

The contribution of international courts and tribunals to the methodology of international law

OC - (ILA-14152) - THE M/V “NORSTAR” JUDGMENT AND THE INTERPRETATION OF THE FREEDOM OF THE HIGH SEAS

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Abstract

A recent judgement of the International Tribunal for the Law of the Sea found that the bunkering of leisure boats carried out by the Panamanian flagged *M/V “Norstar”* on the high seas was within the freedom of navigation and that, consequently, the Decree of Seizure issued by Italy constituted an interference of that freedom by extending to such activities Italy’s prescriptive criminal jurisdiction.

Italy believed to be exercising criminal jurisdiction in respect of the alleged crimes of tax evasion and smuggling, considered under Italian law to have been committed on Italian territory. Italian authorities were of the view that the fuel was bought in Italian territory on false pretenses to avoid payment of taxes, with the intention to be sold at a reduced price to mega yachts outside the territorial waters of Italy using the *M/V “Norstar”*, knowing that, after its sale, the fuel would be reintroduced undeclared into Italian territory.

This Judgment and the Joint Dissenting Opinion of seven judges, including a judge *ad hoc*, underlines two distinctive views of the possible interference with the freedom of navigation regarding bunkering in the high seas, when the crimes are allegedly committed in the territory of one State and the ship is used as part of an apparent criminal scheme concerning the commission of the crimes of tax evasion and smuggling. Whether, or not, the principle of exclusive flag State jurisdiction prohibits the exercise of enforcement jurisdiction on the high seas by States other than the flag State, as well as the extension of their prescriptive jurisdiction to lawful activities conducted by foreign ships on the high seas.

This paper will attempt to examine the recent contribution by the Judgment and the Joint Dissenting Opinion and will attempt to put forward some tentative conclusions concerning the interpretation of the freedom of the high seas in this case.

Palavras-chave : Law of the Sea, International Tribunal for the Law of the Sea, Freedom of the High Sea