

**OBSERVATIONS AND SUBMISSIONS OF THE REPUBLIC OF
PANAMA TO THE PRELIMINARY OBJECTIONS OF THE ITALIAN
REPUBLIC, SUBMITTED ON 9 MAY 2016**

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

THE MOTOR VESSEL (M/V) “NORSTAR” CASE N° 25

THE REPUBLIC OF PANAMA v. THE ITALIAN REPUBLIC

**OBSERVATIONS AND SUBMISSIONS OF THE REPUBLIC OF
PANAMA TO THE PRELIMINARY OBJECTIONS OF THE ITALIAN
REPUBLIC**

5 MAY 2016

TABLE OF CONTENTS

Part I. Observations and Submissions of the Republic of Panama to the Preliminary Objections of the Italian Republic

CHAPTER 1 INTRODUCTION.....	1
CHAPTER 2 JURISDICTION OF THE TRIBUNAL AND ADMISSIBILITY OF THE CLAIM	2
I. The jurisdiction of the Tribunal to entertain the present case	2
A. The existence of a dispute	2
B. The jurisdiction <i>ratione personae</i> and the question of a third State as a Party to the proceedings.....	3
C. Panama has complied with the obligation to exchange views.....	5
1. The interpretation of Article 283 of the Convention.....	5
2. Italy has not stated all of the relevant facts about its conduct under Article 283 of the Convention	6
3. Italy did not state ALL the relevant facts related to the case	10
D. The interpretation and application of the Convention	11
II. Admissibility of the claim.....	11
A. The question of nationality and diplomatic protection.	12
B. Time bar, estoppel, and exhaustion of local remedies	13
1. Time bar	13
2. Estoppel.....	15
3. Exhaustion of Local Remedies.....	16
Summary.....	18
Part II List of Annexes.....	21

**OBSERVATIONS AND SUBMISSIONS OF THE REPUBLIC OF
PANAMA TO THE PRELIMINARY OBJECTIONS OF THE ITALIAN
REPUBLIC**

**CHAPTER 1
INTRODUCTION**

1. On 16 November 2015, the Republic of Panama (Panama) instituted proceedings against the Italian Republic (Italy) before the International Tribunal for the Law of the Sea (ITLOS or the Tribunal).
2. On 11 March 2016, pursuant to Article 294, paragraph 3, of the United Nations Convention on the Law of the Sea (the Convention), Italy submitted Preliminary Objections to the Tribunal (Objections).
3. On 15 March 2016, the Tribunal issued an Order fixing 10 May 2016 as the time limit for Panama to submit its written Observations and Submissions (Observations) in response to the Objections filed by Italy, and 9 July 2016 as the time limit for Italy to tender its additional Observations and Submissions.
4. Pursuant to Article 97, paragraph 3, of the Rules of the Tribunal, Panama takes issue with each of the current Objections. Panama also notes that, as of this date, Italy still has not responded to any of the arguments of law and fact put forward by Panama in its written communications.
5. In particular, Panama contends that:

The Tribunal has jurisdiction *rationae materiae* to entertain the present case for the following reasons. First, a dispute between Panama and Italy exists. Second, Italy, and only Italy, is the proper respondent to these proceedings. Third, Panama has fulfilled its part in the obligation to exchange views with Italy regarding this matter. Fourth, Italy has omitted relevant facts regarding its and Panama's compliance with Article 283, as well as significant points related to the case itself. And, fifth, this dispute falls under the scope of the Convention and how its rules are interpreted and applied.

Panama also maintains that this case is admissible, not only because it has the right to protect its national subjects by diplomatic action or through the institution of international judicial proceedings, but also because it is not prevented from doing so by a time bar, by an estoppel, or by the requirement to exhaust local remedies.

Panama is not time barred, because its communications with Italy have extended the time limit for bringing this case and, thus, voided any prescription regarding it. Since Italy has not relied on any pertinent statement of Panama, the requirement of estoppel has not been met.

Finally, the rule of exhaustion of local remedies is only applicable when the acts complained of are carried out within the territorial waters of a coastal State, and this was not the case in this instance.

CHAPTER 2
JURISDICTION OF THE TRIBUNAL AND ADMISSIBILITY OF THE CLAIM

I. The jurisdiction of the Tribunal to entertain the present case

A. The existence of a dispute

6. Italy maintains that there is no dispute. Although it is true that "the unilateral assertion of one's own claims does not, as such, fulfill the basic jurisdictional requirement of the existence of a dispute between the Parties"¹ Panama would not have instituted proceedings before the Tribunal if it felt that a legitimate dispute did not exist.

7. Italy has not responded to any of the written communications sent by Panama, wherein Panama explained the facts and requested compensation for the unlawful detention of the M/V Norstar, which has Panamanian nationality. That Panama has made a claim which Italy has not acknowledged, much less attempted to resolve, clearly indicates the existence of a dispute. The Tribunal should recognize the good intentions of Panama and take into account the silence of Italy as unambiguous evidence of *its* refusal of Panama's claim.

8. Would the Tribunal find that there is no dispute simply because Italy has not deemed to respond to Panama? Italy proposes that the Tribunal put an end to the proceedings at this early stage without advancing its view regarding the claim expressed in all the relevant communications of Panama, including the Application. In other words, Italy intends to take advantage of its silence by requesting that the Tribunal dismiss this case without regard to its merits.

9. Italy says that "no meaningful attempts at negotiated settlement were made by Panama over any putative difference between the two States on the points of law or fact concerning the present proceedings". This statement implies that Italy does recognize that its interpretations of the law and the facts in this case differ from those of Panama. However, Panama contends that this difference is much more than "putative". By refusing to answer Panama's communications, Italy has, in fact, implicitly taken a very different position from Panama by rejecting Panama's formal requests, thereby confirming the existence of a serious disagreement.

In the *Land and Maritime Boundary Case (Cameroon v. Nigeria)*, the International Court of Justice stated that

a disagreement on a point of law or fact, a conflict of legal views or interests, or the positive opposition of the claim of one party by the other need not necessarily be stated expressis verbis. In the determination of the existence of a dispute, as in other matters, the position or the attitude of a party can be established by inference, whatever the professed view of that party.²

This statement was reiterated in the *Case Concerning the Application of the International Convention on the Elimination of all forms of Discrimination (Georgia vs. Russian Federation)* (hereinafter the CERD case) in which the Court affirmed that "the existence of a dispute may

¹Objections, paragraph 18.

² *Land and Maritime Boundary Case (Cameroon v. Nigeria)*, Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 315, paragraph 89.

be inferred from the failure of a State to respond to a claim in circumstances where a response is called for.”³

The precedents above confirm Panama’s contention that a dispute exists in this case, even if Italy refuses to accept this fact. Under the circumstances, Italy has to justify its failure to pay compensation for the illegitimate arrest of the M/V Norstar. Moreover, if Italy still contends that there is no dispute between the parties, it has to ask itself why it has not adjusted the damages caused by the illegal arrest of the vessel.

B. The jurisdiction *ratione personae* and the question of a third State as a Party to the proceedings.

10. Italy admits that the order for the seizure of the M/V Norstar was issued by an Italian Public Prosecutor. Panama concurs and accepts this as fact.

However, the basis for Italy’s Preliminary Objection to Jurisdiction is that the actual arrest and detention was not executed by Italy, but rather by the Spanish Authorities, so that Italy is an “improper respondent”. Italy contends that the ascertainment of the legality of the actions of the third party, Spain, must occur before the Tribunal considers this case. Italy bases this assertion on the *Monetary Gold Case*. The “Indispensable Third Party” doctrine established in the *Monetary Gold Case* states that in certain instances the Court is unable to entertain the merits of a case if a third party, whose presence is indispensable for a thorough examination of the case at hand, has not given its consent to the proceedings and is not present before the Court⁴.

11. In the *Monetary Gold* case, the International Court of Justice adjudged that it did not have jurisdiction with respect to Albania, the third party in the case, due to the fact that the

Albania’s legal interests would not only be affected by a decision; they would constitute the very subject-matter of the decision. Therefore, the Statute could not be regarded, even by implication, as authorizing that proceedings could be continued in the absence of Albania.⁵

12. Panama contends that this case is fundamentally different and, thus, the Italian argument based on the Indispensable Third Party doctrine is misleading.

Panama has not instituted proceedings against Spain and does not consider Spain to have any liability in this case. The detention of the M/V Norstar was based on an order given by Italy, not by Spain. Thus, this case does not involve the actions of a third State, only those of Italy.

Therefore, the only means for Spain to intervene in these proceedings is on the basis of Articles 99 to 104 of the Rules of the Tribunal (Section C, Incidental Proceedings, Subsection 5,

³ *CERD case*, page 20. In other contexts the Tribunal has deplored an ommissive attitude: “The Tribunal notes with regret that a copy of this agreement was not provided by the Applicant until after the request was made by the Tribunal” (See *The Louise case*, judgement, paragraph 47, *in fine*).

⁴ Andreas Zimmermann, et al. *The Statute of the International Court of Justice- A Commentary* (1st ed., Oxford University Press 2006), p. 603.

⁵ *Case of The Monetary Gold removed from Rome in 1943* (Preliminary Question) (Italy v. France, United Kingdom of Great Britain and Northern Ireland, and United States of America), Judgment of 15th June 1954, p. 17.

Intervention), Article 31 (Request to intervene), and Article 32 (Right to intervene in cases of interpretation or application) of the Statute of the Tribunal. This would occur only if Spain had an interest of a legal nature which would be affected by the decision of the Tribunal, which it does not.

Regardless of the ruling of the Tribunal in this case, Spain has the opportunity to intervene if it so desires. In the *Case concerning military and paramilitary activities in and against Nicaragua* (Nicaragua v. United States of America) the International Court of Justice stated:

Where however claims of a legal nature are made by an Applicant against a Respondent in proceedings before the Court, and made the subject of submissions, the Court has in principle merely to decide upon those submissions, with binding force for the parties only, and no other State, in accordance with Article 59 of the Statute. As the Court has already indicated (paragraph 74, above) other States which consider that they may be affected are free to institute separate proceedings, or to employ the procedure of intervention.⁶

13. Spain could enter into this dispute if the effects of the interpretation or application of the Convention upon it came into question. But again, this would be voluntary on its part, and, according to Article 99 of the Rules of the Tribunal, this right would only be exercised within 30 days after the counter-memorial becomes available under Article 67, paragraph 1, of the Rules.

The interests of Spain are not an issue in this case, which is why it was not summoned to the proceedings as a Respondent. Thus, the *Monetary Gold case*, cited by Italy as support for its argument, is of a different nature and is based on different reasoning,

14. Panama's assertion that Italy's liability in this case can be determined regardless of Spain's involvement was supported by a similar case: In the *The Certain Phosphate Lands in Nauru case* the International Court of Justice examined the involvement of third parties where it was stated that "the absence of such a request in no way precludes the Court from adjudicating upon the claims submitted to it, provided that the legal interests of the third State which may possibly be affected do not form the very subject-matter of the decision that is applied for."⁷

15. In the present case, the only legal interests which may be affected are those of Italy, not those of Spain, and the very subject matter of a decision on its merits would concern only Italy as Respondent.

Spain has not been mentioned, summoned, cited, or even referred to in this case either as defendant or as a third party, nor has it shown any interest in participating through any of the possible methods accepted by the Convention.

Therefore, Panama does not see how the interests of Spain would be affected by the judgment of the Tribunal, or how "they would constitute the very subject-matter of the decision" The Tribunal can examine the present case and determine Italy's international responsibility arising out of the Convention without examining the conduct of Spain.

⁶ *Case concerning military and paramilitary activities in and against Nicaragua* (Nicaragua v. United States of America), Judgment, I.C.J. Reports 1984, p. 431, paragraph 88

⁷ *The Certain Phosphate Lands in Nauru (Nauru vs. Australia)*, Judgment, p. 261, paragraph 54.

C. Panama has complied with the obligation to exchange views

1. *The interpretation of Article 283 of the Convention*

16. Article 283 of the Convention is put into force when a dispute arises between States Parties concerning the interpretation or application of the Convention. Panama has always contended that one of the vessels registered by the Panama Merchant Marine of the Panama Maritime Authority had been wrongfully detained upon a judicial order from Italy.

As a result, Panama notified Italy in writing of its claim by identifying the scope and subject matter delineated by the facts of the case, thereby fulfilling the stipulations of Article 283. Thus, the allegation by Italy that Panama did not comply with Article 283 lacks foundation.

17. Italy has used the word “putative” to characterize Panama’s claim, suggesting that a legitimate dispute does not exist. On the other hand, Italy has juxtaposed this argument with one citing Panama’s failure to exchange views before resorting to international adjudication.

This reflects a contradictory interpretation of Article 283 of the Convention. In fact, by failing to answer any of the communications of Panama, Italy has been the party which has precluded this exchange.

18. Italy argues that “no meaningful attempts at negotiated settlement were made by Panama”⁸ and that Panama has failed to “appropriately pursue the settlement of the dispute by negotiation or other peaceful means under Article 283, paragraph 1”⁹, because some of the communications that Panama has sent have specifically focused on the release of the vessel.

Panama undertook communication with Italy in order to resolve the matter by mutually determining the appropriate amount of damages due for the unlawful arrest of the M/V Norstar.

Italy has objected to this stating that Panama’s formal messages “*fell short*” of the requirement of Article 283 paragraph 1...”¹⁰ were neither “*meaningful*”, “*genuine*”, or “*appropriate*”, and were “*inconsistent*”.¹¹

However, Italy has failed to show and has not explained what it means by these terms and how they specifically apply to Panama’s actions. Panama requests that the Tribunal *consider* these omissions to constitute a procedural obstacle to its defence against Italy’s Objections.

If Italy had specifically explicated how Panama should have phrased its communications, or what inconsistencies they had, Panama would have had the opportunity to refute such criticisms.

The absence of such information undermines the Panama’s right to defence and violates the Due Process of Law Principle.

⁸ Objections, paragraphs 19-20.

⁹ *Ibid.*, paragraphs 4.b, 17.c and 34.c.

¹⁰ *Objections.*, paragraph 20.

¹¹ *Ibid.*, paragraph 31.

2. *Italy has not stated all of the relevant facts about its conduct under Article 283 of the Convention*

19. In paragraph 10 of its Objections, Italy referred to the *first* written communication of Panama to Italy dated 15 August 2001 (Objections, Annex F)-(Communication N° 1). That first letter stated that, as of that time, the M/V Norstar had been inoperative and allowed to decay for over three years, so that the damages incurred were approximately six (6) million dollars and climbing. The letter went on to say that the detention of the vessel, based on the trade of gasoil in extraterritorial waters outside of the Italian Customs zone, was improper, and reminded Italy that the International Tribunal of the Law of the Sea had declared areas outside of territorial waters and the Contiguous Zone open, based on the principle of the Freedom of Commerce. The letter concluded with a request for Italy to release the vessel and pay damages, stating that otherwise, Panama would have no option but to apply to the Hamburg Tribunal.

No response to this communication was ever received by Panama, so the specific objections of Italy regarding its shortcomings remain unclear.

20. Italy also acknowledged the receipt of a *second* written communication, this time dated 7 January 2002 (Objections, Annex G)-(Communication N° 2) specifically asking for a reply to the previous letter and reiterating Panama's intention to institute proceedings before the Tribunal if a bilateral settlement could not be reached. Italy did not respond to this communication, either.

21. In paragraph 10 of its Objections, Italy also mentioned a *third* written communication received from Panama, dated 6 June 2002 (Objections, Annex H)-(Communication N° 3) without referring to Article 283 of the Convention, apart from saying that this communication only "reiterated" the earlier letter dated 15 August 2001. The most important aspects of the third communication were that Panama stated that it expected an answer and that it had "not yet received the relevant acknowledgement of receipt" of its previous two messages. Panama also attached a copy of the original communication dated 15 August 2001. No reply to this communication was ever received by Panama.

22. In addition to the three (3) communications that Italy has now admitted it had received, there was a *fourth* communication sent on 3 and 6 August 2004 (Communication N° 4) that Italy neglected to mention in its Objections.

23. Unlike the previous communications that Panama sent to Italy regarding this matter, the communication of 3 and 6 August 2004 was written in Spanish and translated into English, French, and Italian. The Italian Embassy in Panama certified the receipt of all four versions with the seal of the Ambasciata D'Italia Panama and the signature of Elia Castro.¹²

24. If Italy had doubts about the intentions of Panama from its previous communications, filed by Italy as Annexes F, G, and H, these should have been completely dispelled with this *fourth* communication from Panama to Italy.

25. Panama is very much concerned by the failure of Italy to refer to the communication dated 3 and 6 August 2004 as evidence, because in this communication Panama clearly declared:

¹² Observations, Annexes 1, 2, 3, and 4.

“This is a letter from the Panamanian Government to the Italian Government in accordance with Article 283 of the United Nations Convention on the Law of the Sea.”

26. Due to a total lack of response by Italy as of that point, Panama stated in that communication that it was trying to reach a settlement with the Italian government “through the procedures given for the International Law of the Sea Tribunal.”

27. The letter went on to say that if the Italian Government wished to have the dispute with Panama decided by the International Law of the Sea Tribunal in accordance with Article 287 of UNCLOS, the Government of Panama would be ready to proceed accordingly, but if Italy did not give its consent, the Panamanian government would be forced to invoke proceedings for arbitration as described in Annex VII of UNCLOS.

28. On 31 August 2004, Panama sent its *fifth* communication to Italy, this time as Note Verbale A.J. N° 2227 (Objections, Annex M). When Italy referred to this piece of evidence (Communication N° 5), it said that this communication only “reiterated the mandate of Mr. Carreyó”. However, with this Note Verbale, Panama did more than that, requesting its Ministry of Foreign Affairs to use diplomatic channels to convey the communication dated 3 and 6 August 2004 cited and mentioned in paragraphs 23-27 above.

Although the dates 3 and 6 August 2004, were not mentioned in this Note Verbale, Panama made a clear reference to the earlier message by mentioning that it had been delivered in four languages, thus distinguishing it from the rest. It is important to note that Italy neglected to mention the significance of either this Note Verbale or of any of the communications which preceded it.

29. With the Note Verbale of 31 August, Panama intended to verify that Italy had received the communication of 3 and 6 August 2004, whereby Panama had offered to work with Italy to come to an agreement, in accordance with procedures of the Tribunal. However, Italy did not provide an answer to either Panama’s communication dated 3 and 6 August 2004 or to this Note Verbale.

30. On 7 January 2005, pursuant to the contents of the Note Verbale A.J. N° 2227 dated 31 August 2004 (paragraphs 29-30), the Ministry of Foreign Affairs of Panama dispatched the Note Verbale A.J. N° 97 (Objections, Annex N) (Communication N° 6), addressed to the Italian Embassy in Panama. Panama is concerned by, and strongly objects to, the translated interpretation of the contents of this its *sixth* communication provided by Italy because it inaccurately reflects the actual meaning of the original and, therefore, is misleading. Therefore, Panama requests that the Tribunal review the translation provided by Italy and compare it to the original communication.

31. Panama is also concerned by the failure of Italy to refer to the fact that on 25 January 2005, the Italian Embassy in Panama notified Panama that it had transmitted the Note Verbale A.J. N° 97 to the Italian Ministry of Foreign Affairs and that as soon as it received an answer, it would be duly forwarded to its Panamanian counterpart.¹³ Despite that, Italy did not reply further, nor has it now filed this important piece of evidence.¹⁴

¹³ Observations, Annex 5.

¹⁴ *Ibid.*, Annexes 6.7, and 8.

32. In paragraph 16, Italy acknowledged receiving a *seventh* communication, this time dated 17 April 2010 (Objections, Annex P)-(Communication N° 7), but did not refer to its contents. In this letter, Panama repeated the same facts it had mentioned in the letter dated 15 August 2001 and asked Italy again to decide whether it would pay damages caused by its competent authorities or whether Panama should apply to the Tribunal. The primary purpose of this letter was to determine if Italy had received the previous ones, but Italy remained silent.

33. The clear objective of all of the communications sent by Panama that are referred to above was to obtain feedback from Italy about the Panamanian position on the subject matter, and therefore, the feasibility of a negotiation and/or settlement. There have been seven (7) attempts made by Panama with the purpose of understanding the position of Italy concerning this issue, yet all of them have been unsuccessful. Given its silence, it is unclear how Italy intended to comply with Article 283. Italy, by completely ignoring all of the communications sent throughout the years, has effectively impeded any productive exchange of views.

34. The *travaux préparatoires* of UNCLOS show that the exchange of views was introduced with the intention of preventing States from an unexpected institution of proceedings. This has not been the case. As the communications demonstrate, Panama's application to the Tribunal came as no surprise to Italy. Furthermore, the time passed between the first communication sent to Italy and the submission of the application shows that Panama did not submit the case precipitously to the tribunal.

35. In the *Case Factory at Chorzow (Germany vs. Poland)* the Permanent Court of International Justice (PCIJ) stated:

It is, moreover, a principle generally accepted in the jurisprudence of international arbitration, as well as by municipal courts, that one Party cannot avail himself of the fact that the other has not fulfilled some obligation or has not had recourse to some means of redress, if the former Party has, by some illegal act, prevented the latter from fulfilling the obligation in question, or from having recourse to the tribunal which would have been open, to him.¹⁵

36. Panama sees a parallel between the *Case Factory at Chorzow* decision and the conduct of Italy in this case, specifically in the way it has used silence to prevent Panama from fulfilling its desire to frankly and fully exchange views.

37. In the *CERD Case*, the Court ruled that in an Exchange of Views, the subject matter of the negotiations must relate to the subject matter of the dispute which, in turn, must concern the substantive obligations contained in the treaty in question.¹⁶ In its communications with Italy, Panama notified Italy that a dispute existed, delimited the scope of the subject matter, and placed it in the context of negotiations in accordance with the obligations of the Convention.

38. On the other hand, certain Court decisions have addressed circumstances when parties did not properly respond to international communications. In the *M/V Louisa Case*, the Tribunal noted that Spain did not respond adequately to a Note Verbale sent by Saint Vincent and the Grenadines, because it failed to provide the requested information.

¹⁵ *Factory at Chorzow*, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 31.

¹⁶ *Case concerning Application of the International Convention on the Elimination of all Forms of racial Discrimination* (Georgia v Russian Federation), Preliminary Objections, ICJ Reports 2011, p. 67, paragraph 161.

39. According to the Order on Provisional Measures in the *Louisa Case*, the Tribunal held that the requirements of Article 283 had been satisfied.¹⁷ Similarly, In the *Southern Bluefin Tuna Case*, the Tribunal said that “A State Party is not obliged to pursue procedures under Part XV, Section 1, of the Convention when it concludes that the possibilities of settlement have been exhausted.”¹⁸ Due to Italy’s refusal to engage Panama’s attempts to settle the issue, Panama feels justified in concluding that the chances of reaching a resolution through bilateral communication have likewise been exhausted.

40. Panama has maintained a genuine intention to peacefully negotiate with Italy, most recently exhibited on 28 January 2016, during the Consultations held by the Parties in the presence of the President and the Registrar of the Tribunal. At that meeting, Panama indicated to Italy that it was still willing to reach a settlement. In spite of the fact that Italy verbally promised once again that it would convey the Panamanian position to its Government officials, Panama has not received any reply from Italy regarding the possibility of formal negotiations, apart from the filing of its Objections which can now be interpreted as an official rejection of all of the Panamanian initiatives to exchange views.

41. In short, the Italian contention that Panama failed to exchange views in “any meaningful or legally appropriate manner” related to Article 283 is not true. The guiding principle of the Convention is that the will of the parties shall prevail by means of any method of dispute settlement they wish to employ.¹⁹ In the absence of an agreement between Italy and Panama, the principle of sovereign equality ensures that the view of one nation with respect to the interpretation and application of the Convention cannot prevail over the views of another. Italy’s silence in this instance should not be used to deny the sovereign equality of Panama or to evade its own obligations under Article 283.

42. Panama still does not know what the Italian position concerning its claim is. Panama does not want to believe the Italian silence represents bad faith on its part, but there is no excuse for not returning communications within a reasonable time, save to avoid the matter being brought up and discussed. Given Italy’s unforthcoming approach to this issue, the possibility of Panama and Italy reaching a mutually satisfactory resolution has become more remote.

43. That Italy prevented Panama from even knowing whether it had received its formal communications concerning its claim, and, apparently, to totally avoid communicating with Panama at all, reflects an uncooperative attitude with regard to negotiations. In any case, Italy’s lack of responsiveness does not negate the fact that Panama has made a sincere effort to consult with Italy, thereby fulfilling its own requirements under Article 283.

44. Italy has tacitly rejected all of Panama’s efforts to engage in formal negotiation. Panama has gone to great lengths to satisfy Article 283, while Italy has shown a complete lack of willingness to comply with this provision of the Convention by disregarding Panama’s petitions. The exchange of views set out by Article 283 has been undermined by

¹⁷ *The M/V “Louisa” Case* (Saint Vincent and the Grenadines v. Spain) No. 18, Provisional Measures, Order of 23 December 2010, p. 68.

¹⁸ *The Southern Bluefin Tuna Cases (Request for Provisional Measures)*, Order, August 1999, paragraph 60.

¹⁹ Article 280, United Nations Convention on the Law of the Sea.

the silence of Italy, which has hindered, rather than promoted, Panama's attempts to settle this dispute with Italy by mutual agreement.²⁰

According to the principle of *venire contra factum proprium*, Italy, having prevented Panama from fulfilling the obligations under Article 283, cannot now argue that Panama is remiss for not having done so. To resolve this conflict, Panama's only recourse is to submit its claim to binding third-party adjudication. Under the circumstances, Panama is justified in considering its options for exchanging views to have been exhausted and that bringing this case to the Tribunal is a logical next step.

3. *Italy did not state ALL the relevant facts related to the case*

45. In the Statement of Facts section of its Objections, Italy referred to the "offences of criminal association aimed at smuggling" and tax fraud allegedly committed by foreign tankers, and has classified the M/V Norstar as a "corpus delicti-i.e. the means through which the crime was perpetrated."²¹ However, Italy has also conceded that the Tribunal of Savona "acquitted all accused of all charges" and "ordered the lifting of the seizure of the M/V Norstar". Italy also recognized that this decision was upheld by the Court of Appeal of Genoa. Thus, these judicial decisions negate the classification of the M/V Norstar as a "*corpus delicti*" that Italy is now using to substantiate its position.

46. It is important to bear in mind that the Italian courts have acknowledged the absence of a rationale for believing that an offence had been committed within its territorial waters²². Fuel purchased by leisure boats and stored on board outside the territorial sea line shall not be subject to import duties since it is not consumed within the maritime or mainland customs territory. Therefore, whoever distributes fuel offshore has not committed an offence even when aware that the fuel is used by boats sailing the Italian coasts.²³

47. In its Statement of Facts concerning the improper seizure of the M/V Norstar, Italy did not refer to the reasoning of its Judiciary along these lines, nor even what the grounds for the acquittal of the persons accused and for the lifting of the detainment of the M/V Norstar were, suggesting that these facts are of no relevance.

48. Italy has also failed to concede that the Appeals Court of Genoa based its decision to confirm the judgment of the lower court to acquit and release the M/V Norstar on the grounds that the transfer of supplies occurred outside the territorial waters of Italy, a fact confirmed even by the Public Prosecutor himself. Since none of the offences the M/V Norstar was charged with were sustained²⁴ and its detention was ruled as unlawful²⁵, Panama has a legitimate reason to request the Tribunal to consider the need for Italy to pay compensation.

²⁰ See *The Land and Maritime Boundary Case (Cameroon v. Nigeria)* and the *CERD Case* cited at paragraph 9 above.

²¹ Objections, paragraph 8.

²² *Ibid.*, Annex B, paragraph 2.

²³ *Ibid.*, paragraph 5.

²⁴ *Ibid.*, paragraph 6.

²⁵ *Ibidem*.

D. The interpretation and application of the Convention

49. In its Application to the Tribunal, Panama identified the subject-matter as “a dispute concerning, *inter alia*, the contravention by the Italian Republic of the provisions of the Convention in regard to the freedoms of navigation and/or in regard to other international lawful uses of the sea specified in Article 58 of the Convention....for damages...caused by an illegal arrest of the Norstar.”

The legal grounds on which the Application was based were the “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 M/V 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.”²⁶

The Tribunal has jurisdiction pursuant to Article 287 paragraph 1 lit.b and paragraph 4 of UNCLOS because both the Republic of Panama and the Italian Republic are State Parties to both having made written declarations in accordance with Article 287 of the Convention, Panama, by Declaration of its Vice President and Minister of Foreign Affairs, Isabel de Saint Malo de Alvarado, dated 13 March 2015 and deposited with the General Secretary of the United Nations, and Italy, by a Declaration of 26 February 1997 at Accession.

50. Nevertheless, Italy asserts that there is “a manifest irrelevance of the UNCLOS provisions invoked by Panama”.²⁷

51. The primary position of Panama is that it is entitled to compensation due to the Italian violation of several provisions of the Convention on the basis of the unlawful arrest of the M/V Norstar. To support this particular argument, Panama calls attention to Article 297, paragraph 1 which limits the applicability of Section 2 (Compulsory Procedures Entailing Binding Decisions) of Part XV (Settlement of Disputes) to disputes over the interpretation or application of the Convention. Panama deems Italy as having acted in contravention of the rights and provisions of the Convention concerning the freedoms and rights of navigation granted by Article 297 because its arrest of the M/V Norstar was conducted in violation of the norms of the Convention that protect the freedom of navigation.

II. ADMISSIBILITY OF THE CLAIM

52. Italy contends that this claim should be rejected as inadmissible because: (a) it “is preponderantly, if not exclusively, of a diplomatic protection character, [yet] the requirements for its exercise *i.e.*, that of the nationality of the alleged victims and that of the exhaustion of local remedies have not been met” and (b) “Panama is time-barred, and estopped from validly bringing this case before this Tribunal due to the lapse of eighteen years since the seizure of the Vessel and Panama’s contradictory attitude throughout that time.”

We will now address each of these arguments in turn.

²⁶ Application, paragraph 9.

²⁷ Objections, paragraph 19.

A. The question of nationality and diplomatic protection.

53. The first reason for the assertion above was that the M/V Norstar was not "owned, fitted out, or rented, by a natural or legal person of Panamanian nationality, nor were the accused in the Italian criminal proceedings Panamanian nationals"²⁸.

54. Italy suggests that the claim of Panama is one of diplomatic protection and that therefore it is not admissible. However, the exertion of diplomatic protection and the institution of judicial proceedings on behalf of non-nationals are discretionary rights of any State. Panama submits that it is entitled to exercise diplomatic protection by diplomatic action *or* by international judicial proceedings not limited to formal presentation before international tribunals. In fact, the Permanent Court of International Justice has affirmed that states are allowed to take up a case "by resorting to diplomatic action or international judicial proceedings on his behalf".²⁹

55. Italy contends that Panama could only validly bring the claim if the wrongful act had affected its own nationals and requests that the claim be held inadmissible on these grounds.

56. However, Italy only referred to the nationalities of the M/V Norstar's owner, charterer, captain, and crew, not that of the M/V Norstar itself. As set out in Article 91, paragraph 1 of the Convention, "Ships have the nationality of the State whose flag they are entitled to fly.". If Italy had taken into account the nationality of the M/V Norstar, the essence of what this claim is about, it would unconditionally have to accept that she holds Panamanian nationality. Even its own competent authorities have granted this. The fact that the M/V Norstar is a national subject of Panama is precisely the reason that Panama has brought this case to this Tribunal.

57. Furthermore, the M/V Norstar has been registered by the Merchant Marine of the Panama National Authority since 10 April 1997, yet due to the wrongful act of Italy, Panama has not received the vessel registration fees, taxes, and duties owed by the M/V Norstar since its improper seizure. Therefore, Panama is obligated to act on the M/V Norstar's behalf.

58. According to the Convention, Panama has the right and duty to protect its registered vessels and use the peaceful means to assure that other members of the international community respect its rights. There should not be any question that without this claim by Panama, the owner would not have access to this Tribunal. The fact that the victims of the wrongful conduct of Italy are not nationals of Panama does not disqualify this claim because it is based on the deprivation of the property of a juridical person having a vessel registered in Panama.

The Tribunal has already ruled, in the case of the *M/V Saiga*, that the Convention considers a ship as a unit, as regards the obligations of the flag State with respect to the ship and the right of a flag State to seek reparation for loss or damage caused to the ship by acts of other States and to institute proceedings under article 292 of the Convention. Thus the ship, everything on it, and every person involved or interested in its operations are treated as an entity linked to the flag State. The nationalities of these persons are not relevant.³⁰ Accordingly, a flag State is entitled to present claims for damages on behalf of natural and juridical persons who are not its own nationals if the above conditions apply.

²⁸ Objections, paragraphs 28-29.

²⁹ *Mavrommatis Palestine Concessions Case*, paragraph 21; *Nottebohm, Liechtenstein v. Guatemala Case*, paragraph 2.

³⁰ *The Saiga case* (N° 2), paragraph 106.

B. Time bar, estoppel, and exhaustion of local remedies

1. Time bar

59. Italy stated that Panama is time-barred “due to the lapse of eighteen years since the seizure of the Vessel” and that “between 2001 and 2004, Mr. Carreyó, had expressed his intention to apply for the prompt release of M/V Norstar under Article 292 UNCLOS”³¹ but that “no action was taken to that effect while the M/V Norstar had remained seized in Spain”.³²

60. Italy affirms that Panama waived its right to act by waiting eighteen years. However, since 15 August 2001 (Objections, Annex F) Panama has been requesting a response from Italy regarding the release of the vessel and the payment for damages caused by the arrest. In its first communication, Panama asserted, as mentioned above, that the detention of the M/V Norstar contravened Article 297 of the Convention and the principle of Freedom of Commerce.

61. This first request, as well as subsequent ones, from Panama for dialogue with Italy stopped the clock as far as a time bar was concerned. During an International Arbitration between Italy and Venezuela, the arbitrators stated that, “the presentation of a claim to competent authority within proper time will interrupt the running of prescription.”³³

In the Case of Certain Phosphate Lands in Nauru, the International Court of Justice rejected the objection of Australia that Nauru had made the claim 20 years after having become independent. The Court stated:

The Court recognizes that, even in the absence of any applicable treaty provision, delay on the part of a claimant State may render an application inadmissible. It notes, however, that international law does not lay down any specific time-limit in that regard. It is therefore for the Court to determine in the light of the circumstances of each case whether the passage of time renders an application inadmissible.³⁴

In this case, the President of Nauru had written to the Minister for External Affairs of Australia on 5 December 1968 in relation to the rehabilitation of its phosphate lands. The Australian Minister replied on 4 February 1969.

This letter did not elicit any immediate reaction. Five years later, the President of Nauru raised the question of rehabilitation again on the occasion of a State visit to Canberra and brought up the matter a third time, without success, on the occasion of a visit to Nauru by the Australian Acting Minister for External Affairs in 1974.

The next communication in relation to the rehabilitation was a letter from the President of Nauru to the Prime Minister of Australia dated 6 October 1983.

Although there were long periods of time during which the parties did not communicate in relation to the claim of Nauru, the Court determined “that, given the nature of relations between

³¹ Objections, paragraph 32.

³² *Ibid.*

³³ *Gentini case*, United Nations Reports of International Arbitral Awards, 1903, Volume X, p. 561.

³⁴ *The Certain Phosphate Lands in Nauru (Nauru vs. Australia)*, Preliminary Objections, pp.253-254, paragraph 32.

Australia and Nauru as well as the steps thus taken, Nauru's Application was not rendered inadmissible by passage of time".³⁵

62. We have shown the Tribunal that Panama has not ceased communicating with Italy concerning this case. The fact that Italy now admits that, as early as 2001, Panama sought redress and the prompt release of the M/V Norstar, signifies that the Italian Government took notice of the claim³⁶ and has had ample opportunity to prepare its defence.³⁷

These facts are incongruent with Italy's time bar Objection, which still suggests a very clear intention on its part not to settle or negotiate this case. In any case, Panama's efforts to communicate openly with Italy through formal written requests clearly refute Italy's time bar argument.

63. The judicial proceedings in Italy also negate its Time Bar claim. On 13 November 2006³⁸ the Court of Appeal of Genoa answered a request of the Spanish Authorities to demolish the M/V Norstar with a response that included the following statement:

Having noted that this judgment obviously has to be enforced and there is no decision to be taken given that the destiny of the vessel, *after having been given back to the party entitled*, does not fall within the competence of this Court (and in any case, given that the first instance judgment was confirmed, any issue on the enforcement of the said judgment would be the competence of the Court of Savona pursuant to Article 665 of the Code of criminal procedure).³⁹ (emphasis added)

64. In other words, without identifying the party entitled, Italy is assuming that the vessel had been returned and that the case was closed.

However, although it was decided that "any issue on the enforcement of the said judgment would be the competence of the Court of Savona", to date that court has not issued a decision on this matter and therefore it is still pending. In fact, Italy has made no effort to return the ship.

65. The fact that the M/V Norstar, the object of these proceedings, has not been returned to its owner despite the order issued by the Italian jurisdictional authorities signifies that Italy's compliance with the judgment of its own authorities is still unrealized.

66. To argue now that this claim is Time Barred denies all of Panama's efforts to obtain redress.⁴⁰

Italy intends to reap advantage from its own failure to make timely reparations to Panama as a consequence of its unlawful detention of the M/V Norstar.⁴¹

³⁵ *Ibid.*, pp.254-255, paragraphs 33-36.

³⁶ Objections, Annexes, G, H, L, M and N. Observations Annexes 1-5.

³⁷ *Giacopini* case, United Nations Reports of International Arbitral Awards, 1903. Volume X, p. 595.

³⁸ Objections, Annex O.

³⁹ *Ibid.*

⁴⁰ *Frances Irene Roberts* Case, the United States-Venezuelan Mixed Claims Commission (1903), Ven. Arb. 1903, p. 144. See also Mex. U.S. G.C.C. (1923): *G.W Cook* Case (Dock. 663 (1927), Op. Of Com. 1927, p. 319.

⁴¹ *Nullus commodum capere de sua injuria propria* (no one can be allowed to take advantage of his own wrong).

2. Estoppel

67. According to Wagner,

International estoppel requires three elements. First, the statement creating the estoppel must be clear and unambiguous; second, the statement must be voluntary, unconditional, and authorized; and finally, there must be good faith reliance upon the representation of one party by the other party either to the detriment of the relying party or to the advantage of the party making the representation....However, if the complaining party never relied on the statement and consequently did not change its position, the change in policy cannot be said to lack good faith.⁴²

68. Italy asserts that Panama is estopped from bringing this case to the Tribunal, but this reasoning is also contrary to the law. The State Parties to the Convention may use the legal instruments given by the Convention to resolve their disputes as they see fit. Although Panama did not bring a petition to the Tribunal for the prompt release of M/V Norstar under Article 292, it was not obligated to do so according to the rights that any State has when it decides whether to bring a case.

69. The first two elements that Wagner cites are not applicable in this case. Panama has never stated that it would not bring a claim for damages before this Tribunal. Regarding the third element, Italy, as the complaining party in its Objections, has not relied on nor reacted to any statement made by Panama.

The complaining party also has to produce germane evidence in order to avail itself of estoppel. In the case of the *M/V Saiga* the Tribunal stated: “The Tribunal considers that the nationality of a ship is a question of fact to be determined like other facts in dispute before it, on the basis of evidence adduced by the parties.”⁴³ However, Italy has failed to present any statement in which Panama declared that it would never bring a claim for damages before this Tribunal. Italy also failed to explain in what way it has relied on any statement of Panama or in what way it has changed its position as a consequence. In light of this omission, the objection of Italy regarding estoppel should be rejected.

70. If, between 2000 and 2004, Panama only raised the possibility of bringing a petition for Prompt Release to this Tribunal, this was because the Italian judicial authorities had not yet issued a final judgment and, therefore, Panama did not consider local remedies to have been exhausted.

The criminal proceedings in Italy did not start until 11 August 2001 (Objections, Annex C) and only ended in 2005 when the Court of Appeal of Genoa confirmed the judgment of the Court of Savona. As stated on the Application (p. 3, paragraph 7), Panama also declined to bring a Prompt Release petition because the economic situation of the shipowner did not allow him to post the bond to release the vessel from arrest. Thus, although Prompt Release proceedings were not initiated, Panama should not be estopped on the basis of its decision not to make use of such accessory or incidental proceedings, since this is a right and, as such, is not mandatory.

⁴² Wagner, Megan L., *Jurisdiction by Estoppel in the International Court of Justice*, 74 Cal. L. Rev. 1777 (1986), citing Bowett, *supra* note 12, at 188-94 and A. Vamvoukos, *Termination of Treaties in International Law: the Doctrines of Rebus Sic Stantibus and Desuetude* 294 (1985), as well as Brownlie, note 11, at 638.

⁴³ *The Saiga case* (N° 2), paragraph 66.

3. *Exhaustion of Local Remedies*

71. Italy did not identify the issue of exhaustion of local remedies with a particular heading in its Objections. It only alluded to this subject on several occasions in a rather subtle manner, juxtaposing it with the issue of Diplomatic Protection.⁴⁴

Italy only stated that "the well-established requirements for the valid exercise of diplomatic protection apply, whereby the private victims of an internationally wrongful act should be nationals of the Applicant and should have exhausted the local remedies available in the Respondent State."⁴⁵

However, the exhaustion of local remedies rule does not apply in the present case since the actions of Italy against the M/V *Norstar*, a ship flying the Panamanian flag, violated the right of Panama, as a flag State under the Convention, to have its vessels enjoy the freedom of navigation and other internationally lawful uses of the sea related to that freedom, as set out in Articles 33, 58, 73(3) and (4), 87, 111, and 300 among others.

72. The Tribunal has already decided, in the case of the M/V *Saiga*, that the exhaustion of local remedies rule does not apply in the absence of a "jurisdictional connection" between the arresting state, in that case, Guinea, and the "natural or juridical persons" represented by the Flag State bringing the action, St. Vincent and the Grenadines, because the arrest was made outside the radius of its Territorial Waters and, therefore, the M/V *Saiga* had

- (a) the right of freedom of navigation and other internationally lawful uses of the seas;
- (b) the right not to be subjected to the customs and contraband laws of Guinea;
- (c) the right not to be subjected to unlawful hot pursuit;
- (d) the right to obtain prompt compliance with the Judgment of the Tribunal of 4 December 1997;
- (e) the right not to be cited before the criminal courts of Guinea.⁴⁶

73. There are clear parallels between *the Saiga case* and the current one. Since the M/V *Norstar* was also detained in international, rather than in the territorial waters of Italy, the rights delineated in points a.), b.), c) and e.) above are relevant and have been violated by Italy's actions in the wrongful detention of the M/V *Norstar*.

In *the Saiga's case* the Tribunal affirmed that, according to Article 22 of the Draft Articles on State Responsibility adopted on first Reading by the International Law Commission, the rule of exhaustion of local remedies is applicable when "the conduct of a State has created a situation not in conformity with the result required of it by an international obligation concerning the treatment to be accorded to aliens ...". The Tribunal went on to add that none of the violations of rights claimed by Saint Vincent and the Grenadines, as stated above, could be described as breaches of obligations concerning the treatment to be accorded to aliens. They all are direct violations of the rights of Saint Vincent and the Grenadines. Damage to the persons involved in the operation of the ship arises from those violations. Accordingly, the claims in respect of such damage are not subject to the rule that local remedies must be exhausted.⁴⁷

⁴⁴ Objections, paragraph 29. See also paragraphs 5(b), 27(a), 28 and 35(a).

⁴⁵ *Ibid.*, paragraph 28.

⁴⁶ *The Saiga case (N° 2)*, paragraph 97.

⁴⁷ *Ibid.*, paragraph 98.

Italy has created just such a situation with regard to the M/V Norstar, a vessel registered in Panama. The rights claimed by Panama are not based on obligations concerning the treatment of aliens. Instead, they are based on the treatment of a Panamanian subject, whose rights, just as the rights of the vessel Saiga, a subject of Saint Vincent and the Grenadines, were violated. Therefore, the rule of exhaustion of local remedies does not apply in this case.

74. Whether local remedies apply to this case in the first place also depends on the *locus* where Italy determined the M/V Norstar was carrying out its bunkering activity. Whereas Italy maintains in its Statement of Facts that the M/V Norstar was “off the coast” of Italy⁴⁸, Panama attests that it was “in international waters beyond the Territorial Sea of Italy”⁴⁹ i.e. outside of Italian jurisdiction.

Since the facts of the case show that the M/V Norstar was outside its territorial waters, Italy was not entitled to apply its customs rules to its operation because there was no jurisdictional connection between Italy and the M/V Norstar nor with the juridical and natural persons that Italy identified as its shipowner, charterer, captain, and crew.

In any event, the conclusion of the court case in Italy has exhausted the local remedies, so this is no longer an issue. Thus, the “exhaustion of local remedies” argument is moot.

75. Nevertheless, the decision to annul the detainment of the M/V Norstar has not been complied with since in order to do so, the M/V Norstar would have to be restored to the same condition it was at the time of the seizure, with update trading certificates and class, and formally inform the owner.

The decision whether to restore the M/V Norstar to its original state and deliver it to its owner, or to pay compensatory damages, still rests with Italy. If, after all this time, the Italian criminal courts having jurisdiction over the M/V Norstar have not made a decision regarding its devolution Italy has not done so, how long will Panama have to wait in order to obtain compensation?

PETITUM

Based on the facts and juridical arguments expressed on this Observations, Panama respectfully requests that this honourable Tribunal

FIRST, declare that

1. it has jurisdiction over this case;
2. the Application made by Panama is admissible; and
3. the Italian Republic has not complied with the rule of Due Process of Law;

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

⁴⁸ Objections, paragraph 7.

⁴⁹ Application, paragraph 4.

SUMMARY

76. Panama takes issue with each of the current Objections advanced by Italy and points out that none of the arguments of law and fact that Panama has previously put forward have been directly addressed. Panama maintains that the Tribunal has the jurisdiction to entertain this case because the detention of the M/V Norstar, its acquittal, and the subsequent failure of Italy to pay damages constitute a dispute, and that Italy's refusal to respond to any of the formal communications it received from Panama concerning this matter have prolonged that dispute's existence (p. 2-3, paragraphs 6-9). Furthermore, the facts of this case allow the Tribunal to have jurisdiction *ratione personae* and to continue proceedings with Italy as defendant in the absence of Spain, the presence of whom is not indispensable for its adjudication (p. 3-4, paragraphs 10-15).

77. Panama has assiduously attempted to settle this case through bilateral means. On the other hand, Italy has advanced a contradictory interpretation of Article 283 of the Convention contending that there is no dispute while simultaneously declaring that Panama is obligated to exchange views. This paradoxical approach on the part of Italy has inhibited the very exchange it has professed to want. Moreover, the allegation of Italy that the Panamanian attempts at dialogue have not been "appropriate", "genuine" or "meaningful" lacks specificity, substance, and a legal foundation (p. 5, paragraphs 16-18).

78. Italy's failure to file all the communications received from Panama has been amplified by its omission of highly relevant facts about both its conduct and the case (p. 6-10, paragraphs 19-48). It is extremely significant to note, as Italy has neglected to do, that the M/V Norstar release was ordered because its activities were carried out beyond the Italian territorial waters and, thus, were not illegal acts. Such omissions have affected not only the interpretation of the case, but also have impeded the Panamanian right to seek a resolution in an expeditious manner.

79. Panama further contends that the Tribunal has the competent authority to deal with this matter because the dispute concerns the interpretation and application of several provisions of the Convention and its written declarations, in accordance with Article 287, that have been made by both States (p. 11, paragraphs 49-51).

80. Despite objections by Italy based on the issues of diplomatic protection, a time bar, an estoppel, and the exhaustion of local remedies, Panama asserts that its claim *remains* admissible because the M/V Norstar is registered and enjoys Panamanian nationality (p. 12, paragraphs 54-58) and because, by notifying Italy of its *intentions* as early as 2001, Panama extended any time limitation period in effect, thus eliminating any question of a time bar (p.13-14, paragraphs 59-66).

Panama also would like to point out that estoppel does *not necessarily* apply when a claimant decides against filing a Prompt Release request to let the process of local remedies take its course, but rather depends on whether the complaining party *relied* on the statement of the party making the representation which, in this case, it did not (p. 15, paragraphs 67-70).

Finally, Panama maintains that the need to exhaust local remedies is not applicable in this case, just as it was not in the *Saiga Case*, due to the *lack of a jurisdictional connection* between Italy, as the arresting State, and the Panamanian vessel, M/V Norstar, because the arrest was based upon activities that the vessel carried out in international waters beyond the territorial sea of Italy (p. 16-17, paragraphs 71-75).

Although many jurisdictions have established fixed rules regarding the implementation of prescription, this is not the case with international public law. Specifically, there is no article in the UNCLOS regulations that delineates a time restriction regarding the bringing of cases. Thus, Panama is of the opinion that, in the absence of a clearly stated definition of legal deadlines, the Time Bar objection does not hold.

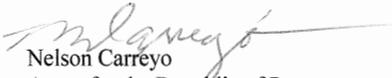
Panama, 6 May 2016



Nelson Carreyó
Agent for the Republic of Panama

CERTIFICATION

In accordance with articles 63, paragraph 1, and 64, paragraph 3, of the Rules of the Tribunal, I herewith certify that the documents reproduced in the Annexes to these Observations and Submissions are true copies of the documents referred to and that the translations provided by the Republic of Panama are accurate.



Nelson Carreyo
Agent for the Republic of Panama
6 May 2016

LIST OF ANNEXES

ANNEX	TITLE
Annex 1	Letter written in the Spanish language received on 6 August 2004 by Elia Castro on behalf and with the seal of the Italian Embassy in Panama.
Annex 2	Letter written in the French language received on 3 August 2004 by Elia Castro on behalf and with the seal of the Italian Embassy in Panama.
Annex 3	Letter written in the English language received on 3 August 2004 by Elia Castro on behalf and with the seal of the Italian Embassy in Panama.
Annex 4	Letter written in the Italian language received on 3 August 2004 by Elia Castro on behalf and with the seal of the Italian Embassy in Panama.
Annex 5	Note Verbale dated 25 January 2005 addressed by the Italian Embassy in Panama to the Ministry of Foreign Affairs of Panama.
Annex 6	Petition by Dr.. Nelson Carreyó dated 23 August, 2004 in which he requests to the Ministry of Foreign Affairs of Panama, a declaration accepting the jurisdiction of the International Tribunal for the Law of the Sea and that the letter of complaint be sent through diplomatic channels.
Annex 7	Application dated 29 April, 2016 addressed to the Ministry of Foreign Affairs of Panama in which Nelson Carreyo, as Agent for the Republic of Panama, requests a Certification to be filed as evidence in this case.
Annex 8	Certification dated 4 May 2016 issued by the Ministry of Foreign Affairs-Directorate of Legal Affairs and Treaties of the Republic of Panama as a response to the request filed by Nelson Carreyó as Agent of Panama.