

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2018

Public sitting

held on Tuesday, 11 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
		Markiyan 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 everyone. Before the lunch break
2 Mr von der Wense was speaking. I therefore give the floor again to
3 Mr von der Wense to continue his statement.

4
5 **MR VON DER WENSE:** I would now like to address the question of continued
6 payment of wages and payment due for fees and taxes to the Panama Maritime
7 Authority. In paragraph 204 of its Rejoinder, Italy referenced the judgment in the *M/V*
8 *“Saiga”* Case, where the Tribunal did not recognize the expenses incurred by Saint
9 Vincent and the Grenadines in respect of its officials as damages, as these
10 expenses “must be borne by it as having been incurred in the normal functions of a
11 flag State”.

12
13 However, this only shows that expenses which the injured party also would have
14 incurred in the absence of the loss cannot be claimed as damages. In the present
15 case, however, we are talking about something completely different, namely the
16 correction within the damage calculation. As we heard, the calculation of the loss of
17 profit was based on the lost revenue and the expenses not incurred were deducted
18 from this. Notably, the wages of the crew were deducted as of the time of the arrest.

19
20 However, the owner did have to continue paying these wages for a brief period
21 following the arrest, as the employment contracts could not be terminated
22 immediately. This fact along with the exact amounts were confirmed by the witness
23 Mr Arve Morch. So these wages cannot be deducted from the lost revenue as they
24 were in fact not eliminated; so they must therefore be added as an adjustment item.

25
26 Based on all this, a comparison with the *“Saiga”* Case does not hold in this case.

27
28 I will now address “costs and legal fees”.

29
30 Panama is aware the Tribunal can only deviate from the convention of article 34 of
31 its Statute and order a party to compensate the other party for its expenses under
32 special circumstances.

33
34 However, Panama believes these special circumstances apply in the present case.
35 At this point I will reference the statements of Mr Nelson Carreyó, who stated in
36 detail that Italy breached its duty to act in good faith in several blatant ways, further
37 increasing the loss for Panama, particularly also with respect to costs and legal fees,
38 notably by stalling any attempt by Panama to resolve the matter in a reasonable
39 amount of time and achieve reparation or limit damages. As a result, Panama and
40 the owner and other parties involved had to hold prolonged litigation requiring
41 extensive legal assistance. This probably could have been avoided had Italy at least
42 responded to Panama’s attempts to resolve the matter and also concluded the
43 criminal proceedings within a reasonable amount of time. Having said this, Panama
44 is petitioning the court to order Italy to also reimburse the costs and legal fees in this
45 case.

46
47 Apart from this, I would like to point out that article 34 of the ITLOS Statute, to be
48 found in section 3 which, under its heading, refers to “Procedure”, only applies to the
49 costs of proceedings before the Tribunal. However, in this case Panama is also
50 asserting costs and legal fees outside of these proceedings. This particularly

1 pertains to the expenses for criminal proceedings before the Tribunal of Savona and
2 the Court of Appeal of Genoa. These expenses are not covered by article 34 and
3 therefore need to be reimbursed by Italy at any rate.

4
5 Hence Italy must in this case reimburse all costs and legal fees the owner and other
6 natural persons incurred.

7
8 I will now address the loss and damages suffered by the charterer of the “*Norstar*”.

9
10 Italy argues that the loss of revenue asserted is too remotely linked to the alleged
11 wrongful conduct and that Panama further has not provided any conclusive evidence
12 pertaining to the amount of the loss of revenue.

13
14 It should be noted that from the start, Panama has made it very clear that it can only
15 estimate the amount of the loss of profit suffered by the charterer for lack of exact
16 numbers, particularly since the charterer, the Nor Maritime Bunker Co. Ltd., no
17 longer exists; and yet this fact cannot result in Italy therefore being relieved of any
18 compensation. Instead, the compensation must be estimated in such a case.

19
20 As we will show at a later stage, the calculation followed a conservative approach by
21 calculating annual revenue of only US\$150,000. The witness Rossi confirmed that in
22 reality the revenue was higher. He is an excellent expert in the business, although
23 Italy attempted to question his credibility as he was involved in the operation of the
24 *M/V “Norstar”* and the “alleged criminal plan”. However, this is not at all convincing,
25 as this was in fact not a “criminal plan” but an entirely legal and successful business
26 model.

27
28 The loss is therefore in no way too remotely linked to the alleged wrongful conduct.
29 My prior statement also applies here: If a vessel is removed from service, it is
30 entirely evident, or even compelling, that the charterer will as a result suffer a loss of
31 revenue.

32
33 Please allow me a few words on the amount of gasoil on board at the time of the
34 seizure. Here, Italy is arguing that the email from Mr Petter Vadis does not provide
35 any evidence, as it was written almost three years after the seizure and because of
36 the conflict of interest of its sender. I must disagree with this. There is no such
37 conflict of interest, because the amount of the gasoil on board was not important to
38 the owner. Also, Italy failed to forward any argument why the amount of gasoil could
39 no longer be established almost three years after the seizure. Companies typically
40 keep their business records for more than three years, so exact information about
41 purchases, sales and inventory is available during this time. It is quite evident this
42 was also the case here. Otherwise, Mr Vadis would not have been able to provide so
43 many details including the names of the yachts refuelled. Based on all this, there is
44 no reason to challenge the accuracy of the information provided by Mr Vadis.

45
46 As I approach the end of my statement, please allow me a few words on the material
47 and non-material damages to natural persons. Italy argues there is no causal
48 connection between the criminal proceedings against natural persons and the
49 alleged violation by Italy of article 87 of the Convention. Furthermore, the Tribunal
50 had limited the object of the present dispute to the request of execution of the decree

1 of seizure. The Italian domestic criminal proceedings with regard to natural persons
2 would therefore not be an object of the present dispute. Panama's claim concerning
3 material and non-material damage to natural persons would therefore be outside the
4 scope of the present dispute.

5
6 This interpretation of the judgment of 4 November 2016, however, is false. The fact
7 the Tribunal found it reasonable that the decree of seizure and the request for its
8 execution constitute an infringement of the rights of Panama under article 87 does
9 not preclude Italy's other actions related to the seizure being able to constitute an
10 infringement of these rights.

11
12 Panama believes the unlawful accusations against natural persons in connection
13 with criminal proceedings accordingly also constitute such infringement. The rights of
14 a state under article 87 of UNCLOS cannot only be infringed by the seizure of a
15 vessel, but for example also by preventing the natural persons employed on the
16 vessel from continuing their duties, whether it be by detaining these persons or
17 through criminal charges. This too can prevent the flag State from exercising its
18 rights under article 87.

19
20 This was certainly the case here. By prosecuting natural persons for legal bunkering
21 activities aboard the "*Norstar*" on the high seas, Italy also infringed Panama's rights
22 under article 87 with this action.

23
24 Now moving to the last points in my pleading, Italy's argument that, by advancing a
25 claim for non-material damage, Panama is attempting to make up for its inability to
26 prove actual economic damage.

27
28 This allegation is false alone due to the fact that Panama is claiming both material
29 and non-material damages and has further provided compelling facts for both the
30 reason for as well as the amount of the damages. After all, with respect to Mr Rossi
31 and Mr Morch, in addition to non-material damages, material damages, namely
32 lawyers' fees, are also being claimed.

33
34 Also, there is no rule prohibiting individual natural persons from only claiming non-
35 material damages and abandon material damages so long as they in fact are non-
36 material damages and not actually disguised material damages. This requirement
37 has been met in this case, as the psychological stress of seven-year criminal
38 proceedings is clearly of a non-material nature.

39
40 The legal action is therefore justified with respect to material and non-material
41 damage to natural persons.

42
43 As regards the level of interest, Italy's objections are not justified. Panama's interest
44 rates are reasonable given the expert's convincing calculation.

45
46 In closing, I would like to summarize that Italy's attempt of disputing the existence of
47 a causative link, the amount of loss of the individual items is under no circumstances
48 reasonable and Panama's claim is justified.

49
50 Thank you, Mr President.

1 **THE PRESIDENT:** Thank you, Mr von der Wense. I understand that Panama next
2 wishes to call and examine an expert. May I ask the Agent of Panama to confirm
3 this?
4

5 **MR CARREYÓ:** That is true.
6

7 **THE PRESIDENT:** Thank you, Mr Carreyó. The Tribunal will then proceed to hear
8 the expert, Mr Horatio Estribí. He may now be brought into the courtroom.
9

10 I call upon the Registrar to administer the solemn declaration to be made by the
11 expert.
12

13 **THE REGISTRAR:** Good afternoon, Mr Estribí. Mr Estribí, an expert appearing
14 before the Tribunal is required to make a solemn declaration pursuant to article 79 of
15 the Rules of the Tribunal. You have been received the text of the declaration. May
16 I invite you to make the declaration?
17

18 *(The witness made the solemn declaration)*
19

20 **THE PRESIDENT:** I understand that examination of the expert will be conducted by
21 Mr von der Wense. I therefore give the floor again to Mr von der Wense.
22

23 **Examined by Mr von der Wense**
24

25 **MR VON DER WENSE:** Good afternoon, Mr Estribí. I would now like to start the
26 questioning. Mr Estribi, would you please introduce yourself?
27

28 **MR ESTRIBÍ:** Yes. My name is Horacio Estribí. I am an economic advisor to the
29 Ministry of Finance in Panama. I also hold a degree from Boston University and
30 I have been a private consultant also for a number of years and been involved in
31 several forensic examinations in Panama.
32

33 **MR VON DER WENSE:** Have you been, or are you, in any personal or business
34 relationship with the companies or persons whose damage is the subject of this
35 proceeding?
36

37 **MR ESTRIBÍ:** I do not have a personal business relationship with the owner of the
38 “Norstar”. Through a Panamanian legal firm I was hired to estimate damages
39 regarding the arrest of the aforementioned vessel.
40

41 **MR VON DER WENSE:** I now come to Panama’s demands for compensation from
42 Italy for the arrest of the “Norstar”. The owner of the “Norstar” was, until its
43 destruction, Inter Marine & Co AS, a corporation registered in Norway. In your
44 opinion, what damage did the owner suffer because of the arrest of the “Norstar”?
45

46 **MR ESTRIBÍ:** Okay, slide 1. As you can appreciate from the slide, the loss and
47 damage suffered by the owner includes damage for the loss of the vessel, damage
48 resulting from the loss of revenue, continuing payment of wages, legal fees, payment
49 due for fees and taxes to the Panama Maritime Authority, and payment due for fees
50 and taxes to the Palma de Mallorca Port Authority.

1 **MR VON DER WENSE:** What was the damage due to the loss of the vessel?
2

3 **MR ESTRIBÍ:** The total amount was US\$ 1,641,670.06. This amount includes both
4 the principal and the interest.
5

6 **MR VON DER WENSE:** Could you specify the amount again?
7

8 **MR ESTRIBÍ:** Yes, the total amount was US\$ 1,641,670.06; and this amount
9 included the principal, which represented US\$ 625,000 plus interest, which
10 represented US\$ 1,016,670.
11

12 **MR VON DER WENSE:** On what are you basing this assessment concerning the
13 value of the “*Norstar*”?
14

15 **MR ESTRIBÍ:** On the statement for estimation of value issued by CM Olsen A/S
16 dated 4 April 2001. Essentially, it indicated that the “*Norstar*” at the time of its seizure
17 was a solidly built and well-maintained product tanker, with good loading and
18 discharging capacity. It also states that such factors were vital elements in her ability
19 to operate as a bunker tanker.
20

21 **MR VON DER WENSE:** Do you consider the estimation of value from C M Olsen
22 A/S to be convincing?
23

24 **MR ESTRIBÍ:** Yes, I do, because it is based on a technical analysis of the features
25 and conditions of the vessel at the time that the value estimation was conducted. On
26 the other hand, CM Olsen is a well-established and recognized company that
27 specializes in the shipping industry, mainly in sales and purchase of vessels and as
28 an agent of crude oil products and related shipping vessels.
29

30 **MR VON DER WENSE:** The estimation of value states that CM Olsen did not
31 inspect the vessel and/or her class records. Does this, in your opinion, reduce the
32 persuasive power of the estimation of value?
33

34 **MR ESTRIBÍ:** CM Olsen is a company that was very well-acquainted with the
35 “*Norstar*” because it had inspected the vessel prior to the signature of the charter
36 contract, which took place in 1988, and on that occasion it issued an estimation of
37 value which is, in my view, sufficiently convincing and persuasive on the basis of the
38 reasons that I mentioned before.
39

40 **MR VON DER WENSE:** What do you say to the objection of Italy that the estimation
41 of value “is given under the condition that the vessel is entertained under a minimum
42 four years’ time charter at a rate of \$2,850 per day for the first year and with
43 natural/normal escalation for each additional year” and that this is why Panama
44 confuses the criteria used for estimation of damage for the direct loss with the criteria
45 used for estimation of *lucrum cessans*?
46

47 **MR ESTRIBÍ:** With all due respect, I think that the objection has no basis; it is
48 unfounded, since the value of the ship also depends on its future commercial value
49 or its potential use. The future revenue estimation of the vessel, on the other hand,
50 was based on the existing charter contract, which was signed, as I mentioned earlier,

1 in 1998. Thus, in my view, there should be no confusion regarding the criteria used
2 for estimation of the damage resulting from the direct loss of the vessel in
3 comparison to the loss stemming from the revenues that were foregone. In my view,
4 neither damages would have occurred if Italy had returned the ship at an earlier time
5 or Italy had reimbursed the full value of the ship to its owner. Under this
6 circumstance, the loss of profits would simply have not taken place. Since Italy did
7 not act accordingly, the ship became a complete loss, which gave place to the
8 occurrence of both damages.

9
10 **MR VON DER WENSE:** I proceed now with the issue of damages stemming from
11 the loss of revenue of the owner of the “*Norstar*”. Could you please share with us the
12 total amount of such damage?

13
14 **MR ESTRIBÍ:** Certainly. The total loss of revenue pertaining the owner was
15 \$42,856,882 at future value.

16
17 **MR VON DER WENSE:** What are the individual factors or components of this loss?

18
19 **MR ESTRIBÍ:** There were several used in my model, which I will explain in more
20 detail further, but it included gross revenue per day, operational expenses, such as
21 crew-related expenses as well as insurance expenses. The other factors included as
22 well the application of interest rate and the time span that we assumed for the
23 operation of the vessel, the time that the vessel operated commercially; or the
24 estimation that we made – I am sorry – of the time the vessel would have operated.

25
26 **MR VON DER WENSE:** How did you determine such calculations?

27
28 **MR ESTRIBÍ:** Well, the basic procedure was to deduct from gross revenue the cost
29 of operation of the vessel. Later we applied to the net revenue the compound interest
30 to determine the future value of the yearly cash flows.

31
32 **MR VON DER WENSE:** Okay. Thank you. What life or operating time span of the
33 “*Norstar*” did you base your calculations on?

34
35 **MR ESTRIBÍ:** Damage estimations are based on the assumption that the vessel
36 could have operated at least until the present day. Just for practical purposes, we
37 assumed December 2018, for practical purposes.

38
39 **MR VON DER WENSE:** Why do you assume that the vessel could have been used
40 or chartered during this period?

41
42 **MR ESTRIBÍ:** My assumption is based on a report issued by Mr Karsten
43 Himmelstrup, he is director of Procurement and Logistics in Scanbio Marine Group
44 A/S (Scanbio). They issued important information regarding the “*Norstar*” at the
45 moment of its arrest, indicating that it had a high technical standard. The
46 confirmation issued by Mr Karsten also indicates that, provided the vessel would
47 have received the adequate and timely maintenance, it could have been used in their
48 fleet, for example, even until today, the present time. This, in our view, is a
49 reasonable proof of a high probability or likelihood of continued operations of the
50 “*Norstar*” during the 1998-2018 period, which is equivalent to 20 years of operations.

1 Furthermore, this source additionally indicated that for the purpose of offshore
2 bunkering services and provision for transport of naval provision – gasoil, for
3 example – the ship could have been alternatively used for other purposes, which
4 include, for example, transportation of liquid bio-products such as vegoils and even
5 fresh water.

6
7 As explained by Karsten, the employment of the ship is based on the standard Time
8 Charter agreement (T4). According to the same source, the revenue that the vessel
9 could have generated would have most likely been very stable or constant
10 throughout the aforementioned operating period.

11
12 **MR VON DER WENSE:** Why do you consider Karsten Himmelstrup an authoritative
13 source?

14
15 **MR ESTRIBÍ:** Scanbio Marine Group is a leading producer of food ingredients for
16 sustainable marine and aquaculture sources. The company operates also six tankers
17 and uses these ships for transportation of waste products for the fish farming
18 industry in Norway and Northern Europe in general.

19
20 **MR VON DER WENSE:** Would the vessel have required any sort of overhaul or
21 revamping to operate during this time span?

22
23 **MR ESTRIBÍ:** The vessel only would have needed an adequate and timely
24 maintenance to operate until the present day, according to Scanbio.

25
26 **MR VON DER WENSE:** Have you also taken into account the times when the ship
27 was unable to generate revenue due to periodical dry docking for maintenance and,
28 if so, to what extent did this affect total damage estimations?

29
30 **MR ESTRIBÍ:** Yes, I did, in fact. Based on the information provided by the owner,
31 Mr Morch, we took into consideration that the vessel had to receive dry docking
32 services every five years. However, the model discounts five operating days on a
33 yearly basis, which implies that we only estimated 360 operating days yearly, which
34 means, yes, we did take into account the fact that the vessel needs to undergo dry
35 docking services

36
37 **MR VON DER WENSE:** Have you also considered the owner's operational costs
38 such as maintenance costs?

39
40 **MR ESTRIBÍ:** Yes, indeed I have.

41
42 **MR VON DER WENSE:** I would now like to address the continued payment of
43 wages item. How high is this damage, in your estimation?

44
45 **MR ESTRIBÍ:** Total damage in this regard was US\$ 19,100, and the payment period
46 corresponds to the time elapsed between the arrest of the vessel on 24 September
47 1998 until the end of December 1998.

48
49 **MR VON DER WENSE:** Have you specialized the single items in your calculation?
50

1 **MR ESTRIBÍ:** Yes. In my model there is a clear segregation of the different members
2 of the crew and the amounts that they received.

3
4 **MR VON DER WENSE:** How did you determine this information and why do you
5 affirm that this damage stems from the arrest of the vessel?
6

7 **MR ESTRIBÍ:** The information was provided by the owner, Mr Arve Morch, to me,
8 and it is based on the assumption that this was an outflow of cash or money that the
9 owner had to pay from his own pocket, a situation which would not have occurred
10 under the condition that the arrest had not taken place. Given the fact that the arrest
11 took place, this was an obstacle for the vessel to generate revenues and therefore to
12 finance the wages out of the abnormal operations of the vessel.
13

14 **MR VON DER WENSE:** I would now like to address the legal fees item. How high is
15 this damage of the owner, in your estimation?
16

17 **MR ESTRIBÍ:** For the owner specifically, the total amount as of 13 June 2018 was
18 equivalent to a total of €140,571, and US\$ 102,401. There are more details in the
19 report that I filed and the different fees that have been paid out to different firms and
20 lawyers.
21

22 **MR VON DER WENSE:** How did you determine this information?
23

24 **MR ESTRIBÍ:** It was provided essentially by the invoices of payments issued to each
25 lawyer.
26

27 **MR VON DER WENSE:** Now I proceed to address payment due for fees and taxes
28 to the Panama Maritime Authority. What is your estimation of this amount?
29

30 **MR ESTRIBÍ:** We have a very recent certificate issued by the Panama Maritime
31 Authority. In fact, it is dated 29 August 2018, where essentially they make an update
32 and also they make a projection of the amount owed to them by "Norstar". As of
33 December 2018, the amounts are 135,111.93. I am sorry, I am going to correct that.
34 The amount due as of December 2018 would be 136,899.49, and the amount due on
35 30 September 2018 would be 135,111.93.
36

37 **MR VON DER WENSE:** US dollars?
38

39 **MR ESTRIBÍ:** Yes.
40

41 **MR VON DER WENSE:** Thank you. How did you determine this amount?
42

43 **MR ESTRIBÍ:** As I mentioned earlier, the entity recently issued a certification of the
44 amount owed, and that certification was dated 29 August. There was a previous
45 certification as well dated 30 March 2017, but we have more recent information.
46

47 **MR VON DER WENSE:** As for the payment due to the Palma de Mallorca port
48 authority, what is your estimation of this amount?
49

1 **MR ESTRIBÍ:** According to the information provided to me, it is not known at this
2 time the amount that the “*Norstar*” would have to pay to the Palma port authority.
3 However, if the authority were to demand any payments or fees, then this would
4 represent an additional amount to the claim that we have brought today.

5
6 **MR VON DER WENSE:** With regard to the charter of the Nor Maritime Bunker
7 Company Limited, a company registered in Malta, what damage did it incur because
8 of the arrest of the vessel according to your estimation?

9
10 **MR ESTRIBÍ:** Namely the following: loss of cargo and loss of revenue. Other factors
11 also obviously included the application of interest rate and the revenues that were
12 estimated would have taken place during the operating period of the vessel.

13
14 **MR VON DER WENSE:** According to you, what is the damage caused by the loss of
15 the cargo?

16
17 **MR ESTRIBÍ:** The value of the cargo on the date of the arrest was US\$ 108,670.39.
18 This gasoil should have been surrendered by Italy to the charterer but the fuel was
19 recycled or disposed of. The total amount then would be US\$ 285,441.48 owed to
20 the charterer. This amount obviously would include the above-mentioned principal of
21 US\$ 108,670.39 and interests, which would represent in this case US\$ 176,771.09.

22
23 **MR VON DER WENSE:** How did you determine this?

24
25 **MR ESTRIBÍ:** It is based on the estimated price of a cubic metre of gasoil at the
26 time, which was estimated at \$612 per cubic metre on board.

27
28 **MR VON DER WENSE:** How many tonnes was the amount of the cargo?

29
30 **MR ESTRIBÍ:** It was 177,566 cubic metres of gasoil.

31
32 **MR VON DER WENSE:** Cubic metres or metric tonnes?

33
34 **MR ESTRIBÍ:** Metric tonnes, I am sorry.

35
36 **MR VON DER WENSE:** How did you determine the amount of gasoil on board at the
37 moment of the vessel’s arrest?

38
39 **MR ESTRIBÍ:** It was based on the information contained in Annex 1 of the Reply of
40 Panama, dated 27 May 2001, and the information was contained in an email issued
41 by Mr Petter Vadis.

42
43 **MR VON DER WENSE:** How did you determine the price of the gasoil?

44
45 **MR ESTRIBÍ:** The information was provided to me by Mr Arve Morch. He asserted
46 that the price of the gasoil is based on a naval provision that establishes a price of
47 between US\$ 500 and US\$ 600 per metric tonne. It would also be useful to provide
48 an example of the sales price that the marina in San Remo was charging at the time
49 for the same product, which was US\$ 1,000 per metric tonne.

50

1 **MR VON DER WENSE:** What is your estimate of the charterer's loss of revenue?
2

3 **MR ESTRIBÍ:** As a consequence of the seizure of the "Norstar", the charterer was
4 unable to use the vessel to generate further business activity. Therefore, he
5 sustained damage in the form of lost profits, foregone profits. The total loss of
6 revenue pertaining to the owner was US\$ 6,438,646. This amount would include
7 essentially a portion of interests of US\$ 3,080,547 and interests accrued in an
8 amount of US\$ 3,358,098.29.
9

10 **MR VON DER WENSE:** How did you determine this amount?
11

12 **MR ESTRIBÍ:** The calculations were made applying essentially the model and the
13 corresponding interest rates, which I will explain in more detail in a moment, to
14 determine the future value of the estimated cash flows during this 20-year time
15 period. In this case such estimations reveal that the annual revenues were
16 equivalent to at least US\$ 150,000 per year as a result of the offshore bunkering
17 activity.
18

19 **MR VON DER WENSE:** In relation to the material and non-material damage to
20 natural persons, which individuals suffered this damage?
21

22 **MR ESTRIBÍ:** The individuals that suffered such damage would include the
23 following: Silvio Rossi, Renzo Biggio, Arve Einar Morch, Emil Petter Vadis,
24 Tore Husefest, Odd Falck and Tor Tollefsen.
25

26 **MR VON DER WENSE:** What damage did these individuals suffer?
27

28 **MR ESTRIBÍ:** Well, they endured, they suffered, namely, the following items:
29 material damages, including legal fees and other professional fees, and immaterial
30 damages, which included pain and suffering.
31

32 **MR VON DER WENSE:** What is the total legal and other professional fees
33 generated in relation to their defence?
34

35 **MR ESTRIBÍ:** Total legal fees in this case were €56,117, of which €29,797 were
36 principal and €26,320 corresponds to accumulated interests.
37

38 **MR VON DER WENSE:** How did you determine these amounts?
39

40 **MR ESTRIBÍ:** Essentially, the amounts were paid out to the lawyers, so I based my
41 calculations on invoices, and also, just to simplify the calculations, I made an
42 assumption, which is that interests were accrued as of November 2005. Although
43 some of the invoices were paid earlier, just to simplify the calculations I took as a
44 basis November 2005.
45

46 **MR VON DER WENSE:** What are your estimates of immaterial damages?
47

48 **MR ESTRIBÍ:** My figures indicate that total claim is for the amount of US\$ 219,844,
49 of which US\$ 87,000 correspond to principal and US\$ 132,844 would correspond to
50 interests.

1 **MR VON DER WENSE:** Principal was, once again?

2
3 **MR ESTRIBÍ:** I will say that again. Total claim was US\$ 219,844 and principal was
4 US\$ 87,000, and interests were US\$ 132,844.

5
6 **MR VON DER WENSE:** What is the total damage you have estimated and what
7 portions correspond to interest rates and what to principal?

8
9 **MR ESTRIBÍ:** In a while I will show the total figures in a slide I have but total damage
10 was estimated to be US\$ 51,882,358, of which US\$ 24,873,091 corresponded to
11 interests, and US\$ 27,009,266 to principal. Also, the total damages include a portion
12 denominated in euros and the amount would be €196,688, of which €26,320
13 correspond to interest and €170,368 correspond to principal.

14
15 **MR VON DER WENSE:** Why did you apply compound interest instead of simple?

16
17 **MR ESTRIBÍ:** It is slide 2. I will get to those figures in a while. Why was compound
18 interest applied in this case? Based on essentially technical literature that states that
19 for large periods of damage estimations, interests should be compounded because
20 of the numerous alternatives of investment that gain benefits on a compounded
21 basis. For this statement I used several papers that specifically address the issue of
22 when and why compound interests are applied in cases similar to the one we are
23 seeing today. For example, in his paper *Approaches to the Award of Interest by*
24 *Arbitration Tribunals* by Mark Beeley Richard E. Walck asserts that: "There is, then,
25 no logical support for the awarding of simple interest, unless the time from the cause
26 of action to the payment of the award is very short", which is not the case now. Mr
27 Beeley is, by the way, a solicitor-advocate and barrister in the London office of
28 Vinson & Elkins RLLP and a member of its International Dispute Resolution Group.
29 He is also a partner in Global Financial Analytics LLC and specializes in the
30 assessment of damages in international commercial and treaty arbitrations. By the
31 way, his paper also contains information from other specialists, for example, in
32 discussing *Norway v. United States*, F A Mann notes in his paper *Compound Interest*
33 *as an Item of Damage in International Law* that "there at least is an indication that if
34 proper reasons had been advanced, the Tribunal might have awarded compound
35 interest."

36
37 By the way, Mann also concludes that compound interest should be the norm absent
38 special circumstances that would dictate otherwise. Mann was an influential
39 German-born scholar of his generation and a noted authority on international law.

40
41 Also, the literature indicates, for example, that there is a paper called *Compound*
42 *Interest in International Disputes (2004)* written by Mr John Yuko Gotanda, who
43 essentially states that up until recently the longstanding and well settled rule was that
44 award of interests was to be on a simple, as opposed to compound, basis. Later Mr
45 Gotanda in his paper *Assessing Damage in International Commercial Arbitration:*
46 *A Comparison with Investment Treaty Disputes* states the following:

47
48 Starting in the early 2000s, however, there was a trio of cases – *Santa Elena*,
49 *Maffezini*, and *Wena Hotels* – in which the tribunals awarded compound
50 interest. These decisions have been followed most recently by the tribunals in

1 other cases such as *PSEG Global Inc*, *Siemens* and *Azurix*. As the tribunals
2 noted in the latter two cases, compound interest “reflects the reality of financial
3 transactions and best approximates the value lost by an investor”.

4
5 **MR VON DER WENSE:** Why did you choose to apply US Prime rate as opposed to
6 Libor, for example, or other rates?

7
8 **MR ESTRIBÍ:** Yes, in fact, Prime rate was applied as a proxy or as a variable for
9 interest rates in our model. However, Libor was not considered because Libor, in my
10 view, represents an interest rate applied between banks; it is an interbank rate, as
11 opposed to Prime rate, which is essentially the amount that would be paid to a
12 potential investor or to a final client or depositor.

13
14 **MR VON DER WENSE:** How did interest vary now in comparison to rates applied in
15 chapter 4?

16
17 **MR ESTRIBÍ:** This is a very important question. Damage in chapter 4 was based on
18 the *M/V “Saiga”* Case essentially, which was also discussed and seen by this Court.
19 Estimations in such case were based on a shorter timespan than the *M/V “Norstar”*
20 Case, therefore we needed to apply a more realistic interest which would be more
21 objective in the estimation of total damages caused to the owner and the charterer.

22
23 **MR VON DER WENSE:** Why did your estimations of damage vary with respect to
24 original estimates presented in chapter 4?

25
26 **MR ESTRIBÍ:** For several reasons, but the main one is that the estimations in
27 chapter 4 only were done on the assumption that the vessel would operate until June
28 2005, and therefore we needed to update this estimation.

29
30 **MR VON DER WENSE:** Why are you now assuming the vessel could have operated
31 all the way until 2018 as opposed to June 2005, as assumed originally in chapter 4?

32
33 **MR ESTRIBÍ:** This is the essential reason why we extended the amount. It was
34 based on Mr Karsten, information provided recently, so we did a new estimation,
35 more technical and based on more, new assumptions. The additional element was
36 that the “*Norstar*” could have operated until present days provided, as we mentioned
37 earlier, that it received the appropriate maintenance, and also on another important
38 premise, which is the fact that the “*Norstar*” could have also been used alternatively
39 in other commercial operations, which I already mentioned earlier. So there were two
40 basic new premises which needed to be accounted for: essentially, that the “*Norstar*”
41 could have operated until today and, second, that the “*Norstar*” had and has several
42 alternative commercial uses, not only to distribute and sell bunker.

43
44 **MR VON DER WENSE:** Why did you use the median of the interest to estimate
45 certain future values but applied individual yearly interest rates to, for example, loss
46 of revenue estimates?

47
48 **MR ESTRIBÍ:** This is a very important part of the estimations. In effect, we applied a
49 simple average and a moving average for the 1998/2018 Prime rate time series. So
50 what we did was we calculated a simple mean, but we wanted to be very meticulous

1 statistically speaking, and we also calculated so-called moving average, which is a
2 method just to smoothen the sample, especially when you have samples that are
3 subject to variations or fluctuations, which in fact Prime rate was.
4

5 This is important, the fact that we used the moving average of 4.8 as opposed to a
6 simple mean of 5.6. Another important issue is that the sample gave us a standard
7 deviation of 2.8, which we would consider is a low deviation of the different samples.
8 Why is this important? Because of the following: although to begin with the difference
9 between the two means used was relatively small, we opted for the smallest one, to
10 be fair in our calculations. Secondly, although standard deviation was relatively low,
11 we followed the following method in order to minimise the impact that could derive
12 from the fluctuations of the Prime rate we already mentioned. We did the following.
13 In order to calculate the loss of revenue that derived from cash flows, like the loss of
14 revenue of the owner and the loss of revenue of the charterer, we applied the Prime
15 rate of the year to that basic year. We applied the Prime rate registered during the
16 year to the calculation of cash flow, so cash flow estimations were based on a year
17 to year basis. This was done in order to reduce the distortion that statistically could
18 derive from the fact of using an average. It is not recommended to use an average if
19 you have important variations, although variations were low in this case. We tried to
20 correlate as closely as we could the Prime rate that prevailed that year with regard to
21 the net revenue that was created. In a moment I will explain this more graphically.
22

23 So it is important to state that we tried to minimize the distorting impact that could
24 result from applying an average to the time series of Prime rates. We applied the
25 Prime rate on a yearly basis corresponding to the yearly estimated net revenue.
26

27 We took the simple, the moving mean, 4.8, and applied that to cases only where we
28 had lump sum payments, as in the case of legal fees and so forth. We did this based
29 on the fact that this would also have a minimum distorting impact since we were
30 using the moving mean.
31

32 I would like to summarize. What we did was we used the series of Prime rate, we
33 calculated the standard deviation to see if the sample presented important deviations
34 – it did not. However, we were very meticulous in applying Prime rate on a yearly
35 basis for the estimation of the loss of revenues on a yearly basis, and we used the
36 moving mean to lump sum payments such as legal fees and the losses deriving, for
37 instance, from the loss of cargo.
38

39 **MR VON DER WENSE:** Thank you, Mr Estribí. Is there any other parameter or proxy
40 which you consider determines that the interest rate that you applied in the financial
41 model is conservative and realistic?
42

43 **MR ESTRIBÍ:** Yes. This is very important. There was a paper we submitted as proof
44 or evidence called *Systematic Risk and the Cost of Equity Capital in the Shipping*
45 *Industry*, written by Professor Wolfgang Drobetz and Hennin Schröder – sorry for the
46 mispronunciation of the last name – and they both teach at the Department of
47 Finance at the University of Hamburg Business School. Why is that paper important?
48 That paper estimates through the so-called capital asset pricing model. It is one of
49 the methods they use. They use another alternative model but I will centre my
50 dissertation on the capital asset pricing model (CAPM), and basically what they do is

1 they use this method, which is widely known, to estimate what the equity capital of
2 the shipping industry should be in European countries. He estimates the same
3 values for other markets, but it is important that the paper contains both an
4 estimation of the equity capital in the shipping industry, and it does it in Europe, to
5 isolate, so to speak, the estimation of damages that would apply to the *M/V "Norstar"*
6 Case since it operated precisely in the European market.

7
8 Why is this important? Essentially because this parameter allows us to estimate two
9 important factors: one, the value of money as a function of time and, secondly, the
10 value of money in terms of the risk that an investor would typically take in an
11 industry, in the shipping industry in this case.

12
13 So what this comes down to is that they estimate the following co-efficients for the
14 European market. They calculate an equity capital of the shipping industry for
15 Europe of 6.53, corresponding to a June 1984 to July 2003 period; and they also
16 calculate 8.49 for the August 2003 through November 2013 period. What is
17 important is that both indicators are greater than the average of Prime rate we used
18 of 4.9. I guess the point I want to stress is that we were quite conservative in the
19 application of the Prime rate, which was below the estimated co-efficients in the
20 above-mentioned paper.

21
22 **MR VON DER WENSE:** Why are interests applied on payments made by the owner
23 or charterer such as fees?

24
25 **MR ESTRIBÍ:** Well, interests are applied to such outflows of cash since they
26 represent an opportunity cost. Let me explain. Such outlays of cash could have been
27 invested at a reasonable interest and generate returns to the owner, as opposed to
28 allocating such resources to pay fees and legal services that stemmed or derived
29 from the seizure of the *"Norstar"* vessel.

30
31 **MR VON DER WENSE:** Thank you. I am now moving to my last questions. Are there
32 any important estimations or factors that you consider were not included in your
33 calculations of damage, and what are the implications?

34
35 **MR ESTRIBÍ:** Well, yes, there is a factor which was not accounted for in the model,
36 and essentially it is related to the impact that inflation would have on the estimated
37 revenues and loss of profits. So we did an exercise and we took essentially the
38 global inflation rate from information provided by the World Bank and the
39 International Monetary Fund, and we tried approximating the impact that this would
40 have had on our estimations – and what we obtained was that we were roughly
41 underestimated by 2 per cent total amount of damages as a result of not correcting
42 for inflation.

43
44 **MR VON DER WENSE:** Thank you. Now moving to my last question, what is the
45 extent of such underestimation in light of, for example, the European inflation rate
46 during the assumed operation time span of the vessel?

47
48 **MR ESTRIBÍ:** Well, like I mentioned, roughly what we estimate is that we
49 underestimated total revenues in approximately 2 per cent, since we did not account
50 for the impact of inflation on the estimations.

1 **MR VON DER WENSE:** Do you want to make any additional comments?
2

3 **MR ESTRIBÍ:** Well, just address the graph we have up on the screen. Can we see
4 the other graph? Is there a previous one? Okay. These graphs essentially reflect two
5 estimations, and the estimations are essentially the loss of revenue. First, we can
6 observe the loss of revenue endured by the owner. I think what is interesting is that
7 we can appreciate how interest rates, as well as principals, were accumulated or
8 estimated along the period of analysis – and we can clearly see that, yes, there is an
9 important impact stemming from the application of interest rates, which in turn is a
10 result of the variations of interest rates along the different years. As you can
11 appreciate, we had very high interest for instance during 1999, 2000, 2001; then
12 interest rates dropped in the market during 2002 to 2003. As you can observe, after
13 the economic crisis of 2008/2009 interest rates have been pretty much stable and
14 low, and therefore the impact that that had on the model is much more moderate.
15

16 Also, it is important to mention that the damages are a result essentially of the time
17 period elapsed between the seizure of the vessel and the payment of the reparation
18 of the damages.
19

20 The next graph will basically show the same, except for the charterer's loss of
21 revenue, but I think you can appreciate pretty much the same principles of the
22 impact that interest rates had on the calculation of damages, and also how interest
23 rate represented an important share or portion of the damages as a result of the time
24 that transpired between the seizure and the reparation of the damages.
25

26 My final slide is a summary of some of the figures we have already used. I won't go
27 into details but essentially you can see there the different items which I was asked
28 about along the questionnaire. You can easily appreciate that the most important
29 damage reparations stem, or are related to, the loss of revenue both of the owner
30 and of the charterer. In this case we can see the total amount – and I mentioned this
31 amount earlier – is US\$ 51,681, the total reparations denominated in dollars. The
32 next slide resumes the total amounts of damages that are denominated in euro.
33 That's about it.
34

35 **MR VON DER WENSE:** Thank you very much, Mr Estribi. Thank you, Mr President.
36

37 **THE PRESIDENT:** Pursuant to article 80 of the Rules of the Tribunal, an expert
38 called by one Party may also be examined by the other Party. Therefore, I ask the
39 Co-Agent of Italy whether Italy wishes to cross-examine the expert and, if so, to
40 indicate who will be conducting the cross-examination.
41

42 **MR AIELLO:** Yes, Mr President, we would like to cross-examine the witness, and I
43 would like to cross-examine him.
44

45 **THE PRESIDENT:** Thank you. I give the floor to Mr Aiello to cross-examine the
46 expert.
47

48 **Cross-examined by MR AIELLO**
49

1 **MR AIELLO:** Good evening, Mr Estribí. A while ago we heard from you that you had
2 no relationship with the people who allegedly suffered damages from the Italian
3 conduct. Especially you mentioned Mr Rossi and Mr Morch. But, as you know, the
4 client is the Government of Panama. So I want to know what is your relationship with
5 the Government of Panama.
6

7 **MR ESTRIBÍ:** I am an advisor, economic advisor, consultant, to the Ministry of
8 Finance.
9

10 **MR AIELLO:** Economic advisor is what kind of relationship? Are you a public
11 servant?
12

13 **MR ESTRIBÍ:** I am a consultant for the Panamanian Government.
14

15 **MR AIELLO:** But your relationship, it is not for a specific period of time – you are
16 until your retirement a consultant of the Ministry?
17

18 **MR ESTRIBÍ:** Yes, it is not specified in terms of time – yes; it's not a contract.
19

20 **MR AIELLO:** So the most part of your earnings comes from the Ministry of Economic
21 Finance of Panama?
22

23 **MR ESTRIBÍ:** I derive – yes – income from being a consultant and an advisor to the
24 Government of Panama.
25

26 **MR AIELLO:** Thank you. Have you ever made evaluations of other vessels before
27 these proceedings?
28

29 **MR ESTRIBÍ:** No, I haven't. Excuse me, can you repeat the question – evaluation
30 of?
31

32 **MR AIELLO:** I am wondering if you are an expert on this subject, and my question is
33 if you have ever made other expertise about the value of vessels.
34

35 **MR ESTRIBÍ:** I have made several expertise in my country. I have been an
36 economic expert in several trials, and I have never made an estimation directly of a
37 vessel case. This is the reason why I was very careful in finding papers, and
38 specialized papers, about the subject, since in any event there aren't many cases
39 related to evaluation of vessels. Most of them are seen by this court.
40

41 **MR AIELLO:** So this is your first time in which you are giving us your advice about
42 evaluation of a vessel. It is a very specific sector.
43

44 **MR ESTRIBÍ:** This is my first time. In terms of a case related to a vessel, it is not my
45 first time as an economic expert in legal cases.
46

47 **MR AIELLO:** Are you aware that the total amount of the loss and damages allegedly
48 suffered by Panama has been considerably increased during this proceeding?
49

1 **MR ESTRIBÍ:** They have been increased with regard to – relative to the estimations
2 made earlier in chapter 4. They have.
3
4 **MR AIELLO:** Have you advised Panama about the preparation of its Pleadings?
5
6 **MR ESTRIBÍ:** Can you please repeat the question and be more specific?
7
8 **MR AIELLO:** Yes, have you helped Panama in the preparation of its Memorial and
9 Pleadings in this case?
10
11 **MR ESTRIBÍ:** Not directly, no. I have been involved more specifically in the
12 preparation of the estimations regarding the damages.
13
14 **MR AIELLO:** Here, we have an estimation dated 13 June 2018 that has your
15 signature.
16
17 **MR ESTRIBÍ:** Yes.
18
19 **MR AIELLO:** Do you recognize this one?
20
21 **MR ESTRIBÍ:** Yes, I do, yes.
22
23 **MR AIELLO:** It is yours, I suppose, with all documents.
24
25 **MR ESTRIBÍ:** Yes.
26
27 **MR AIELLO:** But we have another expertise sent by Mr Nelson Carreyó to this
28 honourable Tribunal on 9 October 2017.
29
30 **MR ESTRIBÍ:** Yes.
31
32 **MR AIELLO:** This one has not been signed. I would like to know if you are the
33 author also of this one.
34
35 **MR ESTRIBÍ:** There was information sent to the Tribunal on 13 June, which I signed.
36 That is the information I would like to consider as valid for the purpose of this trial.
37
38 **MR AIELLO:** I do not understand. Is this yours or not?
39
40 **MR ESTRIBÍ:** What I can account for is the one I signed.
41
42 **MR AIELLO:** It is not signed by you.
43
44 **MR ESTRIBÍ:** Precisely. The one I signed was the one that was sent out on 13 June.
45 The other sheets are similar to the ones we issued, but they are simply not signed.
46
47 **MR AIELLO:** Yes, because reading this message there is written: “Panama hereby
48 finds the attached economic report to be sustained by an expert witness at the oral
49 proceeding.” Are you this expert?
50

1 **MR ESTRIBÍ:** Well, like I said, I signed a – different copies of the model on 13 June,
2 and this is the one that I am presenting today.

3

4 **MR AIELLO:** But not on 9 October 2017?

5

6 **MR ESTRIBÍ:** Well, I am responsible for the one sent and signed on 13 June.

7 I cannot account for the...

8

9 **MR AIELLO:** Thank you. Coming back to your financial model – I suppose this is the
10 correct name – this has no representation of your reasoning. Today you have
11 illustrated, maybe for the first time, how you could evaluate all the damages,
12 because we have any citation or reference of your sources here. And so I have to
13 make some questions. First of all, how did you evaluate the amount of the damage
14 and substitution of the vessel? I think it is on page 2, the first section: loss and
15 damage suffered by owner; damage and substitution of the vessel etc.

16

17 **MR ESTRIBÍ:** Well, I think I addressed this question earlier, but I will be happy to do
18 this again.

19

20 **MR AIELLO:** Yes, please.

21

22 **MR ESTRIBÍ:** The damage due to the loss of the vessel was for a total amount of
23 US\$ 1,641,670. This amount included both the principal, which in this case
24 represented the \$625,000, and interest rates for \$1,016,670. The information
25 regarding the value of the vessel at the time of the arrest was provided to us by
26 Mr Arve Morch.

27

28 **MR AIELLO:** Was provided by?

29

30 **MR ESTRIBÍ:** Well, this information was essentially provided from C M Olsen and
31 also in conversations we had with Mr Arve Morch, which provided us with information
32 about the vessel at the time.

33

34 **MR AIELLO:** Okay. Have you ever seen or inspected the “*Norstar*” vessel?

35

36 **MR ESTRIBÍ:** No, I haven’t. I have seen pictures of it – and, again, based my
37 estimations on information provided by the owner as well as by the report issued by
38 CM Olsen, which I already mentioned.

39

40 **MR AIELLO:** How is it possible to perform this kind of estimation, having never seen
41 the vessel?

42

43 **MR ESTRIBÍ:** Like I said, the information that I included in the model was based on a
44 report issued by CM Olsen, as well as by information provided directly to me by
45 Mr Arve Morch, based on pictures and the report that I mentioned.

46

47 **MR AIELLO:** I suppose that you are speaking about this record, CM Olsen, dated
48 4 April 2001. Is that correct?

49

1 **MR ESTRIBÍ:** Yes, there was a report issued on that date by CM Olsen, which gave
2 indications regarding the value of the vessel.
3
4 **MR AIELLO:** Do you know if CM Olsen had inspected the “*Norstar*” and when?
5
6 **MR ESTRIBÍ:** Yes, my understanding is that they did. I think I mentioned this earlier.
7
8 **MR AIELLO:** Your understanding?
9
10 **MR ESTRIBÍ:** Well, the information that was provided to me.
11
12 **MR AIELLO:** From who – sorry?
13
14 **MR ESTRIBÍ:** Was provided by Arve Morch, and also was included in chapter 4.
15
16 **MR AIELLO:** Mr Morch?
17
18 **MR ESTRIBÍ:** Yes.
19
20 **MR AIELLO:** Sorry, but I do not understand.
21
22 **MR ESTRIBÍ:** Oh, I am sorry – Mr Morch, Arve – was provided by him and also the
23 information was contained in chapter 4, and that is where I obtained these figures
24 from.
25
26 **MR AIELLO:** So Mr Morch told you that CM Olsen made this record, having
27 inspected the ship – on which date?
28
29 **MR ESTRIBÍ:** That question I answered before. I did not answer it now. The Olsen
30 report was based on an inspection that they made prior to the signature of the
31 charter contract in 1998. As for the exact dates on which the inspections were made,
32 I do not have that information available, but I do have the information that Olsen was
33 well acquainted with the “*Norstar*” as a result of the fact that they inspected the
34 vessel prior to the signature of the charter contract in 1988.
35
36 **MR AIELLO:** But we do not know if the vessel was inspected before or after the
37 arrest?
38
39 **MR ESTRIBÍ:** What I know is what I just mentioned. I cannot speculate further than
40 that. I can repeat what I said earlier regarding the Olsen information that was
41 contained in the case in chapter 4, which states that the “*Norstar*” was in fact
42 inspected prior to the signature of the charter contract in 1998.
43
44 **MR AIELLO:** Turning to chapter 2 of your expertise – for me it is page 3 but there is
45 no numeration of the pages, but you can easily find the chart – this is related to loss
46 of revenues. What is the period of time that you have taken into account?
47
48 **MR ESTRIBÍ:** Basically, from September 1998 to December 2018.
49
50 **MR AIELLO:** That is coming?

1 **MR ESTRIBÍ:** I am sorry?
2
3 **MR AIELLO:** That is coming?
4
5 **MR ESTRIBÍ:** Yes, as it was an approximation because we are not entirely sure
6 when the reparations will take place, so it was an estimation.
7
8 **MR AIELLO:** Why 31 December of this year and not 31 December of 2044?
9
10 **MR ESTRIBÍ:** I guess because one needs to make fair assumptions for the purpose
11 of the estimations. I cannot make projections that are not logical or not based on
12 facts. I doubt that the vessel could have operated under any circumstances to that
13 point, and that would have been highly speculative on my part. I tried to be objective
14 and logical and base my assumptions on feasible and reasonable facts.
15
16 **MR AIELLO:** You are not an expert in the vessel or maritime field. Do you know
17 what could be the normal period of life of a small tanker like the “*Norstar*”?
18
19 **MR ESTRIBÍ:** I am not an expert, but my information is based on information
20 provided by specialists. Like I said, the assumption regarding the possibility or high
21 likelihood that the vessel could still be operating was not my assumption; it was
22 made by an expert. Second, I do understand from information that I discussed with
23 Arve that there are several vessels that currently have the same age that the
24 “*Norstar*” has and are still fully operational and working and have commercial
25 operations today. In the company that we just mentioned, I think the Scanbio
26 Company would be operating vessels with very similar specifications and a similar
27 time of construction.
28
29 **MR AIELLO:** Which expert did you consult on this argument?
30
31 **MR ESTRIBÍ:** I did not consult an expert directly. I took the information from reports
32 issued by experts who I have mentioned. I can mention them again. CM Olsen was
33 one of them and the Scanbio Marine Group was another.
34
35 **MR AIELLO:** So you made research on the internet maybe, or something like that?
36
37 **MR ESTRIBÍ:** I did research but not for the purpose of the assumption that you
38 mention, which is regarding the operation at the time. This was not research that I
39 made directly. This is information that was provided in a report that stated that in fact
40 – and I mentioned this earlier – there was a very high likelihood that if the “*Norstar*”
41 had received timely and proper maintenance, it could still be operating even until
42 today.
43
44 **MR AIELLO:** Do you know when the “*Norstar*” was built?
45
46 **MR ESTRIBÍ:** Yes, I have an approximate date. I think it was 1966 or 1967.
47
48 **MR AIELLO:** 1966?
49
50 **MR ESTRIBÍ:** That is correct.

1 **MR AIELLO:** So at the moment of the arrest this ship was 32 years old?
2
3 **MR ESTRIBÍ:** I guess, yes, my presumption is that it was.
4
5 **MR AIELLO:** In your evaluation, it could operate from 1998 to 2018, 20 years more,
6 which means 52 years?
7
8 **MR ESTRIBÍ:** In my view, that was the view of the expert who provided the
9 information, and I have already mentioned both experts.
10
11 **MR AIELLO:** Fifty-two years?
12
13 **MR ESTRIBÍ:** According to their view, yes.
14
15 **MR AIELLO:** In chapter 3 or section 3, as you like, you said –
16
17 **MR ESTRIBÍ:** Of the questionnaire, I am sorry?
18
19 **MR AIELLO:** Of *this*, chapter 3.
20
21 **MR ESTRIBÍ:** Give me one minute to get the printout of the model. Okay.
22
23 **MR AIELLO:** In this chapter you suggest the cost of the personnel, the crew, of the
24 “*Norstar*” until 19 November 1998. Is that correct?
25
26 **MR ESTRIBÍ:** Yes. The item refers to the wages that had to be paid by the owner of
27 the vessel from his own pocket as a result of the fact that the vessel was not
28 operating because it had been arrested, and the information that I got directly from
29 Mr Arve Morch is based on his report regarding the crew that was paid continuously
30 until December or November, and it represented an amount – I think we mentioned it
31 – of approximately \$19,000.
32
33 **MR AIELLO:** How many people were working on the vessel at the moment of the
34 arrest?
35
36 **MR ESTRIBÍ:** The details are contained in the information that was sent, and I
37 believe you have a copy of that. I can look it up. From the information that I have
38 related to the case, there were six members of the crew.
39
40 **MR AIELLO:** Six, not five? I see one master and –
41
42 **MR ESTRIBÍ:** I am sorry, yes, five.
43
44 **MR AIELLO:** One chief engineer, a cook and able seamen?
45
46 **MR ESTRIBÍ:** That is correct, sir.
47
48 **MR AIELLO:** I very much like to eat because I am an Italian, so I am very curious
49 about the cook. When does this cook finish his work? We do not have any date.
50

1 **MR ESTRIBÍ:** I think you are asking questions that an economic expert is not entitled
2 to know regarding the direct involvement of the crew and exact operations or
3 functions that they perform. My estimations were based on the information contained
4 in the case and provided also by Mr Arve Morch.

5
6 **MR AIELLO:** For the chief engineer you say “paid until the end of December 1998”.
7 What about the cook? Until which date was he paid by Mr Morch?

8
9 **MR ESTRIBÍ:** I am not in a position to provide details regarding the exact date that
10 the crew that worked back in 1998 ceased from the vessel. I think there are much
11 more entitled people in this room to respond about that, but I could say, with all due
12 respect, that at the end of the day the assumptions, if they vary, the ones that you
13 are making, would have a very negligible impact on the model. The model really
14 would not change much in its final amounts if the cook stayed one week or two or
15 three or four. I understand that probably it is very important but from my damage
16 estimation the impact of the cook who earned \$300 per month is quite negligible.

17
18 **MR AIELLO:** You could say the same about the able seamen?

19
20 **MR ESTRIBÍ:** Again, what I could say is that I do not have this information in detail.
21 I have the information that was contained in chapter 4, and there was a detail
22 contained in my estimations that is identical to the one contained in chapter 4.

23
24 **MR AIELLO:** Have you ever seen the contract between Mr Morch and the cabin
25 crew?

26
27 **MR ESTRIBÍ:** I must admit, no, I have not seen it. I have not seen the contract. My
28 understanding is that there are several documents that were lost in the vessel when
29 it was arrested, and this might have been one of them, but my answer to your
30 question is: no, sir, I have not seen the copy of the contract that was signed between
31 the crew and the owner.

32
33 **MR AIELLO:** How can you give to the Tribunal an evaluation of the wages of the
34 cabin crew if you have never seen the contract or other kinds of document? I cannot
35 understand it. Can you explain this, please?

36
37 **MR ESTRIBÍ:** Let me limit it to your statement about me not seeing other
38 documents. You will have to specify what other documents. I just said that I have not
39 seen a document pertaining to the contract between the owner of the vessel and the
40 crew. I have not seen that. I have seen other documents, but that one I have not
41 seen. I am guessing that perhaps this is one of the documents that was not
42 recovered as a result of the fact that some of the documents were lost in the vessel.

43
44 **MR AIELLO:** Can you tell the Tribunal what kind of documents you are speaking
45 about, because these documents are not alleged in this case, so we are very curious
46 at this moment?

47
48 **MR ESTRIBÍ:** Can you be more specific in your question?

49

1 **MR AIELLO:** What kind of document did you use to evaluate this amount, for
2 example for the master, 6,600?
3

4 **MR ESTRIBÍ:** The document that I used, the basis of the information was the
5 information contained in chapter 4, where there is a detail of the different salaries
6 earned by the crew, and the information that I have in my report is identical to the
7 one contained there.
8

9 **MR AIELLO:** In general or in this case?
10

11 **MR ESTRIBÍ:** I will try to rephrase my answer. Your question was: where did I get
12 the information regarding the different salaries earned by each member of the crew?
13 My answer was that I got this from chapter 4, where there was a detail regarding the
14 salaries earned by each member.
15

16 **MR AIELLO:** Do you remember the names of the members of the crew?
17

18 **MR ESTRIBÍ:** No, I do not.
19

20 **MR AIELLO:** Have you ever met them?
21

22 **MR ESTRIBÍ:** No, I have not, sir, not that I know of.
23

24 **MR AIELLO:** Going to the legal fees, section 4, you seem to have included the
25 expenses sustained for this proceeding, but this honourable Tribunal will take these
26 into consideration in the light of the result of this case. For example, what I see is
27 that from 2011, if I am correct, there are a lot of legal fees – Nelson Carreyó and
28 others – but do you know if these legal fees were paid for the criminal proceedings in
29 Italy?
30

31 **MR ESTRIBÍ:** Again, this information is taken from chapter 4 and it is identical in that
32 sense, on the one hand, and on the second hand ... Can you restate the question,
33 please?
34

35 **MR AIELLO:** The question is very easy.
36

37 **MR ESTRIBÍ:** I am sure it is.
38

39 **MR AIELLO:** I would like to know whether you have checked that these legal fees
40 were paid for criminal proceedings in Italy?
41

42 **MR ESTRIBÍ:** Like I mentioned earlier, the information that is contained in my model,
43 accounted for in the model, essentially I took from information that was contained in
44 chapter 4. Secondly, some invoices have been sent recently by each lawyer and
45 I have tried to include some of them because some of those invoices were generated
46 recently, so they could not be incorporated; they were generated ex-post on 13 June,
47 so they are not included here.
48

1 **MR AIELLO:** I can imagine that if they have sent some invoices a little before, these
2 are obviously related to different proceedings, not the Italian criminal proceedings
3 that had finished before?
4

5 **MR ESTRIBÍ:** From my understanding, there are two legal fees: ones that pertain to
6 the owner and legal fees also for the charterer. My understanding – and again this is
7 not information that I came up with but I took it from chapter 4 – is that part of that
8 was related to the events that occurred immediately after the arrest of the vessel.
9 The other part of the invoices and services rendered by each lawyer is related
10 perhaps to other stages of the process.
11

12 **MR AIELLO:** I am sorry, we are just speaking about legal fees, section 4. These
13 fees were apparently sustained not immediately after the arrest of the vessel, so if
14 you want to make more precise your last answer, you can.
15

16 **MR ESTRIBÍ:** To what question, if you are kind enough to repeat it?
17

18 **MR AIELLO:** These legal fees were not paid for the Italian criminal process?
19

20 **MR ESTRIBÍ:** When you say “these”, to which ones do you refer? There is a large
21 list of invoices.
22

23 **MR AIELLO:** *This one, from 2011. (Document handed to the witness)*
24

25 **MR ESTRIBÍ:** I will try to reply to my best knowledge. There are different invoices
26 contained in the Annexes of the case. They pertain to different legal services during
27 different periods. As an economist, I cannot account exactly for what was the nature
28 of the services or the time at which they were rendered. I could go over each detail
29 but from the perspective of damage calculations I simply added up all the information
30 regarding invoices and legal fee payments that were contained in chapter 4, and I
31 have added more recent information regarding invoices that were generated
32 recently. The exact nature of the expenditure and purpose is something that I
33 respectfully find is not within my competence as an expert estimating damages.
34

35 **MR AIELLO:** On the third section you speak about material and non-material
36 damage to natural persons.
37

38 **MR ESTRIBÍ:** Yes, sir.
39

40 **MR AIELLO:** Can you explain to us what does it mean, which are material, which
41 are non-material – moral, for example, I suppose?
42

43 **MR ESTRIBÍ:** Yes, in fact there is a section on material and non-material damage to
44 natural persons. I already accounted for the amount and how the interest rate
45 applied. The information I took, again, from documents contained in chapter 4 and
46 information contained in chapter 4, so the information that is contained in my
47 estimations is identical to the ones that are already contained in chapter 4, so I could
48 not account exactly for the criteria that prevailed in the calculations and estimations. I
49 took the figures as they were provided to me and they were provided to me
50 essentially through chapter 4 and information that was there. It is there, and there

1 are abundant details in the chapter that you can cross-examine with. The information
2 I have is exact. So I think we should refer this to the person that put up the case,
3 chapter 4. I, as an economist, simply took the damages that were accounted for,
4 applied the interest rate, and estimated the damage.

5
6 **MR AIELLO:** I have to say that non-material damage is one of the most difficult
7 arguments in jurisprudence in each country.

8
9 **MR ESTRIBÍ:** I am sure it is.

10
11 **MR AIELLO:** Are you a lawyer?

12
13 **MR ESTRIBÍ:** No, I am not, sir. I am an economist.

14
15 **MR AIELLO:** How did you make this quantification of non-material damages?

16
17 **MR ESTRIBÍ:** I think I will rephrase myself. I did not make them. I took them, and
18 I took them from chapter 4, and that is where the information is, essentially, and it is
19 identical to the one I have in the estimations that were submitted to the Court by
20 myself.

21
22 **MR AIELLO:** When in the section 3 of chapter 3 you speak about pain and suffering,
23 what do you refer to? Pain and suffering?

24
25 **MR ESTRIBÍ:** I in particular am not referring to anything. Like I said, this information
26 is contained in chapter 4 and I took it exactly as it is there in terms of the
27 specification of the expenditure and the amounts. The only thing I modified, if you
28 wish, was to apply in this case the interest, and estimate what the total amount of
29 damage would be, including the principal, which I did not estimate, and the interest,
30 which I did estimate according to the methodology I have already explained.

31
32 **MR AIELLO:** Have you any medical documents just to demonstrate that there was
33 pain and suffering like psychological or other form of illness? Have you any
34 documentary evidence of medical problems of the present claimants – not the
35 present claimants; sorry. The present claimants are Panama. Panama does not
36 suffer. But of Mr Morch, Mr Rossi and someone else. Can you show this medical
37 documentation?

38
39 **MR ESTRIBÍ:** Like I said, this information was not generated by me. It was taken by
40 me. I used it in my model and it was contained in chapter 4. As for your question,
41 have I seen any documentation of a medical nature regarding this item or other, my
42 answer would be no, I have not seen medical documentation in this regard.

43
44 **MR AIELLO:** About fees and taxes to the Panama Maritime Authority – can you
45 explain to which period of time they are related?

46
47 **MR ESTRIBÍ:** Yes, gladly. I have a certification here that I mentioned earlier dated
48 23 August 2018. If I may, I will try to translate as best I can. "It is a pleasure for me to
49 reply this letter."
50

1 This was addressed, by the way, by Dr Nelson Carreyó to Fernando Solorzano,
2 General Director of *Autoridad Marítima de Panamá* – Panama Maritime Authority –
3 where he essentially says the following.

4
5 According to your memorial of 22 August through which you request we certify
6 the amount owed to us, to *Autoridad Marítima de Panamá*, for the “*Norstar*”
7 vessel, here is the following information.

8
9 Then there is a certification which is numbered 106117 of 23 August corresponding
10 to the “*Norstar*” vessel and essentially what they says is:

11
12 We take this opportunity to submit the communiqué issued on August 16 2018,
13 and that certificate essentially establishes the following: that –

14
15 Oh, this is in English. Good.

16
17 that according to the statements of account issued by consular assistance and
18 maritime contributor division of the department of ship registry, the ship
19 “*Norstar*” with IMO 6703056 keeps a balance owed to the Panama Maritime
20 Authority for the total amount of \$135,111.95 calculated up to September 30,
21 2018.

22
23 And then the same certificate shows another figure in the following way:

24
25 that the ship “*Norstar*” with the already mentioned IMO keeps a balance owed
26 to the Panama Maritime Authority for the local amount of \$136,899 calculated
27 up to December 31, 2018.

28
29 **MR AIELLO:** 2018?

30
31 **MR ESTRIBÍ:** Yes. So the information is contained in an official document, from what
32 I can see. I am not sure that answers your question as to where I got the figure from.

33
34 **MR AIELLO:** Thank you. How did you estimate the compensation for the cargo, not
35 having inspected the vessel?

36
37 **MR ESTRIBÍ:** Can you repeat the question?

38
39 **MR AIELLO:** Yes. You spoke a while ago about the damage for the loss of the
40 cargo.

41
42 **MR ESTRIBÍ:** That is correct, yes.

43
44 **MR AIELLO:** Can you explain how did you estimate this value, not having inspected
45 the vessel?

46
47 **MR ESTRIBÍ:** So this is a different subject from the one that we discussed about the
48 – okay.

49
50 **MR AIELLO:** Yes. Can you repeat something?

1 **MR ESTRIBÍ:** Sure, I will be glad to. I think I went over this but I will be happy to
2 repeat the information I provided earlier. You are referring to the estimation that was
3 made regarding the value of the cargo, which in this case was fuel.
4
5 Let me just find the answer right here. I have all the facts.
6
7 **MR AIELLO:** Which is the source of your information?
8
9 **MR ESTRIBÍ:** The source of the information is provided by the owner of the vessel,
10 Mr Arve Morch, essentially, one, two. There is also an annexe, Reply of Panama,
11 email from Mr Petter Vadis dated 27 May 2001, where he determined the amount of
12 gasoil on board at the moment of the arrest of the vessel. So, according to Mr Arve
13 Morch, the price of gasoil in cargo tanks is based on a naval provision that
14 establishes a price in 1998 at the time of the arrest of approximately 500-600 per
15 metric ton.
16
17 **MR AIELLO:** So the source is an email sent to Mr Morch three years after the
18 seizure of the vessel from a third person? You have not any bill or document able to
19 attest the quantity and the price of the gasoil?
20
21 **MR ESTRIBÍ:** I do not have it and, as far as my knowledge is concerned, this could
22 be the result of the fact already mentioned that some of the documentation was lost
23 when the vessel was arrested.
24
25 **MR AIELLO:** So we have a mail sent three years after but we do not know how
26 much, which was the quantity effectively inside the vessel at the moment of the
27 seizure?
28
29 **MR ESTRIBÍ:** Well, I have not made that affirmation, sir. The affirmation I made is
30 the facts I have stemmed from Mr Arve Morch and the email.
31
32 **MR AIELLO:** Yes, thank you.
33
34 **THE PRESIDENT:** Mr Aiello, we have reached already 4.50. If you are able to finish
35 your cross-examination in a few minutes, I will allow you to continue, but if you need
36 more than five minutes, I will take a break.
37
38 **MR AIELLO:** Thank you, Mr President. I am able to finish in one minute, if you
39 consent.
40
41 **THE PRESIDENT:** You may proceed.
42
43 **MR AIELLO:** Thank you. (*To the witness*) Have you taken into account how the
44 cargo would have been used? Which was the end of the cargo?
45
46 **MR ESTRIBÍ:** In my knowledge –
47
48 **MR AIELLO:** If you have any information about this.
49

1 **MR ESTRIBÍ:** Let me see if I understand the question. The question is: what do I
2 know would be the purpose of having cargo on the vessel?
3
4 **MR AIELLO:** We do not know what was the final destination of this cargo. Do you
5 know anything about this?
6
7 **MR ESTRIBÍ:** I can make an educated guess, an assumption. My assumption is that
8 it was destined to sell to yachts. That is the only thing I can account for in terms of
9 the –
10
11 **MR AIELLO:** No.
12
13 **MR ESTRIBÍ:** Geographic destiny? I am not sure I can account for that.
14
15 **MR AIELLO:** No, no, no. I am sorry. The question is about the cargo existent on the
16 vessel at the moment of the arrest. Do you know what kind of sort had this cargo?
17
18 **MR ESTRIBÍ:** What was the nature of the cargo?
19
20 **MR AIELLO:** No; how it was used, if it was used.
21
22 **MR ESTRIBÍ:** My understanding is that the “*Norstar*” was in the business of
23 bunkering, selling fuel to yachts.
24
25 **MR AIELLO:** Okay, okay. That is all. Thank you, Mr President. I have finished.
26
27 **THE PRESIDENT:** Thank you, Mr Aiello. At this stage the Tribunal will withdraw for a
28 break of 30 minutes. The hearing will continue at 5.20 p.m.
29
30 *(Break)*
31
32 **THE PRESIDENT:** An expert who was cross-examined by the other Party may be
33 re-examined by the Party who had called the expert. Therefore, I ask the Agent of
34 Panama whether Panama wishes to re-examine the expert.
35
36 **MR CARREYÓ:** That is correct, your Honour. Mr von der Wense will do that.
37
38 **THE PRESIDENT:** Thank you. I then give the floor to the Mr von der Wense to
39 re-examine the expert. I wish to emphasize that no new issues shall be raised during
40 re-examination.
41
42 **MR VON DER WENSE:** Thank you very much, Mr President.
43
44 **Re-examined by Mr von der Wense**
45
46 **MR VON DER WENSE:** Mr Estribí, I only have a few questions to you.
47
48 In the cross-examination Italy has indicated that there might be a kind of conflict of
49 interests. For the sake of clarification, is there any relation to your other work for the

1 Government of Panama in this case? For example, have you received any others
2 also?
3

4 **MR ESTRIBÍ:** None whatsoever. They are completely unrelated. I mean, the tasks
5 I was hired for regarding the “*Norstar*” and the daily duties that I fulfil as a consultant
6 for the Government are, I repeat, completely unrelated, and I have received in no
7 form, implicit or explicit, any instruction from any official from the Government of
8 Panama regarding this case.
9

10 **MR VON DER WENSE:** We also have learnt that you have had contact with
11 Arve Morch. Just for the sake of clarification, to avoid misunderstanding, are you
12 aware that the owner of the vessel was the Inter Marine Company, and not
13 Mr Morch?
14

15 **MR ESTRIBÍ:** Yes, I must clarify: my understanding is that Mr Arve is the general
16 manager of Inter Marine, and an administrator, not the direct owner of the vessel. I
17 must clarify that for the record – I am sorry.
18

19 **MR VON DER WENSE:** Thank you very much. My next question would be: we have
20 learned, for example, that you do not recall the names of the crew, and for example
21 that you did not inspect the vessel. Irrespective of the fact that the ship was
22 demolished already in 2015, so as a consequence it would have been quite
23 impossible for you to inspect the vessel, did you feel that you have had enough
24 information to make your estimations and calculations?
25

26 **MR ESTRIBÍ:** Yes, I did, sir, because I was hired specifically to estimate the
27 damages resulting from the arrest of the vessel, and I based many of the estimations
28 on the information that was provided to me; and one of those was the vessel *per se*
29 – the value of the vessel. The same is true, for example, regarding the value of an
30 amount of the fuel that was on board at the time of the arrest. I think it is important to
31 clarify that I was not hired to estimate the value of the vessel *per se*; I was hired to
32 take that as a basis to make an estimation of the damages that derived from the
33 arrest, which is, in turn, based on several assumptions, which I assumed are correct
34 and I take as certain.
35

36 **MR VON DER WENSE:** Do you feel that this procedure applied here, in providing
37 you with information, is kind of unusual, and is it according to your experience in
38 other cases?
39

40 **MR ESTRIBÍ:** That is an important issue because I was asked a moment ago if I was
41 an expert in evaluating how much a vessel is worth, and regardless of whether I
42 have experience or not I was actually not hired to do that task. I was hired, like I said,
43 to estimate damages stemming from the arrest. On the other hand, I am familiar with
44 the elaboration of financial and economic models. I have done econometrics both as
45 a teacher and also I have been involved as an expert in several legal cases in
46 Panama which have involved econometric models as well as financial models. I don't
47 mean to sound disrespectful, but this model is not really the most complicated model
48 I have come up with; it is just a model that compounds interest and it takes certain
49 values that are brought to future value by compounding interest. It does not involve
50 any sophisticated mathematical tools to do the exercise.

1 **MR VON DER WENSE:** Thank you. You have already answered my last question,
2 but just to make it clear, that I have the correct understanding – that your task was to
3 make an economic calculation based on the information provided to you by, for
4 example, the owner, other experts and lawyers, and not to make, for example, an
5 inspection of the non-existing vessel or medical expertise of the crew, or an
6 expertise about the legal aspects of immaterial damages for example?
7

8 **MR ESTRIBÍ:** That is correct. My main task was to estimate the future value of the
9 losses caused by the arrest of the vessel and that are the result of several factors
10 including a certain time span that was assumed, interest rates that were assumed,
11 and also certain values of – for instance, the ship, like I mentioned – the vessel, as
12 well as the fuel that was on board; and some of the assumptions that I made, that I
13 had to make, were those regarding the expenditures in terms of legal fees and the
14 hiring of lawyers. This is something that I did not question. This is something that I
15 basically took as an input for my estimates.
16

17 **MR VON DER WENSE:** Thank you, Mr Estribí. I do not have more questions,
18 Mr President. Thank you.
19

20 **THE PRESIDENT:** Thank you, Mr von der Wense.
21

22 Pursuant to article 80 of the Rules of the Tribunal, the President and Judges of the
23 Tribunal may also put questions to the expert. I was informed that Judge
24 Kittichaisaree wishes to put a question to Mr Estribí. I therefore give the floor to
25 Judge Kittichaisaree to put his question.
26

27 **JUDGE KITTICHAISAREE:** Mr Estribí, I have two main questions. The first one
28 relates to your answer to question 26 on page 3. You said:
29

30 Additionally to offshore bunkering services and provision for transport of ...
31 gasoil the [*Norstar*] could also have been alternatively used for transportation
32 of other liquid bio-products such as vegoils and even fresh water.
33

34 My question to you, sir: is this so-called potential alternative use of the "*Norstar*"
35 included in calculation of the total loss of revenue pertaining to the owner of the
36 "*Norstar*"?
37

38 **MR ESTRIBÍ:** Your Honour, can you repeat? I understood everything except the last
39 part of the question, if you are so kind as to repeat.
40

41 **JUDGE KITTICHAISAREE:** Yes, because if you look at your answer to question 20
42 you said you also take into account other factors including *et cetera, et cetera*. So
43 my question to you is: other factors – does it include the possibility of so-called
44 additional use, alternative use of the "*Norstar*" for transportation of other liquid bio-
45 products, *et cetera*, and even fresh water? So do you include every possibility in the
46 calculation of the claim for damage?
47

48 **MR ESTRIBÍ:** I will try to respond, your Honour, in my best knowledge and
49 understanding of the question. When I mentioned the potential for the "*Norstar*" to be
50 used in other alternative commercial activities, I did so based on information that was

1 provided to me by an expert, first; second, it was a general assumption, which
2 implies that I did not model *per se* different alternative uses. I guess the point I
3 wanted to stress was the fact that the “*Norstar*” could have generated loss of profits
4 all throughout the last twenty years, considering that it could have been used either
5 for the original purpose it was destined for, that is to act as a bunkering vessel, or
6 other uses. I am not sure I am replying fully, as your expectations, but I did not
7 model scenarios. I guess the point I wanted to stress is that there is a loss of
8 revenue as a result of the fact that the ship did have potential in other alternative
9 uses – and just to make the assumption sounder and not assume that – well, what if
10 it could not do any more bunkering; what if it could not – simply was not completely
11 designed, because of its age, for this purpose? Then we could have safely and
12 soundly assumed that there were other alternative uses.

13

14 **JUDGE KITTICHAISAREE:** Thank you very much. If I understand your answer
15 correctly, you also include the possibility of other uses in the calculation of the claim
16 for damages.

17

18 **MR ESTRIBÍ:** No, your Honour. In fact, I am assuming that simply from the point of
19 view of the possibility that somebody might say, what would happen if the vessel was
20 not in the capacity to serve any more for the original purpose, then my answer would
21 be: my estimations of loss of revenue would be still be sound, would still be valid,
22 considering that there were other alternative uses.

23

24 **JUDGE KITTICHAISAREE:** Thank you very much. My second and last question:
25 you have not included the 2 per cent inflation in the claim of damages. You say that it
26 is some kind of underestimation. I just would like to ask you whether it is you, or any
27 other persons who decide not to include this kind of – who decided not to insist on
28 including the so-called inflation adjustment in the claim of damages?

29

30 **MR ESTRIBÍ:** I guess, your Honour, that the reply would be myself: I decided not to
31 include it, and it only represents 2 per cent. I could have, but I thought it was fair for
32 the time being just to leave this out of the model because I had made other
33 assumptions and there is always a certain margin of approximation in each model.
34 So I simply considered that at this time it was not a priority to include it – but I did
35 think it was important to mention that there is a certain margin there that was simply
36 not accounted for.

37

38 **JUDGE KITTICHAISAREE:** Thank you very much, Mr President.

39

40 **THE PRESIDENT:** Mr Estribí, thank you very much for your testimony. Your
41 examination is now finished. You may withdraw.

42

43 **MR ESTRIBÍ:** Thank you very much.

44

45 *(The witness withdrew)*

46

47 **THE PRESIDENT:** This brings us to the end of this afternoon’s sitting and concludes
48 the first round of pleadings by Panama. The hearing will continue tomorrow morning
49 at 10 a.m. with the first round of pleadings by Italy. I wish you a good evening. The
50 sitting is now closed.

1
2

(The sitting closed at 5.38 p.m.)