



São Tomé ordered to pay damages over detained oil tanker

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Front centre: Tullio Treves, Alfred Soons, James Kateka at the PCA arbitration (Credit: www.pca-cpa.org)

After a finding of liability over three years ago, a tribunal in The Hague has ordered São Tomé and Príncipe to pay US\$13.1 million to Malta over the detention of an oil tanker on smuggling charges.

In an "[award on reparation](#)" dated 18 December and released last week, a majority tribunal at the Permanent Court of Arbitration ruled that the west African archipelago should pay compensation for lost revenues, diminished cargo value and moral damages.

Malta had claimed US\$15 million in damages over the detention of the Maltese flag-bearing ship *Duzgit Integrity* and the fining and imprisonment of the ship's master. The parties engaged in unsuccessful settlement negotiations following a merits [award](#) in September 2016.

In that award, Dutch tribunal chair **Alfred Soons** and Malta's appointee **Tullio Treves** of Italy formed the majority to find São Tomé liable under the United Nations Convention on the Law of the Sea (UNCLOS) for punitive actions it took after detaining the vessel. Tanzanian co-arbitrator **James Kateka** agreed that the tribunal had jurisdiction over the claim but dissented on the merits.

The *Duzgit Integrity*, a tanker chartered by Sweden's Stena Oil to carry oil and equipment to and from its operations in Nigeria, entered Santomean archipelagic waters in 2013 to transfer its cargo to a Marshall Islands-registered ship in a safer location.

The Santomean coastguard detained both ships for failing to provide advance notification of their entry and arrested their masters. The ship's masters were convicted of smuggling by a local court, fined €5 million and sentenced to three years' imprisonment – though São Tomé's president commuted their jail sentences after three months.

Stena Oil paid a €28,875 fine for the release of the vessels but the court also ordered the confiscation of the two vessels and their oil cargo.

The second vessel, with no oil cargo onboard, settled the case with a relevant payment. Malta, as the flagged state of *Duzgit Integrity*, [filed](#) for UNCLOS arbitration soon after having agreed to bring the claim on the company's behalf in exchange for a share of the damages.

In the 2016 merits award, the tribunal were unanimous in finding São Tomé was within its rights to impose the €28,875 penalty to “ensure respect for its sovereignty.”

It also found that a settlement agreement that São Tomé had separately reached with the *Duzgit Integrity*'s Maltese owner, DS Tankers, had “no bearing” on Malta's right to bring a distinct international law claim for damages under UNCLOS.

Soons and Treves ruled that the west African nations' actions after detaining the ship, including the imprisonment of the crew, confiscation of cargo and the €5 million fine, were “unreasonable and disproportionate”.

The “cumulative effect” was incompatible with the responsibilities of a state exercising sovereignty and for these breaches of UNCLOS Malta was entitled to claim damages, they said.

In the latest award, Soons and Treves again formed a majority to award Malta US\$2.08 million for loss of hire of the *Duzgit Integrity* vessel and US\$6.9 million for diminished cargo value. The majority tribunal also awarded over US\$2.8 million in pre-award interest.

The award includes US\$175,000 in moral damages for the enforced stay on São Tomé of the ships' master and crew and for criminal proceedings against the master. The remainder of US\$13.2 million includes compensation for use of *Duzgit Integrity*'s cargo, port agent fees, vessel repairs and legal costs.

The majority dismissed claims for contributory fault against Malta for not following administrative and customs formalities.

In another [dissenting opinion](#), Kateka maintained that the tribunal had “lumped together” São Tomé's successive actions in order to find a breach of UNCLOS and that the size of the award was inappropriate.

Kateka had agreed in the merits award that the settlement agreement did not preclude the UNCLOS claim, but nonetheless said the settlement should mitigate the size of the damages awarded.

Malta was represented in the proceeding by King & Wood Mallesons partner **Ramon García-Gallardo** in Brussels. He says the award “confirms that it is also possible to claim violations of different provisions of UNCLOS when a ship has been arrested within the jurisdictional waters of another state, and not just within the economic exclusive area.”

Juliette Luycks of Clifford Chance in Amsterdam acted for São Tomé and Príncipe and was contacted for comment.

Malta v São Tomé and Príncipe (PCA Case No. 2014-07)

Tribunal

- **Alfred Soons** (Netherlands) (President)
- **Tullio Treves** (Italy) (appointed by Malta)
- **James Kateka** (Tanzania) (appointed by ITLOS)

Agent and Counsel to Malta

- King & Wood Mallesons

Partner **Ramón García-Gallardo** and associate **Alejandro Camacho González** in Brussels

Agent and Counsel to São Tomé and Príncipe

- Clifford Chance

Counsel **Juliette Luycks** and associate **Ruud Niesink** in Amsterdam

- Posser de Costa & Sociedade de Advogados

Partner **Guilherme Posser da Costa** in São Tomé

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