

[Translation by the Registry]

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

**VESSEL “ZHENG HE”**

**GRAND DUCHY OF LUXEMBOURG (Applicant)**

**v.**

**UNITED MEXICAN STATES (Respondent)**

REQUEST FOR THE PRESCRIPTION OF PROVISIONAL MEASURES  
SUBMITTED BY THE GRAND DUCHY OF LUXEMBOURG  
UNDER ARTICLE 290(1) OF THE UNITED NATIONS CONVENTION ON THE LAW  
OF THE SEA

**7 JUNE 2024**

**REQUEST FOR THE PRESCRIPTION OF PROVISIONAL MEASURES  
SUBMITTED BY THE GRAND DUCHY OF LUXEMBOURG**

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## I. INTRODUCTION

1.- Over the past thirty years, the Grand Duchy of Luxembourg (hereinafter “Luxembourg”) has developed a flag renowned for its quality. Under article 61(2) of the amended Law of 9 November 1990 *creating a Luxembourg public maritime register*, only ships no more than 15 years old are admitted under the Luxembourg flag,<sup>1</sup> so that the average age of the fleet is 11.5 years. According to Article 5 of the amended law of 9 November 1990, a ship may be registered in the Luxembourg maritime register only if all or at least a significant part of its management is carried out from Luxembourg. This condition is ensured by the requirement that the vessel be operated from Luxembourg by a shipping company, which is obliged to engage the services of a maritime manager who can demonstrate maritime competence and guarantees of good repute.<sup>2</sup> A genuine link is thus required between the Luxembourg flag and the vessels.

2.- For the purposes of statutory inspections carried out on behalf of the Luxembourg flag, only the most reputable IACS<sup>3</sup> member classification societies have been approved. The Luxembourg flag favours ships with very low greenhouse gas emissions that meet the criteria of the *Ultra Low Emission vessels (ULEv)* rating, the specifications for which have been drawn up by Bureau Veritas. The quality of Luxembourg’s flag is attested by the results of the inspections carried out on its ships by the States of the Paris Memorandum. Vessels flying the Luxembourg flag are white-listed.<sup>4</sup> Following the audit carried out by IMO and VIMSAS,<sup>5</sup> the flag was even included in the exclusive club of “low-risk” flags.

3.- Luxembourg is one of the maritime nations to have ratified the Maritime Labour Convention of 2006 (hereinafter “MLC 2006”). In this respect, as a flag State, it is responsible for ensuring that working and living conditions are respected on board its ships.

4.- Because of its geographical location, with no direct access to the sea, Luxembourg is a “*landlocked State*” within the meaning of article 124 of the United Nations Convention on the Law of the Sea (hereinafter “UNCLOS” or “the Convention”). It therefore takes great heed to ensure that its vessels enjoy, in the maritime ports of other States Parties, treatment equal to that enjoyed by other vessels within the meaning of article 131 of UNCLOS. More broadly, Luxembourg also takes great heed that its ships’ right of innocent passage is respected, particularly as regards the right of innocent passage to and from foreign ports within the meaning of article 18(b) of the Convention. Because of its membership of the European Union and its history, Luxembourg has always favoured seeking negotiated solutions, refusing “*gunboat diplomacy*”. It is in this context that it has decided to submit to the International

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<sup>1</sup> **Art. 61(2):** “No vessel older than 15 years from keel laying may be registered for the first time under the Luxembourg flag.”

**Art. 61(3):** “For ships registered in Luxembourg, the maintenance of the class when the ship reaches 15 years of age is conditional on the full maintenance of the ship’s class, in accordance with the criteria established by the international classification societies.”

<sup>2</sup> **Art. 132(1):** “To be approved as a maritime company director, a person must be resident in Luxembourg and provide proof of good repute and professional experience.

Good character is assessed on the basis of criminal records and any other factors likely to establish that the persons concerned enjoy a good reputation and offer every guarantee of irreproachable activity.

Professional experience is assessed on the basis of the fact that these people have already carried out similar activities with a high level of responsibility and autonomy.”

<sup>3</sup> *International Association of Classification Societies*. See the ministerial decrees of 4 December 1990 (*Mémorial A n°61*, 28 December 1990) and of 1 October 1991 (*Mémorial A n°54*, November 20, 1991) designating classification societies in maritime matters.

<sup>4</sup> *ParisMoU Performance List*, 1 July 2023 to 30 June 2024.

<sup>5</sup> <<https://parismou.org/Statistics%26Current-Lists/flags-meeting-low-risk-criteria>>

Tribunal for the Law of the Sea the dispute which has crystallized with the United Mexican States (hereinafter “Mexico”) in order to find a definitive solution and, more urgently, to prevent any aggravation of this dispute and to protect its rights, which are under serious and imminent threat.

5.- The dispute between Luxembourg and Mexico, both parties to UNCLOS, arose from the exorbitant taxation and prolonged detention of the dredger *Zheng He*, a Luxembourg-flagged vessel, by the Mexican authorities in the internal waters of the Tampico maritime port. The measures taken and maintained by Mexico against the *Zheng He*, with consequences for its crew, are manifestly abusive, arbitrary and discriminatory; they constitute violations of Luxembourg’s rights under UNCLOS, the international conventions supplementing it, and customary international law.

6.- Mexico has made a declaration under article 287 of UNCLOS in which it recognizes, *inter alia*, the jurisdiction of the International Tribunal for the Law of the Sea. On 29 April 2024, Luxembourg, for its part, made the notification required under article 287 of UNCLOS to confer jurisdiction on the International Tribunal for the Law of the Sea to settle any disputes arising from the interpretation or application of UNCLOS (**Annex MC1**). Consequently, as will be demonstrated below by Luxembourg, there can be no doubt that the International Tribunal for the Law of the Sea (hereinafter “the Tribunal”) has jurisdiction over the present dispute.

7.- Under article 290(1) of UNCLOS, any court or tribunal to which a dispute has been duly submitted under Part XV of the Convention may prescribe provisional measures to preserve the rights of the parties to the dispute.

8.- For the proceedings on the merits, initiated by the Application of 3 June 2024, Luxembourg submitted the entire dispute with Mexico to the Tribunal. It will seek all appropriate remedies on the merits, including in particular the definitive release of the vessel and reparation for the injury suffered by the State of Luxembourg, according to figures to be finalized. Pending settlement of the dispute on the merits, whether this results from a judgment of the Tribunal or an amicable agreement reached in the course of the proceedings, Luxembourg is asking the Tribunal for provisional measures which do not prejudice the merits, but protect its rights that are immediately under threat by the Mexican authorities.

9.- This Request is organized as follows: after setting out the facts of the case (paras. 10-34), Luxembourg demonstrates that all the jurisdictional conditions for the Tribunal to prescribe provisional measures have been met (paras. 35-46), provides grounds in support of all the provisional measures requested (paras. 47-78), chooses an judge *ad hoc* (para. 79) and presents its conclusions (para. 80).

## II. STATEMENT OF FACTS

10.- After identifying the elements linking this request to Luxembourg (A), we will present the circumstances surrounding the detention of the vessel *Zheng He* (B) and Luxembourg’s unsuccessful attempts to reach an amicable settlement of the dispute (C).

## A. Link to Luxembourg

11.- The *Zheng He* is owned by the Luxembourg company *European Dredging Company SA*, whose head office is located at the following address:

European Dredging Company SA  
34-36, Parc d'Activités Capellen,  
L - 8308 CAPELLEN  
Luxembourg

The ship is operated directly by its owner from Luxembourg. Management services within the meaning of the ISM and ISPS Codes and the MLC 2006 are also provided from Luxembourg.

12 - The *Zheng He* flies the Luxembourg flag (**Annex MC2**). It is identified as follows:

- IMO number: 9448982
- Tonnage: 8015 GRT
- Ship type: Dredger
- Call sign: LXNG

13.- The Luxembourg company *European Dredging Company SA* owns 12 other vessels also flying the Luxembourg flag (**Annex MC3.1**). It is controlled by the Luxembourg parent company SOFIDRA (**Annex MC3.2**), whose subsidiaries, under the name *Jan De Nul*, operate a total of 69 vessels under Luxembourg flag (**Annex MC3.3**).

## B. The circumstances surrounding the detention of the *Zheng He*

14.- On 5 October 2023, the *Zheng He* left the port of Freeport in The Bahamas to call into a port in Tampico, Mexico. The ship was therefore engaged in open-sea navigation.

15.- As is customary, and in order to comply as closely as possible with local regulations and practices, the Luxembourg shipowner used the services of a local agent for the vessel, the Mexican company *Agencia Consignaria de Buques JVV Logistics JVA*. This company, incorporated under Mexican law, was responsible for preparing the entry of various ships into Mexican ports, and was entrusted by the shipowner with the task of communicating with the port and customs authorities to complete the necessary formalities. At times dredgers are brought into port for tax purposes in order to complete temporary import formalities in light of subsequent dredging work, while other times they are brought in for strictly maritime purposes, in order to carry out various actions required to resume navigation.

16.- In this case, while the vessel was not yet in the area, the shipping agent had first sent customs authorities “*advance notice of the arrival of an open-sea vessel*”, reserving the possibility of a temporary import, not being certain at that time whether it would be requested (**Annex MC4**). At this early stage, the shipping agent did not, for that matter, refer to the shipowner’s instructions. The Tampico harbour master’s office noted that the vessel was engaged in open-sea navigation and was flying the Luxembourg flag (**Annex MC5**). It authorized its arrival, without yet specifying the authorized berth.

17.- The *Zheng He* arrived at 7.30 a.m. on 11 October, 40 nautical miles from the first landing buoy in an area known as “*Areas de Fondateiro de Tampico*”. At the time of arrival in the Tampico roadstead on 11 October 2023, 36 seafarers were aboard and formed the crew on board this Luxembourg ship (**Annex MC6**): the captain and 14 other crew members with the nationality of a Member State of the European Union, 12 crew members with Indonesian

nationality, 5 crew members with Philippine nationality, 3 crew members with Indian nationality, and 1 crew member with Mexican nationality. This marked the start of the waiting time in the roadstead, where the ship, through its agent, clarified its intentions and requested admission to the port on the basis of the current information transmitted at that precise moment. In today's global maritime traffic, waiting times in roadsteads often last several days.

**18.-** On 17 October 2023 (**Annex MC7**), the ship's agent advised the port authorities of the exclusively maritime purpose of the request to call into Tampico, going as far as to specify the Mexican operators who would provide each of the services necessary for the continuation of the voyage:

- Crew changeover
- Refuelling: boat supplier *Avimar S.A. de C.V*
- Sewage, sludge and waste removal: *Lacavex S.A.*
- *Delta - Iossif Dutsini*: inputs and waste removal
- Gas-free certificate: *Taller MASI*
- Preventive maintenance: *Electromex Mantenimiento Industrial Marino, S.A. DE C.V.*

At the call authorization request stage, which makes no mention whatsoever of temporary import, the agent explicitly referred to the instructions of its principal, the shipowner ("on the instructions of our principal").

**19.-** On 20 October 2023, while the *Zheng He* was continuing its waiting time in the Tampico roadstead, the harbour master's office issued a weather alert for the night of October 22, indicating adverse weather conditions with an episode locally described as *Surada*: wind gusts of 25 to 30 knots, reduced visibility and waves of 7 to 10 feet (**Annex MC8**). This corresponds to a force 6 situation on the Beaufort scale.

**20.-** On 21 October 2023, in response to its request of 17 October, the vessel *Zheng He* was granted permission by the Tampico harbour master's office to dock at berth no. 3 (**Annex MC9**). It reached the port at 10.00 a.m. and was berthed there at 2.20 p.m. On 23 October 2023, the ship's local agent immediately informed the customs authorities that the *Zheng He* had been authorized to proceed to berth no. 3, where it was to remain for bunkering and maintenance, pending instructions (**Annex MC10**). The notification to the customs authorities expressly emphasized that admission to the port was carried out "with the sole purpose of refuelling the vessel, changing the crew and carrying out preventive maintenance, while remaining at the disposal of the authorities for any type of instructions." Clearly, for both technical and practical reasons, these navigation-related operations had to be carried out quayside, and could not be carried out when the ship was anchored in the roadstead, several nautical miles from the coast and the service providers.

**21.-** On 24 October 2023, the customs authorities issued a first customs penalty against the *Zheng He* (**Annex MC11**) in the amount of 9,570 Mexican pesos, with a 50 per cent reduction of the fine 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 promptly to the customs authorities on 31 October 2023 (**Annex MC12**). The payment made in good faith by the agent did not, however, imply recognition by the shipowner of the alleged offences.

**22.-** The official report was indeed rather confusing, especially for a foreigner. The penalty was imposed on the shipping agent, but not on the vessel or its owner. The fourth recital of the official report stated that berth no. 3 was a "*place not authorized to open-sea vessels*",

even though the Mexican port authority had itself authorized the *Zheng He* to enter the berth. The report established that the customs authorities had indeed been informed of the call authorization given to the vessel by the harbour master's office on 21 October, in response to the request made on behalf of the shipowner on 17 October. But it did not, however, take into account the exclusively maritime purpose of the call.

**23.-** In addition to promptly paying the fine, the ship acted on the consequences of the official notice by requesting to remedy its situation by changing berth. The *Zheng He* therefore requested a movement order from the Tampico harbour master's office to *Terminal of Multiple Uses II, F-6*, for 1 November 2023 at 6.15 a.m., in order to be moored there to carry out the announced bunkering, maintenance and personnel rotation operations. The movement order for the *Zheng He* was issued by the harbour master's office on 31 October 2023 (**Annex MC13**).

**24.-** At the same time, on 31 October 2023, the Mexican authorities were preparing to detain the vessel *Zheng He*. On the one hand, the tax authorities took a preliminary decision to authorize an onboard inspection, without however indicating what the subject matter of that inspection would be (**Annex MC14**). On the other hand, the harbour master's office issued a weather warning, the duration of which it did not specify (**Annex MC15**).

**25.-** On 1 November at 7 a.m., while a port pilot was being received on board the *Zheng He* to carry out the manoeuvre scheduled the previous day (**Annex MC16**), the harbour master's office gave *ex abrupto*, by VHS and without leaving any written trace, the order to halt the vessel's movement on the grounds that traffic in the port was prohibited. The *Zheng He* was therefore forced to remain moored at berth no. 3.

**26.-** A new weather report dated 1 November at 10.00 a.m. put an end to the weather warning that had de facto immobilized the vessel, a few minutes before agents from the local customs agency, ADACEN, boarded the vessel to carry out the onboard visit and detain the *Zheng He de jure* (**Annex MC 19**).

**27.-** These agents arrived at 10.30 a.m. to carry out an inspection on board (**Annex MC17**). They 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*. When asked whether it had been informed in advance of the impending inspection by customs, the harbour master's office gave a negative response, which could not be verified (**Annex MC18**).

**28.-** Notwithstanding diplomatic efforts and recourse to remedies under Mexican law taken by the shipowner, on 15 February 2024, the Mexican authorities issued an administrative decision known as "*Orden CVD6000037/23*" (**Annex MC20**), by which they set the alleged customs debt of *European Dredging Company* at 1,616,462,343.62 Mexican pesos, approximately USD 96,230,000. This decision resulted, in addition and cumulatively, in the definitive confiscation (subject only to appeal) of the *Zheng He*, whose ownership is now claimed by the Mexican State ("*dicha mercancía pasa a propiedad del fisco federal*").

**29.-** This is an unprecedented situation for both the flag State and the shipowner, whose ships have repeatedly called into port in Mexico. Even supposing that the shipowner had wanted to, or even had to, initiate a temporary import procedure for its dredging vessel, the amount of duty for the temporary import of the *Zheng He* had amounted to USD 744 a few months earlier (**Annex MC21**). The confiscation of the vessel, the value of which exceeds the customs duties claimed for the temporary importation of the vessel by a factor of several

thousand, is completely out of proportion to the amount of duties that Mexico could claim. In addition, a fine of USD 96,230,000 was imposed, which exceeds by a factor of 12,000 the amount of customs duties claimed for a temporary import, supposing they were due. The penalties imposed on the *Zheng He* are therefore clearly disproportionate. Added to this are the obstacles to resolving its situation.

**30.-** At no time before the onboard visit and the detention order of 1 November 2023, nor even before the decision of 15 February 2024 to expropriate the vessel, did the Mexican authorities contact the flag State authorities to notify them of the coercive measures affecting their vessel. Mexico sent no note verbale in advance either to the diplomatic representation of Luxembourg or to the *Luxembourg Maritime Administration*, which is the public authority that keeps the Luxembourg flag register.<sup>6</sup>

**31.-** Similarly, according to public data available to legal professionals based in Mexico, there is no known precedent for the Mexican customs agency to qualify a vessel as a commodity in order to form the basis for calculating import duties for the purposes of a definitive import (**Annex MC22**). This exorbitant measure is all the more exceptional in that the ship entered the port of Tampico under very special circumstances:

- The ship was engaged in open-sea navigation, a fact acknowledged by the Mexican authorities;
- The requests for authorization made on behalf of the owner clearly indicated that the exclusive purpose of the call was to carry out bunkering, refuelling, preventive maintenance and crew rotation;
- While anchored in the roadstead, the ship was advised to enter the port against the backdrop of an alarming weather report;
- In the light of this information, the vessel was directed to berth no. 3 on the initiative of the harbour master's office, part of the Secretariat of the Navy. However, according to the Secretariat of the Navy (**Annex MC18**), the concession of berth no. 3 has been assigned to it since 1994; its legal status therefore should have been known to the port authorities.

### **C. The efforts taken to release the vessel**

**32.-** All the necessary efforts have been made to release the vessel, whether through recourse to domestic legal remedies in Mexico at the initiative of the shipowner, or through diplomatic efforts on the part of Luxembourg to find an amicable solution to the dispute.

**33.-** With regard to the efforts made by the shipowner in dealing with the detention of its vessel, it first attempted a non-contentious remedy, in vain, before referring the matter to the Mexican courts. On 22 March 2024, the Tampico District Court ruled that the customs proceedings against the *Zheng He* were null and void (**Annex MC23**), thereby depriving of legal effect the onboard visit, the fine reports and the expropriation of the vessel. The Mexican authorities, parties to the proceedings and duly informed, did not lodge an appeal within the time limit prescribed by Mexican law, which expired on 12 April 2024. This is established by the *Certificate of non-appeal against the decision of 22 March 2024* drawn up on 18 April 2024 by the Mexican authorities, more precisely by the court clerk attached to the District Court of Tamaulipas (**Annex MC24**). This certificate constituted formal notice to perform within three days. It was thus established that the decision annulling the customs proceedings had become

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<sup>6</sup> This information is available on the IMO's official GISIS website.



final in the absence of an appeal by the Mexican authorities within the time limits set by their own law. Upon presentation on 19 April 2024 of this enforceable act under Mexican law (**Annex MC25**), the Mexican authorities refused to release the vessel and its crew.

**34.-** As for the efforts of the State of Luxembourg, they were deployed as soon as the vessel was detained. In a first note verbale dated 7 November 2023, six days after the detention of its vessel, Luxembourg wished to draw the attention of the Mexican federal authorities to this prejudicial situation and called for a solution within the framework of international law (**Annex MC26**). This note verbale remained unanswered. In a second note verbale dated 14 November 2024 (**Annex MC27**), Luxembourg requested the assistance of the Mexican federal authorities in finding a solution with the customs authorities. This note verbale remained unanswered. Faced with the continued detention, Luxembourg confirmed the vessel's registration in the Luxembourg register, thereby demonstrating its intention to protect it (**Annex MC28**). Two months later, Mexico sent a note verbale referring the State of Luxembourg to the Mexican domestic courts (**Annex MC29**). The diplomatic meeting held on 23 February 2024 was not followed up, and on 29 March, Luxembourg sent a new note verbale reiterating its request for a diplomatic solution (**Annex MC30**). This remained unanswered. Finally, Luxembourg deposited the declaration under article 287 of UNCLOS and notified Mexico that it was considering submitting the matter to the International Tribunal for the Law of the Sea (**Annex AMC31**). This last note verbale, dated 29 April 2024, also remained unanswered by the Mexican authorities.

### III. JURISDICTION

**35.-** Luxembourg and Mexico are parties to UNCLOS, having ratified it on 5 October 2000 and 18 March 1983, respectively. Both have made a declaration under article 287(1) of the Convention. In its declaration, Mexico accepts without order of preference the jurisdiction of the International Tribunal for the Law of the Sea, the International Court of Justice and a special Annex VIII arbitral tribunal for the categories of disputes specified therein. In its declaration of 29 April 2024, Luxembourg accepts the jurisdiction of the International Tribunal for the Law of the Sea. In accordance with article 287(4), the two parties have therefore agreed on the same procedure, before the International Tribunal for the Law of the Sea, to hear any dispute relating to the interpretation or application of the Convention.

**36.-** In its application instituting proceedings dated 3 June 2024, Luxembourg stated that the dispute with Mexico concerning the vessel *Zheng He* concerns the interpretation and application of the Convention, in particular articles 2, 17, 18, 19, 21, 58, 87, 90, 92, 131 and 300 thereof.

**37.-** Mexico has never challenged Luxembourg's status as the flag State of the *Zheng He*. In this regard, the Tribunal has had occasion to recall that, under the Convention, the vessel is to be considered as constituting a unit "*as regards the obligations of the flag State with respect of the ship and the right of the flag State to seek reparation for loss or damage caused to the ship by acts of other States*".<sup>7</sup> In the *Virginia G* case, the Tribunal further emphasized that "*the M/V 'Virginia G' is to be considered as a unit and therefore, the M/V 'Virginia G', 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. Therefore, Panama is entitled to bring claims in respect of alleged violations of its rights under the Convention which resulted*

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<sup>7</sup> *The M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea), Judgment, ITLOS Reports 1999*, p. 48, para. 106.

*in damages to these persons or entities.*”<sup>8</sup> Accordingly, in its Application lodged on 3 June 2024, Luxembourg seeks the cessation of all the alleged violations of its rights under the Convention and reparation for the damage caused to the unit that is the vessel *Zheng He*, consisting of the vessel itself, its crew and every person involved or interested in the operations of the *Zheng He*.

**38.-** Among the conduct of the Mexican authorities that violated the rights of Luxembourg enshrined in UNCLOS, the following should be noted:

- The detention of the *Zheng He* in the port of Tampico owing to the abusive and discriminatory application of a customs procedure against it, after having authorized the vessel to enter the port for weather-related reasons, and in particular berth no. 3, and having recognized that it was engaged in open-sea navigation;
- The imposition of a disproportionate and unusual penalty on the *Zheng He* allowing ownership of the vessel to be transferred to the Mexican State and the flag to be changed, even though the vessel was calling into port and there was no actual transfer of ownership or change of registration;
- The non-enforcement of a final court decision annulling the entire customs procedure against the *Zheng He* and the de facto continuation of the detention in violation of the right to leave port as enshrined in article 18(1)(b) UNCLOS;
- The refusal by the Mexican authorities to negotiate a solution with Luxembourg that complies with international law of the sea.

**39.-** It should be recalled, as Mexico very well knows, that the State is responsible for the acts of all its organs, whether they exercise legislative, administrative, judicial or other functions, and whether these organs are under the authority of the central government or of a local government of the State, including when these organs exceed their authority or contravene their own instructions. This is established by general international law and reflected in articles 4 and 7 of the Articles on Responsibility of States for Internationally Wrongful Acts, drawn up by the International Law Commission.<sup>9</sup>

**40.-** The international rules violated by Mexico include both specific provisions of UNCLOS and other rules of international law which, in accordance with article 293(1) of the Convention, are not incompatible with it:

- The right to leave internal waters, set out in article 18(1)(b) UNCLOS;
- The other rights and freedoms of navigation recognized for the benefit of foreign vessels and their flag States, which form the cornerstone of the law of the sea, namely, freedom of navigation in the exclusive economic zone, as set out in article 58 of UNCLOS, and freedom of navigation on the high seas, as set out in articles 87 and 90 of UNCLOS;
- The obligation for a State Party to grant ships flying the flag of landlocked States treatment equal to that accorded to other foreign ships in maritime ports, as set out in article 131 of UNCLOS;
- The obligation of a State Party to fulfil its obligations under the Convention in good faith and not to exercise the rights, jurisdiction and freedoms recognized in the Convention in a manner that constitutes an abuse of right in accordance with article 300 of UNCLOS;

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<sup>8</sup> *The M/V “Virginia G” (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 48, para. 127.

<sup>9</sup> Annex to United Nations General Assembly resolution 56/83 of 12 December 2001.

While article 300 cannot be applied on its own,<sup>10</sup> in addition to the above-mentioned provisions of the Convention, article 2 of UNCLOS recognizes the sovereignty of the coastal State over its internal waters, and articles 218 and 220 of UNCLOS enshrine certain limited powers for the benefit of the port State and the coastal State. As a result, the State's jurisdiction and powers over foreign ships, including in its internal waters and maritime ports, cannot be exercised abusively without violating the Convention. Maritime spaces are all interconnected, and the Convention treats them as such. Luxembourg also points out that, under general international law, any State that admits a foreigner to its territory must treat him or her in accordance with elementary considerations of humanity, without arbitrariness or discrimination. The International Court of Justice made this clear in the *Barcelona Traction* case: "When a State admits into its territory foreign investments or foreign nationals, whether natural or juristic persons, it is bound to extend to them the protection of the law and assumes obligations concerning the treatment to be afforded them [...] this treatment is guaranteed by general international law even in the absence of any treaty".<sup>11</sup>

- The obligation to respect internationally recognized human rights, in particular those enshrined in the International Covenant on Civil and Political Rights ratified by Mexico and Luxembourg, including the right to liberty and security (article 9), and those enshrined in the International Covenant on Economic, Social and Cultural Rights, also ratified by Mexico and Luxembourg, including the right to work and to just and favourable conditions of work (articles 6 and 7) and the right to health (article 12).

**41.-** In summary, the international dispute between Luxembourg and Mexico concerns the lawfulness of the detention, taxation and confiscation of the *Zheng He*. The rights that Luxembourg seeks to protect are a central element of the law of the sea and are intended to guarantee freedom of navigation and other internationally lawful uses of the sea. Mexico's treatment of the *Zheng He* throughout the customs proceedings against it shows a lack of good faith and an abusive exercise of its jurisdiction as a coastal State in its internal waters. Mexico has rendered ineffective all the rights and freedoms of navigation enshrined in the Convention to which Luxembourg is entitled, and has deprived the crew of certain internationally recognized human rights. The rights claimed by Luxembourg are more than plausible: they result from the express provisions of the Convention, the two 1966 covenants and general international law.

**42.-** None of the exceptions to the acceptance of dispute settlement procedures provided for in Part XV, Section 2, of the Convention relate to the subject matter of the dispute submitted to the Tribunal. In particular, in its declaration under article 298 of UNCLOS, Mexico excluded disputes relating to sea boundary delimitations, disputes involving historic bays or titles, and disputes concerning military activities. These exclusions do not apply in this case.

**43.-** Despite Luxembourg's efforts to achieve a diplomatic settlement of the dispute, which have been recalled above at paragraph 34, Mexico has denied the international scope of the dispute and the existence of Luxembourg's own rights as the flag State. In the only note verbale transmitted by Mexico, dated 24 March 2024, recourse to proceedings under Mexican law is presented as the "*appropriate means*" to protect all of the rights in question (**Annex MC29**). Mexico claims that the dispute is strictly domestic and customs-related,

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<sup>10</sup> *The M/V "Louisa" (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Judgment, ITLOS Reports 2013, p. 43, para. 137.

<sup>11</sup> *Barcelona Traction, Light and Power Company, Limited*, Judgment of 5 February 1970, Preliminary Objections, I.C.J. Reports 1970, p. 3, para. 33.

whereas Luxembourg claims that the foreign-flag status of the *Zheng He* has been, and continues to be, denied, in violation of international law. There is therefore “a disagreement on a point of law or fact, a conflict of legal views or of interests”<sup>12</sup> between the two States. For many months, up until 24 March 2024, Mexico’s failure to respond to Luxembourg’s initial notes verbales showed that, unlike Luxembourg, Mexico did not consider that the present dispute involved UNCLOS and called for a solution that took international law into account.

**44.-** Despite Luxembourg’s efforts, the dispute with Mexico concerning the *Zheng He* on questions relating to the interpretation and application of the Convention has not been settled through the application of Part XV, Section 1. As a reminder, the last notes verbales sent by Luxembourg expressly referred to possible international remedies, including before the International Tribunal for the Law of the Sea. They remained unanswered. Consequently, the requirement under article 286 of UNCLOS is met.

**45.-** In the settled case law, and in accordance with article 290(1) of the Convention, in order to prescribe provisional measures, the Tribunal “*need not finally satisfy itself that it has jurisdiction on the merits of the case*”, but it is necessary and sufficient that “*the provisions invoked by the Applicant appear prima facie to afford a basis on which the jurisdiction of the Tribunal might be founded.*”<sup>13</sup> Similarly, at this stage of the proceedings, the Tribunal “*does not need to concern itself with the competing claims of the Parties and [...] it needs only to satisfy itself that the rights which [the Parties] claim and seek to protect are at least plausible.*”<sup>14</sup>

**46.-** It is clear from all of these elements that the condition required by article 290(1), under which the Tribunal may prescribe provisional measures if it considers *prima facie* that it has jurisdiction under Part XV of the Convention, is clearly met in this case.

#### **IV. STATEMENT OF LEGAL GROUNDS AND CHARACTERIZATION OF URGENCY**

**47.-** The detention and exorbitant fine imposed on the *Zheng He* create a real and imminent risk of irreversible prejudice for Luxembourg (A). Luxembourg therefore requests provisional measures (B), the necessity of which is established in the light of the Tribunal’s standard of assessment (C).

##### **A. THE REAL AND IMMINENT RISK OF IRREVERSIBLE PREJUDICE**

**48.-** In the absence of guarantees ordered in favour of the flag State, and pending settlement of the dispute on the merits, prolonging the detention of the vessel beyond a period

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<sup>12</sup> PCIJ, *Mavrommatis concessions in Palestine*, Judgment no. 2, 1924, 1924, PCIJ, Series A. No. 2, p.11.

<sup>13</sup> *The M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Provisional Measures, Order of 11 March 1998, ITLOS Reports 1998, p. 37, para. 29; see also *The M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Provisional Measures, Order of 23 December 2010, ITLOS Reports 2008-2010, pp. 27 and 65, paras. 39 and 69); *Dispute concerning the delimitation of the maritime boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015, p. 155, para. 34.

<sup>14</sup> *The “Enrica Lexie” Incident (Italy v. India)*, Provisional Measures, Order of 24 August 2015, ITLOS Reports 2015, p. 182, para. 84.

of six months creates a real and imminent risk of irreversible prejudice. Firstly, an asymmetry of information between Mexico and Luxembourg is identified (1). Luxembourg as the flag State is consequently prevented from fully exercising its obligations in terms of maritime safety (2) and maritime labour (3). Loss of the vessel is a risk due to its gradual deterioration at anchor in Tampico (4). The risk of vessel loss is incurred also, and above all, by the persistence of the Mexican authorities in seeking to confiscate the vessel, which would again harm the Luxembourg flag (5). The imposition of a fine separate from the expropriation of the *Zheng He* raises legitimate fears of further harm to the Luxembourg flag through the detention of related vessels operated under the same flag by the *Jan De Nul* group (6).

### ***1) The information asymmetry between Mexico and Luxembourg***

**49.-** In the dispute between the shipowner and the Mexican authorities, which led to coercive measures being taken against the vessel *Zheng He*, the shipowner finds itself in a very unfavourable situation of asymmetry of information compared with the Mexican port and customs authorities. This asymmetry affects Luxembourg's position even more severely.

**50.-** In practice, therefore, it is impossible for it to provide proof of oral instructions, in particular those given by the harbour master's office by VHF radio (**Annex MC15**), just as it is difficult for it to establish the decision-making circuits involving the various agencies in Mexico, in particular the prior coordination between the harbour master's office and the customs agency (**Annex MC16**): therefore, it has to rely on the declarations of the agencies alone.

**51.-** The shipowner has access to only some of the administrative, customs and tax documents that concern it directly, with delays that reflect a clear desire on the part of the Mexican authorities to withhold information. The decision to detain the vessel dated 1 November (**Annex MC17**) was not notified to the shipowner until 28 November 2023, i.e., four weeks later. Similarly, the shipowner is not in a position to verify the time stamp and validity of the electronic signatures affixed to the official documents according to technical standards and accreditations which are under the control of the Mexican authorities. It follows that the Mexican authorities can claim without contradiction that they were justified in passively letting expire the time limit for appealing against the decision of the District Court of Tampico, Tamaulipas of 22 March 2024 (**Annex MC22**) cancelling the customs proceedings on the grounds that they had encountered a problem with their own electronic administration system.

**52.-** Similarly, with regard to the conditions under which the harbour master's office issued weather warnings (**MC8, 15 and 19**), the Luxembourg flag is not in a position to determine whether they were issued under conditions similar to those which normally prevail, or whether they were issued in order to attract and then hold the ship at berth.

**53.-** In the context of the inter-State dispute now between Luxembourg and Mexico, such a situation of asymmetry must be corrected by prescribing provisional measures allowing the flag State to have access to the information surrounding the coercive measures taken by Mexico against the *Zheng He*. Luxembourg must be put in a position to compare the treatment reserved for its vessel with the treatment reserved in the same period for other foreign-flagged vessels by the Mexican authorities. It is a matter of equality of the parties before the Tribunal, a judicial body, which is part of the requirements for the proper administration of justice.

**54.-** The detention of the vessel *Zheng He* at the Port of Tampico, in the internal waters of Mexico, deprives the flag State of the concrete and effective possibility of prescribing and enforcing the investigative and provisional measures it requires. Luxembourg must necessarily

resort to instruments of inter-State cooperation involving the collaboration of the State on whose territory the measures are requested. In this case, the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, signed on 18 March 1970, to which Mexico is a party, governs civil and commercial matters, which excludes public and criminal litigation. The usual channels for cooperation in criminal matters should therefore be used, but no criminal investigation has been opened in Luxembourg by the Luxembourg authorities. Nor is there any bilateral agreement between Luxembourg and Mexico that would apply. In the absence of an appropriate instrument, and in view of the crystallization of the dispute, Luxembourg wished neither to aggravate the dispute nor to expose itself to the exercise of a discretionary refusal by the Mexican authorities, even though access to this information is necessary to support its claims on the merits and to respond appropriately to Mexico's allegations before this Tribunal. At no time did the Mexican authorities alert the Luxembourg authorities to the situation of the *Zheng He* and the Mexican authorities has remained largely silent in the face of Luxembourg's diplomatic requests.

## ***2) The impossibility for the flag State to exercise its prerogatives with regard to the safety of the ship***

**55.-** As the flag State of the vessel *Zheng He*, Luxembourg has obligations under UNCLOS and other international conventions to which it is a party. Mexico's long-term detention of the vessel prevents it, *de facto* and *de jure*, from fulfilling its obligations as a sovereign State, particularly with regard to the safety of the vessel.

**56.-** As a flag state, Luxembourg is particularly responsible for ensuring compliance with the SOLAS Convention (for safety of life at sea), which implies, by virtue of the powers delegated by the flag State, regular inspections by the chosen classification society. Thus, the vessel *Zheng He* was unable to undergo the "Bottom Survey in Dry Dock or Afloat", which was due at the latest by 8 January 2024 (**Annex MC32**). The ship's detention obviously prevented a dry dock passage, and the turbidity of the waters in Tampico port meant that the visit could not be carried out by scuba divers owing to low visibility. As a result, the vessel now has a conditional certificate valid only until 7 June 2024. Similarly, the SOLAS Convention requires lifeboat testing to be carried out on both port and starboard sides by 7 June 2024 at the latest. Testing lifeboats in real-life conditions involves throwing them into the water, which is obviously impossible when the vessel is moored (**Annex MC32**). For the time being, the vessel's condition has allowed the issue of a Short Term Cargo Ship Safety Equipment Certificate in agreement with Bureau Veritas (**Annex MC33**). Mexico's extension of the vessel's detention therefore has the effect of preventing the flag State from ensuring that the statutory certification is carried out.

**57.-** The safety of the ship also requires that a minimum crew be maintained on board, the number and qualifications of which are prescribed by the flag State according to the ship's nautical characteristics. This is the purpose of the Minimum Safe Manning Document issued by the flag State on August 30, 2023 (**Annex MC34**), which prescribes the minimum regulatory presence of 10 seafarers with specific qualifications, to which must be added the presence of other seafarers for routine maintenance of the vessel. Indeed, the minimum number of sailors prescribed by the Minimum Safe Manning Document takes into account minimum safety requirements for navigation and not the constraints of the vessel's daily maintenance.

**58.-** For as long as the *Zheng He* remains detained in the port of Tampico, the preservation of Luxembourg's rights as the flag State requires that Mexico allow the preventive and corrective maintenance of the vessel to ensure its compliance with national, European and

international standards applicable to ships flying the Luxembourg flag. Moreover, failure to carry out preventive maintenance could ultimately result in damage to protected interests. This applies to the protection of seafarers' contractual, social and fundamental rights.

### ***3) The impossibility for the flag State to exercise its prerogatives with regard to the safety of seafarers***

**59.-** The *Zheng He* is covered by an MLC certificate of conformity (**Annex MC35**). As the flag State, Luxembourg must ensure that the social rights of seafarers under the Maritime Labour Convention are respected, a necessity made all the more imperative in this case by the fact that Mexico is not a party to this widely ratified international convention. The legal compliance of the seafarers' employment contracts was verified on a documentary basis, as was the frequency of changeovers, notwithstanding the detention. But onboard living and working conditions must also be monitored. It is important *a minima* that Luxembourg, as the flag State, obtain certain guarantees regarding the non-deterioration of living and working conditions on board the *Zheng He*.

**60.-** First and foremost, the *Zheng He* is a modern vessel, equipped with the usual amenities for a ship in its class. However, the prolonged stay in port prevent the maintenance of essential equipment such as the Man auxiliary engine, which provides the ship's electrical power. The ship's power supply is essential for the operation of equipment such as air conditioning and ventilation systems, cold chambers, fresh water and wastewater treatment systems, which are particularly necessary for a prolonged stay in an equatorial climate. Living and working conditions for the crew kept on board by safety requirements could therefore deteriorate very rapidly if the auxiliary engine were to stop working. In view of the absence of preventive maintenance, the manufacturer of the auxiliary motor now declines all responsibility in the event of auxiliary motor failure (**Annex MC36**). What is more, it is very difficult, if not impossible (owing to import restrictions), to obtain certain equipment and parts in Mexico. And power supply malfunctions can in turn damage electrical equipment of all kinds.

**61.-** Compliance with the rules of the Maritime Labour Convention, in particular Standards A3.1, A3.2 and A.3.3, is therefore at issue. With regard to *Standard A3.1 on accommodation and recreational facilities* and the *Guidelines* which give it concrete form, it should be pointed out that the failure of the auxiliary motor would result in the interruption of ventilation and lighting, which would be problematic with regard to *Guidelines B3.1.2 (Ventilation)*, B3.1.4 (Lighting), B3.1.6 (Mess rooms) and B3.1.8 (Hospital accommodation). An interruption of the supply of fresh running water would also be problematic from the point of view of the *Guidelines B3.1.6 (Mess rooms)*, B3.1.7 (Sanitary accommodation), but also from the point of view of *Standard 3.2 on food and catering*. The latter's purpose is to "*ensure that seafarers have access to good quality food and drinking water provided under regulated hygienic conditions*".

**62.-** Similarly, since Mexico is not a party to the MLC, compliance with Title 4 (Health protection, medical care, welfare and social security protection) of this Convention is at issue. Luxembourg must be assured that the purpose, to "*protect the health of seafarers and ensure their prompt access to medical care on board ship and ashore*", will be met, in particular under Regulations 4.1 and 4.3. Regulation 4.1 implies that the right of seafarers to effectively receive appropriate care ashore must be guaranteed. According to the WHO definition of health, "[h]ealth is a state of complete physical, mental and social well-being and not merely the

*absence of disease or infirmity.*”<sup>15</sup> It follows that the anxiety linked to the detention of the ship, not knowing whether or not it will be able to sail, and the anxiety linked to the uncertain outcome of the legal proceedings underway in Mexico, are such as to affect the mental health of the seafarers by causing them to suffer anxiety amounting to prejudice for them and prejudice for the State of Luxembourg, regardless of their respective nationalities, since they belong to the ship’s company and form a unit with the ship. This anxiety is heightened by the prospect of the total loss of the ship if the expropriation is confirmed. A psychological assessment established that the Captain of the vessel, Gerrit de Voos, was particularly affected by the conditions under which the onboard visit was carried out (**Annex MC37**).

**63.-** Secondly, while the shipowner has continued to pay the seafarers their fixed wages, they are now deprived of any bonuses for activity linked to the operation of the vessel because of its detention. At the same time, the ship remains at berth, which may imply a wage adjustment within the meaning of Regulation 2.3 of the MLC.

#### **4) The degradation and depreciation of the Zheng He**

**64.-** According to the Köppen-Geiger classification, the city of Tampico is subject to an equatorial climate, rated by the letters Af. Annual rainfall in Tampico averages 2557.1 mm, i.e., much higher than in Paris where the average is 475 mm. Over the year, the average temperature in Tampico is 25°C, compared with an average annual of 12.3°C in Paris. In these conditions, the ship’s prolonged detention is an ordeal as much for the crew, confined to the ship, and for the ship and its equipment.

**65.-** The vessel *Zheng He* is a highly technical vessel: more precisely, it is a cutter disc dredger, with a gross tonnage of 8015 GRT and a length of 110 meters (138.5 m overall length). This vessel is equipped with a cutter which is used to disintegrate materials before they are pumped and discharged. The dredger is fitted with two 3500 Kw motors for propulsion and is capable of sailing at a speed of 13 knots. This is therefore not a stationary barge but a full-fledged seaworthy vessel with its own propulsion system. The detention of such a vessel for more than six months is particularly damaging. As with any vessel, detention in itself produces harmful effects. The location and situation of the ship do not allow for proper cleaning of the hull and other external parts, which favours the well-known phenomenon of fouling. The accumulation of shellfish and algae on the hull (**Annex MC38**) deteriorates the hull, reducing the ship’s speed and significantly increasing its fuel consumption, with a consequent deterioration in its carbon footprint when it sets sail again. In the specific case of a cutter disc dredger, the long-term inactivity of the motor and pump systems in an equatorial environment means that the vessel runs a real risk of major equipment failure, requiring heavy investment to restore them.

**66.-** To date, even though an enforceable decision by the Mexican courts has established the invalidity of the customs procedure, the Mexican authorities continue to detain the vessel *Zheng He*, with no sustainable possibility of carrying out preventive and corrective maintenance operations or maintaining statutory certification and class. The dredging equipment itself is idle. On the basis of an unlawful procedure, the Mexican authorities maintain their claim to a temporary or permanent right of ownership over the *Zheng He*. This means that the value of the *Zheng He* vessel will continue to depreciate, ultimately leading to de facto expropriation, even if the shipowner finally succeeds in asserting its rights before the

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<sup>15</sup> Preamble to the Constitution of the World Health Organization, as adopted by the International Health Conference, New York, 19 June - 22 July 1946; signed on 22 July 1946 by the representatives of 61 States. (Official Proceedings of the World Health Organization, No. 2, p. 100) and entered into force on 7 April 1948. This definition has remained unchanged since 1946.



Mexican courts and Luxembourg succeeds in asserting its rights before the Tribunal. At present, the value of the vessel cannot be determined with any certainty. However, if the vessel were to be detained for an extended period without any immediate guarantee of maintenance and maintenance of class and certification, the shipowner would have to replace its vessel with an equivalent service vessel in order to register it under the Luxembourg flag.

#### **5) The harm to the Luxembourg flag caused by the expropriation of the Zheng He**

**67.-** By administrative decision “*Orden CVD6000037/23*” dated 15 February 2024, the Mexican authorities expressed their unilateral intention to definitively confiscate the *Zheng He*, whose ownership is now claimed by the Mexican State (“*dicha mercancía pasa a propiedad del fisco federal*”) (**Annex MC20**). According to the *legal opinion* drawn up by an international law firm based in Mexico (**Annex MC22**), the decision of 15 February 2024 constitutes final confiscation of the vessel:

*[T]he declaration that the merchandise consisting of the Zheng He becomes the property of the Mexican Government (Fisco Federal), because the tax authority determined that the EDC did not prove the legal import, possession and/or stay in Mexican territory in breach of the provisions of Article 146, section I of the Customs Law, in relation to Article 36-A, Section I, paragraph (a) of said law.*

Even though the Tampico District Court ruled on 22 March 2024 (**Annexes MC23, 24 and 25**) that the customs proceedings against the *Zheng He* were null and void (which renders the subsequent reports of fine and expropriation of the vessel legally null and void), the Mexican authorities refused to release the vessel on presentation of the enforceable judgment.

**68.-** The expropriation of the vessel, together with a fine based on the value of the vessel, infringes the rights of its Luxembourg owner, *European Dredging Company*, and constitutes damage that can be assessed at the replacement value of an equivalent vessel, bearing in mind that dredgers are not standard vessels like tankers. The infringement of the shipowner’s property already constitutes a direct prejudice to Luxembourg.

**69.-** Moreover, the definitive expropriation by Mexico would undermine the legal certainty of the connection of the vessel *Zheng He* to the Luxembourg flag. Mexico, invoking the *act of State* taken in the form of a unilateral administrative decision, claims ownership of the vessel, which would then enable it, if necessary, to seek to use the vessel directly or indirectly, to transfer ownership, or even to attempt to place the expropriated vessel under the Mexican flag, trying to justify this under article 92(1) *in fine* of UNCLOS. Such a unilateral decision, taken in violation of the sovereignty of the State of Luxembourg and its public order, would be denied any effect in Luxembourg, so that there would be no lawful and recognized transfer of real rights within the meaning of article 92 of UNCLOS.

**70.-** Mexico’s continuation of domestic proceedings in order to obtain confirmation of the definitive expropriation of the vessel would therefore result in a twofold violation of Luxembourg’s rights. On the one hand, article 92(1) *in principio* clearly states: “*Ships shall sail under the flag of one State only*”. On the other hand, article 92(1) *in fine* also provides: “*A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or a change of registry*”, which prohibits a change of flag during the open-sea voyage of the *Zheng He* and while it remains registered in the Luxembourg registry. We therefore request that the Mexican State be prohibited from aggravating the dispute by bringing new domestic actions.

## **6) The harm to the Luxembourg flag through the detention of related vessels operated under Luxembourg flag**

71.- The Luxembourg company *European Dredging Company*, which operates the dredger *Zheng He*, also operates 12 other vessels under the Luxembourg flag. The parent company SOFIDRA and its other subsidiaries, which are also Luxembourgish, operate a further 68 vessels under the Luxembourg flag. However, the increase in *European Dredging Company SA*'s alleged customs debt over time makes it plausible that the Mexican authorities might later decide to detain other vessels of *European Dredging Company SA*'s fleet or of the fleet owned by other SOFIDRA subsidiaries while they exercise their right of innocent passage through Mexican territorial waters or while in a port of call for technical purposes.

72.- This risk for Luxembourg-flagged vessels related to the *Zheng He* is likely and effectively deprives these vessels of the possibility of sailing in waters under Mexican jurisdiction. This deprivation, affecting one of the most representative shipowners of the Luxembourg flag, is detrimental to the State of Luxembourg. Guarantees of non-aggravation and non-extension of the dispute to other Luxembourg-flagged vessels related to the *Zheng He* are therefore requested.

## **B. THE PROVISIONAL MEASURES REQUESTED**

73.- Luxembourg respectfully requests the Tribunal to prescribe the following provisional measures:

### **1. In order to preserve the fundamental rights and freedoms of the crew:**

- Order Mexico to continue to ensure the freedom of movement of the crew members off the vessel and their access to health-care facilities, places of worship and recreational facilities;
- Order Mexico to continue to ensure that there will be no impediments to the renewal of the crew and the necessary rotations;
- Order Mexico to continue to ensure that the crew will not be compelled by law enforcement agencies to disembark from the vessel nor be prevented from re-embarking the vessel;

### **2. In order to preserve the rights of Luxembourg as the flag State:**

- Order Mexico to allow Luxembourg to effectively exercise its jurisdiction and control in administrative, technical and social matters over the vessel, and to enable any measures necessary for the preventive and corrective maintenance of the *Zheng He* in order to ensure its compliance with the national, European and international standards applicable to vessels flying the flag of Luxembourg;
- Prohibit Mexico from directly or indirectly operating the vessel *Zheng He*;
- Prohibit Mexico from taking any measures to create or transfer real rights to the vessel and from changing the flag of the vessel *Zheng He*;

### **3. In order to avoid aggravating or extending the dispute:**

- Prohibit Mexico from collecting the customs fine of 1,616,462,343.52 Mexican pesos imposed on *European Dredging Company SA*;
- Prohibit Mexico from detaining, confiscating and expropriating, under any proceeding whatsoever, vessels related to the vessel *Zheng He* flying the flag of

Luxembourg, whether they be the property of *European Dredging Company SA*, its parent company SOFIDRA or any other subsidiary of SOFIDRA;

- Prohibit Mexico from instituting new national proceedings or new actions against the *Zheng He*, *European Dredging Company SA*, its parent company SOFIDRA or any other subsidiary of SOFIDRA;

#### **4. In order to ensure equality of the parties in the proceedings before the Tribunal:**

- Authorize the agents of Luxembourg to conduct on the territory of Mexico, without restriction, any investigations in connection with the present proceedings, in particular to ascertain the condition of the vessel *Zheng He* and to collect any relevant evidence;
- Transmit to Luxembourg, at its request and after examination by the Tribunal, the information and documents to which Luxembourg was unable to gain access relating to the non-contentious and contentious proceedings under Mexican law concerning the *Zheng He*, including forthwith:
  - The identification of the berths in the Port of Tampico, with their official and/or customary names, and the GPS coordinates of the endpoints of each berth;
  - The regulatory texts of Mexico in force on 21 October 2023 that were officially published relating to the tax and customs regime of each berth in the Port of Tampico.

### **C. THE APPROPRIATENESS OF THE PROVISIONAL MEASURES REQUESTED**

**74.-** Being called upon to rule on provisional measures necessitated by the facts of and urgency caused by the infringement of Luxembourg's rights, the International Tribunal for the Law of the Sea must ensure that the rights claimed by the parties are plausible or probable, according to a standard of *prima facie* analysis, taking into account that the dispute cannot, at this stage, be judged on the merits.

**75.-** The facts alleged by Luxembourg are supported by precise and rigorous evidence, based largely on the official documents notified by Mexico to the shipowner and on other official documents.

**76.-** The rights invoked by Luxembourg are taken directly from UNCLOS, in which they are principally based, such as, firstly, the right of the flag State to ensure that a duly registered ship does not see its status as a ship challenged, and the right not to be prevented from exercising its jurisdiction and controls. Secondly, UNCLOS also provides for the right of any vessel to exercise its right of innocent passage to enter a port of call in the internal waters of a maritime port under non-discriminatory conditions that do not constitute an abuse of right. The same applies to the right of any vessel to exercise its right of innocent passage to reach the high seas and to exercise freedom of navigation. These rights cannot be denied by Mexico, since article 2(3) of UNCLOS provides that "*sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.*" In this case, the other rules of international law referred to by Luxembourg, besides customary law, are international conventions which do not contradict UNCLOS, but rather complement or implement it. With regard to the crew's fundamental rights, Luxembourg invokes the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Maritime Labour Convention. With regard to maritime safety, Luxembourg invokes

the MARPOL, Load Lines and SOLAS conventions. These rights are directly applicable to the indisputable fact of a vessel being detained while calling into port during an open-seas voyage.

**77.-** The violations of the rights invoked by Luxembourg are also more than “plausible”. It is well-established that the vessel *Zheng He* has been detained for over seven months by the Mexican authorities, despite the fact that it was, according to their own observations, engaged in open-sea navigation and was calling into port to carry out bunkering, refuelling, preventive maintenance and personnel rotation. It has been established that the vessel *Zheng He* is prevented from resuming its maritime voyage and exercising the right of innocent passage through Mexican territorial waters. It should also be pointed out that Mexico intervened as a coastal State and not as a port State under Title XII. It intervened without informing or obtaining the consent of Luxembourg. A *prima facie* examination of the documents in the file shows that the detention of the *Zheng He* is in no way linked to the exercise of port State prerogatives in the context of environmental protection or the protection of seafarers’ social rights. Nor is the detention of the *Zheng He* linked to combating human or drug trafficking. The validity of the tax procedure which led to the vessel’s detention was successfully challenged before the Mexican courts by the owner of the *Zheng He*, who however was unable to obtain the release of its vessel on presentation of the enforceable judgment. Luxembourg therefore maintains that its rights as flag State have been violated by Mexico.

**78.-** Not only are the conditions for provisional measures to be ordered by the International Tribunal for the Law of the Sea met, but their appropriateness is established in view of the purpose of Luxembourg’s requests for the prescription of provisional measures. The requests are intended both to preserve rights that are under real and serious threat and to prevent the aggravation of the dispute between the two States. An aggravation of the dispute is likely to result from the aggravation of the violations and damage suffered by Luxembourg. The aggravation of the dispute could, however, also result from new measures such as reiterations concerning other Luxembourg-flagged vessels, and could cause the dispute to extend beyond its original maritime framework.

## V. JUDGE AD HOC

**79.-** In accordance with article 17, paragraph 2, of the Statute of the Tribunal, Luxembourg chooses Professor Marcelo Gustavo Kohen to participate as a member of the Tribunal. Professor Kohen’s *curriculum vitae*, which attests to his renowned competence in the field of the law of the sea, can be found at **Annex MC39**.

## VI. CONCLUSIONS

**80.-** For the reasons set out above, Luxembourg respectfully requests the Tribunal to order the following provisional measures:

### **1. In order to preserve the fundamental rights and freedoms of the crew:**

- Order Mexico to continue to ensure the freedom of movement of the crew members off the vessel and their access to health-care facilities, places of worship and recreational facilities;
- Order Mexico to continue to ensure that there will be no impediments to the renewal of the crew and the necessary rotations;

- Order Mexico to continue to ensure that the crew will not be compelled by law enforcement agencies to disembark from the vessel nor be prevented from re-embarking the vessel;

**2. In order to safeguard the rights of Luxembourg as the flag State:**

- Order Mexico to allow Luxembourg to effectively exercise its jurisdiction and control in administrative, technical and social matters over the vessel, and to enable any measures necessary for the preventive and corrective maintenance of the *Zheng He* in order to ensure its compliance with the national, European and international standards applicable to vessels flying the flag of Luxembourg;
- Prohibit Mexico from directly or indirectly operating the vessel *Zheng He*;
- Prohibit Mexico from taking any measures to create or transfer real rights to the vessel and from changing the flag of the vessel *Zheng He*;

**3. In order to avoid aggravating or extending the dispute:**

- Prohibit Mexico from collecting the customs fine of 1,616,462,343.52 Mexican pesos imposed on *European Dredging Company SA*;
- Prohibit Mexico from detaining, confiscating and expropriating, under any proceeding whatsoever, vessels related to the vessel *Zheng He* flying the flag of Luxembourg, whether they be the property of *European Dredging Company SA*, its parent company SOFIDRA or any other subsidiary of SOFIDRA;
- Prohibit Mexico from instituting new national proceedings or new actions against the *Zheng He*, *European Dredging Company SA*, its parent company SOFIDRA or any other subsidiary of SOFIDRA;

**4. In order to ensure equality of the parties in the proceedings before the Tribunal:**

- Authorize the agents of Luxembourg to conduct on the territory of Mexico, without restriction, any investigations in connection with the present proceedings, in particular to ascertain the condition of the vessel *Zheng He* and to collect any relevant evidence;
- Transmit to Luxembourg, at its request and after examination by the Tribunal, the information and documents to which Luxembourg was unable to gain access relating to the non-contentious and contentious proceedings under Mexican law concerning the *Zheng He*, including forthwith:
  - The identification of the berths in the Port of Tampico, with their official and/or customary names, and the GPS coordinates of the endpoints of each berth;
  - The regulatory texts of Mexico in force on 21 October 2023 that were officially published relating to the tax and customs regime of each berth in the port of Tampico.

**7 JUNE 2024, LUXEMBOURG**

Annabel ROSSI  
 Agent of Luxembourg  
 Head of Department  
 Legal Affairs, Legislation and Approvals  
 Luxembourg Maritime Administration

## VII. ANNEXES TO THE REQUEST FOR PROVISIONAL MEASURES

**Annex MC1:** GRAND DUCHY OF LUXEMBOURG, *Declaration made under Article 287 UNCLOS*, 29 April 2024, *original in French*;

**Annex MC2:** LUXEMBOURG FLAG, *Continuous Synopsis Record 4*, *original in English*;

**Annex MC3: MC3.1:** LUXEMBOURG FLAG, *List of 12 vessels owned by European Dredging Company SA*; **MC3.2:** *Control of European Dredging Company SA by parent company SOFIDRA*; **MC3.3:** *List of 69 vessels flying the Luxembourg flag and operated by subsidiaries of SOFIDRA*, *original in French or English*;

**Annex MC4:** JVV LOGISTICS, *Advance notice of arrival of a open-seas vessel*, 9 October 2023, *original in Spanish and sworn translation into French*;

**Annex MC5:** SECRETARIAT FOR THE NAVY, *Authorisation for the arrival of vessels or large open-seas vessels No. 514873*, 10 October 2023, *original in Spanish and sworn translation in French*;

**Annex MC6:** CAPTAIN OF THE ZHENG HE, *Zheng He Crew List as at 11 October 2023*, *original in English*;

**Annex MC7:** JVV LOGISTICS, *Agreement for the mooring of the cutter dredger Zheng He*, *original in Spanish and sworn translation in French*;

**Annex MC8:** SECRETARIAT FOR THE NAVY, *Storm warning for “surada phenomenon”, Caution notice No. 036/2023*, 20 October 2023, *original in Spanish and sworn translation in French*;

**Annex MC9:** SECRETARIAT FOR THE NAVY, TAMPICO HARBOUR MASTER’S OFFICE, *Authorisation to enter port*, 21 October 2023, *original in Spanish and copy in French*;

**Annex MC10:** JVV LOGISTICS, *Information notice, the dredger Zheng He docked at Tampico ASIPONA berth No. 3*, 23 October 2023, *original in Spanish and sworn translation in French*;

**Annex MC11:** TAMPICO CUSTOMS OFFICE, *Establishment of a tax debt (no. 2178, against JVV Logistics, the ship’s local agent)*, 24 October 2023, *original in Spanish and sworn translation into French*;

**Annex MC12:** JVV LOGISTICS, *Proof of payment of fine, file reference No. 65.3-2023-61-I’5’*, 30 October 2023, *original in Spanish and sworn translation in French*;

**Annex MC13:** SECRETARIAT FOR THE NAVY, TAMPICO HARBOUR MASTER’S OFFICE, *Authorization to change berth No. 521010*, 31 October 2023, *original in Spanish and sworn translation in French*;

**Annex MC14:** SAT [Servicio de Administración Tributaria (Mexican Tax Administration Service)], GENERAL ADMINISTRATION OF FOREIGN TRADE AUDIT (ADACEN), *Onboard visit order*, 31 October 2023, *original in Spanish and sworn translation in French*;

**Annex MC15:** SECRETARIAT FOR THE NAVY, TAMPICO HARBOUR MASTER’S OFFICE, *Provisional suspension of internal movements on the Pánuco River, Cautionary Notice No. 038/2023*, 31 October 2023, *original in Spanish and sworn translation in French*;

**Annex MC16:** NATIONAL UNION OF HARBOUR PILOTS, DELEGATION OF TAMPICO, *Manoeuvring the dredger Zheng He*, certificate drawn up on 11 December 2023, *original in Spanish and sworn translation into French*;

**Annex MC17:** SAT [Servicio de Administración Tributaria (Mexican Tax Administration Service)], General administration of foreign trade audit (ADACEN), *Seizure deed and seizure for precautionary purposes*, Order No. CVD6000037/23, 1 November 2023, *original in Spanish and sworn translation in French*;

**Annex MC18:** SECRETARIAT FOR THE NAVY, TAMPICO HARBOUR MASTER'S OFFICE, *Letter in response to questions from European Dredging Company*, 26 December 2023, *original in Spanish and sworn translation into French*;

**Annex MC19:** *Secretariat for the Navy, Tampico harbour master's office, Provisional suspension of internal movements on the Pánuco River, Cautionary Notice No. 039/2023*, 31 October 2023, *original in Spanish and sworn translation in French*;

**Annex MC20:** SAT [Servicio de Administración Tributaria], General administration of foreign trade audit (ADACEN), *Order CVD6000037/23*, 15 February 2024, excerpts, *original in Spanish and sworn translation in English*;

**Annex MC 21:** EDC, *Temporary import form for the vessel Zheng He* on 31 March 2023, *original in Spanish*;

**Annex MC22:** JONES DAY MEXICO, *Legal opinion*, 15 May 2024, *original in English*;

**Annex MC23:** TAMPICO DISTRICT COURT, *Decision of 22 March 2024 voiding customs proceedings*, *original in Spanish and sworn translation in French*;

**Annex MC24:** CLERK OF JUSTICE, ATTACHED TO THE TAMPICO DISTRICT COURT, *Certificate of non-appeal against the decision of 22 March 2024*, 18 April 2024, *original in Spanish and sworn translation into French*;

**Annex MC25:** *Notification to the Port of Tampico Harbour Master's Office of the nullity of the onboard visit that served as the basis for the vessel's detention*, 19 April 2024, *original in Spanish and sworn translation in French*;

**Annex MC26:** *Note verbale from the Grand Duchy of Luxembourg dated 7 November 2023*, 011-MEX-O-NV-20231107-LU, *original in English and courtesy translation in Spanish*;

**Annex MC27:** *Note verbale from the Grand Duchy of Luxembourg dated 14 November 2023*, 012-MEX-O-NV-20231114-LU, *original in English and courtesy translation in Spanish*;

**Annex MC28:** *Note verbale from the Grand Duchy of Luxembourg dated 17 January 2024*, 003-MEX-O-NV-2024-SRE, *original in English and courtesy translation in Spanish*;

**Annex MC29:** *Note verbale from Mexico to Luxembourg of 20 March 2024*, *original in Spanish and courtesy translation into French*;

**Annex MC30:** *Note verbale from the Grand Duchy of Luxembourg of 29 March 2024*, 20240329 NV MAE LU to EMB MEX, *original in French and courtesy translation in Spanish*;

**Annex MC31:** *Note verbale from the Grand Duchy of Luxembourg of 29 April 2024*, 20240429 NV LU to MEX, *original in English*;

**Annex MC32:** BUREAU VERITAS, Zheng He, *Veristar Info Survey Status*, 13 May 2024, *original in English*;

**Annex MC33:** BUREAU VERITAS, *Short Term Cargo Ship Safety Equipment Certificate*, 18 April 2024, *original in English*;

**Annex MC34:** GRAND DUCHY OF LUXEMBOURG, *Minimum Safe Manning Document*, 30 August 2023, *original in English*;

**Annex MC35:** GRAND DUCHY OF LUXEMBOURG, *Maritime Labour Convention Certificate*, 18 May 2021, *original in English*;

**Annex MC36:** MAN ENERGY SOLUTIONS, *Statement*, 3 May 2024, *original in English*;

**Annex MC37:** *Psychological evaluations of Commandant Gerit de Voos and Hendrik Henry Gruis, conducted remotely from the Belgian Embassy by a licensed psychologist*, 11 April 2024, *originals in English and sworn translation into French*;

**Annex MC38:** EUROPEAN DREDGING COMPANY, *photographs of the hull illustrating the fouling phenomenon and the corrosion of the vessel*;

**Annex MC 39:** *Curriculum Vitae* of Professor Marcelo Gustavo Kohen, in French.