



INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER

Press Release

THE M/V "NORSTAR" CASE (PANAMA V. ITALY)

TRIBUNAL DELIVERS ITS JUDGMENT

Today, 10 April 2019, the International Tribunal for the Law of the Sea delivered its Judgment in *The M/V "Norstar" Case (Panama v. Italy)*.

In its Judgment, the Tribunal finds that Italy violated article 87, paragraph 1, of the Convention, that article 87, paragraph 2, of the Convention is not applicable in the case, and that Italy did not violate article 300 of the Convention. The Tribunal awards Panama compensation for the loss of the *M/V "Norstar"* in the amount of US\$ 285,000 with interest.

Factual and procedural background

The dispute concerns the arrest and detention of the *M/V "Norstar"*, a Panamanian-flagged vessel. From 1994 until 1998, the *M/V "Norstar"* was engaged in supplying gasoil to mega yachts in the Mediterranean Sea. On 11 August 1998, the Public Prosecutor at the Court of Savona, Italy, issued a Decree of Seizure against the *M/V "Norstar"*, in the context of criminal proceedings instituted against eight individuals for alleged smuggling and tax evasion. At the request of Italy, the vessel was seized by Spanish authorities when anchored in the bay of Palma de Mallorca, Spain, in September 1998.

Proceedings in the case were instituted by an Application filed by Panama on 17 December 2015. On 11 March 2016, preliminary objections were raised by Italy. On 4 November 2016, the Tribunal delivered its Judgment on Preliminary Objections, in which it decided that it had jurisdiction to adjudicate upon the dispute and that Panama's Application was admissible.

After the closure of the written proceedings, the public hearing on the merits was held from 10 to 15 September 2018.

Tribunal's Judgment of 10 April 2019

Scope of jurisdiction (paras. 100-146)

With regard to the scope of its jurisdiction, “the Tribunal recalls that, in its Judgment on Preliminary Objections, it found that articles 87 and 300 of the Convention were relevant to the present case” (para. 101). The Tribunal notes that, during the proceedings on the merits, “Italy has interpreted paragraph 122 of the Judgment on Preliminary Objections as excluding from the scope of its jurisdiction the actual arrest and detention of the *M/V “Norstar”*” (para. 117). For the Tribunal, however, “[i]t is clear” that, “in its Judgment on Preliminary Objections, it considered the dispute between the Parties to include not only the Decree of Seizure and the Request for its execution, but also the arrest and detention of the *M/V “Norstar”*” (para. 122). “The Tribunal’s jurisdiction over the dispute, therefore, covers the arrest and detention of the *M/V “Norstar”*” (para. 122). The Tribunal further notes that the Parties “disagree on whether several claims made by Panama under article 300 are related to article 87 of the Convention” (para. 126). The Tribunal, however, decides to “deal with the question as to whether it has jurisdiction over Panama’s claims concerning good faith and abuse of rights under article 300 together with the examination of the question as to whether Italy has breached its obligations under that article” (para. 129).

Article 87 of the Convention (Freedom of the high seas; paras. 147-231)

In addressing “the question as to whether the Decree of Seizure, the Request for its execution and the arrest and detention of the *M/V “Norstar”* constitute a violation of article 87” (para. 147), the Tribunal first examines “whether the Decree of Seizure and its execution concern activities conducted by the *M/V “Norstar”* on the high seas, or alleged crimes committed in the territory of Italy, or both” (para. 153). On the basis of an examination of the Decree of Seizure and other relevant documents (paras. 166-185), the Tribunal finds “that the bunkering activities of the *M/V “Norstar”* on the high seas in fact constitute not only an integral part, but also a central element, of the activities targeted by the Decree of Seizure and its execution” (para. 186). “Consequently, the Tribunal concludes that article 87 may be applicable in the present case” (para. 187).

The Tribunal then turns to “the question as to whether article 87 ... is applicable and, if so, whether Italy breached it” (para. 188). The Tribunal notes that article 87 “proclaims that the high seas are open to all States” (para. 214) and that, “save in exceptional cases, no State may exercise jurisdiction over a foreign ship on the high seas” (para. 216). In this context, it observes that the “[f]reedom of navigation would be illusory if a ship ... could be subject to the jurisdiction of other States on the high seas” (para. 216).

Recalling its jurisprudence in the *M/V “Virginia G” Case*, the Tribunal then expresses the view that “bunkering on the high seas is part of the freedom of navigation to be exercised under the conditions laid down by the Convention and other rules of international law” (para. 219). It therefore “finds that the bunkering of leisure boats carried out by the *M/V “Norstar”* on the high seas falls within the freedom of navigation under article 87” (para. 219).

The Tribunal then “turns to the question of what acts could constitute a breach of the freedom of navigation under article 87” (para. 222). “As no State may exercise jurisdiction over foreign ships on the high seas, in the view of the Tribunal, any act of

interference with navigation of foreign ships or any exercise of jurisdiction over such ships on the high seas constitutes a breach of the freedom of navigation, unless justified by the Convention or other international treaties” (para. 222) In the view of the Tribunal, “even acts which do not involve physical interference or enforcement on the high seas may constitute a breach of the freedom of navigation” (para. 223). Likewise, “any act which subjects activities of a foreign ship on the high seas to the jurisdiction of States other than the flag State constitutes a breach of the freedom of navigation, save in exceptional cases expressly provided for in the Convention or in other international treaties” (para. 224).

The Tribunal holds that the principle of exclusive flag State jurisdiction “prohibits not only the exercise of enforcement jurisdiction on the high seas by States other than the flag State but also the extension of their prescriptive jurisdiction to lawful activities conducted by foreign ships on the high seas” (para. 225). In the view of the Tribunal, “if a State applies its criminal and customs laws to the high seas and criminalizes activities carried out by foreign ships thereon, it would constitute a breach of article 87 of the Convention, unless justified by the Convention or other international treaties” and “[t]his would be so, even if the State refrained from enforcing those laws on the high seas” (para. 225).

The Tribunal adds that, “even when enforcement is carried out in internal waters, article 87 may still be applicable and be breached if a State extends its criminal and customs laws extraterritorially to activities of foreign ships on the high seas and criminalizes them” (para. 226).

“In light of the foregoing, the Tribunal concludes that Italy, through the Decree of Seizure by the Public Prosecutor at the Court of Savona against the *M/V “Norstar”*, the Request for its execution, and the arrest and detention of the vessel, breached article 87, paragraph 1, of the Convention” (para. 230).

As regards Panama’s contention that Italy breached article 87, paragraph 2, of the Convention, the Tribunal finds that this provision is not applicable in the present case (para. 231).

Article 300 of the Convention (Good faith and abuse of rights; paras. 232-308)

In addressing Panama’s claims concerning article 300 of the Convention, the Tribunal recalls its jurisprudence in the *M/V “Louisa” Case*, according to which “article 300 of the Convention cannot be invoked on its own” (para. 241). Thus, a State Party claiming a breach of article 300 must, inter alia, “establish a link between its claim under article 300 and ‘the obligations assumed under this Convention’ or ‘the rights, jurisdiction and freedoms recognized in this Convention’” (para. 241).

Panama made a number of claims alleging breach of the good faith obligation by Italy under article 300. Several of them are rejected by the Tribunal because Panama failed to show evidence of bad faith (Italy’s conduct with regard to the timing of the arrest (para. 251); Italy’s decision to arrest the *M/V “Norstar”* in a Spanish port (para. 258); and duration of detention and maintenance of the vessel (para. 289)). The

other claims of Panama fall outside the scope of the Tribunal's jurisdiction as Panama failed to establish a link between the respective claim under article 300 and article 87 (Italy's execution of the Decree of Seizure (para. 265); alleged lack of communication (para. 271); alleged withholding of information (para. 275); alleged contradictory reasons to justify the Decree of Seizure, (para. 281)).

In addition, the Tribunal does not find that Italy exercised its rights under the Convention in a manner that would constitute an abuse of rights (paras. 304-307).

For these reasons, "the Tribunal concludes that Italy did not violate article 300 of the Convention" (para. 308).

Reparation (paras. 309-462)

The Tribunal states that "Italy as the State responsible for an internationally wrongful act is under an obligation to compensate for damage caused by its breach of article 87, paragraph 1, of the Convention" (para. 321). In the view of the Tribunal, "Panama is entitled to compensation for damage suffered by it as well as for damage or other loss suffered by the *M/V "Norstar"*, including all persons involved or interested in its operation" (para. 323).

The Tribunal "refers to its jurisprudence in the *M/V "Virginia G" Case*, in which it emphasized the requirement of a causal link between the wrongful act committed and damage suffered" (para. 333). It "points out that only damage directly caused by the wrongful act of Italy is the subject of compensation" (para. 334).

In this connection, the Tribunal finds that "the causal link between the wrongful act of Italy and damage suffered by Panama was interrupted on 26 March 2003" - when the shipowner received an official communication from the Court of Savona that the vessel was unconditionally released from detention - and that "any damage that may have been sustained after 26 March 2003 was not directly caused by the arrest and detention of the *M/V "Norstar"*" (para. 370).

On the issue of compensation, the Tribunal finds that "the loss of the *M/V "Norstar"* was directly caused by the wrongful act of Italy" (para. 406). With regard to the value of the vessel at the time of its arrest, the Tribunal examines the documentary and testimonial evidence, in particular the two estimates made available to it by the Parties (para. 411-416), and concludes that the amount of US\$ 285,000 - the equivalent of the amount of the estimate provided by the expert called by Italy - represents the value of the *M/V "Norstar"* (para. 417). The Tribunal also "considers that the award of interest under that category of damages is warranted by the circumstances of this case" (para. 459).

The Tribunal does not award compensation with regard to Panama's other claims (loss of profits (para. 433); continued payment of wages (para. 438); payment due for fees and taxes (para. 443); loss and damage to the charterer of the *M/V "Norstar"* (paras. 448, 449); and material and non-material damage to natural persons (para. 452)).

Operative paragraph (para. 469)

The operative paragraph of the Judgment in *the M/V “Norstar” Case (Panama v. Italy)* of 10 April 2019 reads as follows:

... the Tribunal,

(1) By 15 votes to 7,

Finds that Italy violated article 87, paragraph 1, of the Convention.

IN FAVOUR: *President* PAIK; *Judges* NDIAYE, JESUS, LUCKY, KATEKA, GAO, BOUGUETAIA, KELLY, KULYK, GÓMEZ-ROBLEDO, HEIDAR, CABELLO, CHADHA, KITTICHAISAREE; *Judge ad hoc* EIRIKSSON;

AGAINST: *Judges* COT, PAWLAK, YANAI, HOFFMANN, KOLODKIN, LIJNZAAD; *Judge ad hoc* TREVES.

(2) Unanimously,

Finds that article 87, paragraph 2, of the Convention is not applicable in the present case.

(3) By 20 votes to 2,

Finds that Italy did not violate article 300 of the Convention.

IN FAVOUR: *President* PAIK; *Judges* JESUS, COT, PAWLAK, YANAI, KATEKA, HOFFMANN, GAO, BOUGUETAIA, KELLY, KULYK, GÓMEZ-ROBLEDO, HEIDAR, CABELLO, CHADHA, KITTICHAISAREE, KOLODKIN, LIJNZAAD; *Judges ad hoc* TREVES, EIRIKSSON;

AGAINST: *Judges* NDIAYE, LUCKY.

(4) By 15 votes to 7,

Decides to award Panama compensation for the loss of the *M/V “Norstar”* in the amount of US\$ 285,000 with interest at the rate of 2.7182 per cent, compounded annually and payable from 25 September 1998 until the date of the present Judgment.

IN FAVOUR: *President* PAIK; *Judges* NDIAYE, JESUS, LUCKY, KATEKA, GAO, BOUGUETAIA, KELLY, KULYK, GÓMEZ-ROBLEDO, HEIDAR, CABELLO, CHADHA, KITTICHAISAREE; *Judge ad hoc* EIRIKSSON;

AGAINST: *Judges* COT, PAWLAK, YANAI, HOFFMANN, KOLODKIN, LIJNZAAD; *Judge ad hoc* TREVES.

(5) By 19 votes to 3,

Decides not to award Panama compensation with respect to its other claims, as indicated in paragraphs 433, 438, 443, 448, 449 and 452.

IN FAVOUR: *President* PAIK; *Judges* JESUS, COT, PAWLAK, YANAI, KATEKA, HOFFMANN, GAO, KELLY, KULYK, GÓMEZ-ROBLEDO, HEIDAR, CABELLO, CHADHA, KITTICHAISAREE, KOLODKIN, LIJNZAAD; *Judges ad hoc* TREVES, EIRIKSSON;

AGAINST: *Judges* NDIAYE, LUCKY, BOUGUETAIA.

(6) Unanimously,

Decides that each Party shall bear its own costs.

Judges Jesus, Kelly, Gómez-Robledo, Kittichaisaree and Judge *ad hoc* Treves append declarations to the Judgment, Judges Ndiaye and Lucky append separate opinions to the Judgment, and Judges Cot, Pawlak, Yanai, Hoffmann, Kolodkin, Lijnzaad and Judge *ad hoc* Treves append a joint dissenting opinion to the Judgment.

The text of the Judgment, declarations and opinions as well as a recorded webcast of the reading are available on the [case page](#) of the Tribunal's website.

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