

**APPLICATION OF THE REPUBLIC OF PANAMA, SUBMITTED ON
17 DECEMBER 2015**

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Motor vessel (mv) Norstar
REPUBLIC OF PANAMA v. THE ITALIAN
REPUBLIC

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16 NOVEMBER 2015

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Hon. Phillipe Gautier
The Registrar
International Tribunal for the Law of the Sea
Am Internationalen Seegerichtshof 1
22609 Hamburg
Germany

Dear Sir:

1. I, Nelson Carreyó, have the honour to submit to the International Tribunal for the Law of the Sea (ITLOS) an Application on behalf of the Republic of Panama against the Italian Republic. The Application relates to the dispute between the two states concerning the interpretation and application of the United Nations Convention on the Law of the Sea (UNCLOS) in connection with the arrest and detention by Italy of mv Norstar, an oil tanker registered under the flag of Panama.

1. Jurisdiction of the Tribunal

2. The Tribunal has jurisdiction to consider this Application pursuant to Article 287 par.1 lit.b and par.4 UNCLOS. Both the Republic of Panama and the Italian Republic being State Parties to UNCLOS have made written declarations in accordance with Article 287 of the Convention, Panama by Declaration of the Vice President of the Republic of Panama and Minister of Foreign Affairs Isabel de Saint Malo de Alvarado dated 13 March 2015 (enclosed) deposited with the General Secretary of the United Nations, and Italy by a Declaration dated 26 February 1997 at Accession.

2. Subject of the Dispute

3. This is a dispute concerning inter alia the contravention by Italy of the provisions of the Convention in regard to the freedoms and rights of navigation and/or in regard to other internationally lawful uses of the sea specified in Article 58 of the Convention. The Application concerns a claim for damages against the Republic of Italy caused by an illegal arrest of the mv Norstar, Panama flag, and of the oil products therein in 1998 maintained over several years without a notification by Italy to Panama. The arrest was lifted by judgment of the Savona Tribunal in 2003. The release of the vessel was finally ordered and all persons involved were absolved of all criminal charges. This occurred many years after mv Norstar was alleged by Italian authorities to have violated Italian laws and about 5 years after following long criminal proceedings against the owner of the vessel and others.

3. Statement of facts

4. During 1994 until 1998 mv Norstar was involved in supplying gasoil to mega yachts in international waters beyond the Territorial Sea of Italy, France and Spain. Same was true in summer 1998 when she served outside Spanish territory between Mallorca and Ibiza.

5. On 11 August 1998, the Italian Republic, through its judicial authorities, i.e. the Public Prosecutor at Savona's Tribunal Dr. A. Landolfi, issued a Decree of seizure against mv Norstar based on erroneous information regarding violations of which the Italian Republic authorities knew or should have known were false. The seizure took place on 24 September 1998 by the Spanish officials upon request of Italian authorities, when the vessel was anchored at the Palma de Mallorca Bay waiting for orders under the running Charter Party. The Decree said that the business of supplying oil offshore to mega yachts constituted a criminal act under various articles of Italian Criminal Law and thereby making money by avoiding customs. The vessel and the oil transported were to be considered by Italy as *corpus delicti* and thus justifying the arrest.

6. *At the time of detention* the vessel was loaded with 800 liters of luboil and 12.000 liters of gas oil in bunkertanks. In cargo tanks there were 170 tons (202 cbm) of gas oil remaining for sale. The statement of valuation of damages as of 24 September 1998 was Six Million Three Hundred and Twenty Six Thousand Nine Hundred and Seven Dollars and 20/100 (USD\$6,326,907.20) plus interests.

7. On January 1999 owners application for a release of the arrested vessel was refused by the authorities of Italy who offered the release against a security of Two Hundred and Fifty (250) million Lire, an amount which the owner of mv Norstar could not provide as through the long arrest the market for such business had been destroyed with no further income.

8. The hearings before the Savona Tribunal began late 2002. On 13 March 2003 the Criminal Court of Savona delivered its Judgment according to which *all persons were absolved of all criminal charges*, the release of the mv Norstar and its restitution to its owner being also ordered. However the judgment was not full and final. The Italian Public Prosecutor appealed to the Court of Appeal of Genoa which judgment was finally delivered on October 2005 confirming the Court of Savona first instance decision local remedies thereby being exhausted.

4. Legal Grounds

9. The claim of the Republic of Panama is based on Respondent's violations of Articles 33, 73 (3) and (4), 87, 111, 226 and 300 and others of the Convention. The right of peaceful navigation of the Republic of Panama through the mv Norstar was violated by the Italian Republic agents the latter hindering the movements and activities of foreign vessels in the High Seas without complying with essential norms of the Convention, i.e. those relating to the General Principle of Free Navigation, and to the consequences of an unreasonable delay on releasing a foreign vessel such as the mv Norstar which was held longer than sensible for purposes of a lawful investigation.

10. The Italian Republic also failed to notify the Republic of Panama about the seizure of the vessel and has tacitly rejected all formal efforts to talk and/or obtain redress. After imprisoning members of the crew of the mv Norstar, the Italian Republic has (up until this date) evaded to account for this event.

5. Damages

11. As a consequence of the illegal acts of the Italian Republic, the vessel is now a total loss. The statement of valuation of damages as of September 24th, 1998 was Six Million Three Hundred and Twenty Six Thousand Nine Hundred Seven Dollars and 20/100 (USD\$6,326,907.20) plus interests. Respondent's lawlessness has resulted in the necessity of securing counsel in the Republic of Panama, the Italian Republic and Germany, and required the expenditure of huge resources. The damages suffered by the vessel's owner also include the value of the ship, loss of revenues due to the unfulfilling of the Charter Party in force until detention, registration fees due to the Panama Maritime Authority for ships register, legal services, harbor costs, and others.

6. Summary procedure

12. With a view to the speedy dispatch of business the Republic of Panama respectfully requests that this case be resolved by means of the summary procedure governed by Annex VI Article 15 par. 3 of the Statute of ITLOS.

7. Request

13. Accordingly, Applicant requests the Tribunal to adjudge and declare that:

1. Respondent has violated articles 33, 73 (3) and (4), 87, 111, 226 and 300 of the Convention;
2. Applicant is entitled to damages as proven in the case on the merits, which are provisionally estimated in Ten Million and 00/100 USDollars (\$10,000,000); and
3. Applicant is entitled to all attorneys' fees, costs, and incidental expenses.

8. The Agents


14. Pursuant to Article 56, paragraph 2, of the Rules, Mr. Nelson Carreyó has been appointed by The Republic of Panama as its lead Agent for the purpose of all proceedings in connection with this Application.

15. The contact details of Nelson Carreyó are as follows:

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16. The address for service to which all communications concerning the case are to be sent in accordance with article 56, paragraph 1, of the Rules is as follows:

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Nelson Carreyó
Agent and Counsel for the
Republic of Panama