



INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER

Press Release

THE M/V “NORSTAR” CASE (PANAMA V. ITALY)

**TRIBUNAL DECIDES ON ITALY’S PRELIMINARY OBJECTIONS,
FINDS THAT IT HAS JURISDICTION TO ADJUDICATE THE DISPUTE
AND THAT PANAMA’S APPLICATION IS ADMISSIBLE**

The Judgment of the Tribunal on the Preliminary Objections raised by Italy on 11 March 2016 in *The M/V “Norstar” Case (Panama v. Italy)* was delivered today. The Tribunal finds that it has jurisdiction to adjudicate the dispute and decides that Panama’s application is admissible.

Proceedings in the case were instituted by an Application filed by Panama on 17 December 2015. According to the Application, the dispute concerns the arrest and detention of the M/V “*Norstar*”, a Panamanian-flagged oil tanker. From 1994 until 1998, the M/V “*Norstar*” was engaged in supplying gasoil to mega yachts in an area described by Panama as “international waters beyond the Territorial Sea of Italy, France and Spain” and by Italy as “off the coasts of France, Italy and Spain”. On 11 August 1998, the Public Prosecutor at the Court of Savona, Italy, issued a Decree of Seizure against the M/V “*Norstar*”, in the context of criminal proceedings against eight individuals. The vessel was seized by Spanish authorities at the request of Italy when anchored at the bay of Palma de Mallorca, Spain, in September 1998.

The public hearing on the Preliminary Objections was held from 20 to 22 September 2016. In its final submissions, Italy requested the Tribunal to adjudge and declare that:

- “a. The Tribunal lacks jurisdiction with regard to the claim submitted by Panama in its Application filed with the Tribunal on 17 December 2015;
And / or that
b. The claim brought by Panama against Italy in the instant case is inadmissible.”

In its final submissions, Panama requested the Tribunal to adjudge and declare that:

FIRST

- the Tribunal has jurisdiction over this case;
- the claim made by Panama is admissible; and

SECOND, that as a consequence of the above declarations the Written Preliminary Objections made by the Italian Republic under Article 294, paragraph 3 of the Convention are rejected.”

Objections to jurisdiction

Existence of a dispute concerning the interpretation or application of the Convention

Italy submits that there is no dispute between the Parties concerning the interpretation or application of the United Nations Convention on the Law of the Sea (“the Convention”). Panama contends that a dispute falling under the scope of the Convention does exist.

In dealing with this objection, the Tribunal examines a number of communications which were sent to Italy concerning the detention of the *M/V “Norstar”*. It concludes that “since 31 August 2004, when Italy received the first note verbale of Panama, it cannot validly question that Mr Carreyó was duly authorized to represent Panama in all exchanges relating to the detention of the *M/V “Norstar”*”, and that “Italy cannot, therefore, claim ignorance of the fact that Panama, as the flag State of the *M/V “Norstar”*, contests the legality of the detention under the Convention” (paragraph 97). The Tribunal also notes that, except for one response issued by Italy, “[a]ll other communications sent to Italy remained unanswered” (paragraph 98). According to the Tribunal, “the notes verbales and other communications sent to Italy and the silence of Italy indicate that in the present case there is a disagreement between the Parties on points of law and fact” (paragraph 102). The Tribunal then “concludes that in the present case a dispute existed between the Parties at the time of the filing of the Application” (paragraph 103).

In order to ascertain whether the dispute between the Parties concerns the interpretation or application of the Convention, the Tribunal examines “whether a link exists between the Decree of Seizure against the *M/V “Norstar”* for its activities on the high seas and the request for its execution by the Prosecutor at the Court of Savona, and any rights enjoyed by Panama under the articles of the Convention invoked by it” (paragraph 111). Panama, in its Application, invokes articles 33, 73, 87, 58, 111, 226 and 300 and others of the Convention. The Tribunal notes that Panama conceded during the oral proceedings that articles 73 and 226 of the Convention are not applicable. It also finds that articles 33 and 58 cannot be invoked and that article 111 is not relevant to the present case.

With regard to article 87 of the Convention, the Tribunal observes that this provision “concerns the freedom of the high seas, provides that the high seas are open to all States and that the freedom of the high seas comprises, inter alia, the freedom of navigation” and that “[t]he Decree of Seizure by the Public Prosecutor at the Court of Savona against the *M/V “Norstar”* with regard to activities conducted by that vessel on the high seas and the request for execution by the Prosecutor at the Court of Savona may be viewed as an infringement of the rights of Panama under article 87 as the flag State of the vessel” (paragraph 122). “Consequently, the Tribunal concludes that article 87 is relevant to the present case” (paragraph 122). Concerning article 300 of the Convention, the Tribunal “considers that the question arises as to whether Italy has fulfilled in good faith the obligations assumed by it under article 87 of the Convention” (paragraph 132). “Therefore, the Tribunal is of the view that article 300 of the Convention is relevant to the present case” (paragraph 132).

The Tribunal “rejects the objection raised by Italy based on non-existence of a dispute concerning the interpretation or application of the Convention” (paragraph 133).

Jurisdiction ratione personae

Italy submits that the Tribunal lacks jurisdiction *ratione personae* in the present case while Panama rejects this objection.

In its Judgment, the Tribunal examines whether Italy is the proper respondent in the proceedings. In the view of the Tribunal, the facts and circumstances of the case indicate that, while the arrest of the *M/V "Norstar"* "took place as a result of judicial cooperation between Italy and Spain, the Decree of Seizure and the request for its enforcement by Italy were central to the eventual arrest of the vessel" (paragraph 165). The Tribunal notes that the detention carried out by Spain was part of the criminal investigation and proceedings conducted by Italy against the *M/V "Norstar"* and that Italy has held legal control over the *M/V "Norstar"* during its detention. Accordingly, "the Tribunal finds that the dispute before it concerns the rights and obligations of Italy and that its decision would affect the legal interests of Italy" (paragraph 167). In the light of these considerations, "the Tribunal is of the view that Italy is the proper respondent to the claim made by Panama in these proceedings" (paragraph 168).

The Tribunal considers the argument of Italy that Spain is an indispensable party to the proceedings. It notes that the involvement of Spain in this dispute is limited to the execution of Italy's request for the seizure of the *M/V "Norstar"*. According to the Tribunal, it is the legal interests of Italy, not those of Spain, that form the subject matter of the decision to be rendered by the Tribunal on the merits of Panama's Application. The Tribunal notes that its decision on jurisdiction and admissibility "does not require the prior determination of Spain's rights and obligations" and therefore it is not indispensable for Spain to be a party to the present proceedings for the Tribunal to determine whether Italy violated the provisions of the Convention (paragraph 173).

For these reasons, the Tribunal "rejects the objection raised by Italy based on lack of jurisdiction *ratione personae*" (paragraph 175).

Exchange of views under article 283 of the Convention

Italy submits that Panama has failed to appropriately pursue the settlement of the dispute by negotiations or other peaceful means under article 283 of the Convention. Panama contends that it has fulfilled its part of the obligation to exchange views with Italy.

In considering this objection raised by Italy, the Tribunal notes that it has already concluded that Mr Carreyó was authorized to represent Panama in all exchanges relating to the arrest and detention of the *M/V "Norstar"* and that, after the note verbale of 31 August 2004, Italy should have been fully aware of Panama's attempts to exchange views concerning issues arising from the detention of the *M/V "Norstar"* (paragraphs 206 and 212). The Tribunal considers that "the absence of a response from one State Party to an attempt by another State Party to exchange views on the means of settlement of a dispute arising between them does not prevent the Tribunal from finding that the requirements of article 283 have been fulfilled" (paragraph 215). It is also of the opinion that "by disregarding correspondence from Panama concerning the detention of the *M/V "Norstar"*, Italy in effect precluded possibilities for an exchange of views between the Parties", and that "Panama

was justified in assuming that to continue attempts to exchange views could not have yielded a positive result and that it had thus fulfilled its obligation under article 283 of the Convention” (paragraph 217).

“Accordingly, the Tribunal rejects the objection raised by Italy based on the failure by Panama to fulfil its obligations regarding an exchange of views under article 283 of the Convention” (paragraph 219).

Having rejected the three objections to jurisdiction raised by Italy, “the Tribunal finds that it has jurisdiction to adjudicate upon the dispute” (paragraph 220).

Objections to admissibility

Nationality of claims

Regarding Italy’s objection to the admissibility of Panama’s Application based on the nationality of claims, the Tribunal, relying on previous jurisprudence, finds that the *M/V “Norstar”*, flying the flag of Panama, is to be considered a unit and therefore the *M/V “Norstar”*, its crew and cargo on board as well as its owner and every person involved or interested in its operations are to be treated as an entity linked to the flag State, irrespective of their nationalities” (paragraph 231).

The Tribunal “rejects the objection raised by Italy based on the nationality of claims” (paragraph 232).

Exhaustion of local remedies

Noting that the Parties differ on the applicability of article 295 of the Convention on the exhaustion of local remedies, the Tribunal examines its applicability in the present case. Having concluded that articles 87 and 300 of the Convention are relevant, the Tribunal is of the view that the right of Panama to enjoy freedom of navigation on the high seas is a right that belongs to Panama under article 87 of the Convention, and that a violation of that right would amount to a direct injury to Panama (paragraphs 269 to 270). It considers that “the claim for damage to the persons and entities with an interest in the ship or its cargo arises from the alleged injury to Panama”. “Accordingly, the Tribunal concludes that the claims in respect of such damage are not subject to the rule of exhaustion of local remedies” (paragraph 271).

For these reasons, the Tribunal “rejects the objection raised by Italy based on the non-exhaustion of local remedies” (paragraph 273).

Acquiescence, estoppel and extinctive prescription

The Tribunal notes that “the Parties do not dispute these principles” and that “their differences relate to the application of such principles in the circumstances of the present proceedings” (paragraph 302).

Regarding acquiescence, the Tribunal notes that “[t]he argument of Italy that Panama remained silent over a number of years in prosecuting its claims that arose from the

detention of the *M/V "Norstar"*, and that this silence amounts to acquiescence, is not substantiated in the circumstances of the case, taking into account Italy's conduct of not responding to Panama's communications. The Tribunal holds that at no stage has the conduct of Panama given scope to infer that it has abandoned its claim or acquiesced in the lapse of its claim" (paragraph 304). The Tribunal, therefore, "rejects the objection raised by Italy based on acquiescence" (paragraph 305).

With regard to estoppel, the Tribunal considers that "the main elements of estoppel have not been fulfilled in this case". It states that "Panama has never made a representation, by word, conduct or silence, that it would abandon its claim if Italy failed to act on its claim within a specific time-limit". The Tribunal further states that "[i]t is true that there was a representation that Panama would commence legal proceedings if Italy failed to release the vessel and pay damages by a specified time and that no such proceedings were brought in spite of Italy's failure to respond to such representation". However, according to the Tribunal "this cannot be taken as amounting to a clear and unequivocal representation that Panama would abandon its claim because of the non-response of Italy". The Tribunal adds that "Italy has not submitted any evidence to prove that it was induced by such representation to act to its detriment" (paragraph 307).

"For these reasons, the Tribunal rejects the objection raised by Italy based on estoppel" (paragraph 308).

As to extinctive prescription, the Tribunal notes that neither the Convention nor general international law provide a time-limit regarding the institution of proceedings before it (paragraph 311). The Tribunal finds that Panama has not failed to pursue its claim since the time when it first made it, so as to render the Application inadmissible (paragraph 313). The Tribunal "rejects the objection raised by Italy based on extinctive prescription" (paragraph 314).

Having rejected the objections to admissibility raised by Italy, "the Tribunal finds that the Application filed by Panama is admissible"

The operative paragraph of the Judgment in *The M/V "Norstar" Case (Panama v. Italy)* of 4 November 2016 reads as follows (paragraph 316):

"For the above reasons, the Tribunal

(1) By 21 votes to 1,

Rejects the objections raised by Italy to the jurisdiction of the Tribunal and finds that it has jurisdiction to adjudicate upon the dispute.

IN FAVOUR: *President* GOLITSYN; *Vice-President* BOUGUETAIA; *Judges* CHANDRASEKHARA RAO, AKL, WOLFRUM, NDIAYE, JESUS, COT, LUCKY, PAWLAK, YANAI, KATEKA, HOFFMANN, GAO, PAIK,

KELLY, ATTARD, KULYK, GÓMEZ-ROBLEDO, HEIDAR; *Judge ad hoc* EIRIKSSON;

AGAINST: *Judge ad hoc* TREVES.

(2) By 20 votes to 2,

Rejects the objections raised by Italy to the admissibility of Panama's Application and finds that the Application is admissible.

IN FAVOUR: *President* GOLITSYN; *Vice-President* BOUGUETAIA; *Judges* CHANDRASEKHARA RAO, AKL, WOLFRUM, NDIAYE, JESUS, LUCKY, PAWLAK, YANAI, KATEKA, HOFFMANN, GAO, PAIK, KELLY, ATTARD, KULYK, GÓMEZ-ROBLEDO, HEIDAR; *Judge ad hoc* EIRIKSSON;

AGAINST: *Judge* COT; *Judge ad hoc* TREVES.

Judges Cot and Heidar append declarations to the Judgment, Judges Wolfrum and Attard append a joint separate opinion to the Judgment and Judges Ndiaye and Lucky append separate opinions to the Judgment. *Judge ad hoc* Treves appends a dissenting opinion to the Judgment.

The text of the Judgment, the declarations and opinions as well as a recorded webcast of the reading are available on the [website](#) of the Tribunal.

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