

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2018

Public sitting

held on Thursday, 13 September 2018, at 3 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President Jin-Hyun Paik presiding

THE M/V “NORSTAR” CASE

(Panama v. Italy)

Verbatim Record

<i>Present:</i>	President	Jin-Hyun Paik
	Judges	Tafsir Malick Ndiaye
		José Luís Jesus
		Jean-Pierre Cot
		Anthony Amos Lucky
		Stanislaw Pawlak
		Shunji Yanai
		James L. Kateka
		Albert J. Hoffmann
		Zhiguo Gao
		Boualem Bouguetaia
		Elsa Kelly
		Markiyán Kulyk
		Alonso Gómez-Robledo
		Tomas Heidar
		Óscar Cabello Sarubbi
		Neeru Chadha
		Kriangsak Kittichaisaree
		Roman Kolodkin
		Liesbeth Lijnzaad
	Judges <i>ad hoc</i>	Tullio Treves
		Gudmundur Eiriksson
	Registrar	Philippe Gautier

Panama is represented by:

Dr Nelson Carreyó Collazos Esq. LL.M, Ph.D., ABADAS (Senior Partner),
Attorney at Law, Panama,

as Agent;

and

Dr Olrik von der Wense, LL.M., ALP Rechtsanwälte (Partner), Attorney at Law,
Hamburg, Germany,
Mr Hartmut von Brevern, Attorney at Law, Hamburg, Germany,

as Counsel;

Ms Mareike Klein, LL.M., Independent Legal Consultant, Cologne, Germany,
Dr Miriam Cohen, Assistant Professor of International Law, University of
Montreal, member of the Quebec Bar, Montreal, Canada,

as Advocates;

Ms Swantje Pilzecker, ALP Rechtsanwälte (Associate), Attorney at Law,
Hamburg, Germany,
Mr Jarle Erling Morch, Intermarine, Norway,
Mr Arve Einar Morch, Manager, Intermarine, Norway,

as Advisers.

Italy is represented by:

Mr Giacomo Aiello, State Attorney, Italy,

as Co-Agent;

and

Dr Attila Tanzi, Professor of International Law, University of Bologna, Italy,
Associate Member - 3VB Chambers, London, United Kingdom,

as Lead Counsel and Advocate;

Dr Ida Caracciolo, Professor of International Law, University of Campania "Luigi
Vanvitelli", Caserta/Naples, Member of the Rome Bar, Italy,

Dr Francesca Graziani, Associate Professor of International Law, University of
Campania "Luigi Vanvitelli", Caserta/Naples, Italy,

Mr Paolo Busco, Member of the Rome Bar, European Registered Lawyer with
the Bar of England and Wales, 20 Essex Street Chambers, London, United Kingdom,

as Counsel and Advocates;

Dr Gian Maria Farnelli, University of Bologna, Italy,
Dr Ryan Manton, Associate, Three Crowns LLP, London, United Kingdom,
Member of the New Zealand Bar,

as Counsel;

Mr Niccolò Lanzoni, University of Bologna, Italy,
Ms Angelica Pizzini, Roma Tre University, Italy,

as Legal Assistants.

1 **THE PRESIDENT:** Good afternoon. At the end of the morning sitting, the Agent of
2 Panama, Mr Carreyó, was conducting his cross-examination of the expert,
3 Mr Esposito. Before we continue, I wish to remind all Agents and Counsel examining
4 the experts this afternoon to wait until the interpretation of the expert's answer into
5 French is completed before asking the next question. I now give the floor again to
6 Mr Carreyó to continue the cross-examination.

7
8 **MR CARREYÓ:** Thank you, Mr President. Good afternoon to everybody. I hope you
9 have had a nice lunch.

10
11 **Cross-examined by MR CARREYÓ (Continued)**

12
13 **MR CARREYÓ:** Mr Esposito, I assume you are aware of our time constraints, and
14 I would therefore kindly appreciate, if it is possible, to go to the point of my questions
15 and to be as concise as possible.

16
17 Mr Esposito, is it lawful to ground an order of arrest on one reason, and then to act
18 differently?

19
20 **MR ESPOSITO** (*Interpretation from French*): Once again, I don't understand the
21 question you are asking me. There is a statement of grounds. The court set out the
22 grounds and it acted in accordance with the rules of the law. So what is the
23 inconsistency that you see in the conduct of the court? If you tell me that, then I can
24 answer your question.

25
26 **MR CARREYÓ:** Thank you, Mr Esposito. I did not refer to any judge, but in order to
27 clarify, I would refer to the Prosecutor – the Decree of Seizure particularly.

28
29 **MR ESPOSITO** (*Interpretation from French*): The Italian Public Prosecutor issued a
30 Decree of Seizure, a Decree of Seizure with its grounds. Panama had the right to
31 challenge the court's grounds, which you did not do. So, what is the conduct of the
32 court that is not acceptable, that did not comply with the law? That is what I do not
33 understand.

34
35 **MR CARREYÓ:** Again, Mr Esposito, I am not referring to any judge; I am just
36 referring to the Public Prosecutor – but let us move on. Was there any sense of
37 urgency to arrest the "Norstar"?

38
39 **MR ESPOSITO** (*Interpretation from French*): Certainly, certainly. If the court
40 considers it necessary to have recourse to a Decree of Seizure, it is in the very
41 nature of things that it must execute the seizure immediately because it is an act that
42 cannot be repeated afterwards. It is an act with a view to searching for evidence. The
43 Italian Public Prosecutor issued the probative decree with a view to searching for
44 evidence. He was seeking evidence of the crime which he was prosecuting.

45
46 **MR CARREYÓ:** Mr Esposito, can you tell me what did I ask you? Can you tell me
47 what just was asked to you?

48
49 **MR ESPOSITO** (*Interpretation from French*): I think I have answered that the Decree
50 is a surprise act. It is like a phone tap. If you need to carry out a phone tap, you do

1 not wait for the person to get off the telephone. If you intend to tap a phone, you do it
2 immediately. It is the same thing that the Italian Public Prosecutor did with the
3 probative Decree of Seizure. It is a matter of preventive secrecy.

4
5 **MR CARREYÓ:** Thank you. My question did not refer to surprise but to urgency. Do
6 you know the difference between surprise and urgency?
7

8 **MR ESPOSITO** (*Interpretation from French*): I also worked at the Public Prosecutor's
9 Office for many years. If I needed to execute an act, an act that I could not repeat
10 again ... The problem is that it is an act that you cannot repeat again. You have to
11 take the property for evidentiary purposes. The evidence was the fuel on the vessel.
12 We cannot get into the grounds of the court along the lines you wish.
13

14 **MR CARREYÓ:** Mr Esposito, could the Prosecutor have foreseen that damages
15 would probably result with the arrest in this case?
16

17 **MR ESPOSITO** (*Interpretation from French*): I think he would have needed a crystal
18 ball to foresee the damage. The judge has to act in accordance with the rules of the
19 law and the rules of procedure. If he did that, then I don't understand what damage
20 could arise from a Decree of Seizure which had been executed in a Spanish bay,
21 outside the sea ... in Spanish territorial waters. What damage?
22

23 **MR CARREYÓ:** Did he have that crystal ball?
24

25 **MR ESPOSITO** (*Interpretation from French*): No, I do not think he had the crystal
26 ball – I don't think so.
27

28 **MR CARREYÓ:** Mr Esposito, does Italian law allow whole files of criminal cases to
29 be requested as evidence to be used in another jurisdiction?
30

31 **MR ESPOSITO** (*Interpretation from French*): You will have to explain to me what
32 files you are referring to. Italy can use all the documents available to request judicial
33 cooperation from another State. I am not quite sure what the purpose of your
34 question is. I cannot answer.
35

36 **MR CARREYÓ:** Let me explain to you. A file has different documents, so I want to
37 know if in Italy it is lawful to request the whole file with all the documents to be used
38 in another case or jurisdiction – the whole files, not just one or two particular
39 documents. It is possible?
40

41 **MR ESPOSITO** (*Interpretation from French*): Yes, I understand your question. The
42 law provides for this – the law. We can talk about whether this law is appropriate,
43 and I am willing to do so, but in reality it must be acknowledged that the law makes it
44 possible to transfer files from one case to another, having due regard to the rules, of
45 course. But it is provided for by the law.
46

47 **MR CARREYÓ:** What is the juridical value of decisions of Prosecutors that have
48 been revoked?
49

1 **MR ESPOSITO** (*Interpretation from French*): Have they been revoked by the same
2 court or by another jurisdiction, by another judge?

3
4 **MR CARREYÓ**: Whatever you want to elect.

5
6 **MR ESPOSITO** (*Interpretation from French*): If you are referring to the matter of
7 damage, I have already explained earlier – but perhaps I have to explain once
8 again – that the legitimacy of each act must be assessed in the light of the context in
9 which the matter arises and the stage of the procedure. If a probative or preventive
10 decree, whatever, is subsequently revoked, this means that the situation, the
11 evidence, has changed. If the situation has changed, it is not the same situation as
12 before. So there is no illegitimacy on the part of the court. If you tell me that courts
13 have acted deceitfully, with serious misconduct, then I would concur, but if there is
14 no fault or deceit, then the legitimacy of the act has to be established in the current
15 state of the facts, the situation as it stands, with the evidence it has at that time and
16 in the light of the fact that that evidence has changed over time. In any moment in
17 time there is a situation that is different from the next situation.

18
19 **MR CARREYÓ**: So in this case do you believe that there was something wrong that
20 was done by Mr Landolfi, the Public Prosecutor that was the reason for the
21 revocation of this order?

22
23 **MR ESPOSITO** (*Interpretation from French*): As far as I know, he never revoked his
24 order – never. There has been no revocation of the order which he made, the Public
25 Prosecutor, Landolfi. There were other authorities that revoked the order he had
26 made. If you are referring to the fact that there was a decision of acquittal, a decision
27 of acquittal is something entirely different. The evidence required to convict a person
28 is not the same as for issuing a decree of seizure or some other decree, including a
29 decree to deprive someone of his personal liberty.

30
31 **MR CARREYÓ**: Mr Esposito, I will refer now to a piece of evidence that has been
32 filed as Annex 7 to the Memorial. It is a letter dated 4 September 1998, issued by the
33 Service of Diplomatic Litigation Treaties and Legislative Affairs of the Ministry of
34 Foreign Affairs of Italy in the case concerning the arrest of *M/V "Spiro F"*. Are you
35 familiar with that document?

36
37 **MR ESPOSITO** (*Interpretation from French*): I am familiar with Annex 8, but if you
38 tell me what Annex 7 is, I will be able to follow you. But I recall Annex 8; it is the
39 letter which Mr Landolfi wrote saying that the security could be paid and that if the
40 security was paid, the decree would be revoked.

41
42 Annex 7, I don't remember. If you tell me what it is about, I can talk about it.

43
44 **MR CARREYÓ**: If I told you it was a letter issued by the Service of Diplomatic
45 Litigation, Treaties and Legislative Affairs of the Ministry of Foreign Affairs of Italy?

46
47 **MR ESPOSITO** (*Interpretation from French*): Very well.

48
49 **MR CARREYÓ**: In this letter ---

1 **MR AIELLO:** I am sorry, Mr President, and distinguished Members of the Tribunal,
2 but once again we are speaking about the “*Spiro F*” but it is not the object of this
3 case; so I think that this question is not admissible.
4

5 **THE PRESIDENT:** Thank you, Mr Aiello. I must disagree with you on this issue
6 because this incident was already referred to in the pleadings, and also I do not
7 consider this incident is totally unrelated or irrelevant to the present case. Therefore,
8 I will allow the Agent of Panama to continue, but at the same time I ask the Agent of
9 Panama to focus on the matter which has been dealt with by the expert in his
10 examination.
11

12 Further, Mr Esposito has come to this hearing as an expert on Italian law. He was
13 not involved with the seizure of *M/V “Norstar”*; therefore, I hope you will focus your
14 cross-examination on the matters over which Mr Esposito has expertise and
15 experience.
16

17 Mr Carreyó, you may continue.
18

19 **MR CARREYÓ:** Thank you, Mr President. Mr President, this is a document that is on
20 the files, and the expert seems to know it, so I think that he might answer my
21 questions.
22

23 In this document, Mr Esposito, it says that in the Decree of 13 July you said: “The
24 arrest of the boat has been done in the contiguous zone, subject to the full
25 jurisdiction of the State regarding fiscal and customs crimes.”
26

27 Would you agree, Mr Esposito, with what was just read – the quotation? I will read it
28 again to you: “The arrest of the boat has been done in the contiguous zone, subject
29 to the full jurisdiction of the State regarding fiscal and customs crimes.”
30

31 **MR ESPOSITO** (*Interpretation from French*): I don’t know what document you are
32 referring to. I have read everything that was relevant to my statement from a legal
33 point of view, as the President has made clear. In any case, what I know is that the
34 first document relating to the “*Norstar*” is the Decree of 11 August. Not July. So, any
35 document which relates to the month of July falls outside my knowledge and is not
36 relevant to the case. The Tribunal will have to decide on this point.
37

38 In any case, we have the Decree of 11 August and we do not know where the vessel
39 was at that time. What is certain is that the Decree was executed in Palma de
40 Mallorca in September, so I am not quite sure what you are referring to, when I am
41 not familiar with Annex 7. And I also believe – and just talking as an expert, not as a
42 judge – he is talking about the Service of Diplomatic Litigation and referring to the
43 “*Spiro F*”, but it is up to the Tribunal to decide this. It is a matter of equality of arms
44 between you and the Italian delegation, of which I am not a member.
45

46 **MR CARREYÓ:** In this same document it says:
47

48 We take this opportunity to remember you the importance to comply with the
49 international rules, being the case a very delicate question, which involves
50 from one side the custom interests of Italy, but on the other side the respect of

1 the Maltese flag interests, and if there is any small mistake your action won't
2 get any advantage.

3
4 Could you make this statement applicable to the case of the "Norstar" according to
5 your opinion?

6
7 **MR ESPOSITO** (*Interpretation from French*): I can only give you my opinion, and
8 I would say straight away: no, it refers to Malta and it refers to the "Spiro F". I think it
9 is self-evident that it refers to the "Spiro F". As I said, I do not have the competence
10 to deal with the questions you are asking me. I can give you any information you like
11 on the law or as regards international judicial cooperation, but in terms of the merits
12 of the case, I am indifferent. To be frank, the fact that I am Italian has no bearing, of
13 course.

14
15 **MR CARREYÓ**: Mr Esposito, I will now refer to a document that is on the files in
16 Annex 12 of the Panamanian Reply. I will read it all to you:

17
18 The matter in reference has initiated in the fall of 2001 with the communication
19 hereby made by a Panamanian lawyer, Mr Nelson Carreyó, related with a
20 claim of damages due to the arrest of the "Norstar"...

21
22 For understandable reasons this information has been obtained and detailed
23 from the Hamburg Tribunal in a confidential manner ...

24
25 The procedure for freedom of ... has been established in article 292 of the
26 Convention of Law of the Sea 1992 was conceived for urgent situations while
27 in the referenced case the vessel is under arrest in Spain three years ago.
28 [Party's own translation]

29
30 Would you, representing Italy, have made available this document to this Tribunal?

31
32 **MR ESPOSITO** (*Interpretation from French*): Well, I have to ask you a question then.
33 Is this a letter you wrote to the Service of Diplomatic Litigation? You wrote a letter to
34 the Service of Diplomatic Litigation – right?

35
36 **MR CARREYÓ**: No, Mr Esposito, I explained to you that this was a letter sent by the
37 Service of Diplomatic Litigation, Treaties and Legislative Affairs of the Ministry of
38 Foreign Affairs of Italy to the Public Prosecutor – received by the Public Prosecutor.

39
40 **MR ESPOSITO** (*Interpretation from French*): Well, an initiative taken by the Service
41 of Diplomatic Litigation. I do not know why it did this, but it is not usual for the
42 Service of Diplomatic Litigation, a government organ, to turn to a court. And what is it
43 asking the court? I do not understand what the Service of Diplomatic Litigation is
44 asking the court in this document. What does it say? If you give me the document,
45 I can answer you, but I am not Pico della Mirandola who remembers everything.

46
47 **MR CARREYÓ**: It has been a pleasure. Thank you very much, Mr Esposito.

48
49 Mr President, I pray you will pass the floor to Ms Cohen, please.

50

1 **THE PRESIDENT:** Thank you, Mr Carreyó, I give the floor to Ms Cohen to continue
2 the cross-examination of the expert.

3
4 **Cross-examined by MS COHEN**

5
6 **MS COHEN:** Thank you, Mr Esposito, for your testimony here today. I will start with
7 my first question. Respectfully, Mr Esposito, with a yes or no answer, in your opinion,
8 are Italian authorities bound by Italy's international law obligations?

9
10 **MR ESPOSITO** (*Interpretation from Italian*): Certainly. If that was the question,
11 certainly they are bound.

12
13 **MS COHEN:** Would you say that the Public Prosecutor –

14
15 **THE PRESIDENT:** Ms Cohen, I am sorry to interrupt you but there is some problem
16 with the interpretation. Can you continue?

17
18 **MS COHEN:** Yes, certainly, Mr President. I will repeat my question. Would you say
19 that the Public Prosecutor should be aware of the rules of international law that are
20 binding on Italy and that a decree of seizure issued by a Public Prosecutor must
21 comply with Italy's international law obligations?

22
23 **MR ESPOSITO** (*Interpretation from Italian*): Naturally, if you do not tell me what is
24 the breach, it is difficult for me because I cannot answer, because if you ask me if
25 international law is binding, my answer is yes, but if you do not tell me what is the
26 breach that we are talking about, I cannot reply; but if you tell me of which violation
27 or breach we are talking, then okay, we can talk.

28
29 **MS COHEN:** Thank you, Mr Esposito. I am satisfied with the answer. I will move on
30 to my next question. I will ask you a question about the relevant activities. We heard
31 yesterday counsel for Italy state – and I quote the relevant part –

32
33 The suspected criminal scheme which was investigated basically consisted of
34 three elements: first, loading the tanker with fuel purchased from the Italian
35 port of Livorno in exemption of excise duty and VAT; second, the subsequent
36 resale to Italian and other European leisure boats stationed on the high seas
37 off the coast of the Italian city of San Remo; third, the re-entry of the leisure
38 boats into Italian territory and the internal waters with fuel on board, thus
39 potentially eluding the payment of the fiscal duties due under Italian law.

40
41 Allow me to focus on the third element as stated by learned counsel of Italy, that is,
42 I repeat: “the re-entry of the leisure boats into Italian territory and the internal waters
43 with fuel on board, thus potentially eluding the payment of the fiscal duties due under
44 Italian law.” My question is: to your knowledge, Mr Esposito, what evidence, if any,
45 was available to the Public Prosecutor that the fuel sold to leisure boats on the high
46 seas re-entered Italian territory?

47
48 **MR ESPOSITO** (*Interpretation from Italian*): I am not the judge, but what you are
49 saying, it seems to me, is hypothetical. A breach occurred and you are prosecuting it
50 accordingly, but you cannot ask me what was done and why.

1 **MS COHEN:** I understand, Mr Esposito. Thank you. My question was whether you
2 had any knowledge of the evidence that was available, since it is part of the criminal
3 scheme as mentioned by counsel for Italy. I move on to another question. Again to
4 your knowledge, would you know if the leisure boats that I have just mentioned were
5 prosecuted in Italy?
6

7 **MR ESPOSITO** (*Interpretation from Italian*): I repeat, I am not familiar with the
8 procedures, and the questions you are asking lie outside my field of competence.
9

10 **MS COHEN:** Thank you. In your opinion, would you say that it is a possibility that
11 one of the motivations for the issue of the Decree of Seizure was to stop the
12 “Norstar”’s bunkering operations on the high seas?
13

14 **MR ESPOSITO** (*Interpretation from Italian*): The same question, same answer, and
15 I still cannot answer it. Mr President, I believe that we are now outside the purview of
16 the questions that were originally put to me in my capacity as an expert.
17

18 **MS COHEN:** Please allow me to explain. My question is simply because the Decree
19 of Seizure mentions “The repeated use of adjacent high seas by the foreign ship was
20 found to be exclusively aimed at affecting Italy’s and the European Union’s financial
21 interests”, so my question was to try to obtain your opinion but I take your answer.
22

23 Thank you, Mr Esposito, for your testimony. Thank you, Mr President. I have no
24 further questions.
25

26 **THE PRESIDENT:** Thank you, Ms Cohen. An expert who was cross-examined by
27 the other Party may be re-examined by the Party who had called the expert.
28 Therefore, I ask the Co-Agent of Italy whether Italy wishes to re-examine the expert
29 and, if yes, who will conduct the re-examination.
30

31 **MR AIELLO:** No, nothing, Mr President.
32

33 **THE PRESIDENT:** Thank you, Mr Aiello. Pursuant to article 80 of the Rules of the
34 Tribunal, the President and Judges of the Tribunal may also put questions to the
35 expert. I was informed that Judges Lijnzaad, Kittichaisaree, Heidar and Pawlak wish
36 to put questions to Mr Esposito. I therefore give the floor first to Judge Lijnzaad to
37 put her questions.
38

39 **JUDGE LIJNZAAD:** Thank you, Mr President. Good afternoon, Mr Esposito, and
40 thank you for all your efforts at clarifying matters to the Tribunal this afternoon.
41

42 I would like to ask you a few details with respect to Italian law and procedure
43 concerning the arrest of ships. I have three questions but it is okay if you mention
44 that this may not be exactly your expertise. I am wondering whether, when a ship is
45 arrested in Italy in a criminal case, a report is made of that arrest, like a procès-
46 verbale, by the authority executing the arrest and, if so, what kind of information is
47 included in the report? Does it, for instance, say something about the cargo?
48

49 **MR ESPOSITO** (*Interpretation from Italian*): Thank you for this question, because
50 actually I can clarify a few things. In Italy the probative seizure can be either done on

1 the initiative of the Public Prosecutor or on the initiative of the judicial police, so
2 actually your question crosses the two questions. I am going to explain it better. The
3 judicial police in Italy work with the Public Prosecutor's office. In each Public
4 Prosecutor's office there is an office of judicial police, and in cases where matters
5 are very urgent, or in particular cases, the judicial police actually can be made aware
6 of a crime and can proceed to a probative seizure. In this case the judicial police
7 officer must write a report in which he must, for example, write in detail everything –
8 for example, the nomination of a guardian or a custodian or other details. For
9 example, it is also possible to impose a security on the custodian and the security
10 can be imposed in order, for example, to avoid more damages. This seizure
11 proceeding that is made by the judicial police must be confirmed by the Public
12 Prosecutor. So, as you very well say, we need to have a report and then the Public
13 Prosecutor must read the report and then he can confirm the seizure.

14
15 After all that, we can do an appeal, we can do the re-examination and everything, but
16 again I want to repeat that this monolithic block that I was speaking about, which is
17 represented by the Public Prosecutor and the people who work with him, must
18 actually respect all the articles of the Criminal Code, for example article 353 and
19 others, and everything is regulated by the Criminal Code. There is not only the
20 seizure order. We do have the decree of seizure, but I think you are referring to the
21 execution of the seizure, which actually happened in Spain based on the rogatory
22 that was issued by the magistrate. When there is a rogatory as an international rule,
23 everything is regulated. The request is regulated by the demanding State, but the
24 execution is actually regulated according to the laws of the State in which this order
25 is being enforced.

26
27 **JUDGE LIJNZAAD:** Do you know what happens with the ship's documents such as
28 the papers relating to its IMO certificate or class certificate or logbook when the ship
29 is arrested in Italy? Do they stay on board or go elsewhere?

30
31 **MR ESPOSITO** (*Interpretation from Italian*): The main problem lies in the custodian
32 nomination, which means that we need actually to impose a binding link. That means
33 that the asset is not available any more; it is arrested. Together with this, we need to
34 choose a custodian. All of these proceedings are then in the hands of the custodian,
35 and if there is a problem, the custodian can talk to the Public Prosecutor in order to
36 ask what is the line of action that the custodian should follow, and the same thing
37 goes for the upkeep. If, for example, the custodian cannot go ahead with the upkeep
38 of the boat, then the Public Prosecutor is still the decision-maker of the situation. The
39 problem that we had here was that we had two different jurisdictions in charge. We
40 had Italy requesting the arrest and Spain executing the order, so that is why we had
41 these problems.

42
43 **JUDGE LIJNZAAD:** My final question to you is about the 1959 Council of Europe
44 Convention on Mutual Assistance in Criminal Matters. When Italy would act on a
45 rogatory letter and take action at the request of another State, after action has been
46 taken and the ship arrested, would a report be sent to the requesting State or
47 perhaps also to the flag State?

48
49 **MR ESPOSITO** (*Interpretation from Italian*): I do not know this rule. What is the date
50 of the Convention?

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9

JUDGE LIJNZAAD: It is the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters, which is at the basis of Spain's –

MR ESPOSITO (*Interpretation from Italian*): Yes, yes, I understand. This is an act of the European Union. Yes, of course we need to write a report, absolutely.

JUDGE LIJNZAAD: Does it go to the requesting State or does it also go to the flag State? Do you know?

1 **MR ESPOSITO** (*Interpretation from Italian*): I do not know, I am sorry. I am not
2 aware. I do not know this.

3
4 **JUDGE LIJNZAAD**: Thank you very much, Mr Esposito.

5
6 **THE PRESIDENT**: Judge Kittichaisaree.

7
8 **JUDGE KITTICHAISAREE**: Thank you very much, President.

9
10 Mr Esposito, thank you very much for being here. My questions centre on your
11 expertise in Italian law as practised in judicial operations. You mentioned in your
12 answer to my colleague that there are two different jurisdictions. I would like to ask
13 you about the normal practice or procedure in relation to Italy's request to a foreign
14 government to enforce a decree of seizure. Does the foreign authority have to make
15 an inventory of the conditions of the object of seizure at the time of the seizure, and
16 does it have to provide a copy of the inventory to the Italian authority that has
17 requested the seizure?

18
19 **MR ESPOSITO** (*Interpretation from Italian*): Yes, of course. The authority of the
20 State that needs to execute the order must actually respect all these laws. I do not
21 know Spanish law but I am sure that in the case of seizure there is an inventory that
22 is made. I am sure about this, but again I am not an expert in Spanish law. I can only
23 imagine the general principle of European law. The country to whom the rogatory
24 has been sent must of course write a report and give all the information concerning
25 the vessel. The vessel's captain must give all the information and must help the
26 country to execute the order in this case.

27
28 **JUDGE KITTICHAISAREE**: So, from the perspective of Italian law, your answer is:
29 yes, according to the general principle of European law. For how long does the
30 Italian authority in question keep a record of an inventory and where? What is the
31 normal practice that you have?

32
33 **MR ESPOSITO** (*Interpretation from Italian*): If it is a seizure that has happened in
34 Italy, we have a series of rules that are inserted not only in the Code but also we
35 have many regulations according to which all the information must be kept by the
36 authorities, but this is actually based on Italian law. I do not know concerning
37 Spanish law. This is what I can tell you about Italian law.

38
39 **JUDGE KITTICHAISAREE**: Thank you, Mr President.

40
41 **THE PRESIDENT**: Thank you. Judge Heidar.

42
43 **JUDGE HEIDAR**: Thank you, Mr President.

44
45 Mr Esposito, on 11 March 1999 the Public Prosecutor of the Court of Savona
46 requested the Italian Embassy in Oslo to inform the owner of the *M/V "Norstar"* that it
47 could be released on payment of a bond that amounted to 250,000,000 lira,
48 approximately €129,000. My question is of a general nature and not limited to the
49 *M/V "Norstar"*. Based on your experience, to what extent does the amount of a bond
50 reflect and indicate the estimated value of the goods that had been seized?

1 **MR ESPOSITO** (*Interpretation from Italian*): You refer to Annex 8, which has been
2 introduced by Panama. On the same day as the preventative seizure is ordered, so it
3 is a decree for which the vessel can be confiscated or for which the vessel actually
4 may be considered as a guarantee for paying the trial expenses or maybe the
5 injuries, so, on the same day, the PM writes to the Oslo Embassy and says that if the
6 interested people want to free the vessel, they must pay €250,000. So it is clear that
7 the Public Prosecutor needed to use the advice of an expert because he did not
8 have the knowledge, the means, to evaluate the value, so for other vessels the
9 security has been paid, but the evaluation that is done by the judge is based on the
10 preventative seizure, which means what can be future needs, which means that we
11 need to pay expenses, trial expenses, and so for this we need to have the opinion of
12 an expert in order to understand how much we need to pay.

13

14 **JUDGE HEIDAR**: Thank you.

15

16 **THE PRESIDENT**: Judge Pawlak.

17

18 **JUDGE PAWLAK**: Thank you, Mr President.

19

20 Good afternoon, sir. I have one simple question on Italian law. You spoke today
21 about custodians. Under Italian law, who is responsible for taking care of the foreign
22 ship while it is temporarily arrested as a means for criminal investigation? Who is
23 responsible?

24

25 **MR ESPOSITO** (*Interpretation from Italian*): We are giving the opposite hypothesis,
26 which means that a foreign authority asks Italy about arresting a vessel. Is that it?
27 Did I understand your question? I am asking you, if you will allow me, whether this is
28 the question.

29

30 **JUDGE PAWLAK**: The question is simple. If Italy arrests a ship, who is responsible
31 for taking care of the ship – the owner, the Italian authorities, other authorities?

32

33 **MR ESPOSITO** (*Interpretation from Italian*): The general rule is whoever has issued
34 the seizure order. It can be a Public Prosecutor but it can also be a judge. In this
35 case the Public Prosecutor is the chief of the situation. He is the master of the
36 situation, so the Public Prosecutor is in charge. He is in charge of the whole
37 situation, naturally, and I can also give you more precise information. According to
38 the Code, there is a rule for each phase of the procedure, so it is important to
39 nominate a guardian to write all the reports, to seal the reports, and then naturally
40 the custodian becomes the person in charge. The responsibility actually moves from
41 the Public Prosecutor to the custodian, and if the custodian has problems that he
42 cannot solve by himself, in this case the custodian can ask the Public Prosecutor
43 what he needs to do, because the Public Prosecutor is still the person in charge until
44 the trial is in the investigation phase. However, after that, the judge actually becomes
45 the person in charge, and then if the custodian has problems, instead of referring to
46 the Public Prosecutor, he needs to refer to the judge.

47

48 **JUDGE PAWLAK**: Thank you.

49

1 **THE PRESIDENT:** Thank you, Mr Esposito, for your testimony for a long time. Your
2 examination is now finished and you may withdraw, sir.

3
4 *(The witness withdrew)*

5
6 I understand that Italy now wishes to examine the next expert. May I ask the
7 Co-Agent of Italy again to confirm this?

8
9 **MR AIELLO:** Yes, Mr President.

10
11 **THE PRESIDENT:** Thank you, Mr Aiello. The Tribunal will then proceed to hear the
12 expert Mr Matteini. He may now be brought into the courtroom.

13
14 **THE PRESIDENT:** I call upon the Registrar to administer the solemn declaration to
15 be made by the expert.

16
17 **THE REGISTRAR:** Good afternoon, Mr Matteini. Can you hear the interpretation?

18
19 **MR MATTEINI** *(Interpretation from Italian):* Yes.

20
21 **THE REGISTRAR:** Mr Matteini, under the Rules of the Tribunal, an expert is
22 required to make a solemn declaration. You have been provided with the text of the
23 declaration and I understand that you will make the declaration in English. May I then
24 invite you to make the declaration?

25
26 *(The witness made the solemn declaration)*

27
28 **THE REGISTRAR:** Thank you, Mr Matteini, you may now be seated. Mr President.

29
30 **THE PRESIDENT:** Thank you, Mr Registrar.

31
32 Mr Matteini, good afternoon. Can you hear the interpretation?

33
34 **MR MATTEINI** *(Interpretation from Italian):* Yes.

35
36 **THE PRESIDENT:** Before we proceed to your testimony, let me briefly explain the
37 arrangements we have made for interpretation. The Tribunal's official languages are
38 English and French. Therefore, when you make your statement in Italian, this will
39 have to be interpreted by our interpreters first into English and then from English into
40 French. As you can imagine, this is a complex task. You can help our interpreters by
41 speaking slowly so that they can follow you. Also, you should know that there will a
42 pause after each of your answers before the next question is put to you so that the
43 interpretation can be completed. I hope that is clear.

44
45 I understand that the examination of the expert will be conducted by Mr Aiello. You
46 have the floor again, Mr Aiello.

47
48 **MR AIELLO:** Yes, Mr President. Thank you very much.

49
50 **Examined by MR AIELLO**

1 **MR AIELLO:** Mr Matteini, would you kindly explain your professional experience in
2 the naval evaluation sector?
3

4 **MR MATTEINI** (*Interpretation from Italian*): I am a sea captain, and since 1982 I am
5 part of the national register for experts for naval evaluation – my activity is normally
6 done on behalf of insurance companies – and I am also an expert for the Tribunal in
7 Florence.
8

9 **MR AIELLO:** Have you assessed the value of the “*Norstar*” at the time of the
10 execution of the seizure?
11

12 **MR MATTEINI** (*Interpretation from Italian*): Yes, I did.
13

14 **MR AIELLO:** Would you mind briefly explaining the criteria and methodology you
15 applied for assessing such value?
16

17 **MR MATTEINI** (*Interpretation from Italian*): It was not possible for me to inspect the
18 vessel, so I had to use estimates that are normally used in these cases. That means
19 that, based on available data, I decided what the dry weight of the vessel was,
20 considering the different materials – ferrous, non-ferrous, plastics – and then
21 I calculated the average price – and these are market prices – also taking into
22 account labour that is required for this.
23

24 **MR AIELLO:** On the basis of the above methodology, what is your assessment of
25 the value of the “*Norstar*” at the time of its seizure?
26

27 **MR MATTEINI** (*Interpretation from Italian*): Approximately 250 million of old lira.
28

29 **MR AIELLO:** That means in euro?
30

31 **MR MATTEINI** (*Interpretation from Italian*): Well, if you take into account the
32 exchange rate but also the effect or the impact that the euro had in Italy on the cost
33 of living, we could consider it at a par, so 250,000 euro.
34

35 **MR AIELLO:** Does this assessment consider the technical updates and adjustments
36 required by international conventions?
37

38 **MR MATTEINI** (*Interpretation from Italian*): Obviously, yes, and I would like to refer
39 more precisely to labour costs, all that had to be done would have been necessary in
40 order to bring about the necessary work in order to comply with the measures that
41 are required.
42

43 **MR AIELLO:** What technical updates and adjustments did the “*Norstar*” have to
44 undergo?
45

46 **MR MATTEINI** (*Interpretation from Italian*): Well, all the updates that would have
47 been necessary for the “*Norstar*” would have entailed a double hull or a technical
48 equivalent, so a double hull. That means there is a partial modification of the
49 MARPOL that was introduced in 1992, and this innovation for existing ships, so had
50 been built in earlier years, before it came into force, not just the duty to comply, but

1 also a plan with timings in order to do these updates that would be referred to the
2 year in which the boat or the vessel was built.

3
4 **MR AIELLO:** What was in your experience the potential working life of the “Norstar”?

5
6 **MR MATTEINI** (*Interpretation from Italian*): Well, the average life of a vessel of the
7 same type, so similar to the “Norstar”, would in general be estimated at around 20-25
8 years. Beyond this period of time, normally it is substituted with another vessel with
9 similar characteristics, but obviously newer, so the vessel can be subject to works
10 that would increase in terms of the operability of the vessel, so these improvements
11 would lengthen the lifespan of the vessel. It is a sort of modernization – making it
12 younger, if you like.

13
14 **MR AIELLO:** Are you aware whether the “Norstar” underwent any renewal action?

15
16 **MR MATTEINI** (*Interpretation from Italian*): On the basis of the research that I did,
17 the answer is no.

18
19 **MR AIELLO:** In your professional opinion, could the “Norstar” have been used for
20 purposes other than the ones for which it was operated in 1998?

21
22 **MR MATTEINI** (*Interpretation from Italian*): Personally, I would say this was not
23 possible, both for technical reasons but also for commercial reasons, because when
24 it comes to the technical specs and, more precisely, I am looking at the maritime
25 regulations for the different sectors, which obviously have an effect on the vessel in
26 terms of any updates that are done, which of course entail a cost and need to be
27 assessed. As far as the commercial reasons, I am thinking of the pre-selection
28 criteria that are normally done through a vetting system. This is obviously inspections
29 of the vessel in order to assess and measure the performance and all the operability
30 of the vessel and, in this case, even if we take into account the possible execution of
31 the updates and updating this vessel, in any case it would still have been a vessel
32 dated 1966. It is not terribly interesting in terms of commercial interest compared to
33 younger and newer and better-performing vessels.

34
35 **MR AIELLO:** Mr Matteini, allow me to show you some pictures, some photos. Are
36 you able to tell the Tribunal their source and the time at which they were taken? You
37 have them on the screen.

38
39 **MR MATTEINI** (*Interpretation from Italian*): Yes. These photos had been published
40 up till quite recently on not so much websites but platforms through which vessels all
41 over the world are monitored, both in terms of traceability of their routes, their
42 movements, and the sector of the goods they transport, but also in order to have a
43 real-time status. These sources are Marine Traffic and Ship Finder – there are quite
44 a few; there is a list that is available but in reality the content is the same on all of
45 them, and the data are what they are and they are available on these portals.

46
47 **MR AIELLO:** Can you tell the Tribunal which sources did you use in this case?

48
49 **MR MATTEINI** (*Interpretation from Italian*): Well, in particular Baltic and Marine
50 Traffic were the sources and, as I said earlier, I would like to point out that, when you

1 look at my calculations to make comparisons, also to prepare for this hearing, these
2 photographs are no longer available, because we are talking of a ship that has been
3 demolished, a lot of time has gone by, and only the shipowner can do this. The data
4 has been cancelled and even though in my report I do state the sources, it is
5 possible that some of these photos are no longer available online.

6
7 **MR AIELLO:** According to your opinion, in which time were these pictures taken?
8

9 **MR MATTEINI** (*Interpretation from Italian*): As I said earlier, together with these
10 photographs there are some sheets of paper or schedules on which the data relating
11 to the last assessment are reproduced, so the data when that photograph is taken –
12 and this should not be mixed up to be sure of when it was posted on the website,
13 because it could have been posted later, but on the sheet, if there is data, that is
14 referred to the photograph that is being shown.
15

16 **MR AIELLO:** How can we distinguish the fact if at the moment of the picture the boat
17 was arrested or not?
18

19 **MR MATTEINI** (*Interpretation from Italian*): I will repeat: the sheet that accompanies
20 the photo, you have different data, amongst which there is the status, so if it says it is
21 operational, it means that it is sailing, even though it could be moored somewhere,
22 but somehow it is operational. Normally when a vessel is arrested, if there are
23 reasons that are legal reasons or others, this is also stated, but this is an indicator
24 that you see on the sheet. It is not something that can be changed or requested. It is
25 either there or it is not.
26

27 **MR AIELLO:** Could you read in this case which is the definition of the state of
28 activity of the ship? Could you read the word?
29

30 **MR MATTEINI** (*Interpretation from Italian*): Yes. In the photograph that is posted on
31 Marine Traffic that I see on the monitor, we see in the second column on the right at
32 the top, if I can read properly the status, it says “active”. This means that it is
33 operational, even though in the area I seem to recognize this is the port of Palma de
34 Mallorca.
35

36 **MR AIELLO:** Distinguished Members of the Tribunal, we are not able to enlarge, but
37 it is only for a technical problem. This is a public site and everybody can check that
38 the status at this time was active.
39

40 (*To the witness*) Can I ask you which other definition could we find if the vessel
41 would have been arrested?
42

43 **MR MATTEINI** (*Interpretation from Italian*): I repeat that you could read either “non-
44 active” or “arrested vessel”.
45

46 **MR AIELLO:** Looking at these pictures, which is your impression about the state, the
47 status of this boat? Could we consider it efficient or does it seem a little bit old?
48

49 **MR MATTEINI** (*Interpretation from Italian*): Beyond the age, what appears quite
50 clearly, also in other photos we saw earlier, one can see especially the one when

1 you see the ship at the back, there is a hill, so we see the bow of the ship. We can
2 clearly see that the steel of the hull has been hammered, so to speak. This is due to
3 pressure or because it hit something or rubbed against something, which probably,
4 during its working life, these are things that happened, but after that there was no re-
5 fitting of any sort.

6
7 Also, one can clearly see that the submerged part of the vessel – we just see that
8 layer which is almost green – shows a hull that is riddled with growth and other
9 organisms that clearly show that there is a lack of careful maintenance – even
10 ordinary maintenance. So I would say it was not being looked after terribly well.

11
12 **MR AIELLO:** I think that you had the occasion to see at the C M Olsen evaluation,
13 estimation of the value of the ship, what I find is a significant difference of value. Do
14 you agree or not with this valuation? If not, why?

15
16 **MR MATTEINI** (*Interpretation from Italian*): First of all, I do not agree from a
17 technical standpoint for the reasons that I have already explained. Secondly, to
18 assess the value of a vessel means working on three indicators, and that is, the
19 historical cost of the vessel – and historical cost means the new price that has been
20 devalued over time and can then be re-evaluated if some improvements have been
21 made to the vessel. The second indicator is the reconstruction value, and with this
22 we mean what it would cost and what the value would be today if that vessel was to
23 be reconstructed from scratch. That means using the technologies used at the time
24 of the first construction, not the innovative technologies. The third indicator is a
25 commercial value, which at the end of the day is probably the most important, but is
26 one of the three that together assess the value.

27
28 So in the expertise done by the colleague it is said, from what I remember, that if the
29 vessel had had a charter contract for a certain amount of time, and should there
30 have been requests for transportation of that type of product, one could recognize to
31 that vessel a market value and also a chartering value but, as we said earlier, there
32 were many “ifs” and therefore an evaluation can be done based on some “ifs”.
33 However, this is based on assumption and not on fact, with due respect to the fact
34 that to do a proper evaluation one would need to go on board, and this was not
35 possible because the ship no longer existed.

36
37 **MR AIELLO:** This is my last but crucial question. What is your opinion on the
38 reasons why the shipowner deemed not appropriate to pay the security of 250 million
39 lira?

40
41 **MR MATTEINI** (*Interpretation from Italian*): My spontaneous answer would be that at
42 the time, as we said earlier, the total costs that had to be incurred in order to update
43 it, the maintenance, and also if you take into account that the class was no longer
44 available and therefore some certificates would have to be reissued, so in spite of
45 this, if we take all these costs, could not justify a further payment in terms of security
46 because the cost/benefit ratio would have clearly indicated that any entrepreneur
47 would have withdrawn. I think this is probably the reason why.

1 **MR AIELLO:** So we could conclude that in this case the commercial value of the
2 vessel has been divined directly from the shipowner, because the value was less
3 than 250 million lira?
4

5 **MR MATTEINI** (*Interpretation from Italian*): Yes, this is what I think.
6

7 **MR AIELLO:** I have no more questions. Thank you.
8

9 **THE PRESIDENT:** Thank you, Mr Aiello. We are approaching 4.30 and the Tribunal
10 will now withdraw for a break of half an hour. The examination or cross-examination
11 of the expert will have to be continued when we resume at 5 o'clock. The sitting is
12 adjourned.
13

14 (Break)
15

16 **THE PRESIDENT:** Before we start, I wish to inform you that Judge Cot is prevented
17 from attending the sitting for a reason duly explained to me.
18

19 Before the break, the Co-Agent of Italy concluded his examination of the expert
20 Mr Matteini. Pursuant to article 80 of the Rules of the Tribunal, an expert called by
21 one Party may also be examined by the other Party. Therefore, I ask the Agent of
22 Panama whether Panama wishes to cross-examine the expert and, if yes, who will
23 conduct the cross-examination.
24

25 **MR CARREYÓ:** Yes, your Honour. This cross-examination will be conducted by
26 Mr von der Wense.
27

28 **THE PRESIDENT:** Thank you, Mr Carreyó. I then give the floor to Mr von der Wense
29 to cross-examine the expert.
30

31 **Cross-examined by MR VON DER WENSE**
32

33 **MR VON DER WENSE:** Thank you, Mr Matteini, that you allow me to put some
34 questions to you. My first question is the following: have you, in terms of your
35 education, any economic or legal background?
36

37 **MR MATTEINI** (*Interpretation from Italian*): No. I am of a prevalently technical
38 background.
39

40 **MR VON DER WENSE:** Can you repeat the answer, please?
41

42 **MR MATTEINI** (*Interpretation from Italian*): No, I mainly have a technical
43 background.
44

45 **MR VON DER WENSE:** Thank you. My next question would be that we learned that
46 you did not have the opportunity to inspect the "Norstar". I assumed that you would
47 have had the opportunity to inspect the vessel, let us say, in 1997 or 1998. Would it
48 have been an important impact on your estimation as regards the value of the vessel
49 at the time of the arrest in 1998?
50

1 **MR MATTEINI** (*Interpretation from Italian*): Considering this case, I think that this
2 would have helped me to better evaluate the real circumstances under which the
3 ship had been preserved, and this goes beyond the commercial and the economic
4 aspects I have already illustrated.

5
6 **MR VON DER WENSE**: Am I correct – in other words, you already stated that you
7 had no information about the investments that have been made; so if you would
8 have had the information, for example, that the vessel received new machines, for
9 example, was completely sandblasted in '89, got a new chain in '99 – would that
10 have been an important impact on your evaluation?

11
12 **MR MATTEINI** (*Interpretation from Italian*): I kindly ask to confirm if the word
13 “sandblasting” meant what has been translated.

14
15 **THE INTERPRETER**: He is asking the interpreters if a specific translation for
16 “sandblasting” can be confirmed in Italian – and the answer is “yes”.

17
18 **MR MATTEINI** (*Interpretation from Italian*): Good. So, as regards the sandblasting
19 on the hull, this is an activity which would have been carried out anyway. This was
20 needed because of the class of the ship. The last two letters are the class acronym
21 and specify that this vessel had to undergo this activity on a regular basis, i.e. in
22 order to appreciate the thickness of the metal plate, this activity had to be carried
23 out. But if we have a look at the pictures which have been shown, especially the
24 pictures that were taken in the period we are analysing, then in my view no
25 sandblasting operation had taken place; otherwise all the aspects on which I have
26 already expanded would not be there – all the things that I have mentioned earlier
27 on.

28
29 **MR VON DER WENSE**: We will come to the pictures later, but I ask a question right
30 now because you mentioned them. Would it change your mind if the pictures were
31 taken, let us say, in 2012 or 2014?

32
33 **MR MATTEINI** (*Interpretation from Italian*): Now, we have pictures that presumably
34 go back to both dates, and they illustrate almost identical situations; so, frankly, I
35 don't understand the meaning of your question.

36
37 **MR VON DER WENSE**: Earlier you said the pictures were not fitted with any dates –
38 in the examination – or did I remember wrong, so perhaps you can correct me?

39
40 **MR MATTEINI** (*Interpretation from Italian*): I recall that in the data sheets that
41 accompanied the pictures there are date indications, hour indications, time
42 indications. No matter when, then, the pictures were then uploaded onto the portal –
43 so if I correctly remember, some pictures have been displayed on the screen and
44 they had a clear indication of a date. Maybe we can display these pictures again so
45 that we can confirm the date.

46
47 **MR VON DER WENSE**: It is not necessary because we have already seen the
48 pictures and heard what you have said in the examination, but if I understand you
49 correctly right now you say you have pictures taken into consideration which, in your
50 remembrance, were made in the time of the arrest and at a later stage as well?

1 **MR MATTEINI** (*Interpretation from Italian*): Yes, I think that is correct.
2
3 **MR VON DER WENSE**: Do you want to see the pictures again?
4
5 **MR MATTEINI** (*Interpretation from Italian*): I perfectly remember the pictures, but if
6 you so wish we can see them again.
7
8 **MR VON DER WENSE**: No, that is fine. In your examination you mentioned the IMO
9 rules, especially the MARPOL rules, and you were talking about the “*Norstar*” not
10 fulfilling the prerequisite of having a double hull. Can you tell us what kind of impact,
11 in terms of money, this non-fulfilment has as regards to the value of the ship?
12
13 **MR MATTEINI** (*Interpretation from Italian*): Well, if we consider the evaluation
14 criteria in the nautical field, we can divide the ship into three portions: hull, fitting and
15 the main structure. All these three elements represent one hundred per cent of the
16 ship, and the hull accounts for 30 per cent of the ship as a whole. So, if we have to
17 make sure that the ship is fully compliant with regulations on technical equipment,
18 then technical update measures would have to be taken accounting for 30 per cent
19 of the overall value of the ship, and then on top of that we would have had to
20 consider additional expenses for reclassification purposes.
21
22 **MR VON DER WENSE**: Assuming that hypothetically, let us say, the ship does not
23 need a double hull – because you consider the ship to have needed a double hull, if
24 I understood you right – and assuming that this provision would not apply and the
25 ship would also be allowed to run as a single-hulled ship, so what deduction did you
26 make from the value because of the non-fulfilment of the double hull requirement?
27
28 **MR MATTEINI** (*Interpretation from Italian*): If I have correctly understood the
29 meaning of your question, I think that we should first consider that the ship had to be
30 made compliant with the standards. The ship could have never resumed its
31 operation under such conditions if it hadn’t been correctly updated – so that is a
32 basic prerequisite. It is a condition *sine qua non*, and the evaluation amounting to
33 250 million lira – and this goes back to the period when the arrest was enforced –
34 I must point out that this evaluation took into consideration all the activities this ship
35 had to go through in order to be compliant with the latest technical measure of
36 MARPOL.
37
38 **MR VON DER WENSE**: My question was about the amount of deduction you have
39 taken from the original value of the ship because of the non-fulfilment of the double
40 hull requirement. I want to hear an amount, but if you cannot answer that, that is no
41 problem – but I just want to make sure that I understand you right.
42
43 **MR MATTEINI** (*Interpretation from Italian*): If I have correctly understood your
44 question, let me ask you one question. Since the hull, as we said earlier on,
45 accounts for 30 per cent of the overall value of the ship, and as part of my evaluation
46 had already taken into consideration these update measures, so we just needed to
47 deduct 30 per cent out of 250 million lira; and this would lead us to the value of the
48 ship in a non-compliant state with the MARPOL requirements going back to the
49 period when the seizure was carried out.
50

1 **MR VON DER WENSE:** With regard to MARPOL, have you considered the fact that
2 not all vessels which were capable of loading oil were subject to the regulations you
3 mentioned?
4

5 **MR MATTEINI** (*Interpretation from Italian*): As far as I am concerned, the “*Norstar*”
6 was one of the ships that was obliged to fulfil this requirement. As I said earlier on in
7 my statement, if we consider the ships that were already sailing, that were already
8 operating before this period, then an update programme, an update scheme had
9 already been planned; and this update scheme was referred to the year in which the
10 ship had been built. This lapse of time stretches over a period of 20 to 25 years of
11 time. So given the fact that this ship was built in 1966, then at the latest in 1996 this
12 ship would have needed some technical upgrade.
13

14 **MR VON DER WENSE:** Even as a lawyer, the regulations of MARPOL are not easy
15 to read. Have you personally scrutinized these provisions?
16

17 **MR MATTEINI** (*Interpretation from Italian*): Sure. Frankly, I didn’t really understood
18 your statement – so even as a lawyer it is not easy to read MARPOL’s requirements
19 Have I correctly understood?
20

21 **MR VON DER WENSE:** At least for me. Okay, you did so. Thank you. Do you know
22 the prerequisites for the MARPOL regulation concerning, for example, the cargo or
23 the deadweight?
24

25 **MR MATTEINI** (*Interpretation from Italian*): Sure. There are a lot of MARPOL
26 provisions according to the type of the ship. In the instant case, the “*Norstar*” is what
27 we call Annex No.1 to the MARPOL Convention. We – I actually – focused on this
28 type of provision for the evaluation purposes. I would say that this prerequisite is
29 binding from a commercial point of view. It can be easily understood that if
30 somebody wanted to use the “*Norstar*” in the past to operate in this goods sector,
31 then they would have been in a position to comply with all the technical
32 requirements.
33

34 Panama, with its own registry, has very specific provisions, so it is not going to
35 happen taking this into consideration, but I have given priority to the international
36 aspects rather than national laws.
37

38 **MR VON DER WENSE:** Do I understand you correctly that you cannot tell, for
39 example, what the deadweight limits of the MARPOL rules are right now? If you do
40 not know, a “no” would be enough for me, but if you know them, perhaps you can tell
41 us now the deadweight limits?
42

43 **MR MATTEINI** (*Interpretation from Italian*): Yes, I would be able to reply to your
44 question had I had the opportunity to have a look at the soundness index of the ship
45 or the load index of the ship.
46

47 **MR VON DER WENSE:** Do you know the deadweight of the “*Norstar*”?
48

49 **MR MATTEINI** (*Interpretation from Italian*): The dry weight, so had we taken the ship
50 out of the sea and put the ship away, then I performed this calculation by using

1 several mathematical nautical formulae, and then I took some more data from the
2 survey of a Norwegian colleague and also used some more publicly available
3 information that I could find online.
4

5 **MR VON DER WENSE:** You do not know the deadweight of the “*Norstar*” right now
6 and I understand that you cannot tell us this figure right now, approximately?
7

8 **MR MATTEINI** (*Interpretation from Italian*): It is written.
9

10 **MR VON DER WENSE:** I am sorry.
11

12 **MR MATTEINI** (*Interpretation from Italian*): We are talking about the gross
13 deadweight, if I correctly understood?
14

15 **MR VON DER WENSE:** Okay.
16

17 **MR MATTEINI** (*Interpretation from Italian*): All right. I indicated as a deadweight
18 value. The value was indicated by the Norwegian colleague in his survey. On top of
19 this, this data is also indicated in the portals, which we mentioned earlier on, where
20 we have all the data sheets of the ship.
21

22 **MR VON DER WENSE:** Can I ask you for a short answer, if possible? In your view,
23 is there a possibility that MARPOL did not apply to the “*Norstar*” in this regard about
24 the double hull requirement – yes or no?
25

26 **MR MATTEINI** (*Interpretation from Italian*): No, because the amendment to the
27 Convention refers not just to the deadweight but also to the type of hydrocarbon that
28 has been transported. MARPOL No. 1 sets forth which fuels can be transported. The
29 inflammability index of fuels are analysed –
30

31 **MR VON DER WENSE:** Can I interrupt you? I am just asking about the double hull
32 prerequisite, not about all the other regulations, so I am happy with your answer and
33 I would like to proceed, if you do not mind.
34

35 **MR MATTEINI** (*Interpretation from Italian*): You are welcome.
36

37 **MR VON DER WENSE:** As to your assumption that the ship was not suitable for
38 other purposes, you referred to material regulations. Can you specify these material
39 regulations? For example, can you say whether any additional provisions apply to
40 the transport of waste of the fishing industry?
41

42 **MR MATTEINI** (*Interpretation from Italian*): For fish and fishing industry waste, I am
43 not able to reply to your question honestly when it comes to fishing industry waste.
44 For all the other sectors, as I have already expounded in my previous statement,
45 there are technical requirements that define different ways in which goods can be
46 transported. I am thinking of sensitive goods like drinkable water or loose food
47 products. All these goods are exposed to different requirements and this ship, the
48 “*Norstar*”, was not compliant with these requirements unless a technical update was
49 performed.
50

1 **MR VON DER WENSE:** I am very sure that there are purposes, for example the
2 transport of dangerous goods, where additional provisions will apply on the
3 equipment of the ship, but can you exclude that there might be other purposes where
4 no additional regulations apply?
5

6 **MR MATTEINI** (*Interpretation from Italian*): I repeat, every goods sector has its own
7 rule and regulations. Dangerous goods, for instance, is one of the sectors where you
8 have the strictest provisions. In the food sector, for instance, you have very specific
9 requirements and these requirements do not just involve the flying State but they
10 also need to take into consideration the commercial requirements that the recipient
11 State has to comply –
12

13 **MR VON DER WENSE:** I am sorry to interrupt you again but I have a simple
14 question. Can you exclude that there might be purposes with no additional
15 obligations imposed on the ship – yes or no?
16

17 **MR MATTEINI** (*Interpretation from Italian*): I cannot reply to this question because
18 these are entrepreneurial decisions which would have involved the people
19 concerned and not even the registry.
20

21 **MR VON DER WENSE:** You said that the lifespan is approximately 20 to 25 years.
22 Again I would appreciate it if you could answer the question strictly. If the vessel is
23 duly maintained and has all the certificates, from a purely technical point of view, do
24 you see any reason why the ship could not be used any more?
25

26 **MR MATTEINI** (*Interpretation from Italian*): Regular maintenance is, for sure, an
27 added value for the ship in terms of residual lifespan, but again we need to consider
28 what we said earlier on. If the ship does not comply with the rules and the
29 requirements, it cannot be sailed. If the ship can be subject to other activities which
30 do not fall within my remit, then we would have had to study all the possibilities one
31 by one, and only then would have been in a position to reply to your question.
32

33 **MR VON DER WENSE:** Coming back again to the photographs, I understand that
34 you took the photographs into consideration for your evaluation?
35

36 **MR MATTEINI** (*Interpretation from Italian*): Sure.
37

38 **MR VON DER WENSE:** Do you know the author or authority of those photographs?
39 Was it an official source or rather a private web page?
40

41 **MR MATTEINI** (*Interpretation from Italian*): No. The websites that I mentioned which
42 I used and all the other people performing similar evaluations use are websites
43 connected to the IMO. They are official sites because they provide this information to
44 coastal guards, ministries, States.
45

46 **MR VON DER WENSE:** So with regard to these ministries and officials on these web
47 pages, can you exclude that these pages were kinds of ship-spotting pages, such as
48 we know people have the hobby of plane spotting and ship spotting? Could it be that
49 the web pages you refer to are such web pages?
50

1 **MR MATTEINI** (*Interpretation from Italian*): The websites that I mentioned, I would
2 exclude this categorically. It is true that there are other websites, private websites as
3 you put it, where you have in typical Facebook-style comments and pictures, and of
4 course it is not reliable data at least for the type of enquiries that we are carrying out.
5

6 **MR VON DER WENSE**: I would now like to show you some photographs taken of
7 the “*Norstar*” that are already filed in the written proceedings and I would ask you to
8 look at them and give your impression of the state of the vessel that you can derive
9 from those photographs.

10
11 **MR MATTEINI** (*Interpretation from Italian*): Looking at these pictures – and I am not
12 referring so much to the hatch that we have just seen – I can see that the deck, for
13 instance, with the manifold of the load lines, the feed lines and the castles, was in
14 good maintenance order. Unfortunately, I had not seen *these* pictures. *This* is the
15 engine cabinet. It is quite clean. You can see the dashboard and the engine portion.
16 For sure, had the vessel looked like that, then my evaluation would have been
17 different, but again we would need to consider the necessary technical update that it
18 had to comply with.

19
20 **MR VON DER WENSE**: I think that it will hardly be difficult to estimate the difference
21 if you see the photographs right now from your valuation?
22

23 **MR MATTEINI** (*Interpretation from Italian*): It would not have had the decay that
24 I pointed out in my report, but this better maintenance would not have entailed an
25 increase in the value because once a certain number of years has gone by, the
26 value of ships tends to be quite stable. Even if ships are kept in good maintenance,
27 the condition as we see in these pictures, this provides some added value. It makes
28 the ships palatable to charterers, but on the whole the evaluation remains the same.
29

30 **MR VON DER WENSE**: You are contradicting yourself because one minute ago you
31 said that if you would have seen the photographs it would have certainly changed
32 the estimation?
33

34 **MR MATTEINI** (*Interpretation from Italian*): No, I did not say that, I am sorry, or
35 maybe if you understood, maybe I expressed myself in the wrong way. This was not
36 the meaning of what I said earlier on, but again we do not have any time reference
37 for these pictures, so it is very difficult to make a comparison. If you take a 16 year-
38 old girl and a 60-year-old, maybe both are very beautiful women but there is a time
39 difference.
40

41 **MR VON DER WENSE**: I will not comment on that! My last question is: do you know
42 the types of bunker that the “*Norstar*” used to carry?
43

44 **MR MATTEINI** (*Interpretation from Italian*): Yes, I know which bunkers the “*Norstar*”
45 was actually carrying, based on the documents that I could read. It was gasoil that
46 generally was used, so I completely exclude a bunker because one trip would have
47 been enough to actually ruin the tanks and then it would have obliged the vessel to
48 transport only this kind of fuel.
49

1 **MR VON DER WENSE:** That was my last question. Thank you very much. Thank
2 you, Mr President.

3
4 **THE PRESIDENT:** Thank you. An expert who was cross-examined by the other
5 Party may be re-examined by the other Party who had called the expert. Therefore,
6 I ask the Co-Agent of Italy whether Italy wishes to re-examine the expert and, if yes,
7 who will conduct the re-examination?

8
9 **MR AIELLO:** No, Mr President. Thank you.

10
11 **THE PRESIDENT:** Thank you. Pursuant to article 80 of the Rules of the Tribunal, the
12 President and Judges of the Tribunal may also put questions to the expert.
13 I understand that no Judges wish to put a question to the expert. Therefore,
14 Mr Matteini, thank you very much for your testimony. Your examination is now
15 finished and you may withdraw.

16
17 *(The witness withdrew)*

18
19 This brings us to the end of this afternoon's sitting and concludes the first round of
20 pleadings by Italy. The hearing will continue tomorrow afternoon at 3 p.m. with the
21 second round of pleadings by Panama. I wish you a good afternoon. The sitting is
22 now closed.

23
24

(The sitting closed at 5.39 p.m.)