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PRESS RELEASE

**DUZGIT INTEGRITY ARBITRATION
(THE REPUBLIC OF MALTA V. THE DEMOCRATIC REPUBLIC OF SÃO TOMÉ AND PRÍNCIPE)**

THE HAGUE, [TO BE ISSUED ON 19 SEPTEMBER 2016]

Arbitral Tribunal Renders an Award

The Tribunal constituted under Annex VII to the United Nations Convention on the Law of the Sea (the “**Convention**”) in the matter of the *Duzgit Integrity Arbitration* has issued an Award in respect of the dispute between the Republic of Malta (“**Malta**”) and the Republic of São Tomé and Príncipe (“**São Tomé**”). The dispute concerns the arrest by São Tomé of a Maltese flagged vessel – the *Duzgit Integrity* – on 15 March 2013 when it attempted to undertake a ship-to-ship (“**STS**”) cargo transfer in São Tomé’s archipelagic waters, and the subsequent measures taken by São Tomé in relation to the vessel, its master, cargo, owner and charterer. Those measures included: the detention of the vessel and its master after 15 March 2013; the court-ordered imprisonment of the master and a EUR 5,000,000 fine against (jointly) the master, owner and charterer of the vessel (which fine also covered the second vessel); the court-ordered confiscation of the vessel and its cargo; a EUR 28,875 fine levied by São Tomé’s Port and Maritime Institute (“**IMAP**”); and a customs fine of more than EUR 1,000,000 levied by São Tomé’s Customs Directorate General.

In the Award, the Tribunal addressed all issues of jurisdiction, admissibility, liability, and entitlement to reparation.

São Tomé had objected to jurisdiction on the grounds that the dispute between the Parties did not concern the interpretation or application of the Convention. São Tomé had also contended that Malta’s claims were not admissible on the grounds that: Malta had failed to fulfil the Convention’s requirement with respect to the exhaustion of local remedies; Malta had not sufficiently specified the grounds on which several of its claims were based; and Malta had failed to fulfil the Convention’s requirement with respect to exchanging views regarding settlement of the dispute before resorting to arbitration. In addition, São Tomé had contended that Malta’s claims for damages suffered by the owner of the *Duzgit Integrity* were not admissible as they were the object of a settlement agreement. Malta disputed all of São Tomé’s objections regarding jurisdiction and admissibility.

With respect to the merits of the dispute, Malta had claimed, *inter alia*, that the measures taken by São Tomé violated Articles 2(3) and 25 of the Convention, which relate to the exercise of a State’s sovereignty over its territorial sea, and Article 49(3) of the Convention, which relates to the exercise of a State’s sovereignty over its archipelagic waters. Malta had also claimed that São Tomé breached Articles 192, 194, and 225 of the Convention, which relate to preservation of the marine environment, when São Tomé undertook a subsequent transfer of the vessel’s cargo. Malta had also invoked in relation to all of its claims Article 300 of the Convention which imposes upon States a duty of good faith and prohibits the abuse of rights. São Tomé opposed all of Malta’s claims.

The Tribunal found, unanimously, that it had jurisdiction over the dispute and that Malta’s claims were admissible. The Tribunal determined that Article 49 of the Convention was applicable (rather than Articles

2(3) and 25) because the *Duzgit Integrity* was located in the archipelagic waters of São Tomé at the time of its arrest.

On the facts, the Tribunal found that the *Duzgit Integrity* did not have the prior authorization that was required under São Tomé's domestic law to undertake the intended STS transfer. The Tribunal also considered that the master of the *Duzgit Integrity* had indicated repeatedly his willingness to move to outside São Tomé's territorial sea to make the transfer.

The Tribunal noted that, under international law, enforcement measures taken by a coastal State in response to activity within its archipelagic waters are subject to the requirement of reasonableness, which encompasses the general principles of necessity and proportionality. The Tribunal found, unanimously, that the measures taken by São Tomé on 15 March 2013 – detaining the vessel, requesting the master to come onshore to explain the circumstances, and imposing the IMAP fine – fell well within the exercise by São Tomé of its law enforcement jurisdiction.

The Tribunal found, by majority, however, that the other penalties imposed by São Tomé – the prolonged detention of the master and vessel, the monetary sanctions, and the confiscation of the entire cargo – when considered together, could not be regarded as proportional when considering the original offence or the interest of ensuring respect for São Tomé's sovereignty. The Tribunal found, by majority, that the disproportionality was such that it rendered the cumulative effect of the sanctions incompatible with the responsibilities of a State exercising sovereignty on the basis of Article 49 of the Convention. Consequently, the Tribunal held, by majority, that Malta was entitled to claim reparation regarding certain heads of claim in a later phase of this arbitration.

Having determined a breach of Article 49(3) of the Convention, the Tribunal saw no need to determine a violation of Article 300 of the Convention. The Tribunal also dismissed Malta's claims under Articles 192, 194, and 225 of the Convention finding that, based on the evidence before it, Malta had not persuaded the Tribunal that São Tomé had exposed its marine environment to an unreasonable risk.

As regards the proceedings to date, the Tribunal ordered that the Tribunal's expenses be borne in equal shares by the Parties and that the Parties bear their own legal costs.

Judge Kateka attached a dissenting opinion in which he disagreed with the majority's finding that São Tomé had violated Article 49 of the Convention. Judge Kateka stated, *inter alia*, that each penalty imposed by São Tomé should be considered on its own merit, and in the context of its particular circumstances and the gravity of the violation. Judge Kateka disagreed with the majority's finding that Malta was entitled to claim reparation in a further phase of these proceedings.

* * *

The arbitral proceedings were instituted by Malta on 22 October 2013 against São Tomé under the Convention.

The Tribunal was constituted on 13 March 2014. On the basis of the Parties' agreement and Article 3 of Annex VII of the Convention, the Tribunal is composed of three arbitrators: Professor Alfred H.A. Soons (President), Professor Tullio Treves, and Judge James L. Kateka. The Permanent Court of Arbitration acts as Registry in the arbitration.

After a full exchange of written pleadings, on 23 and 24 February 2016, a hearing was held at the Peace Palace, in The Hague. The hearing pertained to all issues of jurisdiction, admissibility, liability, and entitlement to reparation.

Further information about the case may be found at <http://www.pcacases.com/web/view/53> or requested via e-mail.

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Background on the Permanent Court of Arbitration: The PCA is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding, and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties.

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