

[Translation by the Registry]



THE GOVERNMENT
OF THE GRAND DUCHY OF LUXEMBOURG
Ministry of Foreign and European Affairs,
Defence, Development Cooperation
and Foreign Trade

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

VESSEL “ZHENG HE”

**GRAND DUCHY OF LUXEMBOURG (Applicant)
v. UNITED MEXICAN STATES (Respondent)**

APPLICATION INSTITUTING PROCEEDINGS BROUGHT BY LUXEMBOURG
BEFORE THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

3 JUNE 2024

**APPLICATION INSTITUTING PROCEEDINGS BROUGHT BY
LUXEMBOURG BEFORE THE INTERNATIONAL TRIBUNAL FOR THE LAW
OF THE SEA**

Luxembourg, 3 June 2024,

Ms Ximena Hinrichs Oyarce
Registrar
Registry of the International Tribunal for the Law of the Sea
Am Internationalen Seegerichtshof 1
22609 Hamburg
Germany

Madam Registrar,

I, the undersigned, Annabel Rossi, have the honour to submit to the International Tribunal for the Law of the Sea (the “Tribunal”) an application instituting proceedings on behalf of the Grand Duchy of Luxembourg (“Luxembourg”) against the United Mexican States (“Mexico”) in the case relating to the *Zheng He* vessel. It concerns a dredging vessel flying the flag of Luxembourg which was exercising the rights and freedoms enshrined in the 1982 United Nations Convention on the Law of the Sea (“UNCLOS” or “the Convention”) when it was detained in the port of Tampico by the Mexican authorities, improperly subjected to Mexican customs legislation and prevented from leaving the port ever since.

1. JURISDICTION OF THE TRIBUNAL

1. The Tribunal has jurisdiction to hear the present application under article 287, paragraphs 1 (a) and (4) of the Convention. Luxembourg and Mexico, both parties to the Convention, have made a written declaration under article 287: in the case of Luxembourg, this is the declaration by the Deputy Prime Minister, Minister of Foreign Affairs and Foreign Trade, Mr Xavier Bettel, dated 29 April 2024 (**Annex 1R**) and deposited with the Secretary-General of the United Nations, and for Mexico, the declaration dated 18 March 1983.

2. The dispute concerns, inter alia, Mexico's violation of the provisions of the Convention relating to the freedom and the right of navigation and/or other internationally lawful uses of the sea referred to in article 58 of the Convention.

3. As early as 7 November 2023, a few days after the detention of the *Zheng He*, Luxembourg actively sought a diplomatic solution to the case by sending a note verbale to Mexico stating that the vessel was on high seas voyage when it was detained, that it was flying the Luxembourg flag and that international law should apply (**Annex 2R**). This note verbale was followed by several others from Luxembourg calling for a swift solution by application of both international and Mexican law, given that a crew of 36 was still on board (note of 14 November 2023, **Annex 3R**) and confirming that the *Zheng He* has been registered in Luxembourg since 22 October 2010 (note dated 17 January 2024, **Annex 4R**). In a single note verbale dated 20 March 2024, Mexico referred any resolution of the dispute to domestic remedies deeming this was the "*appropriate remedy*" to protect all the rights in question (**Annex 5R**), thus denying the international and urgent dimension of Luxembourg's request. Luxembourg then indicated that domestic remedies had enabled the shipowner to obtain the annulment of the customs procedure against it without this leading to the release of the vessel and informed Mexico that, in the absence of a diplomatic solution, it was prepared to exercise international remedies, including before this Tribunal (note verbale of 29 March 2024, **Annex 6.1R** and note verbale of 29 April 2024, **Annex 6.2R**).

4. Thus, despite Luxembourg's efforts, the vessel *Zheng He* is still detained despite a court decision dated 22 March 2024, which has become final and which annulled the customs procedure against it (**Annex 7R**). The release of the vessel was requested on 19 April 2024 (**Annex 8R**) in compliance with this court decision, with no practical consequences. At present, Luxembourg considers that there is no longer any possibility of continuing substantive discussions between the parties with a view to a negotiated settlement of the dispute. As the exchanges of views provided for in article 283 of UNCLOS have not resulted in a settlement, Luxembourg is now bringing an application before the Tribunal.

5. As the Tribunal has no member of its nationality, in accordance with the provisions of article 17(3) of the Statute, Luxembourg intends to designate as soon as possible a person of its choice to sit as a member of the Tribunal to hear the present case.

2. STATEMENT OF FACTS

6. On 5 October 2023, the *Zheng He* left the port of Freeport in the Bahamas en route to Tampico in Mexico in order to make a stopover. The ship was therefore engaged in open-sea navigation. The Mexican company *Agencia Consignaria de Buques JVV Logistics JVA*, acting as the ship's agent, sent the Mexican authorities "advance notice of the arrival of a deep-sea vessel" on 9 October 2023, even before the *Zheng He* arrived in the area.

7. The *Zheng He* arrived in Tampico harbour in the Gulf of Mexico at 07:30 on 11 October 2023, 40 nautical miles from the first landing buoy, in an area known as "*Areas de Fondeadero de Tampico*". On 17 October 2023 (**Annex 9.1R**), the ship's agent advised the port authorities of the exclusively maritime purpose of the requested call at Tampico, indicating that it wished to carry out a crew change, bunkering and preventive maintenance. In response, on 21 October and after four days of waiting in the harbour, the *Zheng He* was given permission by the Tampico harbour master's office to move to dock 3, which she reached at 10:00 am and was moored there at 2:20 pm (**Annex 9.2R**). On 23 October, the ship's local agent informed the customs authorities that the *Zheng He* had been authorised to move to dock 3, where it was to remain for bunkering, maintenance and pending instructions (**Annex 10R**).

8. On 24 October 2023, the customs authorities imposed an initial customs fine on the *Zheng He* of 9,570 Mexican pesos, with a 50% reduction if payment was made within 10 working days. Wishing to conclude the procedure as quickly as possible, the Mexican agent took the initiative of making the payment to the customs authorities as quickly as possible and in good faith on 31 October 2023.

9. The *Zheng He* requested a movement order from the Port of Tampico Harbour Master's Office towards the *Terminal of Multiple Uses II, F-6*, for 06:15 on 1 November 2023, in order to be moored there to carry out bunkering, maintenance and crew rotation operations. The movement order was issued (**Annex 11R**). While a port pilot was received on board the *Zheng He* at 7 am on 1 November to carry out the manoeuvre (**Annex 12R**), the harbour master's office gave an *abrupt* order to stop the ship's movement. The reason given for halting the vessel's movement was a weather warning concerning the *Rio Panuco* (**Annex 13R**).

10. With the *Zheng He* detained at dock 3 by decision of the harbour master's office, agents from ADACEN (*Administracion Desconcentrada en Auditoria de Comercio Exterior del Noreste*) arrived on 1 November at 10:30 a.m. to carry out a visit on board (**Annex 14R**). The agents of this decentralised administration, for which the Mexican State is responsible, decided to detain the dredger *Zheng He* on the grounds that the vessel should be considered as a commodity whose entry into Mexican territory was treated as an import, subjecting its owner to the payment of customs duties proportional to the value of the vessel. The detention report was presented for countersignature not to the Captain of the *Zheng He* but to the Mexican company *Agencia Consignaria de Buques JVV Logistics JVA*.

11. The tax department of the devolved customs administration (ADACEN) then issued an administrative decision known as “Orden CVD6000037/23” on 15 February 2024, in which it set the alleged customs debt at 1,616,462,343.62 Mexican Pesos, or approximately USD 96,230,000, and cumulatively, the transfer of ownership of the *Zheng He* to Mexico (**Annex 15R**).

12. The shipowner’s lawyers based in Mexico, who are assisting it in the internal proceedings, emphasize the disproportionate and unusual nature of the penalty imposed (**Annex 16R**). Moreover, the customs procedure as a whole was annulled by the Tampico District Court on 22 March 2024 (**Annex 7R**), which became final and was notified for enforcement purposes (**Annex 8R**), without this leading to the Mexican authorities releasing the vessel.

13. The *Zheng He* has now been held in port for over 7 months, despite the efforts of the shipowner and Luxembourg, the flag state.

3. LEGAL REMEDIES

14. The facts set out below gave rise to a dispute as to whether the detention by the Mexican authorities of the *Zheng He*, a dredging vessel flying the Luxembourg flag, was lawful under the Convention. This dispute concerns, but is not limited to, the interpretation and application of Parts II, V, VII and X of UNCLOS concerning the exercise by foreign-flagged vessels of navigational rights and freedoms, and the obligation of States to exercise the rights, jurisdiction and freedoms recognized in the Convention in a manner that does not constitute an abuse of right.

15. The detention of the vessel *Zheng He* in the context of the customs proceedings brought against it in an abusive manner by the Mexican authorities, which continue despite the definitive annulment of the proceedings and the protests of Luxembourg, infringes specific provisions of UNCLOS but also other rules of international law which are compatible with and even complementary to UNCLOS.

4. REQUEST FROM LUXEMBOURG

16. For these reasons, Luxembourg asks the Tribunal to adjudge and declare that:
- a. Mexico has breached the provisions of articles 2, 17, 18, 19, 21, 58, 87, 90, 92, 131 and 300 of the Convention. As a result, Mexico's international responsibility is engaged.
 - b. Mexico must immediately cease all ongoing violations.
 - c. Mexico must provide Luxembourg with appropriate assurances and guarantees of non-repetition.
 - d. Luxembourg is entitled to reparation for all losses suffered in the form of compensation, the amount of which will be determined when the case is examined on its merits.
 - e. Luxembourg is entitled to reimbursement of all legal fees, costs and other expenses incurred.

5. PROVISIONAL MEASURES

17. On or about the date of the filing of this Application instituting proceedings before the International Tribunal for the Law of the Sea, Luxembourg will institute a request for provisional measures in accordance with article 290, paragraph 1, of the Convention. The arguments set out in the aforementioned request for provisional measures are reproduced by reference in the present application, as if they were set out in full.

6. APPOINTMENT OF AGENT

18. Pursuant to article 56, paragraph 2, of the Rules, Ms Annabel Rossi, Head of the Legal Service, Legalization and Approvals at the Office of the Commissioner for Maritime Affairs, has been appointed Principal Agent for the purposes of these proceedings before the Tribunal and for all procedural acts relating thereto.

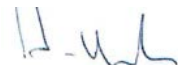
Ms Annabel Rossi's contact details are as follows:

Office of the Commissioner for Maritime Affairs
3-5 rue Auguste Lumière, L-1950, Luxembourg
cam@cam.etat.lu

The address for service of all communications relating to the case pursuant to Article 56(1) of the Rules is as follows:

Embassy of the Grand Duchy of Luxembourg in the Federal Republic of Germany
Klingelhöferstrasse 7
D-10785 BERLIN

Please accept, Madam Registrar, the assurances of my highest consideration,



Xavier BETTEL,
Minister for Foreign Affairs and Foreign Trade

Annexes to Luxembourg's Application instituting proceedings before the International Tribunal for the Law of the Sea

Annex n° 1R: Luxembourg's Declaration under UNCLOS article 287 dated 29 April 2024, *original*.

Annex n° 2R: Note verbale from the Grand Duchy of Luxembourg dated 7 November 2023, 011-MEX-O-NV- 20231107-LU, *original*.

Annex n° 3R: Note verbale from the Grand Duchy of Luxembourg dated 14 November 2023, 012-MEX-O- NV-20231114-LU, *original*.

Annex n° 4R: Note verbale from the Grand Duchy of Luxembourg dated 17 January 2024, 003-MEX-O-NV- 2024-SRE, *original*.

Annex n° 5R: Note verbale from Mexico to Luxembourg dated 20 March 2024, *original*.

Annex n° 6R: Note verbale from the Grand Duchy of Luxembourg dated 29 March 2024, 20240329 NV MAE. LU to EMB MEX (6.IR) and Note verbale from the Grand Duchy of Luxembourg dated 29 April 2024, 20240429 NV LU to MEX (6.2R), *originals*.

Annex n° 7R: District Court de Tampico, Tamaulipas, judgement dated 22 March 2023 annulling the customs procedure, *original Spanish and sworn translation in French*.

Annex n° 8R: Notification to SEMAR dated 19 April 2024 of the final nature of the amparo judgment cancelling the home visit with a view to obtaining the release of the vessel, *original Spanish and translation in French*.

Annex n° 9R: Request from the shipping agent to ASIPONA for permission to berth at quay n.º3 on 17 October 2023 (9.IR) and Permission from the harbour master's office to berth at quay n.º3 on 21 October 2023. (9.2R), *originals Spanish and translations in French*.

Annex n° 10R: Notification to customs by the shipping agent of authorization to berth at quay n.º3, 23 October 2023, *original Spanish and sworn translation in French*.

Annex n° 11R: Authorization from the harbour master's office to move the Zheng He from quay n.º3 to fiscal quay n.º6 given on 31 October for movement on 1 November at 7:00, *original Spanish and sworn translation in French*.

Annex n° 12R: Declaration of the harbour pilots on the events of 1 November 2023 dated 11 December 2023, *original Spanish and sworn translation in French*.

Annex n° 13R: Notice by the harbour master's office of the suspension of all movements in port due to weather conditions dated 31 October 2023 (13.IR) and Notice by the harbour master's office of the end of the suspension of all movements in port due to weather conditions dated 1 November 2023 (13.2R), *original Spanish and sworn translation in French*.

Annex n° 14R: ADACEN home visit order n.ºCVD6O0003T/23 dated 31 October 2023, *original Spanish and sworn translation in French*.

Annex n° 15R: Resolution n.º110-10-01-00-00-2024-00583 dated 15 February 2024 ordering the expropriation of the Zheng He and imposing a customs fine, *extracts, original Spanish and sworn translation in French*.

Annex n° 16R: Legal Opinion, Jones Day, *original English*.