as well as financial models. I don't  
9 mean to sound disrespectful, but this model is not really the most complicated model  
10 I have come up with; it is just a model that compounds interest and it takes certain  
11 values that are brought to future value by compounding interest. It does not involve  
12 any sophisticated mathematical tools to do the exercise.

13  
14 **MR VON DER WENSE:** Thank you. You have already answered my last question,  
15 but just to make it clear, that I have the correct understanding – that your task was to  
16 make an economic calculation based on the information provided to you by, for  
17 example, the owner, other experts and lawyers, and not to make, for example, an  
18 inspection of the non-existing vessel or medical expertise of the crew, or an  
19 expertise about the legal aspects of immaterial damages for example?

20  
21 **MR ESTRIBÍ:** That is correct. My main task was to estimate the future value of the  
22 losses caused by the arrest of the vessel and that are the result of several factors  
23 including a certain time span that was assumed, interest rates that were assumed,  
24 and also certain values of – for instance, the ship, like I mentioned – the vessel, as  
25 well as the fuel that was on board; and some of the assumptions that I made, that I  
26 had to make, were those regarding the expenditures in terms of legal fees and the  
27 hiring of lawyers. This is something that I did not question. This is something that I  
28 basically took as an input for my estimates.

29  
30 **MR VON DER WENSE:** Thank you, Mr Estribí. I do not have more questions,  
31 Mr President. Thank you.

32  
33 **THE PRESIDENT:** Thank you, Mr von der Wense.

34  
35 Pursuant to article 80 of the Rules of the Tribunal, the President and Judges of the  
36 Tribunal may also put questions to the expert. I was informed that Judge  
37 Kittichaisaree wishes to put a question to Mr Estribí. I therefore give the floor to  
38 Judge Kittichaisaree to put his question.

39  
40 **JUDGE KITTICHAISAREE:** Mr Estribí, I have two main questions. The first one  
41 relates to your answer to question 26 on page 3. You said:

42  
43       Additionally to offshore bunkering services and provision for transport of ...  
44       gasoil the [*Norstar*] could also have been alternatively used for transportation  
45       of other liquid bio-products such as vegoils and even fresh water.

46  
47 My question to you, sir: is this so-called potential alternative use of the "*Norstar*"  
48 included in calculation of the total loss of revenue pertaining to the owner of the  
49 "*Norstar*"?  
50

1 **MR ESTRIBÍ:** Your Honour, can you repeat? I understood everything except the last  
2 part of the question, if you are so kind as to repeat.

3  
4 **JUDGE KITTICHAISAREE:** Yes, because if you look at your answer to question 20  
5 you said you also take into account other factors including *et cetera, et cetera*. So  
6 my question to you is: other factors – does it include the possibility of so-called  
7 additional use, alternative use of the “*Norstar*” for transportation of other liquid bio-  
8 products, *et cetera*, and even fresh water? So do you include every possibility in the  
9 calculation of the claim for damage?

10  
11 **MR ESTRIBÍ:** I will try to respond, your Honour, in my best knowledge and  
12 understanding of the question. When I mentioned the potential for the “*Norstar*” to be  
13 used in other alternative commercial activities, I did so based on information that was  
14 provided to me by an expert, first; second, it was a general assumption, which  
15 implies that I did not model *per se* different alternative uses. I guess the point I  
16 wanted to stress was the fact that the “*Norstar*” could have generated loss of profits  
17 all throughout the last twenty years, considering that it could have been used either  
18 for the original purpose it was destined for, that is to act as a bunkering vessel, or  
19 other uses. I am not sure I am replying fully, as your expectations, but I did not  
20 model scenarios. I guess the point I wanted to stress is that there is a loss of  
21 revenue as a result of the fact that the ship did have potential in other alternative  
22 uses – and just to make the assumption sounder and not assume that – well, what if  
23 it could not do any more bunkering; what if it could not – simply was not completely  
24 designed, because of its age, for this purpose? Then we could have safely and  
25 soundly assumed that there were other alternative uses.

26  
27 **JUDGE KITTICHAISAREE:** Thank you very much. If I understand your answer  
28 correctly, you also include the possibility of other uses in the calculation of the claim  
29 for damages.

30  
31 **MR ESTRIBÍ:** No, your Honour. In fact, I am assuming that simply from the point of  
32 view of the possibility that somebody might say, what would happen if the vessel was  
33 not in the capacity to serve any more for the original purpose, then my answer would  
34 be: my estimations of loss of revenue would be still be sound, would still be valid,  
35 considering that there were other alternative uses.

36  
37 **JUDGE KITTICHAISAREE:** Thank you very much. My second and last question:  
38 you have not included the 2 per cent inflation in the claim of damages. You say that it  
39 is some kind of underestimation. I just would like to ask you whether it is you, or any  
40 other persons who decide not to include this kind of – who decided not to insist on  
41 including the so-called inflation adjustment in the claim of damages?

42  
43 **MR ESTRIBÍ:** I guess, your Honour, that the reply would be myself: I decided not to  
44 include it, and it only represents 2 per cent. I could have, but I thought it was fair for  
45 the time being just to leave this out of the model because I had made other  
46 assumptions and there is always a certain margin of approximation in each model.  
47 So I simply considered that at this time it was not a priority to include it – but I did  
48 think it was important to mention that there is a certain margin there that was simply  
49 not accounted for.

1 **JUDGE KITTICHAISAREE:** Thank you very much, Mr President.

2

3 **THE PRESIDENT:** Mr Estribí, thank you very much for your testimony. Your  
4 examination is now finished. You may withdraw.

5

6 **MR ESTRIBÍ:** Thank you very much.

7

8

*(The expert withdrew)*

9

10 **THE PRESIDENT:** This brings us to the end of this afternoon's sitting and concludes  
11 the first round of pleadings by Panama. The hearing will continue tomorrow morning  
12 at 10 a.m. with the first round of pleadings by Italy. I wish you a good evening. The  
13 sitting is now closed.

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*(The sitting closed at 5.38 p.m.)*