



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

Press Release

TRIBUNAL DELIVERS ITS ORDER IN *THE “ZHENG HE” CASE (LUXEMBOURG V. MEXICO), PROVISIONAL MEASURES*

The International Tribunal for the Law of the Sea delivered today its Order in *The “Zheng He” Case (Luxembourg v. Mexico), Provisional Measures*.

History of the proceedings and factual background

On 4 June 2024, Luxembourg instituted proceedings before the Tribunal against Mexico regarding the detention of the “*Zheng He*”, a vessel flying the flag of Luxembourg. On 7 June 2024, Luxembourg submitted a request to the Tribunal for the prescription of provisional measures under article 290, paragraph 1, of the United Nations Convention on the Law of the Sea (“the Convention”).

The factual background of the dispute, as presented by the Parties, can be summarized as follows (see paragraphs 44 to 51 of the Order): The “*Zheng He*” is a dredger owned and operated by a Luxembourgish company named *European Dredging Company SA* (“the shipowner”). Having departed from the port of Freeport in The Bahamas, the vessel arrived on 11 October 2023 at what Luxembourg refers to as the “Tampico roadstead” and Mexico as “the Tampico anchorage area”, located in the Mexican territorial sea. At the time of the vessel’s arrival, 36 seafarers including the captain were aboard and formed the crew. While the vessel was waiting in the anchorage area, the shipowner’s agent transmitted to the port authorities in Tampico, Mexico, on 17 October 2023, a request for authorization to dock the vessel in the port “for a period of approximately 3 to 4 weeks” in order “to await instructions and, in the meantime, for provisioning, crew change, garbage and sludge removal”. The authorization was given on 21 October 2023, and Luxembourg confirms that the vessel reached the port and berthed there that same day. On 1 November 2023, the Northeast Regional Office of the Foreign Trade Audit Administration of Mexico (“ADACEN”) conducted an on-board inspection of the “*Zheng He*” and, thereafter, carried out a “precautionary seizure” of the vessel. According to Luxembourg, ADACEN decided to detain the vessel “on the grounds that [it] should be considered as a commodity whose entry into Mexican territory was treated as an import”. Mexico contends that, during the onboard inspection, neither the shipowner nor its agent “presented customs documentation demonstrating the legal importation, stay, and possession of the *Zheng He* in national territory, in contravention of the Mexican Customs Law.” On 10 November 2023, the shipowner instituted legal proceedings before the Tampico District Court, challenging the actions of ADACEN. By an order

issued on 15 February 2024, ADACEN fixed the total amount of the “tax debt” (Luxembourg) or “tax credit” (Mexico) of the shipowner at 1,616,462,343.62 Mexican pesos. According to Luxembourg, this amount corresponds to approximately USD 96,230,000. The order also provided for the confiscation of the vessel. On 22 March 2024, the Tampico District Court issued a judgment on the proceedings instituted by the shipowner on 10 November 2023. Luxembourg submits that the court “ruled that the customs proceedings against the *Zheng He* were null and void” and that the decision “had become final”. Mexico contends that the legal status of the vessel “is currently the subject of litigation before higher instances of the Federal Judiciary” and states that ADACEN “timely filed” a legal remedy against the decision of the Tampico District Court of 22 March 2024. Thus, according to Mexico, the court’s decision “is not final”.

The Tribunal held public sittings on 11 and 12 July 2024. In its final submissions, Luxembourg requested the Tribunal to prescribe the following provisional measures:

“1. In order to preserve the fundamental rights and freedoms of the crew:

- Order Mexico to continue to ensure the freedom of movement of the crew members off the vessel and their access to health-care facilities, places of worship and recreational facilities;
- Order Mexico to continue to ensure that there will be no impediments to the renewal of the crew and the necessary rotations;
- Order Mexico to continue to ensure that the crew will not be compelled by law enforcement agencies to disembark from the vessel nor be prevented from re-embarking the vessel.

2. In order to preserve the rights of Luxembourg as the flag State:

- Order Mexico to allow Luxembourg to effectively exercise its jurisdiction and control in administrative, technical and social matters over the vessel, and to enable any measures necessary for the preventive and corrective maintenance of the *Zheng He* in order to ensure its compliance with the national, European and international standards applicable to vessels flying the flag of Luxembourg;
- Prohibit Mexico from directly or indirectly operating the vessel *Zheng He*;
- Prohibit Mexico from taking any measures to create or transfer real rights to the vessel and from changing the flag of the vessel *Zheng He*.

3. In order to avoid aggravating or extending the dispute:

- Prohibit Mexico from collecting the customs fine of 1,616,462,343.52 Mexican pesos imposed on *European Dredging Company SA*;
- Prohibit Mexico from detaining, confiscating and expropriating, under any proceeding whatsoever, vessels related to the vessel *Zheng He* flying the flag of Luxembourg, whether they be the property of *European Dredging Company SA*, its parent company SOFIDRA or any other subsidiary of SOFIDRA;
- Prohibit Mexico from instituting new national proceedings or new actions against the *Zheng He*, *European Dredging Company SA*, its parent company SOFIDRA or any other subsidiary of SOFIDRA, and suspend ongoing national proceedings pending a decision on the merits.

4. In order to ensure equality of the parties in the proceedings before the Tribunal:
- Prescribe that Mexico and Luxembourg must cooperate and, to that end, hold consultations without delay in order to:
 - (a) exchange additional information on the non-contentious and contentious proceedings under Mexican law instituted by Mexico against the *Zheng He*, including forthwith:
 - the identification of the berths in the Port of Tampico, with their official and/or customary names, and the GPS coordinates of the endpoints of each berth;
 - the regulatory texts of Mexico in force on 21 October 2023 that were officially published relating to the tax and customs regime of each berth in the Port of Tampico;
 - the initiatives taken in particular by the Mexican customs and port authorities relating to the dispute concerning the *Zheng He*;
 - (b) prevent risks and effects resulting from maintenance work and repairs that are not carried out, inadequately carried out or belatedly carried out which could affect the vessel's classification."

In its final submissions, Mexico requested the Tribunal "to reject Luxembourg's request for provisional measures."

The Tribunal's Order of 27 July 2024

I. *Prima facie* jurisdiction

In its Order, the Tribunal recalls that, "[b]efore prescribing provisional measures under article 290, paragraph 1, of the Convention, the Tribunal must satisfy itself that *prima facie* it has jurisdiction over the dispute". The Tribunal "need not finally satisfy itself that it has jurisdiction on the merits of the case and yet it may not prescribe provisional measures unless the provisions invoked by the applicant appear *prima facie* to afford a basis on which the jurisdiction of the Tribunal might be founded" (paragraph 57 of the Order).

Existence of a dispute concerning the interpretation or application of the Convention

Luxembourg submits that "the dispute with Mexico concerning the vessel *Zheng He* concerns the interpretation and application of the Convention, in particular articles 2, 17, 18, 19, 21, 58, 87, 90, 92, 131 and 300 thereof." It contends that the dispute concerns the rights and obligations of the flag State relating to its ships and the rights and obligations of coastal States relating to foreign ships, including in its internal waters, maritime ports and territorial sea (paragraph 61 of the Order).

Mexico contends that the case submitted by Luxembourg does not relate to the interpretation or application of the Convention but rather to a subject matter outside the scope of the Convention (paragraph 70 of the Order). It further contends that this case "is about internal waters and the situation of a ship, the 'Zheng He', which has entered voluntarily the Port of Tampico inside the Pánuco River, and which has infringed Mexican customs and tax laws" (paragraph 71 of the Order).

The Tribunal notes that, following the detention of the “*Zheng He*”, “Luxembourg submitted a number of notes verbales to Mexico where it requested, *inter alia*, a solution of the situation within the framework of international law” (paragraph 80 of the Order). The Tribunal observes in relation to a meeting of 23 February 2024 between a delegation of Luxembourg and the Ambassador of Mexico to Luxembourg that, “while the Parties differ in their assessment of the content of this meeting, references to the right of innocent passage of the “*Zheng He*” were made during that meeting” (paragraph 81 of the Order). The Tribunal holds that, “[a]lthough Mexico did not respond directly to Luxembourg’s assertion of rights under the Convention ... before proceedings were instituted, Mexico’s view on this question may be inferred from its conduct” (paragraph 83 of the Order). The Tribunal is therefore of the view that “a dispute concerning the interpretation or application of the Convention appears *prima facie* to have existed between the Parties on the date of the institution of the proceedings on the merits” (paragraph 84 of the Order).

The Tribunal also notes that “the Applicant has invoked a number of provisions of the Convention as affording a basis on which *prima facie* the Tribunal’s jurisdiction over the dispute submitted to it might be founded”. The Tribunal recalls that, “at this stage of the proceedings, it need only satisfy itself that at least one of those provisions appears *prima facie* to afford such a basis”. In this regard, the Tribunal considers that “article 131 of the Convention appears *prima facie* to afford a basis on which its jurisdiction might be founded” (paragraph 85 of the Order).

Article 283 of the Convention

As to the requirements under article 283 of the Convention relating to an exchange of views, the Tribunal notes that “Luxembourg has made a number of attempts to exchange views with Mexico regarding the vessel “*Zheng He*”” (paragraph 96 of the Order). The Tribunal further observes that subsequent notes verbales of Luxembourg, dated 29 March 2024 and 29 April 2024, referred to “all possible remedies before international tribunals for the law of the sea” and to “Luxembourg’s intention to initiate proceedings before the Tribunal”. Both of these notes verbales remained unanswered by Mexico (paragraph 97 of the Order).

The Tribunal recalls that “a State Party is not obliged to continue with an exchange of views when it concludes that the possibilities of reaching agreement have been exhausted” (paragraph 99 of the Order). In this respect, the Tribunal considers that “the referral by Mexico solely to the legal means available to Luxembourg under the national law of Mexico could reasonably lead Luxembourg to conclude that all possibilities of reaching agreement were exhausted” (paragraph 100 of the Order). The Tribunal “is of the view that these considerations are sufficient at this stage to find that the requirements of article 283 of the Convention are satisfied” (paragraph 101 of the Order).

The Tribunal “concludes that *prima facie* it has jurisdiction over the dispute submitted to it” (paragraph 106 of the Order).

II. Plausibility of rights

The Tribunal recalls that its power “to prescribe provisional measures under article 290, paragraph 1, of the Convention has as its object the preservation of the respective rights of the parties to the dispute, pending the final decision” and that, “[b]efore prescribing provisional measures, it “is not called upon to settle the competing claims of the parties” (paragraph 107 of the Order). The Tribunal notes that, at this stage of the proceedings, it “is not called upon to determine definitively whether the rights claimed by the applicant exist, but need only decide whether such rights are plausible” (paragraph 119 of the Order).

Luxembourg maintains that “the rights it seeks to protect are a central element of the law of the sea and are intended to guarantee freedom of navigation and other internationally lawful uses of the sea” (paragraph 108 of the Order). Mexico contends that Luxembourg “has failed to establish the existence of a plausible right which can be related to the requested measures” (paragraph 115 of the Order).

Taking into account its previous finding regarding *prima facie* jurisdiction, the Tribunal goes on to determine “whether the alleged rights Luxembourg seeks to protect in relation to article 131 of the Convention are plausible” (paragraph 120 of the Order). The Tribunal notes that “Luxembourg is a landlocked State as defined in article 124 of the Convention and that its flagged vessel “*Zheng He*” is detained in the Port of Tampico, Mexico” (paragraph 122 of the Order). It further notes “the opposing claims of the Parties concerning the alleged unequal treatment of the “*Zheng He*” in the Port of Tampico and the evidence provided by them” (paragraph 123 of the Order). Mindful of the fact that, “at this stage of the proceedings, the Parties have not had sufficient opportunity to furnish all the evidence to establish their arguments in full”, the Tribunal is of the view that “the rights claimed by Luxembourg in the present case on the basis of article 131 of the Convention are plausible” (paragraphs 124-125 of the Order).

III. Real and imminent risk of irreparable prejudice

The Tribunal recalls that, “[u]nder article 290, paragraph 1, of the Convention, the Tribunal may prescribe measures to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment.” It notes that it “may prescribe provisional measures if the urgency of the situation so requires” and that “[u]rgency implies that there is a real and imminent risk that irreparable prejudice may be caused to the rights of the parties to the dispute, pending the final decision” (paragraph 126 of the Order).

In this regard, Luxembourg contends that “the detention and the exorbitant fine imposed on the *Zheng He* create a real and imminent risk of irreversible prejudice” (paragraph 127 of the Order), while Mexico contends that “the requirement of urgency has not been met, since there is no risk of an imminent and irreparable prejudice to the rights claimed by Luxembourg” (paragraph 136 of the Order).

On the basis of the factual information and legal arguments presented by the Parties, the Tribunal considers that “there is at present no urgency, in the sense that there is no real and imminent risk of irreparable prejudice to the rights claimed by Luxembourg” (paragraph 143 of the Order). In this context, the Tribunal takes note of

“the assurances given by Mexico during the hearing on 11 and 12 July 2024” (paragraph 144 of the Order), as reproduced in paragraph 145 of the Order.

The Tribunal recalls that, according to article 92 of the Rules, “[t]he rejection of a request for the prescription of provisional measures shall not prevent the party which made it from making a fresh request in the same case based on new facts” (paragraph 147 of the Order). It also notes that “[t]he present Order in no way prejudices the question of the jurisdiction of the Tribunal to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves, and leaves unaffected the rights of Luxembourg and Mexico to submit arguments in respect of those questions” (paragraph 148 of the Order).

IV. Operative provision (paragraph 149 of the Order)

For these reasons,

THE TRIBUNAL,

By 22 votes to 1,

Finds that the circumstances, as they now present themselves to the Tribunal, are not such as to require the exercise of its powers to prescribe provisional measures under article 290, paragraph 1, of the Convention.

FOR: *President* HEIDAR; *Vice President* CHADHA; *Judges* JESUS, BOUGUETAIA, ATTARD, KULYK, CABELLO SARUBBI, KITTICHAISAREE, KOLODKIN, LIJNZAAD, INFANTE CAFFI, DUAN, BROWN, CARACCILO, KAMGA, ARMAS PFIRTER, HORINOUCI, JOYINI, RHEE, KEH KAMARA, MARCINIAK; *Judge ad hoc* SZÉKELY Y SÁNCHEZ;

AGAINST: *Judge ad hoc* KOHEN.

Judge Kittichaisaree appends a declaration to the Order of the Tribunal. Judges Infante Caffi and Kamga append a joint declaration to the Order of the Tribunal. Judge Kulyk appends a separate opinion to the Order of the Tribunal. Judge *ad hoc* Kohen appends a dissenting opinion to the Order of the Tribunal.

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

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