

# INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2018

Public sitting

held on Friday, 14 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:*

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Attorney at Law, Panama,

*as Agent;*

*and*

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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:*

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*as Co-Agent;*

*and*

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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  
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*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. Today we will hear the second round of oral  
2 pleadings by Panama in the hearing of the Tribunal on the merits of the  
3 *M/V “Norstar”* Case.

4  
5 First, I give the floor to the Agent of Panama, Mr Carreyó.

6  
7 **MR CARREYÓ:** Thank you, Mr President. Being 27 minutes past the hour, I will start  
8 my presentation today. Good morning to all of you, distinguished delegates of Italy.

9  
10 The justification for universally recognized provisions of maritime law stems from the  
11 17<sup>th</sup> century when free trade via sailing vessels arose. This need has ultimately led to  
12 this Tribunal, which is charged with interpreting the actions of member States for  
13 their common good.

14  
15 In this case, this Tribunal has not been called upon to reinterpret Italian law, but  
16 rather to judge whether or not, when applying its domestic statutes, Italy has acted in  
17 conformity with its obligations under the International Convention on the Law of the  
18 Sea as regards the “*Norstar*”.

19  
20 During the past four days in these oral hearings we have discussed a large number  
21 of legal and factual issues. Now, Panama would like to take the opportunity to take a  
22 look once again at what we believe are the most salient features of this case.

23  
24 Panama has asked the Tribunal to examine the Decree of Seizure of 11 August  
25 1998 and related legal documents, as well as Italy’s conduct in this case directly  
26 involving their international responsibilities for any violations of the international law  
27 of the sea.

28  
29 The argument that Panama has been advancing is that the arrest of the “*Norstar*”  
30 and the subsequent events that led to its ultimate demise strongly indicate a breach  
31 of the United Nations Convention on the Law of the Sea.

32  
33 The Convention has established a legal regime which is based on maritime zones. In  
34 this instance, the reasoning of Panama has been unambiguous and straightforward.  
35 All the evidence that has been presented has shown that the “*Norstar*” was operating  
36 on the high seas and that Italy’s actions have interfered with its right to do so.

37  
38 During this second round of oral proceedings Panama will refer to several of the  
39 arguments that Italy has brought forward in its first round, such as the alleged  
40 enlargement of the dispute, the breaches of article 87, the locus of the activities for  
41 which the “*Norstar*” was arrested, the location of the arrest in Spain and why this  
42 does not affect the basis for Italy having arrested this vessel. We will again refer to  
43 the concept of *corpus delicti*. We will also approach the alleged release of the  
44 “*Norstar*” to which Italy referred, and we will insist on Italy’s breaching its duty to act  
45 in good faith. This will be covered by me. I will then pass the floor to the advocate  
46 Miriam Cohen who will first provide a summary of the arguments of Panama in light  
47 of some of the evidence heard in this proceedings.

48  
49 She will then address Italy’s statements regarding Panama’s alleged confusion  
50 between national and international law and, finally, will argue that Panama has fully

1 met its burden of proof. Advocate Mareike Klein will continue to explain why  
2 article 87 applies in this case and that there is indeed a violation of the freedom of  
3 navigation of Panama. She will particularly discuss the contents of the Decree of  
4 Seizure and will contest Italy's arguments in this respect, for approximately half an  
5 hour, and for the same length of time advocate Olrik von der Wense will respectively  
6 cover the question of reparation by way of compensation and some comments about  
7 article 300.

8  
9 At this point in the proceedings, Panama notes that Italy has not brought a single  
10 new argument to be considered but has evidenced the same contradictions as  
11 before.

12  
13 Because the "*Norstar*" was not arrested on the high seas but in Spanish internal  
14 waters, Italy believes that article 87 does not protect Panama.

15  
16 If the Convention is interpreted in a narrow sense, the conclusion could be that the  
17 right to freedom of navigation on the high seas may only and exclusively be  
18 exercised on the high seas – or, in certain cases, according to article 58, in the  
19 exclusive economic zone – and that therefore an infringement of article 87 is only  
20 possible there.

21  
22 An argument often used for this interpretation is that the right of access to and from  
23 the sea was not guaranteed by article 87 but by article 125 of the Convention.

24  
25 However, this provision grants the right of access only to land-locked States but not  
26 to coastal States. This again could lead to the conclusion that article 87 of the  
27 Convention did not protect vessels outside the high seas – and in certain cases the  
28 exclusive economic zone – except for vessels of land-locked States. Following this  
29 narrow interpretation, the "*Norstar*" also would not have been in the geographical  
30 scope of protection of article 87 at the time of the arrest, and for this reason there  
31 was no breach of article 87.

32  
33 However, Panama would like to argue very clearly against such a narrow  
34 interpretation of the Convention.

35  
36 We all know that the freedom of the high seas is one of the oldest principles of  
37 international law of the sea, and a fundamental concept of the Convention. Panama  
38 is convinced that the interpretation of the Convention should take into account the  
39 will of the contracting States to assert the principles of this Convention as effectively  
40 and as fully as possible.

41  
42 Article 87 of the Convention reads: "The high seas are open to all States, whether  
43 coastal or land-locked."

44  
45 This wording refers not only to immediate but also indirect interference with the  
46 freedom of the high seas. This strongly suggests that even if these interferences do  
47 not occur directly on the high seas but take effect from a different location, they still  
48 impact navigational freedom.

1 We are convinced that article 87 of the Convention on the Law of the Sea should be  
2 interpreted broadly. Article 87 must also effectively protect against interferences in  
3 the freedom of the high seas with the conscious aim of preventing that exercise,  
4 such as by way of seizure of a vessel or by imposing restrictions on its legal  
5 activities.

6  
7 This is exactly what happened in the present case. Italy purposefully attempted to  
8 prevent Panama from exercising its freedom of the high seas, sanctioned and  
9 prevented legal bunkering activities by initiating criminal proceedings as well as by  
10 arresting the “*Norstar*”.

11  
12 Italy has shown that it carried out the arrest in Palma de Mallorca Bay with full  
13 knowledge and intent, and deliberately interfered with the right of a ship to exercise  
14 its freedom to navigate on the high seas.

15  
16 Panama has not argued that Italy is unable to arrest a vessel in port in the course of  
17 its internal proceedings. However, what the evidence has shown is that the arrest  
18 was for acts occurring on the high seas and not within Italian territory.

19  
20 In the *M/V “Louisa”* Case, Judge Cot’s Dissenting Opinion at paragraph 24, page 98,  
21 reads:

22  
23 If the offence was committed in a location where the relevant Spanish  
24 legislation – in this case, the provisions of the Criminal Code ... particularly in  
25 its internal waters and territorial sea – is applicable, the Spanish judicial  
26 authorities may exercise criminal jurisdiction without infringing upon  
27 international law.

28  
29 Read *contrario sensu*, this comment coincides with Panama’s theory concerning the  
30 present case in the sense that, if the offence was not committed in a location  
31 governed by the Italian Criminal Code, particularly not within its internal waters or  
32 territorial sea, the Italian judicial authorities may not exercise criminal jurisdiction  
33 without infringing international law.

34  
35 As we will show later, what matters is where the transactions for which the vessel  
36 was confiscated occurred and were conducted.

37  
38 The “*Norstar*” may have purchased bunkers on the Italian coast and then conveyed  
39 them to the high seas where they were sold to mega yachts.

40  
41 However, the fact that the goods were bought in the coastal State does not  
42 constitute illegal conduct. You still have to link it to something else, and that  
43 something else was the reintroduction by mega yachts into Italy.

44  
45 Has Italy provided evidence about how many of all those mega yachts supplied with  
46 bunkers on the high seas went back to Italy in order to affirm that there was a  
47 suspicion of a crime of smuggling and tax evasion having been committed?

48  
49 Or is Italy simply assuming that the “*Norstar*” and the persons connected therewith  
50 were accomplices of such mega yachts who reintroduced the bunker back into Italy?

1 At page 15 of its first round, lines 9-13, Italy stated:

2  
3 In fact, had the fuel been consumed by the “*Norstar*” and the leisure boats in  
4 question on the high seas and/or carried to ports located in the internal waters  
5 other than those of Italy or of other EU coastal States, such as Gibraltar, the  
6 resale of the fuel in question on the high seas would not have raised the  
7 slightest suspicion concerning offences of the kind in question.  
8

9 Italy also stated that

10  
11 the sale of fuel on the high seas, did not constitute a suspected offence as  
12 such, but it was materially instrumental in grounding the suspicion that the fuel  
13 declaration – which was filed at the time of purchase on Italian territory – was  
14 false, and that the re-entry into Italian ports could amount to tax evasion. Here,  
15 again, the suspected offences would occur exclusively on Italian territory.  
16

17 As we can confirm, Mr President and distinguished Judges of this Tribunal, Italy has  
18 had to admit that the sale of fuel on the high seas was “materially instrumental in  
19 grounding the suspicion.”  
20

21 Therefore, there is no doubt that the bunkering operations had been considered as  
22 part of the criminal acts that led to the arrest of the “*Norstar*”.  
23

24 Italy then said that “the Decree did not target bunkering activities, which means  
25 activities carried out on the high seas”. However, it is clear that without such  
26 bunkering activities Italy could not possibly say that there was a suspicion of any  
27 crime of smuggling or tax evasion because, as we have already demonstrated, a  
28 foreign element is intrinsic in the commission of such crimes. We will turn now to the  
29 alleged enlargement of the dispute.  
30

31 Within the context of Italy’s defence about an alleged enlargement of the dispute,  
32 Panama would like to recall that, in its first round of oral arguments, Italy has  
33 continued to differentiate between the Decree of Seizure and the request for its  
34 execution, on the one hand, and the execution or enforcement of that Decree, on the  
35 other, constantly using the phrase “the Decree of Seizure and the request for its  
36 execution”, followed by a similar number of citations of those two conducts in the  
37 afternoon session.  
38

39 In our first round we referred to the Rejoinder, stating that Italy had argued that only  
40 those damages derived from the Decree of Seizure and from the Request for  
41 Execution as such could be claimed, but not from the actual enforcement of the  
42 order of arrest. In its first round, Italy again referred to the same issue, quoting  
43 paragraph 122 of the Judgment of 4 November 2016.  
44

45 With this argument, Italy is once again trying to deny its responsibility for the  
46 enforcement of the arrest by tacitly shifting all responsibility to Spain, even though  
47 Italy itself had requested the enforcement of the “*Norstar*”’s arrest.  
48

49 Italy has ignored that in its Judgment of 4 November 2016 this Tribunal stated:  
50



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

5 and that in the preceding paragraph the Tribunal had not considered relevant  
6

7 the reference made by Italy to the distinction between a State's conduct that  
8 completes a wrongful act and the State's conduct that precedes such conduct  
9 and does not qualify as a wrongful act, stated in the *Gabčikovo-Nagymaros*  
10 *Project* case;  
11

12 but rather stated that  
13

14 The present case, which involves the action of more than one State, fits into a  
15 situation of aid or assistance of a State in the alleged commission of an  
16 internationally wrongful act by another State.  
17

18 Of particular importance is that this Tribunal also found at paragraph 167 that  
19

20 The Tribunal notes that the detention carried out by Spain was part of the  
21 criminal investigation and proceedings conducted by Italy against the  
22 *M/V "Norstar"*. It is Italy that adopted legal positions and pursued legal  
23 interests with respect to the detention of the *M/V "Norstar"* through the  
24 investigation and proceedings. Spain merely provided assistance in  
25 accordance with its obligations under the 1959 Strasbourg Convention. It is  
26 also Italy that has held legal control over the *M/V "Norstar"* during its detention.  
27 This is clearly evidenced by the communication that took place between Italy  
28 and Spain subsequent to the seizure of the *M/V "Norstar"*, including Italy's  
29 letter of request dated 18 March 2003 for the release of the vessel and its  
30 return to the owner following the judgment of the Court of Savona and Spain's  
31 letter dated 6 September 2006 asking for Italy's authorization to demolish the  
32 vessel. Accordingly, the Tribunal finds that the dispute before it concerns the  
33 rights and obligations of Italy and that its decision would affect the legal  
34 interests of Italy.  
35

36 Italy has stated that Panama has been relying on this Tribunal's Judgment despite  
37 the fact that such decision was adopted in the Preliminary Objections phase of this  
38 case and that since we were in the merits phase we were not bound to respect those  
39 findings. Panama disagrees. Panama completely understands what this phase of the  
40 case on the merits means. However, we do not accept that the previous findings are  
41 of no importance. On the contrary, Panama considers those findings very valuable to  
42 understanding the subject matter of this dispute.  
43

44 Would this Tribunal have accepted the present case if it believed that the  
45 enforcement of the arrest, as Italy stated, did not fall squarely within the framework  
46 of article 87?  
47

48 Are we to believe that Italy is still trying to place its responsibility on Spain?  
49

50 Let us stress again that this Tribunal stated, "[w]ithout the Decree of Seizure and the  
51 request of its enforcement, there would have been no arrest."  
52

1 It is not valid to raise a distinction whether the damages were caused by the Decree  
2 of Seizure, the request for its execution or by its actual enforcement.

3  
4 Let us also be perfectly clear that Italy is responsible for all three phases of the arrest  
5 and thus for all damages caused by them to Panama.

6  
7 Italy, as usual, is trying to play with the language more than address the substance  
8 of the issue. Specifically, Italy is trying to greatly circumscribe article 87 and claim  
9 that it does not apply to the Degree of Seizure which is all that it is responsible for.  
10 Let us briefly review the Italian breaches of this provision.

11  
12 Italy has stated that Panama has not presented evidence that the “*Norstar*” was  
13 navigating in the summer of 1998. However, the witness Morch lucidly declared,  
14 under oath, that in July 1998 the “*Norstar*” was in Algeria.

15  
16 Panama has recently received a copy of the declaration given by the former captain  
17 of the “*Norstar*” at the moment of the arrest, Mr Tor Tollefsen, who, on 22 February,  
18 made a declaration before the chief prosecutor in Alicante, Spain, corroborating what  
19 Mr Morch had just said in his declaration. This document is in Spanish and Panama  
20 will send a translated copy to the Tribunal, who, after seeking the views of Italy, may  
21 make a decision as to its admissibility.

22  
23 Coming back to the main issue about article 87 applicability - that is, the location of  
24 the activities for which Italy arrested the “*Norstar*” - Italy insists that although it  
25 arrested the “*Norstar*” because it was bunkering on the high seas as part of the  
26 investigation concerning the commission of the crimes of smuggling and tax evasion  
27 in Italy, this conduct does not amount to a breach of article 87.

28  
29 Italy has also insisted on characterizing the “*Norstar*”’s conduct as smuggling and tax  
30 evasion:

31  
32 In the verbatim record of Wednesday 12 September, afternoon session, page 5, Italy  
33 regretfully insisted on characterizing the “*Norstar*”’s conduct as follows:

34  
35 As described in the Decree of Seizure and in the request for its execution, the  
36 gasoil was bought exempt from taxes (as ship’s stores) from warehouses in  
37 Livorno, Italy and in other EU Member States. The gasoil was smuggled in  
38 Italy and it was sold in Italy by evading customs duties.

39  
40 We do not have any doubt that this Tribunal will have something to say about the  
41 way Italy, in spite of the fact that there were no crimes at all, is still using the same  
42 arguments that refer to the “*Norstar*” and the persons connected therewith as  
43 criminals. We have been respectfully warning Italy about this procedural conduct all  
44 along the written and during these oral proceedings.

45  
46 Nothing forbade the “*Norstar*” from buying the bunkers in any coastal State and  
47 taking them within its own tanks to the high seas to sell them there or anywhere on  
48 the globe. Italy has not presented a single piece of evidence about any of the mega  
49 yachts that were supplied with bunkers on the high seas being fined or prosecuted  
50 because they returned to Italy.

1 We would like Italy to answer these and other questions tomorrow.

2

3 If some of those mega yachts did return, what control did the “*Norstar*” have on such  
4 a decision? Could Italy have demanded that the “*Norstar*” had some sort of registry  
5 over such mega yachts?

6

7 Page 5 of the 12 September verbatim record, afternoon session, shows that Italy  
8 used an analogy with trucks to assume illegal conduct when this has not been the  
9 case. This example reinforces Panama’s thesis because it concludes that the  
10 illegality was committed in the country where the fuel was “illegally sold” and the sale  
11 of the bunker was on the high seas.

12

13 Although on page 3 of 12 September’s verbatim record, afternoon session lines  
14 36-39 Italy states that article 87 is not concerned with territoriality or extraterritoriality,  
15 but rather only with interference with navigation. We all know that if a State applies  
16 its jurisdiction (prescriptive or enforcement) it can do it territorially (in its own  
17 territorial waters) or extraterritorially (on the high seas or in the territorial waters of  
18 another State). The latter is precisely what Italy did. It applied its custom law and its  
19 enforcement jurisdiction to acts carried out on the high seas by the “*Norstar*” and all  
20 the persons connected therewith.

21

22 The other main issue in this case concerns the location of the arrest.

23

24 The Italian argument that article 87 is not applicable to vessels in port is not tenable.

25

26 When Italy appointed an expert in Italian law, Panama expected that all our  
27 questions concerning this case would be resolved. It was disappointing to see how  
28 unfamiliar Mr Esposito was with the law of the sea, but what is more important is that  
29 neither is he familiar with the records of this case.

30

31 These proceedings have left many unanswered questions from Italy. Panama would  
32 have liked to have the opportunity to pose them in a formal way to Italy before this  
33 stage of the proceedings or during the first round with the object of obtaining  
34 answers. However, we understand that the rules of procedure do not provide for  
35 such a valuable procedural instrument.

36

37 Since Panama could not ask the Italian legal expert those questions either, for the  
38 reasons just explained, we will pose some of them now to Italy in the expectation  
39 that tomorrow we will have answers.

40

41 First question: did the fact that the “*Norstar*” moved from the high seas to the  
42 territorial waters of a foreign state change the rationale for arresting this vessel in the  
43 first place? Panama contends that the fact that the “*Norstar*” moved from the high  
44 seas where it operated did not change the underlying reasons for which the arrest  
45 order had been issued in the first place. Those reasons have been stated in the  
46 Decree of Seizure itself.

47

48 Second question: is it not legally necessary in Italian criminal law to confirm the  
49 existence of a criminal offence before issuing a Decree of Seizure against a foreign  
50 vessel?

1 The Italian legal expert yesterday said that, since it was a probatory seizure, for a  
2 prosecutor to arrest a foreign ship, the existence of a crime did not have to be  
3 proven. So our first question to Italy will be: in Italy, for a foreign vessel to be  
4 arrested, even for probatory purposes, is it not necessary to have proven the  
5 existence of a criminal offence?  
6

7 Although for Panama this is very strange proceeding, because in Panama, in order  
8 to arrest a person or a chattel, even for probatory purposes, the arresting party within  
9 criminal proceedings has to prove first the existence of a criminal offence. I honestly  
10 believe this is a universal rule.

11  
12 What was the crime that had objectively been proven that supported the arrest of the  
13 “*Norstar*”?  
14

15 The consequence is that, according to the Italian legal expert and Italian criminal  
16 law, you first arrest a foreign ship, and after the arrest, you then investigate if a crime  
17 has been committed. Panama believes that it should be the other way round.  
18

19 Third question: if, as Italy has accepted, in this case the arrest order was issued  
20 because of the alleged offences of smuggling and tax evasion, and that it would  
21 have been unlawful to arrest the “*Norstar*” on the high seas, what difference does it  
22 make to arrest on the high seas or in Spain if the offences for which the arrest was  
23 issued were the same?  
24

25 By the same token, would Italy consider an arrest of a foreign vessel unlawful on the  
26 high seas, but lawful on the territory of a third State, for the very same offence?  
27

28 Fourth question: if, as Italy has admitted, the arrest of the “*Norstar*” on the high seas  
29 would have been a breach of article 87, and the arrest order was based precisely on  
30 the fact that it had to be “performed in the international seas and hence beyond the  
31 territorial sea and the contiguous zone”, as we will see the Decree of Seizure said,  
32 would it still consider such an order lawful, and why?  
33

34 Fifth question: can an arrest order of a foreign vessel be legally based on the fact  
35 that it has to be performed beyond its international seas and its contiguous zone,  
36 and later decide to execute it within the territory of a third State?  
37

38 Was there any sense of urgency to arrest the “*Norstar*”, particularly considering that  
39 the arrest order was issued after it had been freely bunkering for several years in the  
40 same location?  
41

42 Although Italy insists that paragraph 2 of article 87 only concerns Panama, it would  
43 be necessary to remind Italy that the fact that Italy does not exercise the right to  
44 freedom of navigation does not mean that Italy, as a coastal state, does not conduct  
45 itself with due regard to the interests of Panama in its exercise of such right, which is  
46 precisely what article 87, paragraph 2, is designed for.  
47

48 Let us turn to the examination of Panama’s appointed witnesses.  
49

1 In its first round of oral arguments in Thursday morning's session, Italy stated that  
2 the case of the "*Spiro F*" had nothing to do with the present case. The Italian  
3 Co-Agent even interrupted our examination of a witness relying on the same  
4 argument.

5  
6 However, as can be confirmed, Panama introduced a reference to this case firstly in  
7 the Memorial as Annex 6, with a transcript of the deposition of Silvio Rossi  
8 addressed to and received by the prosecutor of Savona on 18 September 1998,  
9 before the arrest of the "*Norstar*" had been enforced.

10  
11 On page 2 of this piece of evidence Mr Rossi cited article 255 of the Italian Custom  
12 Book as follows: "For what concerns the use of the foreign and exported national  
13 ship supplies, the Italian and foreign ships that are sailing in the territorial waters are  
14 considered outside the Customs territory."

15  
16 He also declared that on page 4 he referred to the Istanbul Convention that in its  
17 C annex says: "The fuels and the propellants inside normal pleasure vessel tanks  
18 are admitted duty free at the importation without being subjected to any prohibition  
19 and restriction."

20  
21 He also stated on page 7 that

22  
23 the gas oil inside the tanks, present on board of the vessel at the moment of  
24 its entering the State territorial waters that ... may have been boarded in any  
25 communitarian or extracommunitarian place, o[r] moored in ports or staying in  
26 high sea ... as at the moment of entering of the vessel the territorial waters  
27 said supplies have been considered by the Italian Customs law in foreign state  
28 ... as extracommunitarian goods.

29  
30 On page 8 he added that

31  
32 In view of all the above reasoning, it is to conclude that the activity of all the  
33 pleasure vessels that have been refuelled in extra-territorial [international]  
34 waters is absolutely right and it cannot absolutely be considered as a  
35 contraband activity.

36  
37 Finally, on the following page he concluded that

38  
39 for years and years the pleasure vessels have entered the Italian ports having  
40 inside their tanks gas oil on-boarded in foreign ports (activity still continuing)  
41 without the need of releasing any declaration to the Customs purposes and  
42 without suffering any penalty.

43  
44 I have decided to bring this to you, Mr President and honourable Judges, to confirm  
45 the knowledge, experience and consistency of the opinions given by this witness in  
46 his oral deposition when he referred to the bunker supplied by the "*Norstar*" as a  
47 "naval provision", confirming that the legal tax regime that governed the bunkering in  
48 Italy was circumscribed to four articles: articles 252, 253, 254 and 255 of the  
49 Customs book.

1 He again explained on page 13 of the verbatim record, in a very detailed fashion,  
2 that in order to co-operate with the police, he “used to give the position of the boat”  
3 and that this was “22-23 miles off the coast, far away from the border of the national  
4 waters.”

5  
6 When we asked him about the “real reasons” the Public Prosecutor had for arresting  
7 the “*Norstar*”, he said on page 15 that “he did not know if it was done for ignorance of  
8 for bad faith”, but that they “confuse national product, national fuel, with foreign fuel.  
9 They confuse consumption with supply.”

10  
11 When he was asked about the application of the Italian Criminal Code he stated on  
12 page 16 that “when you have a ship in the middle of international waters, for sure  
13 this is not national fuel – it is foreign fuel.” When the witness asked if he could use  
14 his memory, the Co-Agent of Italy abruptly interrupted the declaration.

15  
16 We did not learn what the document was about because the witness had been  
17 interrupted by the Co-Agent of Italy and we reminded the President about the  
18 agreement we had reached with him about not interrupting the declarations. In spite  
19 of that, the Co-Agent of Italy interrupted once again later on. Fortunately, this time  
20 the President called him to order.

21  
22 The President then asked Panama if it knew whether the document had already  
23 been introduced before the closure of the written proceedings, but we could not  
24 answer because we had not been allowed to ask the witness what this document  
25 was about. The document in question was disallowed, but we could find out  
26 afterwards that the document was the same as Annex 6 of the Memorial to which we  
27 have just referred.

28  
29 The witness was then again abruptly interrupted by the Co-Agent of Italy when the  
30 witness referred to the “*Spiro F*”. We were then asked to confine our questions to this  
31 case but this evidence had been part of the previous pleadings, as you can confirm.

32  
33 On page 19 of the verbatim record, this witness confirmed that the evidence of the  
34 case in Savona would not have changed at all if the “*Norstar*” had not been arrested.

35  
36 When asked about how he felt about the fact that Italy had filed some documents  
37 stating that he had masterminded a criminal plan, this witness confirmed on page 15  
38 that he felt concerned, and that this was a situation “not so nice to be in” and on  
39 page 18 that he had “suffered three years of investigation”. He also confirmed he  
40 had to pay \$40,000 to lawyers to defend his case in the Italian proceedings.

41  
42 This witness answered all questions in such a way that showed his competence, and  
43 he even explained why he was so experienced in Italian customs laws and even  
44 French law.

45  
46 With reference to the witness Morch, Italy only tried to discredit his declaration by  
47 asking whether he had prepared it himself, failing to show a conflict of interest on his  
48 part as part of the Panama delegation.

1 Yet in its oral statements, Italy has insisted on proclaiming that the suspected crime  
2 consisted of three elements: first, loading the tanker with fuel in Livorno; second, to  
3 subsequently reselling this fuel to Italian and other European leisure boats stationed  
4 on the high seas, off the coasts of San Remo; and third, allowing these leisure boats  
5 to return to Italy.

6  
7 Even though, Mr President, we kindly asked Italy to refrain from referring to the  
8 activities of the persons involved in the operation of the “*Norstar*” as crimes, Italy has  
9 insisted on revictimizing and aggravating their suffering publicly when it refers to  
10 instances of false declarations.

11  
12 Turning to the question of *corpus delicti*, on page 17 of the morning session of  
13 Wednesday 12<sup>th</sup>, Italy gave a definition from its Criminal Code stating that it is “an  
14 instrument to be used in the further investigation of suspected smuggling and tax  
15 evasion.”

16  
17 As you may recall, Mr President, Panama had already asked the question until when  
18 Italy was going to continue calling the “*Norstar*” *corpus delicti* if we already knew that  
19 the suspicions that smuggling and tax evasion had been committed did not exist any  
20 more after the final decision of the Genoa Tribunal in 2005.

21  
22 However, Italy has insisted on tacitly characterizing the conduct of the persons  
23 involved in the operation of the “*Norstar*” as criminals. This, again, Mr President,  
24 should not be allowed in these proceedings any more.

25  
26 We heard from the Italian legal expert that in order to execute an arrest it was not  
27 necessary to have evidence of a crime because it was a probative seizure.

28  
29 However, as Advocate Klein will show, although the Decree of Seizure stated that  
30 the “*Norstar*” had “an intrinsic probationary nature”, in its considerations the Public  
31 Prosecutor stated that the “*Norstar*” as *corpus delicti* was part of the “objects through  
32 which the investigated crime was committed”.

33  
34 In other words, it was not, as the Italian legal expert stated, that the arrest was only  
35 for probatory purposes.

36  
37 Italy has been acting as if it had been an enforcement of its release order. Panama  
38 contends that in the same manner in which the prosecutor had sent a Request to  
39 Spain by means of an international letter rogatory, Italy should have sent another  
40 letter rogatory to Spain to request the enforcement of the judgment of the tribunal of  
41 Savona, and not a simple note dated 18 March 2003, and that this could have only  
42 been made once the Savona judgment had been final after the confirmation by the  
43 tribunal of Genoa in 2005.

44  
45 Italy has portrayed the idea that, because the appeal did not refer to the “*Norstar*”,  
46 this vessel was no longer detained. It is worth remembering that one of the  
47 communications to the owner was to threaten him on 21 March 2003 with auctioning  
48 the “*Norstar*” if he did not retrieve it within 30 days.

1 However, we know that this is not the case, because once an appeal is filed, the  
2 outcome of the judgment that is the object of such appeal has to be suspended until  
3 the appeal is decided.

4  
5 This is contrary to what Italy has been stating over and over, i.e., that since the  
6 arrest order of the “*Norstar*” was not mentioned on the appeal, the release order  
7 became final.

8  
9 However, the contrary has been confirmed by the Genoa Court of Appeal, when on  
10 31 October 2006 this high court of Italy stated, making reference to the Savona  
11 Tribunal judgement that

12  
13 Having noted that this judgment obviously has to be enforced and there is no  
14 decision to be taken given that the destiny of the vessel, after having been  
15 given back to the party entitled, does not fall within the competence of this  
16 Court (and in any case, given that the first instance judgment was confirmed,  
17 any issue on the enforcement of the said judgment would be the competence  
18 of the Court of Savona pursuant of Article 665 of the Code of Criminal  
19 Procedure). (Annex 14 to the Memorial).

20  
21 Panama still does not understand how Italy may refer to the retrieval of the “*Norstar*”  
22 as an unfulfilled obligation of Panama or the shipowner, as it has been stating all  
23 through these proceedings.

24  
25 Panama contends that all references to the alleged communications from Italy to the  
26 shipowner concerning the release of the “*Norstar*” either in 1999 or 2003 fall down  
27 with this clear and unambiguous declaration made by the Appeal Tribunal of Genoa  
28 in 2006.

29  
30 After this date, Mr President, Italy did not make any single effort to communicate with  
31 Panama or the shipowner concerning the enforcement of the release order. On the  
32 contrary, Italy evaded all communications that Panama tried to make with them,  
33 when they had a duty to act in good faith.

34  
35 On page 14, lines 32-35, of the verbatim record of 12 September, afternoon session,  
36 Italy considers that its conduct

37  
38 prior to the commencement of these proceedings, and during these  
39 proceedings is a matter not related to the question as to whether Italy has  
40 fulfilled in good faith the duty to respect Panama’s freedom of navigation under  
41 article 87 of the Convention.

42  
43 If Panama claims that article 87 has been breached by Italy, it is only logical that  
44 from the very moment that this occurred on September 1998, due to the 11 August  
45 1998 issuance of the Decree of Seizure, all of Italy’s conduct should be according to  
46 the standard of good faith.

47  
48 If Italy, having breached article 87, also behaved in such a manner that also shows  
49 that it has not acted in good faith, it is more than obvious that a breach of article 300  
50 is duly linked to another provision of the Convention and is not used as a standalone  
51 norm.



1  
2 Panama takes issue with Italy's reference to article 283 because, contrary to what  
3 Italy proposes, there were no negotiations at all. Italy has not presented any  
4 evidence to support its assertion that Panama made any settlement proposals. What  
5 Panama did was to demonstrate its willingness to obtain at least an answer to any of  
6 its communications, not even to its contents but to the fact that Italy had been  
7 receiving them. This is simply called "acknowledgment of receipt".  
8

9 But Italy was incapable of even doing that. It preferred to keep silent. It was not until  
10 several attempts, and particularly one made through diplomatic channels, that  
11 Panama decided that it could not wait any more for such acknowledgement.  
12

13 The Italian excuse of the lack of an authorization to represent Panama as its Agent  
14 was characterized by Italy as "a legal mistake" and an "error on the law" for which it  
15 considers that it has been sanctioned by the Tribunal with the rejection of Italy's  
16 arguments in this regard.  
17

18 Panama disagrees. The Tribunal has not imposed any sanction on Italy. The  
19 rejection of its Preliminary Objections was as a consequence of its lack of substance,  
20 and because of the procedural aspects that were thoroughly debated at such stage  
21 of this case. They do not have anything to do with the duty to act in good faith.  
22

23 Although Panama considers this duty as a substantive standard, it does not mean  
24 that it may also be claimed in respect of the procedural stages of the case. Panama  
25 contends that Italy has not been conducting itself in such a manner as to say that it  
26 has complied with its duty to act in good faith, as has been expressly explained in  
27 the first round of oral proceedings and in all of its pleadings.  
28

29 On the question of silence, for instance, Italy's failure to respond to all the  
30 communications sent by Panama is considered by Italy as a form of opposition.  
31 Panama disagrees. Panama responds that if Italy had at least acknowledged receipt  
32 of any of the communications sent by Panama then the Italian argument that silence  
33 was some sort of opposition could have been valid. But not in the absence of any of  
34 the communications, because this did not give Panama any certitude about the fact  
35 that Italy had received those letters. Let us remind ourselves that it was not until  
36 Panama instituted proceedings that Italy for the first time acknowledged their receipt.  
37

38 This has been the Italian pattern of conduct, for instance, also when Panama has  
39 asked for its collaboration with reference to its criminal proceedings. Let us  
40 remember that Italy opposed the request for evidence concerning such files. Italy  
41 stated that Panama was under the procedural obligation to particularize any of the  
42 documents that it needed before Italy could consider disclosing them.  
43

44 Panama disagrees with this answer, because it has been Italy who has had access  
45 to and control of all evidence concerning this case. This is a very important issue.  
46 Panama has had to rely on the documents that its goodwill has allowed to be  
47 presented.  
48

49 However, this conduct has not been supported even by the expert on Italian criminal  
50 proceedings, who candidly accepted that all the files in a criminal case are allowed to

1 be used as evidence in the proceedings of another case jurisdiction. Therefore there  
2 was no valid reason to accept excuses for not allowing Panama to have access to all  
3 the files in such criminal proceedings. A lot of questions would be answered with that  
4 information.

5  
6 This expert also agreed with Panama that Italy should have presented as evidence  
7 the letter sent by the Diplomatic Litigation and Treaties Services of its Ministry of  
8 Foreign Affairs, presented as evidence in Annex 12 of the Reply, where the name of  
9 the Agent of Panama had been mentioned, and where this office of the Italian  
10 Government stated that

11  
12 This Service, which the General Secretariat has requested deal with the  
13 matter, has been involved since last September corroborating the effective  
14 legal situation in which the matter in question took place. For understandable  
15 reasons, information and details have been obtained from the Tribunal in  
16 Hamburg, in a confidential manner.

17  
18 If this letter was received by the Public Prosecutor on 18 February 2002, and such  
19 office had been dealing with the matter since last September (2001), Panama  
20 considers that it should have been disclosed by Italy during some stage of the  
21 present proceedings.

22  
23 Furthermore, when Italy offered a list of documents to allow Panama the possibility  
24 to choose among those on the list the ones that Panama would like to be given  
25 access to, Italy again omitted this document. This conduct demonstrates a clear lack  
26 of compliance with a duty to act in good faith.

27  
28 The same applies to the letter from the same Diplomatic Litigation and Treaties  
29 Services of its Ministry of Foreign Affairs, presented as evidence by means of  
30 Annex 7 to the Memorial, where, although concerning the "*Spiro F*", the head of such  
31 office advised or warned the Public Prosecutor of Savona of the fact that Italy did not  
32 have a contiguous zone and that he took the opportunity

33  
34 to remember you the importance to comply with the international rules, being  
35 the case a very delicate question which involves from one side the custom  
36 interests of Italy but on the other side the respect of the Maltese flag interests,  
37 and if there is any small mistake your action won[']t get any advantage.

38  
39 Italy stated that "there is a difference between detention, that is, enforcement action,  
40 and acts that are the logical precedents to the enforcement action".

41  
42 All the Italian reasoning points to the alleged fact that "damage would stem from the  
43 enforcement of the Decree, not from the Decree and the Request for Execution."  
44 With this statement Italy demonstrates two aspects: Italy only wants to discuss the  
45 legality of the order itself, not the arrest, but on the other hand it admits that damage  
46 stemmed from the arrest enforcement of the Decree and not from its adoption and  
47 Request for Execution.

48  
49 Panama's contention is that, while damages may have only been a final  
50 consequence of the arrest enforcement, the unlawfulness of the issuance or  
51 adoption and of its request for its execution were central to its execution and

1  
2 its judicial authorities never said that the Decree of Seizure was in any way  
3 unlawful because of its extraterritorial application or for any other reason. It is  
4 therefore a logical fallacy to say, as Panama does, that, because those  
5 involved with the “*Norstar*” were acquitted, then article 87 of UNCLOS was  
6 breached and that Italy cannot *venire contra factum proprium*.  
7

8 But let us see what the Italian tribunals have said about the lawfulness of the  
9 prosecutor decree.  
10

11 Five years after the Decree of Seizure, the Court of Savona held that  
12

13 (5) The purchase of fuel intended to be stored on board by leisure boats  
14 outside the territorial sea line and for its subsequent introduction into the  
15 territorial sea shall not be subject to the payment of import duties as long as  
16 the fuel is not consumed within the customs territory or unloaded on the  
17 mainland<sup>1</sup>  
18

19 and that  
20

21 Whoever organizes the supply of fuel offshore –it does not really matter  
22 whether this occurs close to, or far from, the territorial waters line –does not  
23 commit any offence even though he/she is aware that the diesel fuel is used  
24 by leisure boaters sailing for the Italian coasts...Nor is there an offence...when  
25 diesel fuel, either sold or transshipped offshore, has been purchased on the  
26 Italian territory with a relief from the payment of excise duties because the fuel  
27 was regarded as a store. These goods are then considered to be foreign goods  
28 once the ship leaves the port or at least the territorial waters line.  
29

30 This Italian first instance tribunal referred to the “elements of the conduct” as “the  
31 purchase of oil products in non EU countries or in Italy and in other EU ports but  
32 under a customs-free regime, for such products to be then used to refuel ships or  
33 vessels outside Italian territorial waters.”<sup>2</sup>  
34

35 The Savona Tribunal then confirmed that the purchase “outside the territorial sea  
36 line” for its subsequent introduction into Italy, “no matter whether this was close to,  
37 or far from, the territorial waters line”, and whether it had been “purchased on the  
38 Italian territory”, was not a crime.<sup>3</sup>  
39

40 Contrary to what Italy is now trying to assert, this Italian judicial authority clearly  
41 recognized that:  
42

43 (6) In light of the above remarks, before asserting any kind of criminal liability,  
44 a preliminary test is needed as to where the provision of supplies occurred  
45 because if it took place outside the line of territorial waters no one of the  
46 offences charged does actually exist.<sup>4</sup>  
47

---

<sup>1</sup> Rejoinder, Annex F.

<sup>2</sup> Tribunal of Savona Judgment, p. 6; Memorial, Annex 10, and Counter-Memorial, Annex M.

<sup>3</sup> Rejoinder, Annex F, para. 5, p. 10.

<sup>4</sup> *Ibid.*, para. 6, p. 10.

1 Consequently, the Tribunal of Savona ruled that the arrest of the “*Norstar*” was  
2 wrongful precisely due to the location of the vessel when it was bunkering. For this  
3 reason, the Public Prosecutor’s order of arrest was revoked and the vessel was  
4 ordered to be returned to its owner.

5  
6 On 18 August 2003 the Public Prosecutor filed an appeal against this decision,  
7 basically repeating all of its legal and factual arguments, the same arguments that  
8 Italy has been using before this Tribunal in the present case. For instance the  
9 Public Prosecutor stated: “We are not contesting whether the vessels seized could  
10 carry out bunkering operations, but we are contesting that the activity carried out  
11 was quite different from actually being bunkering”.<sup>5</sup>

12  
13 Those words used in these proceedings by Italy are the same.

14  
15 Another quotation from the Public Prosecutor:

16  
17 giving wilfully and consciously to the product they sold a destination different  
18 from the one for which they had obtained the tax exemption (with reference to  
19 the product bought in Italy, mainly by “NORSTAR, that was therefore  
20 reintroduced artificially into the customs’ territory).<sup>6</sup>

21  
22 Let us now revisit what the High Tribunal of Genoa decided:

23  
24 The Genoa Tribunal unequivocally decided: “the appeal is unfounded.”<sup>7</sup>

25  
26 The Genoa Tribunal also determined that

27  
28 A recreational vessel may load abroad fuel constituting ship’s stores, both in  
29 case of foreign goods and Italian exported goods, and is relieved from paying  
30 duties upon returning in the waters of Italian ports, unless it is unloaded or  
31 consumed inside the customs borderline.<sup>8</sup>

32  
33 Italy has continuously proposed that article 87 is not applicable and therefore has not  
34 been breached because the vessel and the persons connected therewith had carried  
35 out their conducts within Italy.

36  
37 However, in addition to the Savona Tribunal, the Genoa Higher Tribunal also  
38 declared:

39  
40 That the purchase by recreational vessels of fuel intended to be used as ship’s  
41 stores outside the limit of territorial sea and its subsequent introduction inside  
42 it does not entail any application of duties so long as the fuel is not consumed  
43 within the customs line or landed; that no offence is committed by anyone who  
44 provides bunkering...

---

<sup>5</sup> Appeal submitted by the Public Prosecutor against the Court of Savona Judgment, p. 2, Memorial, Annex 13, p. 2.

<sup>6</sup> *Ibid.*, p. 3.

<sup>7</sup> Preliminary Objections, Annex K.

<sup>8</sup> *Ibid.*, p. 9.

1 This is the “*Norstar*”

2  
3 on the high seas, even in full knowledge that the gasoil will be used by leisure  
4 boaters bound for Italian coast; that there is not any possibility of establishing  
5 the offence provided for, and punishable under ... when the gasoil, which has  
6 been sold or transshipped on the high seas, has been purchased under  
7 exemption from payment of the excise duty for being ship’s stores (such goods  
8 are certainly to be considered foreign goods once the vessel has left the port,  
9 or once it has gone beyond the limit of territorial waters).<sup>9</sup>

10  
11 The Genoa court concluded that: “The consumption of fuel in Italian territorial waters  
12 does not amount to smuggling.”<sup>10</sup>

13  
14 Clearly, this Italian final and definitive judgment confirms that anyone who provides  
15 “bunkering on the high seas”, as Panama has repeatedly characterized the activity of  
16 the “*Norstar*”, and for which, in turn, it has been roundly criticized by Italy, has not  
17 committed any punishable offence.

18  
19 In other words, the Court of Appeal judgment strongly supports Panama’s case in  
20 this dispute, while refuting Italy’s.

21  
22 This would certainly explain why Italy has chosen not to rely on this piece of  
23 evidence at all, and Panama hopes that in its second round Italy can also explain  
24 this.

25  
26 Due to the time restraints, Mr President, I would like now to call advocate  
27 Miriam Cohen, who will cover the issues of Italy’s statements regarding Panama’s  
28 alleged confusion between national and international law, and how Panama has fully  
29 met its burden of proof. Thank you, Mr President.

30  
31 **THE PRESIDENT:** Thank you, Mr Carreyó. Since we started half an hour late, for  
32 which I apologize, the sitting will continue until 5 p.m., when we will take a break.

33  
34 Now, I give the floor to Ms Cohen to make a statement.

35  
36 **MS COHEN:** Thank you, Mr Carreyó.

37  
38 Distinguished President, Members of the Tribunal, it is an honour to appear again  
39 before you to submit arguments on behalf of the Republic of Panama in the second  
40 round of oral proceedings in the *M/V “Norstar”* Case.

41  
42 My task before you today is to make submissions on three points.

43  
44 I will first overview the main arguments of Panama, in light of the evidence presented  
45 in the hearings, and the principal issues that still divide the Parties.

46  
47 Secondly, I will briefly address Italy’s argument regarding remedies under domestic  
48 law and its claim that Panama confuses “Italian domestic national and international

---

<sup>9</sup> *Ibid.*, p. 9.

<sup>10</sup> *Ibid.*, p. 8.

1 law”<sup>1</sup>, an argument which is ultimately based on Italy’s misconstruction of Panama’s  
2 claims;

3  
4 Finally, I will demonstrate that Panama has met its onus of proof and, through written  
5 and oral evidence, has sufficiently proved its case;

6  
7 I will proceed to highlight the main arguments of Panama in relation to the issues  
8 that still divide the Parties and review some of the evidence presented in the oral  
9 hearings:

10  
11 During its first round of pleadings, Italy has devoted a great deal of attention  
12 attempting to blur the issues in the present case, especially as it concerns articles 87  
13 and 300 of the Convention. Opposing Counsel stated that this is a “simple and  
14 narrow”<sup>2</sup> case. Panama submits that rather than simple and narrow, the case before  
15 the Court is rather clear, despite Italy’s efforts to paint another picture. Italy, by its  
16 own actions, violated articles 87 and 300 of the Convention, incurring international  
17 responsibility for which it must provide reparations to Panama in the form of  
18 compensation. Panama also adds that this is a very important case, one that  
19 establishes: the scope of article 87 – freedom of navigation – a freedom upon which  
20 the law of the sea is founded; the concept of good faith and abuse of rights,  
21 enshrined in article 300 of the Convention; and the limits of a State’s jurisdiction not  
22 to interfere with the freedom of the high seas.

23  
24 Panama’s arguments on the law, in a nutshell, are, and have always been, as  
25 follows. First, Italy, through its Public Prosecutor, issued a Decree of Seizure that  
26 was contrary to Italy’s obligations under international law, namely article 87. The  
27 reason is clear: the Decree of Seizure related to activities performed on the high  
28 seas, that is, bunkering activities of the “*Norstar*” in international waters. The Decree  
29 of Seizure explicitly, expressly, says so. To rebut any further argument from Italy in  
30 this regard, my colleague Ms Klein will address this very point: the text of the Decree  
31 of Seizure leaves no room for confusion that the activities that were the object of the  
32 Decree occurred on the high seas. Panama has presented ample evidence that the  
33 bunkering activities the “*Norstar*” was performing took place on the high seas, as  
34 Panama’s Agent has just stated. Italy itself admitted so<sup>3</sup>. Italy has also accepted –  
35 and how could it not – that bunkering on the high seas is a completely lawful  
36 activity<sup>4</sup>.

37  
38 What Italy now tries to claim is that the Decree of Seizure pertained to activities  
39 within Italian territory. If Panama has established that the “*Norstar*” carried out –  
40 lawful – activities on the high seas, it is unsurprising that Italy’s only hope is to  
41 misconstrue, misinterpret, essentially change the words of the Decree of Seizure to  
42 claim that it aimed at activities carried out in Italian territory. But Italy cannot change  
43 history, and it can certainly not modify the clear facts of this case.

44  
45 Italy paints a distorted picture of the factual matrix of this case in the hope of  
46 convincing the Tribunal that the acts for which the vessel was seized happened

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<sup>1</sup> ITLOS/PV.18/C25/5, p. 1.

<sup>2</sup> ITLOS/PV.18/C25/5, p. 24.

<sup>3</sup> ITLOS/PV.18/C25/5, p. 15.

<sup>4</sup> ITLOS/PV.18/C25/5, p. 15.

1 within its jurisdiction, in order to evade responsibility under the Convention. Why is  
2 Italy claiming that the activities which the Decree of Seizure was targeting happened  
3 within Italy's territory? It is simple: Italy knows that as a Party to the Convention it  
4 cannot arrest a vessel flying a foreign flag for activities performed on the high seas,  
5 even if the actual arrest happened in port. That is a contravention of the freedom of  
6 navigation; and that, Mr President, Members of the Tribunal, is exactly what  
7 happened in this case.

8  
9 Ms Klein will discuss in more detail the facts and evidence that prove, uncontestedly,  
10 that article 87 was violated in the present case.

11  
12 Panama also claims that Italy violated article 300 in connection with Italy's violation  
13 of article 87. Although Italy claims that Panama has failed to demonstrate a link  
14 between articles 87 and 300, this is again a blatant distortion of Panama's position  
15 and another attempt to minimize clear arguments to the contrary. I will briefly go  
16 back to this point, in a few minutes.

17  
18 Panama claims as well that reparation is due for all the damages incurred as a  
19 consequence of Italy's violation of its obligations under the Convention. My  
20 colleague, Mr von der Wense, will address this point later in our submissions.

21  
22 In relation to the claim for reparation, Italy repeatedly suggested that the vessel was  
23 in a bad state already at the time of its arrest, in 1998. It provided, however, no  
24 convincing evidence of such claim – none whatsoever. What stems clearly from the  
25 record is that the "*Norstar*" was a fully operational and well-functioning ship.  
26 Panama's witnesses, Mr Morch, Captain Husefest and Mr Rossi, testified about the  
27 seaworthiness and well-maintained condition of the vessel. To recall Mr Morch's  
28 testimony, he made it clear that:

29  
30 [d]uring the operation in the offshore market with supply of gasoil to mega  
31 yachts, maintenance and presentation of a ship in good condition was always  
32 important. The vessel was always clean, newly painted and very well  
33 maintained ... There were no outstanding items from DnV when the ship  
34 arrived at Palma de Mallorca with gasoil from Malta in April 1998. ... Also the  
35 cargo tanks were completely cleaned, and, if necessary, painted prior to  
36 loading. ... Only clean products could be delivered to mega yachts. Samples  
37 were taken during each delivery, as this was part of the routine<sup>5</sup>.

38  
39 Concerning the seaworthiness of the "*Norstar*" in the period prior to the arrest, we  
40 also heard unequivocal testimony, from Mr Morch and also from Captain Husefest  
41 and Mr Rossi, that the vessel was navigating in perfectly well-maintained condition.  
42 In response to my question in this regard, Mr Morch stated on Monday that

43  
44 [t]he ship had, prior to the Italian arrest, all valid certificates such as  
45 Panamanian national certificate, trading certificate, load line certificate, and  
46 had passed the annual survey in 1997.

47 ...  
48

---

<sup>5</sup> ITLOS/PV.18/C25/1, p. 28.

1 The ship was during summer 1998 bunkering mega yachts in a designated  
2 position given by Spanish authorities, 24 nautical miles between Mallorca and  
3 Ibiza<sup>6</sup>.  
4

5 Panama has also provided photos of the vessel, dating prior to the arrest,  
6 which essentially corroborate Mr Morch's testimony about the state of the  
7 vessel. It has submitted charter contracts. The evidence in the record is  
8 abundant in this regard. Italy has tried to discredit Panama's witnesses,  
9 suggesting that their testimony should be questioned. The fact remains that  
10 their testimony prove that the vessel was fully operational at the time of its  
11 arrest, and would continue to be, if it were not for Italy's unlawful detention of  
12 the vessel.  
13

14 Importantly, Italy's own expert witness, Mr Matteini, in cross-examination was asked  
15 to review the photos submitted by Panama regarding the vessel prior to the arrest.  
16 When confronted with the pictures, Mr Matteini affirmed, unequivocally, that:  
17

18 The deck ... the feed lines and the castles, was in good maintenance order ...  
19 this is the engine cabinet. It is quite clean. You can see the dashboard and the  
20 engine portion. For sure, had the vessel looked like that, then my evaluation  
21 would have been different<sup>7</sup>.  
22

23 In other words, the vessel "was in good maintenance order"<sup>8</sup>. Those were the exact  
24 words of Italy's own expert. That is clear, Mr President, Members of the Tribunal. He  
25 also stated, unequivocally, that he had not seen these picture of the vessel before,  
26 and that had he seen these photos his evaluation "would have been different" –  
27 again, his exact words. Now, it is not difficult to understand why Italy did not show  
28 these pictures to Mr Matteini before – or that Mr Matteini had not seen these pictures  
29 before. Obviously, he would have provided a different valuation of the vessel, as he  
30 stated – one that is not convenient for Italy's deceptive and distorted arguments  
31 about the state of the vessel.  
32

33 Panama asks: what has Italy demonstrated? Italy filed photos of the ship, which,  
34 Panama has made abundantly clear in these proceedings, dated from at least a  
35 decade after the arrest took place. I will simply recall again that Italy's own expert  
36 Mr Matteini referred to these photos and clarified that "The dat[e] that the photograph  
37 is taken, and this should not be mixed up to be sure of when it was posted on the  
38 website ... but if there is a dat[e], that is referred to the photograph that is being  
39 shown."<sup>9</sup>  
40

41 During Mr Morch's examination on Monday, he confirmed that the pictures Italy  
42 submitted to this Tribunal date from more than 10 years after the vessel had been in  
43 detention<sup>10</sup>.  
44

45 Continuing on the question of the damages suffered as a result entirely of Italy's  
46 conduct, Italy has also tried to claim that Panama and the shipowner have,

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<sup>6</sup> ITLOS/PV.18/C25/1, p. 29.

<sup>7</sup> ITLOS/PV.18/C25/8, p. 22.

<sup>8</sup> *Ibid.*

<sup>9</sup> ITLOS/PV.18/C25/8, p. 14.

<sup>10</sup> ITLOS/PV.18/C25/1, p. 29.



1 essentially, been the cause of their own misfortune. Why? Because they failed to  
2 maintain the vessel, and retrieve the vessel in 1999, and in 2003. Panama has  
3 already addressed these claims in its written and oral pleadings, as well as,  
4 importantly, through oral testimony. I will limit myself today to affirming three points:  
5

6 First, it was Italy, and not the shipowner or Panama who had the responsibility to  
7 maintain the vessel after its arrest. This is not only a legal conclusion, but it is also a  
8 logical one. If Italy had total control over the “*Norstar*” after its arrest – and we have  
9 heard Mr Morch state that access to the vessel was denied, “everything was  
10 locked” – then it can only be Italy that has the obligation to maintain the vessel in  
11 good working order during the detention. In response to Judge Pawlak’s question,  
12 Mr Esposito, Italy’s own expert, confirmed that: “The general rule is that whoever has  
13 issued the seizure order... is in charge of the whole situation.” In fact, “If Italy arrests  
14 a ship” whoever has issued the seizure order is responsible for taking care of the  
15 ship.”<sup>11</sup>  
16

17 Secondly, it also became clear during these proceedings, through the examination of  
18 witnesses, that Italy had the obligation to name a custodian, and that this person was  
19 responsible for the vessel after its arrest (in Mr Esposito’s words: “The responsibility  
20 actually moves from the Public Prosecutor to the custodian.”<sup>12</sup>) Well, we do not know  
21 that any custodian was appointed in this case. Mr Morch, in response to a question  
22 posed by Judge Lucky, confirmed that there was no information about a custodian  
23 being appointed to oversee the ship<sup>13</sup>. But we do know that no one, I repeat not the  
24 Public Prosecutor, not a potential custodian, took care of the ship, which led to its  
25 ultimate deterioration.  
26

27 Thirdly, I will restate that in 1999, it was a conditional release against a bond of  
28 250,000,000 lira. We heard from Mr Morch’s testimony that, regarding the payment  
29 of the amount of the bond: “[t]he owners had no option. They could not pay the bond.  
30 In this situation all involved had to wait until the Public Prosecutor had lost his  
31 case”<sup>14</sup>.  
32

33 He further stated that:  
34

35 The *M/V “Norstar”* could not continue its commercial activity after the arrest  
36 and thus was not in a position to secure its release. Inter Marine Company S/A  
37 had no other ships to compensate for the loss of income ... [It] also did not  
38 have any option to provide security through its bank ... Therefore, the owner  
39 had neither the opportunity to pay the bond or to provide a bank guarantee<sup>15</sup>.  
40

41 So we have evidence, the sworn testimony of Mr Morch, that the shipowners were  
42 not in a financial state to pay the bond.  
43

44 Panama thus makes two assertions in regard to the vessel at this point. The first is  
45 that it has been proven in this case, through, *inter alia*, the testimony of various

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<sup>11</sup> ITLOS/PV.18/C25/8, p. 10.

<sup>12</sup> ITLOS/PV.18/C25/8, p. 10.

<sup>13</sup> ITLOS/PV.18/C25/2, p. 13.

<sup>14</sup> ITLOS/PV.18/C25/1, p. 36.

<sup>15</sup> ITLOS/PV.18/C25/1, p. 37.

1 witnesses, that the vessel was in perfect working condition prior to the arrest. Italy's  
2 arguments are totally contradictory on this point. I ask again: if the vessel was in the  
3 derelict condition that Italy describes, how could a bond of 250 million lira  
4 (approximately €125,000) be placed on it? The answer is simple – the vessel was a  
5 perfect working vessel, for which Italy had requested this significant amount of  
6 money for its release.

7  
8 The second assertion is that the vessel, unsurprisingly, deteriorated after its arrest  
9 and due to Italy's own fault, for having failed to "take care" of the ship when it had the  
10 legal obligation to do so after it had (albeit unlawfully) arrested the vessel and kept it  
11 under its control for an unreasonably long period of time. For these reasons,  
12 Mr President, Members of the Tribunal, Italy has to repair the damages caused to  
13 Panama.

14  
15 I turn now to Italy's argument regarding remedies under domestic law and its claim  
16 that Panama confuses national and international law.

17  
18 Learned counsel for Italy claimed on Wednesday that Panama failed "to appreciate  
19 the relevance to the present dispute of the distinction between domestic law and  
20 international law"<sup>16</sup>. This is not only a distortion of Panama's arguments but it is also  
21 another attempt by Italy to muddy the waters in relation to the clear fact that, by its  
22 own actions, and specifically the Decree of Seizure, it has contravened the  
23 Convention. Panama perfectly understands the relationship between domestic and  
24 international law. It also appreciates, Mr President, Members of the Tribunal, the  
25 relevance of explaining how Italy, through its domestic proceedings, has blatantly  
26 violated its international law obligations. Italy is ready to state its commitment to  
27 respect international law and "international adjudication"<sup>17</sup>.

28  
29 Italy's expert, Mr Esposito, stated that the Public Prosecutor is bound by international  
30 law and that a "Decree of Seizure issued by a Public Prosecutor must comply with  
31 Italy's international law obligations"<sup>18</sup>. That is hardly surprising. However, what has  
32 been made clear in these proceedings is that the Decree of Seizure applied to  
33 activities having taken place on the high seas. Of this fact, there can be no doubt.  
34 This is not, Mr President, Members of the Tribunal, in compliance with Italy's  
35 obligations under international law.

36  
37 Rather than this unfounded and unsustainable claim that Panama "confuses" domestic  
38 and international law, Panama asks the Tribunal to focus on the true reason why  
39 Italy insists, against the clear text of the Decree of Seizure, contrary to all the  
40 evidence Panama has presented, despite the clear testimony of Panama's witnesses  
41 (Mr Rossi, Mr Morch and Captain Husefest), that the Decree of Seizure was directed  
42 at activities having taken place on Italian territory. The reason is clear: Italy knows  
43 too well that to issue a Decree of Seizure concerning activities on the high seas is a  
44 clear violation of article 87. This is the reason for insisting that Panama confuses the  
45 Decree of Seizure and its execution.

46  

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<sup>16</sup> ITLOS/PV.18/C25/5, p. 4.

<sup>17</sup> ITLOS/PV.18/C25/5, p. 1.

<sup>18</sup> ITLOS/PV.18/C25/8, p. 6.

1 The Parties agree that the Decree was enforced in Spain. In fact, Panama has never  
2 argued that the Decree was enforced elsewhere than in the port of Spain. Panama  
3 also knows very well that the port of Spain is not the high seas. But this argument  
4 misses the point. The key question in this case, however, is that the activities  
5 concerned by the Decree, entirely legal as they were, *occurred on the high seas*,  
6 beyond the zones of jurisdiction of Italy, or any other State. We heard oral evidence  
7 of this. Mr Morch confirmed it, and so did Mr Rossi. In any event, how can Italy now  
8 claim that the activities targeted by the Decree of Seizure were carried out on Italian  
9 territory, as the Agent has already explained? What evidence has Italy provided for  
10 this assertion? None, whatsoever.

11  
12 In this regard, Italy also seems to focus on the date on which the Decree was issued,  
13 and whether the “*Norstar*” was on the high seas, or, as Italy claims, in port on the  
14 date of issuance. This seems to suggest that according to Italy, if the vessel was on  
15 the high seas when the Decree was issued, then it would have constituted a violation  
16 of the Convention. Panama agrees. I shall review the evidence on which Italy relies.  
17 Italy refers to a newspaper article, which Panama submitted in the proceedings, to  
18 say that, “from March 1998 to the date of the article, so August 2015, the ‘*Norstar*’  
19 never left once the port of Palma de Mallorca”<sup>19</sup>. Panama’s witness, Mr Morch, was  
20 cross-examined about this newspaper article. In response to Italian Counsel, Mr  
21 Morch unequivocally stated that the vessel had left during this period to “call the port  
22 of Algeria to load the cargo and supply the vessels”. That was his answer. The article  
23 is thus, “definitely wrong” about never having left the port of Palma for 17 years<sup>20</sup>.

24  
25 May I recall that Mr Morch provided to the Tribunal a sworn declaration. He is a  
26 credible witness who knows the details of the facts that led to this case.  
27 Mr President, Members of the Tribunal, Panama respectfully submits that his  
28 testimony should be given more weight than a newspaper article, a vague  
29 newspaper article, whose author cannot be examined, or cross-examined in this  
30 Tribunal, to ascertain the accuracy of the information, and, importantly, the dates  
31 mentioned in the article.

32  
33 Mr President, considering we are one minute short of five o’clock, and I will turn to  
34 another argument, may I suggest that we pause for now?

35  
36 **THE PRESIDENT:** Indeed. Thank you very much, Ms Cohen. We have reached five  
37 o’clock. The Tribunal will withdraw for a break of half an hour. We will continue the  
38 hearing at 5.30 p.m.

39  
40 (Break)

41  
42 **THE PRESIDENT:** Ms Cohen, would you please continue?

43  
44 **MS COHEN:** I will now turn to briefly address Italy’s insistence on the availability of  
45 local Italian remedies. Indeed, Italy has devoted a great deal of energy to this  
46 question, both in its pleadings and during the examination of its expert witness,  
47 Mr Esposito. I will not burden the Tribunal with lengthy arguments in this respect and

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<sup>19</sup> ITLOS/PV.18/C25/2, p. 6.

<sup>20</sup> ITLOS/PV.18/C25/2, p. 6.

1 will limit myself to just the main points. First, Italy asked its own expert to confirm that  
2 there are available remedies under “Italian law for the damages allegedly caused by  
3 the behaviour of the Italian judiciary”<sup>21</sup>. However, Panama has never claimed that  
4 there are no available local remedies under Italian law when a miscarriage of justice  
5 has occurred; one would hope that this is the case. Italy misses the point. This  
6 question has been settled in law by the Tribunal in its Judgment on Preliminary  
7 Objections.

8  
9 So, in insisting that Panama had available local remedies to which it has not  
10 resorted, Italy once again is trying to deviate the attention of the Tribunal to irrelevant  
11 questions and attempting to fault Panama where no fault is due.

12  
13 I will move on to discuss Panama’s burden of proof and submit that Panama has  
14 amply met its onus to prove the violations of the Convention and the damages due.

15  
16 Italy makes a number of misplaced and erroneous claims concerning Panama’s  
17 onus and standard of proof. Italy first argues that “Panama advances a significant  
18 number of factual and legal contentions which are unsupported by a sufficient  
19 standard of proof.” Then, Italy claims that Panama “tries to shift the burden of proof  
20 on to the defendant”<sup>22</sup> – well, the Respondent, Italy, in this case.

21  
22 Panama has never denied that as the Applicant in this case it has the legal burden to  
23 prove its claims, and it has done so both through written evidence as well as through  
24 the testimony of witnesses called by both Parties.

25  
26 Italy affirms that Panama has not met its burden of proof, and this is simply not  
27 correct.

28  
29 Italy seems itself confused about the evidence which the Tribunal is to take into  
30 account in the present case. Panama has not only provided written evidence of its  
31 claims but also, and importantly, during the past four days has provided credible,  
32 convincing evidence through the oral statements of all witnesses examined and  
33 cross-examined before this Tribunal. Italy conveniently fails to take into account all of  
34 the evidence presented in this case, both oral and written.

35  
36 Furthermore, Panama has already argued, both in the written submissions as well as  
37 the first round of these oral proceedings, that while it bears the burden to prove its  
38 case, Italy has failed to provide, in spite of the numerous requests from Panama,  
39 important documents and information that are under the control of Italy and that only  
40 Italy can access, as Panama’s Agent has already stated. This, Mr President,  
41 Members of the Tribunal, is a completely different matter than “shifting the burden of  
42 proof”, as Italy mistakenly claims. As I already noted on Monday, Panama has  
43 requested Italy to provide a copy of the criminal files relating to the Decree of  
44 Seizure and the arrest of the “*Norstar*”. Italy has refused. Panama was as specific as  
45 it could have been as to what documents it was requesting considering that it had  
46 not seen the entire files. I refer you, Mr President and Members of the Tribunal, to a

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<sup>21</sup> ITLOS/PV.18/C25/7, p. 24.

<sup>22</sup> ITLOS/PV.18/C25/5, pp. 9, 10.

1 *note verbale* filed in the record of the case, dated 27 August 2018. Respectfully, the  
2 receipt of these files is a matter still pending before the Tribunal.

3  
4 Panama has continuously and tirelessly tried to obtain more clarity about the criminal  
5 process that took place in Italy. In light of the refusal of Italy to comply with Panama's  
6 requests and to provide any clarification in these hearings, or at any time in these  
7 proceedings in relation to Panama's requests, Panama has resorted to Italy's expert  
8 witness, Mr Esposito, to seek to obtain some answers. Alas, as it turned out,  
9 Mr Esposito was also unaware of the details of the criminal investigation, the  
10 evidence available to the Public Prosecutor, or the motivation of the Public  
11 Prosecutor who issued the Decree of Seizure. He does not know. So who knows  
12 about this evidence, this motivation? Panama remains in the dark in relation to the  
13 specific files and evidence related to the criminal process in Italy.

14  
15 The same is the case regarding the logbooks and documents that were in the vessel.  
16 These are documents containing very relevant information about the ship. Where are  
17 these logbooks? Italy, once again, did not give back the logbooks to the shipowner  
18 or Panama. What is even more astonishing is that Italy now pretends that it was not  
19 its responsibility to have these books or to give them back. How can that be the case  
20 when Italy detained the ship when the logbooks were inside it and neither the  
21 shipowner, the crew members or Panama had an opportunity to retrieve them? How  
22 can an alleged investigation into an alleged crime take place without examining a  
23 ship's documents and its logbooks?

24  
25 In response to a question put to him by Judge Lijnzaad concerning the "ship's  
26 documents such as the papers relating to its IMO certificate or logbook", Mr Esposito  
27 answered that "the asset is not available anymore; it is arrested." He also confirmed,  
28 importantly, that the "same thing goes for the upkeep. If ... the custodian cannot go  
29 ahead with the upkeep of the boat, then the Public Prosecutor is still the decision-  
30 maker of the situation"<sup>23</sup>.

31  
32 But the absurdity of the Italian conduct does not stop there. Italian counsel, in cross-  
33 examination of Mr Morch on Monday, repeatedly asked about very specific  
34 information of very specific dates of the whereabouts of the "*Norstar*" in the summer  
35 of 1998. Allow me to remind you, Mr President, Members of the Tribunal, that the  
36 dates in question are from approximately 20 years ago. Had Panama or the  
37 shipowner obtained access to the logbooks of the "*Norstar*", all the information so  
38 insistently requested by Italian counsel would be readily available.

39  
40 If the referred documents and information are under the sole control of Italy, how can  
41 Panama possibly have access to them? The answer is simple – it cannot. In  
42 response to a question by Judge Lucky, we heard Mr Morch state that

43  
44 the area was completely closed after the detention in Palma de Mallorca. We  
45 had no access to anything; it was denied. We could not pass the gate because  
46 it was closed ... it was impossible to go on board the ship. Everything was  
47 closed. The keys were taken and everything was closed<sup>24</sup>.

48  

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<sup>23</sup> ITLOS/PV.18/C25/8, p. 8.

<sup>24</sup> ITLOS/PV.18/C25/2, p. 13.

1 Mr President, Members of the Tribunal, I thank you for your kind attention this  
2 afternoon. With your permission, Mr President, I would now like to call  
3 Ms Mareike Klein, Advocate for Panama, to continue Panama's submissions on  
4 article 87 of the Convention.

5  
6 **THE PRESIDENT:** Thank you, Ms Cohen. I now give the floor to Ms Klein. Ms Klein,  
7 you have the floor.

8  
9 **MS KLEIN:** Distinguished President, Members of the Tribunal, it is an honour for me  
10 to plead one last time before you on behalf of the Republic of Panama, my country,  
11 in the *M/V "Norstar"* Case.

12  
13 During the past two days we have heard Italy argue that article 87 of UNCLOS on  
14 the freedom of navigation does not apply, for two reasons. First, Italy states, that the  
15 arrest of the *"Norstar"* was due to its activities in territorial waters, not for activities  
16 carried out on the high seas. Second, Italy contends that article 87 only applies if  
17 there is a physical interference on the high seas and not if a vessel is arrested in  
18 port. According to Italy, in port vessels are not protected by the right to freedom of  
19 navigation.

20  
21 I will address now Italy's first argument, and I want to make this very simple. The  
22 reasons for the arrest are stated in the Decree of Seizure. You can find the Decree  
23 of Seizure in Annex 3 of the Memorial of the Republic of Panama and you can also  
24 see it now on screen. Let us read that order again together, because I would like to  
25 comment on the main parts.

26  
27 The Decree of Seizure dated 11 August 1998 reads:

28  
29 It was also found that the *M/V "Norstar"* positions itself beyond the Italian,  
30 French and Spanish territorial seas, mostly inside the contiguous vigilance  
31 zone and promptly supplies with fuel (so-called "offshore bunkering") mega  
32 yachts that are exclusively moored at EU ports. Thus, they willingly and  
33 consciously give the sold product a destination that differs from the one for  
34 which the tax exemption was granted ... while being fully aware that the  
35 product will certainly be subsequently introduced into Italian territory and that  
36 no statement for customs purposes is issued by the purchasers.

37  
38 Let me rephrase this part of the Decree. According to this part of the Decree, the  
39 *"Norstar"* did bunker other vessels offshore. Those other vessels would then return to  
40 Italian customs territory without issuing a statement for customs purposes, thereby  
41 evading taxes, according to this Decree; and the persons connected to the *"Norstar"*,  
42 like Captain Husefest, are accused of being aware that the other vessels that the  
43 *"Norstar"* supplies with fuel offshore, after being bunkered, return to territorial waters  
44 of Italy without issuing a statement for customs purposes.

45  
46 This means that the *"Norstar"* was arrested and the persons connected to it accused,  
47 because it was doing offshore bunkering. The Decree even goes further, stating the  
48 rationale behind this, to justify the seizure. Let us continue reading:

49  
50 Having noted that the seizure of the mentioned goods must be performed also  
51 in international seas, and hence beyond the territorial sea and the contiguous

1 vigilance zone, given that: -actual contacts between the vessel that is to be  
2 arrested and the State coast were proved ... which implied infringements of  
3 the customs and tax legislation as a result of the previous sale of smuggled  
4 goods in the State territory (so-called “constructive or presumptive presence”).  
5

6 We can therefore see that the Decree of Seizure explicitly refers to the constructive  
7 presence doctrine as the basis for its jurisdiction. What does constructive presence  
8 mean? Here is a definition from a dictionary:  
9

10 The doctrine of constructive presence allows a coastal State to exercise  
11 jurisdiction over a foreign flag vessel that remains seaward of coastal State  
12 waters but acts in concert with another vessel (contact vessel) ... that violates  
13 coastal State laws in waters over which the coastal State may exercise  
14 jurisdiction. In order to exercise jurisdiction over a “mother ship” located  
15 seaward of coastal State waters, the contact vessel must be physically present  
16 in coastal State waters or be subject to coastal State jurisdiction under the  
17 doctrine of hot pursuit.  
18

19 So in this case it means that the “*Norstar*” was the mother ship, which operated on  
20 the high seas, and that the vessels bunkered by the “*Norstar*” returning to territorial  
21 waters of Italy were the contact vessels because they came into contact with the  
22 coastal State’s jurisdiction and were subject to hot pursuit. The Decree even makes  
23 reference here, as we can see, to article 111 of UNCLOS on hot pursuit. The other  
24 day, one of Italy’s counsel suggested that a reason why the “*Norstar*” was allegedly  
25 arrested for activities carried out in territorial waters was that the Decree relied on  
26 the doctrine of hot pursuit. However, what Italy failed to see here is that the right to  
27 hot pursuit originates from the contact vessels, those returning to the territorial  
28 waters, and not the “*Norstar*”, the mother ship operating on the high seas.  
29

30 Therefore, the doctrine of constructive presence, the basis for this Decree of  
31 Seizure, as we can read, takes by itself a holistic approach, and now Italy tries to  
32 wrongly separate the elements of this holistic approach.  
33

34 This is the rationale behind the Decree of Seizure. This is not some supplementary  
35 document, but the Decree of Seizure itself relies on the doctrine of constructive  
36 presence, as we have just read together.  
37

38 The use of this doctrine in the Decree of Seizure in itself proves that the “*Norstar*”  
39 was not seized for activities in the territorial waters of Italy. There would have been  
40 no need to make explicit reference to the doctrine of constructive presence if the  
41 vessel was seized for activities in territorial waters, because there would be no  
42 element of transshipping, otherwise referred to as mother vessel and contact vessel.  
43

44 For the last two days, Italy has relied on the argument that the “*Norstar*” was  
45 arrested for activities carried out in its territorial waters. Mr President, Members of  
46 the Tribunal, this is clearly not what this Decree of Seizure, which is at the heart of  
47 this dispute, actually says.  
48

49 Furthermore, the doctrine of constructive presence is inextricably linked to the  
50 concept or existence of the contiguous zone, a zone to which the Decree makes

1 reference. The Max Planck Encyclopaedia of Public International Law, under  
2 “Hovering Acts” states the following:

3  
4 It is apparent that the modern doctrine of the contiguous zone, as recognized  
5 both in treaty and customary international law, has its historical origins in the  
6 hovering acts promulgated by Great Britain and other countries. ... There is  
7 also an echo of the early hovering acts in the formulation and interpretation of  
8 the doctrine of constructive presence for the purposes of the exercise of the  
9 right of hot pursuit in the modern law of the sea. In its orthodox manifestation  
10 this permits pursuit of a vessel which had not been in the zone of national  
11 jurisdiction in question but which had used its boats to carry out prohibited  
12 activities there.

13  
14 Of course, no prohibited activities were carried out in this case.

15  
16 Well, Italy based the entire Decree of Seizure on the assumption that it could also  
17 exercise its jurisdiction for custom matters in the contiguous zone. This is what this  
18 means.

19  
20 All of this to tell you, Mr President, Members of the Tribunal, that Italy did not even  
21 have a contiguous zone at that time, and this fact has been undisputed throughout  
22 these proceedings by Italy. You can find the proof in Annex 7 of the Memorial of the  
23 Republic of Panama, containing a letter from Telespresso dated 4 September 1998  
24 issued by the Service of Diplomatic Litigation, Treaties and Legislative Affairs of the  
25 Ministry of Foreign Affairs of Italy to the prosecutor who signed the Decree of  
26 Seizure in front of you, stating:

27  
28 pls note that the Contiguous zone exists when a State officially promulgates it  
29 but Italy did not avail herself of this opportunity.

30 Our law actually provided till 1974 a contiguous zone of 6 miles over the  
31 territorial waters ... according to the Geneva Convention ... on the territorial  
32 sea.

33 Later [so from 1974 onwards] the territorial waters became 12 miles so the  
34 contiguous zone was [e]nglobed in the territorial sea.

35 For this reason at the moment [1998] ... the only zone under the State control  
36 is the territorial sea.

37  
38 Therefore, the “*Norstar*” was operating always on the high seas and was arrested for  
39 it.

40  
41 Moreover, the Decree explicitly makes reference to the activities carried out on the  
42 high seas:

43  
44 the so-called “genuine link”, which underlies the mentioned international law  
45 institution, unequivocally emerges from the overall content of the  
46 investigations ordered, as summarized above: the repeated use of adjacent  
47 high seas by the foreign ship was found to be exclusively aimed at affecting  
48 Italy’s and the European Union’s financial interests.

49  
50 Italy has throughout these proceedings denied any foreign element in connection  
51 with the seizure, but this Decree, as we have just read, proves the contrary. The



1 prosecutor refers explicitly to this “link”, which in this situation means the element of  
2 transshipment.

3  
4 I will now respond to Italy’s second argument, that article 87 only applies if there is  
5 physical interference on the high seas, and not if a vessel is arrested in port.  
6 According to Italy, in port vessels are not protected by the right of freedom of  
7 navigation.

8  
9 First of all, I would like to clarify that Panama’s position when referring to the right to  
10 navigate again towards the high seas, is of course based on the fact, that in this  
11 case, the “*Norstar*” was arrested for lawful activities performed on the high seas, as  
12 established before. That is the difference between the *M/V “Norstar”* and the  
13 *M/V “Louisa”* Case, and Panama’s position is the fact that the “*Norstar*” was seized  
14 for activities carried out on the high seas, that alone already triggers a violation of  
15 article 87 on the freedom of navigation, especially because the Decree states that  
16 the authorities would be ready to interfere, and would be justified in interfering, for  
17 the same purpose, on the high seas.

18  
19 Does the freedom of navigation not protect Panama, the flag State, from such  
20 measures? Because the Decree of Seizure is a measure.

21  
22 In the Dissenting Opinion on the *M/V “Louisa”* Case, Judge Wolfrum states the  
23 following when it comes to the protection of the rights of coastal States:

24  
25 It is hard to imagine how the arrest of a vessel in port in the course of national  
26 criminal proceedings can be construed as violating the freedom of navigation  
27 on the high seas. To take this argument to the extreme it would, in fact, mean  
28 that the principle of the freedom of navigation would render vessels immune  
29 from criminal prosecution since any arrest of a vessel, under which ground  
30 whatsoever, would violate the flag State’s right to enjoy the freedom of  
31 navigation.

32  
33 This opinion demonstrates how a rule would utterly fail to protect the interests of  
34 coastal States. The opposite extreme would be a rule that completely fails to protect  
35 the interests of flag States.

36  
37 Mr President, Members of the Tribunal, what would be the opposite extreme of that  
38 example? The opposite extreme is if the coastal State orders the arrest of a vessel in  
39 a port for its activities carried out on the high seas, which in this case were  
40 completely lawful, and if this would not trigger a breach of article 87, because a  
41 violation of article 87 would encompass only arrests that have taken place on the  
42 high seas. It would mean, in fact, that a coastal State could circumvent article 87 on  
43 the freedom of navigation and be free to abuse its right to seize vessels for this  
44 purpose by waiting to arrest them in port. The coastal State could rely on the concept  
45 that article 87 can only be breached if the interference takes place on the high seas.  
46 That is the other extreme.

47  
48 Italy is holding on precisely to that argument. Italy has stated in its pleadings that a  
49 violation of article 87 on the freedom of navigation requires interference, which,  
50 according to Italy, did not occur in this case. Italy thereby contended that the term  
51 “interference” refers to interference on the high seas. So according to this contention,

1 Italy avoided interference, in form of a seizure, by arresting the vessel in a port of a  
2 third State but, as mentioned before, the Decree emphasizes that the authorities  
3 would be justified and ready to interfere, for the same purpose, on the high seas.  
4

5 Without prejudice to the aforementioned, I would like to say one more thing on a  
6 form of actual interference with the bunkering activities of the “*Norstar*” on the high  
7 seas prior to its arrest. Mr President, with all due respect, would you allow me to  
8 clarify briefly the relevance of the harassment incidents described by former Captain  
9 Mr Husefest in his witness testimony?  
10

11 **THE PRESIDENT:** Yes.  
12

13 **MS KLEIN:** The forms of harassment described by the witness testimony of  
14 Mr Husefest do represent a form of interference on the high seas, while the “*Norstar*”  
15 was carrying out its bunkering activities, and that is why it is relevant to the  
16 argumentation of this case. Contrary to what one of the Italian counsel suggested,  
17 that there is no evidence, well, a witness testimony is a form of proof.  
18

19 Let me now come to my last point on the Decree of Seizure. When it comes to  
20 reviewing the measures taken by Italian national authorities, I would like to address  
21 the Decree’s probationary nature.  
22

23 Yesterday Mr Esposito answered several questions on probative seizures. Let me  
24 recite his statement concerning probative seizures:  
25

26 In this case [of a probative seizure] the judicial police officer must write a report  
27 in which he must, for example, write in detail everything ... we need to have a  
28 report and then the Public Prosecutor must read the report and then he can  
29 confirm the seizure.  
30

31 From Mr Esposito’s statement we can deduce that there must be some degree of  
32 reasonableness in order for the prosecutor to confirm the seizure, in particular  
33 because the prosecutor must be presented, as Mr Esposito said, with a “detailed  
34 report” before confirming it.  
35

36 But what does reasonableness mean in international law? Yesterday one of Italy’s  
37 counsel mentioned already the meaning of reasonableness in his pleading, and  
38 Panama agrees with the definition, saying that  
39

40 If we look for guidance in order to identify the contents of the international  
41 standards of due process in the specific context of the law of the sea, the  
42 “*Duzgit Integrity*” case is of particular relevance. There, the tribunal observed  
43 that the exercise of enforcement powers by a coastal State is governed by the  
44 principle of reasonableness. The tribunal specified that: “This principle  
45 encompasses the principles of necessity and proportionality”.  
46

47 So, in international law, reasonableness encompasses the principles of necessity  
48 and proportionality.  
49

50 Let us go back to the Decree of Seizure and see what the Decree tells us about the  
51 use of this principle in this case.

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The second page of the Decree of Seizure reads as follows:

Having noted that the seizure of the mentioned goods must be performed, as it has an intrinsic probatory nature, with no need to assess whether the order is necessary (reference to domestic case-law: Cass.SS.UU...).

The Decree is basically saying that this probative seizure does not even entail a minimal assessment of necessity for issuing the order. I respectfully ask this learned Tribunal, how can the issuance of this order be in accordance with international standards of due process, be reasonable, if there is no assessment of necessity at all?

Panama respectfully asks this Tribunal to take due note of that provision in the Decree when reviewing this measures taken by Italian national authorities, and whether they acted in conformity with international law, in accordance with principles such as necessity, reasonableness and appropriateness.

I now am at the end of my pleading, and would respectfully ask you Mr President, to call Mr von der Wense to continue Panama's pleadings. Thank you.

**THE PRESIDENT:** Thank you, Ms Klein. I now give the floor to Mr von der Wense to make a statement.

**MR VON DER WENSE:** Thank you, Mr President. Mr President, Members of the Tribunal, in the next few minutes I would like to discuss the oral statements and the testimonies of the witnesses, as far as they concern the question of the compensation of damages.

Italy objects that Panama has not proved all the facts that are the basis of the action. However, despite the considerable difficulties involved in the burden of proof after a lapse of 20 years, Panama has provided numerous documents in this process that are capable of proving the important facts.

Of course, it is not only possible to prove facts through written documents only. The Rules of the Tribunal expressly provide, *inter alia*, in article 44 and article 72 and the following, that the parties may also provide evidence by witnesses or experts. This evidence has an equal value.

The testimonies of the witnesses called by Panama in this case, Mr Morch, Mr Rossi and Mr Husefest, were particularly strong evidence because the witnesses were directly involved in the events surrounding the "Norstar" and had extensive knowledge of the facts concerning the vessel and its activities. During my work as a lawyer I have heard numerous witnesses who could only insufficiently answer the questions they had been asked, because they only noticed the events marginally. By contrast, the testimonies we heard here were comprehensive, informative, and credible in every way.

Italy has complained that the witnesses had partially read off their answers. I would like to remind Italy that in the consultations between the Tribunal and the

1 representatives of the Tribunal on 26 June 2018 the President informed the Parties  
2 that for translation purposes each Party was asked to transmit to the Registrar, at the  
3 latest one hour before the hearing, copies of all oral statements to be made by  
4 witnesses and experts by the Party on that day. It was not only optional but  
5 necessary that the witnesses prepared their answers in writing, and that is exactly  
6 what the witnesses did, but then it does not matter if the witnesses have read their  
7 answers or recited them by heart. The only thing that matters is that the answers are  
8 the truth of what the witnesses asserted in their solemn declaration. There is  
9 absolutely no reason to doubt that the witnesses spoke the truth.

10  
11 Italy also doubted the accuracy of the expert's report given by Horacio Estribí.  
12 However, these doubts are unfounded. First of all, I should like to emphasize that the  
13 expert, Mr Estribí, was asked to give an economically valid calculation of the  
14 damage, including the complex calculation of the interests, which is of considerable  
15 importance here due to the long time span. This is why Mr Estribí was called as an  
16 economic expert.

17  
18 The fact that some figures have changed in comparison to previous calculations is  
19 simply because Mr Estribí was not involved in the case from the outset and has  
20 made a more accurate and detailed interest calculation and that some calculation  
21 bases - such as the legal fees - have changed during the procedure. However, these  
22 bases of calculation are not a question of calculation, but have been proved by  
23 witnesses and other evidence.

24  
25 Mr President, Members of the Tribunal. I now come to the question of compensation,  
26 in particular the condition of the vessel at the time of the arrest.

27  
28 As you remember, we saw various photos of the vessel in the course of the  
29 hearings. These photos can be divided into two groups: The first group are photos  
30 filed by Panama that show the "Norstar" in a very good condition, which is  
31 undisputed. I will show you one of these photos now on the screen. And you will find  
32 it also in Annex 1 of the printout of my statement, as well as the whole set in Annex 4  
33 of the Reply of Panama. Italy has expressed the opinion that these photos show a  
34 "brand new" vessel in the Oral Statement. The expert of Italy confirmed yesterday  
35 that the photos show a ship in very good condition.

36  
37 He said:

38  
39 Looking at these pictures - and I am not talking so much to the hatch that we  
40 have just seen - I can see that the deck, for instance, with the manifold of the  
41 lines, the lines and the castles, were in good maintenance order.  
42 Unfortunately, I had not seen these pictures. This is the engine cabinet. It is  
43 quite clean. You can see the dashboard and the engine helping. For sure, had  
44 the vessel looked like that, then my evaluation would have been different.

45  
46 Contradicting himself, he later denied making that statement. However, the protocols  
47 thwart the attempt to undo this.

48  
49 However, Italy claims that these photos date back to 1966, brand new, when the  
50 vessel was new.

1 This is not correct. Rather, these photos show the “*Norstar*” shortly before the arrest,  
2 proving that the “*Norstar*” was in very good and seaworthy condition at that time. The  
3 photos were taken in the short period in which the “*Norstar*” of the charterer Nor  
4 Maritime Bunker Ltd. was used for bunkering activities, that is between 20 June 1998  
5 and 24 September 1998.

6  
7 The witness Arve Morch has explicitly confirmed this in his interrogation and has  
8 therefore proved this fact.

9  
10 But you can also recognize this by another detail. Please look at the enlargement of  
11 the photo I have just shown to you, and I show also on the screen. On this photo you  
12 can see a car in the background. This is obviously not a model from the 60s, 70s or  
13 even 80s.

14  
15 Thus, the testimony of Mr Morch, together with the analysis of the photos – it has  
16 been proved that these photos are not captured in 1966, as Italy claims, but show  
17 the “*Norstar*” shortly before the arrest, and that they are in very good shape and  
18 seaworthy state. Italy has even acknowledged that the “*Norstar*” on these photos  
19 was not only in a very good condition, but looks like “brand new”.

20  
21 Mr President, Members of the Tribunal, let us now turn to the photos taken by Italy  
22 as evidence of the ship’s poor condition at the time of the arrest.

23  
24 The photos that Mr Matteini showed can be seen in the webcast protocols. He has  
25 commented on these photos that they are no longer available on the Internet. Well,  
26 we did a research tonight, and this is the first of several allegations by Mr Matteini  
27 that are not correct.

28  
29 In Annex 2 of my present statement you will find current excerpts from the internet,  
30 which show these photos to which Mr Matteini referred yesterday. He has confirmed  
31 that he has based his calculations on the fact that these photos show the condition of  
32 the “*Norstar*” at the time of the arrest. Mr Matteini has also confirmed that the photos  
33 show the vessel in a state of decay.

34  
35 Italy claims that these photos were taken in some cases in the period before the  
36 arrest and should therefore prove that the “*Norstar*” was in a very poor condition at  
37 the time of the arrest.

38  
39 The fact that the photos show the “*Norstar*” in a very bad condition corresponds to  
40 the presentation of both parties and is therefore undisputed. The only dispute is  
41 about the dates when the photos were taken.

42  
43 Contrary to Mr Matteini’s claim, however, these photos do not show the ship before  
44 the arrest or shortly after.

45  
46 As you can see from screenshots in Annex 2 of my statement, these photos come  
47 from the Internet. As I said, we did research tonight, and what you see on the screen  
48 is the actual live image from the Internet and not the printout. Perhaps you can see it  
49 on your printout a little bit better. We can see here, this photo, for example, you can  
50 see was captured on 25 October 2004. If you go to the left please, with the mouse:

1 “Captured 25 October 2014.” And added on the right column, you can see that it was  
2 added on 7 November 2014.

3  
4 If we take the next one, we see the same result. We see this picture was taken in  
5 2010 and it was added in 2012.

6  
7 For the sake of completeness we can have a quick look at the next two photos,  
8 please. This photo was taken in 2012; the next one please. This is marinetraffic – the  
9 web page that Mr Matteini explicitly referred to – and you will see that in the right  
10 column this photo was taken, in the right column, in 2015, uploaded in 2015. The  
11 expert referred to web pages as baltictraffic.com and marinetraffic.com. However, in  
12 Annex 2 and on the screen you are seeing the original source of these photos, which  
13 were linked to the web pages mentioned by Mr Matteini. These original photos show,  
14 as I have shown you shortly before the dates the photos were actually taken.

15  
16 So we have seen the photos were taken in between 2010 and 2015 and not at the  
17 time of the arrest of the vessel.

18  
19 To prove that the pictures were taken before the time of the arrest, Mr Matteini  
20 pointed out that the status of the ship on the website was given as “active” instead of  
21 “arrested”. However, this is completely wrong. We may have a look on the Internet  
22 again, and this simple look shows, as we can see – this is balticshipping.com and  
23 you can see there it is a live picture from the Internet. The status of the ship is  
24 actually active. This is rather surprising unless you believe in the resurrection of  
25 ships.

26  
27 Therefore, this information is no proof of the age of the photos.

28  
29 Also, the websites mentioned are - unlike what Mr Matteini said - no official sites or  
30 websites filled with official data. In fact these are internet sites owned by private  
31 companies. You can see this from the information attached to the written  
32 transcription as Annex 4.

33  
34 To summarize: the photos and the testimony of the witnesses Arve Morch,  
35 Silvio Rossi and Tore Husefest prove that the ship was in a very good, seaworthy  
36 state at the time of the arrest and then got worse and worse in the following years  
37 due to the arrest, the immobilization and the lack of maintenance.

38  
39 Mr President, Members of the Tribunal, this leads me to the next important point  
40 concerning the statement of the Italian expert, Mr Matteini. This statement is, I must  
41 say, anything but sound. In detail:

42  
43 The first point is that Mr Matteini – partly without his fault - assumed false  
44 presuppositions. As Mr Matteini explained, he did not receive all the information from  
45 his client - Italy – but only the information that is favourable for Italy, namely the  
46 photos showing the ship in a state of decay captured between 2010 and 2015. The  
47 other ones, in which the ship is seen in good, seaworthy condition (looking like brand  
48 new), were evidently not disclosed to Mr Matteini. This behaviour of Italy is – again –  
49 a behaviour of bad faith. Mr Matteini, while contradicting himself, later in his

1 statement, has clearly confirmed that his assessment of the vessel would have had a  
2 very different result if he had known these photos.

3  
4 Secondly, Mr Matteini does not seem to have any knowledge of the legal  
5 requirements for ships like the “*Norstar*”. This is fatal for the validity of his results  
6 since he based his assessments critically on “*Norstar*”’s failure to comply with the  
7 double-hull legal requirements established by the MARPOL 73/78 Convention.

8  
9 Mr Matteini has stated that his assessment has been considerably lower because of  
10 this fact, namely at least 30 per cent plus an additional amount for reclassification  
11 purposes.

12  
13 However, what Mr Matteini does not seem to have tested at all is the fact that the  
14 MARPOL Convention 73/78 provisions concerning double-hull are only applicable to  
15 oil tankers of a deadweight of 5,000 tonnes and above, or of deadweight of  
16 600 tonnes and above. However, the “*Norstar*” had – it is undisputed – a deadweight  
17 of less than 500 tonnes.

18  
19 In addition, the application of the aforementioned regulations also fails due to other  
20 requirements of MARPOL, for it is undisputed that the ship did not transport heavy  
21 oil. In addition, the gasoil was not a cargo but a naval provision.

22  
23 Obviously, Mr Matteini does not have any knowledge of technical requirements for  
24 other potential uses of the vessel, although he has – nebulously enough – stated that  
25 there are special regulations for other potential uses. However, this blanket claim is  
26 wrong and Mr Matteini could not cite a single regulation allegedly regulating such  
27 requirements. I just want to put it right: for example, for the transport of bio-products  
28 or waste of the fishing industry, no single special requirements were to be fulfilled.  
29 “*Norstar*” could have been used for this purpose without any further precautions.  
30 Mr Matteini had no knowledge of this.

31  
32 I may summarize. First, the expert, Mr Matteini, has assumed false assumptions  
33 regarding the ship’s condition.

34  
35 Second, the expert, Mr Matteini, has assumed false legal and technical requirements  
36 with regard to the operational capability of the ship.

37  
38 Third, the expert had never seen the vessel itself.

39  
40 By contrast, the Olsen report of value is a sound assessment since they had  
41 inspected the “*Norstar*” prior to the arrest and they had photos that were actually  
42 from the time prior to the arrest and not 15 years later.

43  
44 At the end of my statement I would now like very briefly to talk about the question of  
45 the causative links.

46  
47 Italy reiterates its argument that the damage claimed by Panama is too remotely  
48 linked. By way of comparison, Italy cites the example of a seaman falling from board  
49 and injuring his leg. I can only repeat what I said in the first round: when a ship  
50 carrying out bunkering activities is arrested, then it is not only likely, but almost

1 compelling, that the charterer and the owner suffer a loss of revenue. A comparison  
2 with any unlikely damage does not fit in the present case in any way.

3  
4 Finally, Italy cannot argue that the owner disrupted the causative link by not paying  
5 the bond, since the demand for the bond was illegal in terms of Italian domestic law  
6 as well the Convention. Italy cannot successfully claim that the owner has broken the  
7 link. This brings me to the end of my statement.

8  
9 I am afraid, due to the lapse of time, I will refrain from my statement about  
10 article 300; and I may ask to pass the floor to our Agent Nelson Carreyó, please.  
11 Thank you Mr President.

12  
13 **THE PRESIDENT:** Thank you, Mr von der Wense. We have reached 6.25 p.m. and  
14 Panama has exhausted all the time allocated. I understand this was the last  
15 statement made by Panama during this hearing.

16  
17 **MR VON DER WENSE:** Yes.

18  
19 I would like to pass now to Mr Carreyó.

20  
21 **THE PRESIDENT:** Article 75, paragraph 2, of the Rules of the Tribunal provides that  
22 at the conclusion of the last statement made by a Party at the hearing, its Agent,  
23 without recapitulation of the arguments, shall read that Party's final submissions. A  
24 copy of the written text of these submissions, signed by the Agent, shall be  
25 communicated to the Tribunal and transmitted to the other Party.

26  
27 Therefore, I now invite the Agent of Panama, Mr Carreyó to take the floor to present  
28 the Final Submissions of Panama.

29  
30 **MR CARREYÓ:** Thank you, Mr President. Before doing that I would like to state only  
31 briefly that Panama knows that the Tribunal has a precious opportunity to set a  
32 precedent in order to avoid similar situations to any other members of the  
33 Convention. It has been a long way between 1998 and today and it has involved a  
34 great deal of effort and resources. Panama also wants to say that it does not harbour  
35 any hard feelings against the members of the Italian delegation and praises their  
36 work. As a consequence of the above-mentioned, Panama wishes to express its  
37 apologies to all present for any harshness in our written or oral statements, and  
38 would like to also express its gratitude to the honourable Judges for patiently  
39 listening and asking questions, which we are confident will serve to clarify the  
40 debate.

41  
42 Finally, I would like to express a word of gratitude for the extraordinary work of all the  
43 staff of this judicial corporation and Mr Registrar as well. Thank you, Mr President.

44  
45 Panama requests the Tribunal to find, declare and adjudge:

46  
47 First, that by *inter alia* ordering and requesting the arrest of the *M/V "Norstar"*, in the  
48 exercise of its criminal jurisdiction and application of its customs laws to bunkering  
49 activities carried out on the high seas, Italy has thereby prevented its ability to  
50 navigate and conduct legitimate commercial activities therein, and that by filing



1 charges against the persons having an interest on the operations of this Panamanian  
2 vessel, Italy has breached the right of Panama and the vessels flying its flag to enjoy  
3 freedom of navigation and other internationally lawful uses of the sea related to the  
4 freedom of navigation, as set forth in article 87, paragraphs 1 and 2, and related  
5 provisions of the Convention;  
6

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

14 Third, that as a consequence of the above violations, Italy is responsible to repair the  
15 damages suffered by Panama and by all the persons involved in the operation of the  
16 *M/V "Norstar"* by way of compensation amounting to US\$ 27,009,266.22, as capital,  
17 plus US\$ 24,873,091.82, as interest, plus €170,368.10, plus €26,320.31 as interest;  
18

19 Fourth, that as a consequence of the specific acts on the part of Italy that have  
20 constituted an abuse of rights and a breach of the duty of good faith, as well as  
21 based on its procedural conduct, Italy is also liable to pay the legal costs derived  
22 from this case.  
23

24 Mr President, I forgot to mention something important, which I also may have asked  
25 Mr von der Wense to say, namely that Panama, in a document that it has filed there,  
26 has requested United Nations in New York to pay Panama's costs, and we are  
27 waiting for an answer. I think that it would be unethical not to disclose in these  
28 proceedings that Panama has also requested that forum to pay the costs of this. In  
29 case that happens, I will of course ask you to take it into account.  
30

31 Thank you, Mr President.  
32

33 **THE PRESIDENT:** Thank you, Mr Carreyó.  
34

35 This completes the second round of the oral arguments of Panama. The hearing will  
36 be resumed tomorrow at 3 p.m. to hear the second round of oral arguments of Italy.  
37

38 The sitting is now closed.  
39

40 *(The sitting closed at 6.33 p.m.)*