

DECLARATION OF JUDGE KITTICHAISAREE

1. This dispute between Luxembourg and Mexico are unusual in many ways. They are two States that have had cordial and good diplomatic relations for nearly 80 years and have an established mechanism of regular political consultations to strengthen the ties of friendship and cooperation between them; the “*Zheng He*” had entered Mexican internal waters on previous occasions without any problem; and yet the Parties are in disagreement over several crucial facts which each of them tried to substantiate with voluminous information in a large number of annexes and additional documents, including subsequently corrected or translated versions of some of them.
2. A request for the prescription of provisional measures is an urgent proceeding within a strict time frame. As the Tribunal rightly states in paragraph 85, at this stage of the proceedings, it need only satisfy itself that at least one of those provisions invoked by the Applicant appears *prima facie* to afford a basis on which the Tribunal’s jurisdiction over the dispute submitted to it might be founded. The Tribunal has selected one such provision from the many provisions invoked by the Applicant, namely, article 131, and this is enough for the Tribunal to proceed to consider the other prerequisites for the prescription of provisional measures, including the plausibility of the rights Luxembourg seeks to protect. The reason why the Tribunal has chosen article 131 over one or more other provisions is immaterial at this stage. Each and every one of the provisions of the Convention invoked by the Parties is to be addressed in full in the proceedings on the merits when the Parties will have sufficient opportunity to furnish all the evidence to establish their arguments in full.
3. The Tribunal has decided not to prescribe provisional measures in this case after concluding in paragraph 143 that, on the basis of the factual information and legal arguments presented by the Parties, there is at present no urgency, in the sense that there is no real and imminent risk of irreparable prejudice to the rights claimed by Luxembourg, while also placing on record, in paragraph 145, the assurances given by the Co-Agent of Mexico during the hearing on 11 and 12 July 2024. In doing so, the Tribunal apparently intends to preserve the respective rights of

not only the Applicant but also the Respondent in this dispute, as required by article 290, paragraph 1, of the Convention.

4. I would not have joined the majority of my colleagues if Mexico had not had given the aforesaid assurances. With these assurances, I expect Mexico to fulfil what it has promised, in particular by “safeguard[ing] the integrity of the vessel, thus allowing maintenance work on the Zheng He, as requested by the agency contracted by the owners of the vessel”. This is because I fully share Luxembourg’s concern that if the maintenance work and repairs of the “*Zheng He*”, a modern, highly technical and expensive dredger, are not carried out, inadequately carried out or belatedly carried out, this could adversely affect the vessel’s classification and statutory certification, making the vessel liable to be removed from its original register, the Luxembourg register. I take note of Luxembourg’s oral statement on 12 July 2024 that visibility in the waters of the Port of Tampico is 20 centimetres, hindering the examination of most of the equipment and structure of the vessel while keeping the vessel docked. There are also risks for the well-being of the crew resulting from the deterioration of the conditions of habitability of the vessel if it is not properly maintained.

5. Luxembourg may submit another request to the Tribunal for the prescription of provisional measures at any time, provided that the condition referred to in paragraph 147 of this Order is met.

(signed)

Kriangsak Kittichaisaree