

Declaration of Judge Jesus

I voted in favour of this Judgment because I am in full agreement with its conclusions and findings and I believe it is a good contribution to international jurisprudence, namely on issues relating to the freedom of navigation.

Regrettably, I do not share the reasoning and conclusions reached by the Tribunal concerning Panama's claim for compensation on account of wages paid to crewmembers after the arrest of the *M/V "Norstar"*. I felt compelled, therefore, to state my views thereon, on the following grounds:

Panama had claimed compensation for the wages paid until December 1998 to crewmembers, during the months that followed the seizure of the *M/V "Norstar"*, explaining that "since the labour contracts for the crew remained in effect even after the seizure of the vessel, the ship-owner continued to be liable for paying crew salaries". The Tribunal, in its wisdom, dismissed the claim for compensation as unfounded, on the basis that "the obligation of the owner in this regard was not contingent on whether or not a ship is arrested".

I agree with the Judgment when it states that "the obligation of the owner in this regard was not contingent on whether or not a ship is arrested". However, the shipowner entered into the labour contracts with the crew on the expectation that the ship would have generated resources to pay for crew wages from its operations. This expectation was frustrated by the arrest of the ship and, as a result, the owner lost revenues that could have been used to pay for the operations of the ship, including the crew salaries.

Contrary to the findings of the decision, there is a clear causal link between the arrest of the ship – which the Tribunal rightfully considered an international wrongful act committed by Italy – and the shipowner's loss of revenue that could have been used to pay the crew salaries had that arrest not taken place. A ship involved in maritime trade, as was the case of *M/V "Norstar"*, has to be seen as a commercial venture which, inter alia, involves assets, crews and other persons interested in its operations. The arrest or detention of the ship

will certainly affect in a direct way all those involved in its operations, as they all depend on the revenues generated by the commercial venture with the ship at its centre.

It is evident to me that for a commercial venture of this nature to operate, the shipowner has to enter into a number of obligations including those arising from labour contracts with the crew. It is also known that labour contracts cannot be terminated overnight as workers need long-term salary protection. The shipowner was therefore expected to honour its contractual obligations with the crew. While I could agree to dismiss Panama's claim for compensation for crew salaries on the grounds that Panama may have failed to present sufficient evidence to substantiate its claim, I cannot agree with the reasoning of the Tribunal.

As the reasoning and conclusions of the Tribunal on this issue may have a negative impact on future cases, I felt that I should record through this short declaration my position on this issue. I am therefore of the view that there is a direct link between the arrest of the ship and the sudden loss of revenue which would have been used to pay for the crew salaries and, on this ground, Panama's compensation claim is well-founded.

(signed) José Luís Jesus