

International Tribunal for the Law of the Sea, Case 25, the M/V “Norstar” Case (Panama v Italy), a Brief Commentary on the Judgment on Preliminary Objections

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The International Tribunal for the Law of the Sea (hereinafter the Tribunal) has recently issued a judgment on the preliminary objections raised by Italy about the admissibility of the M/V “Norstar” case. The M/V “Norstar”, an oil tanker flying the flag of Panama, was engaged from 1994 to 1998 in supplying gasoil to yachts in an area off the coasts of Italy, France and Spain. The vessel, according to Italy, was owned by “Inter Marine & Co AS”, managed by “Borgheim Shipping”, which are both Norwegian-registered companies, and chartered out to “Nor Maritime Bunker”, a Maltese-registered company. On 11 August 1998, a decree of seizure was issued by the Public Prosecutor at the Court of Savona in Italy against the M/V “Norstar”, in the context of criminal proceedings against eight individuals for the offences of a criminal association aimed at smuggling mineral oils and tax fraud. The decree ordered the seizure of the M/V “Norstar” *“as corpus delicti”* for the alleged criminal offences. The Spanish authorities, following a request of judicial assistance by Italy, seized the vessel when it was anchored in the Bay of Palma de Mallorca, Spain, in September 1998. On 13 March 2003, the Court of Savona delivered its judgment and *“acquitted all accused of all charges”*. The judgment also ordered that *“the seizure of M/V Norstar be revoked and the vessel returned to”* its owner. On 18 August 2003, the Public Prosecutor at the Court of Savona appealed against the

previous judgment. On 25 October 2005, the Court of Appeal of Genoa, Italy, upheld the verdict delivered by the Court of Savona. On 31 October 2006, the Court of Appeal also issued an order stating that the judgment of the Court of Savona of 13 March 2003 “*has to be enforced*” and that “*there is no decision to be taken given that the destiny of the vessel, after having been given back to the party entitled, does not fall within the competence of this Court*”. Prior to the submission of the Application in the present case, two notes were sent to Italy by Panama.

On the one hand, Panama claims that, by seizing the vessel, Italy violated articles 33, 73 (3) and (4), 87, 111, 226 and 300 of the United Nations Convention on the Law of the Sea (UNCLOS). The applicant also maintains that it is entitled to damages due to the seizure. On the other hand, Italy raises principally three preliminary objections: firstly, it underlines that there is no dispute between Panama and Italy itself. Moreover, it points out that Italy is to be considered a “wrong” respondent in this case and that “*adjudication over the claim advanced by Panama would require the Tribunal to ascertain rights and obligations pertaining to Spain, in its absence*”. Italy finally claims that Panama failed to appropriately pursue the settlement of the dispute by negotiation or other peaceful means as requested by art. 283, paragraph 1, UNCLOS.

Ruling about its effective jurisdiction, the Tribunal noted that Italy and Panama are both parties to UNCLOS. A declaration under art. 287 of the Convention was made on 26 February 1997 by which Italy opted for the “*settlement of disputes concerning the application or interpretation of the Convention and of the Agreement adopted on 28 July 1994 relating to the Implementation of Part XI the International Tribunal for the Law of the Sea and the International Court of Justice, without specifying that one has precedence over the other*”. A similar declaration was made by Panama on 29 April 2015, which stated “*the Government of the Republic of Panama declares that it accepts the competence and jurisdiction of the International Tribunal of the Law of the Sea for the settlement of the dispute between the Government of the Republic of Panama and the Government of the Italian Republic concerning the interpretation or application of UNCLOS that arose from the detention of the Motor Tanker NORSTAR, flying the Panamanian flag*”. The statement released by Panama refers only to this particular case and since the Convention does not preclude a declaration limited to a particular dispute (as noted by the Tribunal),¹ the application is to be considered consistent with the art. 287.

1 M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain), Judgment, ITLOS Reports 2013, p. 4, at p. 30, para. 79.