

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2025

Public sitting

held on Monday, 6 October 2025, at 10 a.m.,
at the International Tribunal for the Law of the Sea, Hamburg,
President of the Special Chamber, Judge Albert J. Hoffmann, presiding

THE M/T “HEROIC IDUN” (No. 2) CASE

(Marshall Islands/Equatorial Guinea)

Verbatim Record

Special Chamber
of the International Tribunal for the Law of the Sea

<i>Present:</i>	President	Albert J. Hoffmann
	Judges	María Teresa Infante Caffi Kathy-Ann Brown
	Judges <i>ad hoc</i>	Gudmundur Eiriksson Philippe Couvreur
	Registrar	Ximena Hinrichs Oyarce

The Marshall Islands are represented by:

Ms Meredith Kirby, Deputy Commissioner of Maritime Affairs, Republic of the Marshall Islands Maritime Administrator,

as Agent;

and

Mr Bernard J. Adiniwin, Attorney-General,

as Representative;

Sir Daniel Bethlehem KC, Barrister, Twenty Essex, London, United Kingdom; Member of the Bar of England and Wales,

Ms Penelope Nevill, Barrister, Twenty Essex, London, United Kingdom; Member of the Bar of England and Wales; Barrister and Solicitor of the High Court of New Zealand,

Mr Paolo Busco, Barrister, Twenty Essex, London, United Kingdom; Member of the Bar of England and Wales; Member of the Rome Bar,

Mr Manuel Casas Martínez, Barrister, Twenty Essex, London, United Kingdom; Member of the Bar of England and Wales; Member of the Bar of New York; Member of the Bar of Caracas,

Ms Courtney Grafton, Barrister, Twenty Essex, London, United Kingdom; Member of the Bar of England and Wales,

as Counsel and Advocates;

Mr Richard M. Gunn, Partner, Reed Smith LLP, London, United Kingdom,

Mr Jiahui Huang, Barrister, Twenty Essex, London, United Kingdom; Member of the Bar of England and Wales,

Ms Julia Z. Cyron, Associate, Reed Smith LLP, London, United Kingdom,

as Counsel;

Mr James Myazoe, Deputy Commissioner of Maritime Affairs, Republic of the Marshall Islands Maritime Administrator,

Mr Joseph Bigler, Deputy Commissioner of Maritime Affairs, Republic of the Marshall Islands Maritime Administrator,

Mr Baron Bigler, Deputy Commissioner of Maritime Affairs, Republic of the Marshall Islands Maritime Administrator,

as Advisers.

Equatorial Guinea is represented by:

Mr Carmelo Nvono-Ncá, Ambassador of the Republic of Equatorial Guinea to France; Permanent Delegate to UNESCO, Paris, France,

as Agent;

and

Mr Hussein Haeri KC, Partner, Withers LLP, London, United Kingdom; Solicitor-Advocate of England and Wales, SOAS, University of London, London, United Kingdom,

Ms Floriane Lavaud, Partner, Withers LLP, New York, United States of America; Member of the Bars of New York and Paris; Solicitor of England and Wales,

Mr Dapo Akande, Barrister at Essex Court Chambers; Chichele Professor of Public International Law, University of Oxford, Oxford, United Kingdom, Member of the Bar of England and Wales; Member of the International Law Commission,

Mr Francisco Moro Nve Obono, State Lawyer Office of the Republic of Equatorial Guinea,

as Counsel and Advocates;

Mr Juan Olo Mba Nseng, Vice-President of the Legal Commission of State Lawyers, Government of Equatorial Guinea,

Mr Antonios Tzanakopoulos, Professor of Public International Law, University of Oxford, Oxford, United Kingdom,

Ms Clàudia Baró Huelmo, Senior Associate, Withers LLP, Geneva, Switzerland; Solicitor-Advocate of England and Wales; *Abogada* of the Bar of Barcelona,

Ms Maanya Tandon, Associate, Withers LLP, London, United Kingdom; Barrister and Solicitor of the High Court of New Zealand,

Ms Sudipta Purkayastha, Associate, Withers LLP, London, United Kingdom; Solicitor of England and Wales, Advocate of the Bar Council of India,

Ms Eva Keita, Associate, Withers LLP, New York, United States of America; Member of the New York Bar,

Mr Niccolo Dell'Alba, Paralegal, Withers LLP, London, United Kingdom,

Mr Adalberto Acumu Ncogo Angono, State Lawyer of the Republic of Equatorial Guinea,

Ms Gladys Delcourt Ncara Nzang, State Lawyer of the Republic of Equatorial Guinea,

Ms Anouch Sedef, Adviser to the Ministry of Transport, Telecommunications and Artificial Intelligence Systems,

as Counsel;

Ms Carmen Matas Gallardo, Communications Adviser to the Agent, Paris, France,

as Adviser.

1 **CLERK OF THE TRIBUNAL:** The Special Chamber of the International Tribunal for
2 the Law of the Sea is now in session. *L'audience de la Chambre spéciale du*
3 *Tribunal international du droit de la mer est ouverte.*

4
5 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Good morning. I wish to welcome
6 you to this meeting. The Special Chamber of the Tribunal formed pursuant to
7 article 15, paragraph 2, of the Statute of the Tribunal meets this morning to hear the
8 Parties' arguments in the *M/T "Heroic Idun" (No. 2) Case* between the Republic of
9 the Marshall Islands and the Republic of Equatorial Guinea.

10
11 Before we proceed, I note that, in addition to interpretation from and into the
12 Tribunal's two official languages, English and French, interpretation from and into
13 Spanish is also available in the present hearings, in line with specific arrangements
14 made at the request of Equatorial Guinea.

15
16 I recall that, by Special Agreement concluded on 18 April 2023, the representatives
17 of the Marshall Islands and Equatorial Guinea agreed to submit the dispute
18 concerning the *M/T "Heroic Idun"* and her crew to a special chamber of the Tribunal
19 to be formed pursuant to article 15, paragraph 2, of the Statute of the Tribunal. The
20 Tribunal was notified of the Special Agreement on 18 April 2023 and the Special
21 Chamber was constituted by an Order of the Tribunal of 27 April 2023. The case was
22 entered into the List of Cases of the Tribunal as Case No. 32.

23
24 I now call on the Registrar to summarize the procedure in the case and to read out
25 the submissions of the Parties.

26
27 **THE REGISTRAR:** Thank you, Mr President.

28
29 By Order of 19 May 2023, the President of the Special Chamber fixed 20 November
30 2023 and 20 May 2024 as the time-limits for the filing, respectively, of the Memorial
31 of the Marshall Islands and the Counter-Memorial of Equatorial Guinea. Further to a
32 request by the Marshall Islands, by an Order of the President dated 16 November
33 2023, these time-limits were extended to 18 December 2023 for the filing of the
34 Memorial, and to 15 July 2024 for the filing of the Counter-Memorial. The Memorial
35 and the Counter-Memorial were filed within the extended time-limits.

36
37 By Order of 25 July 2024, the President of the Special Chamber authorized the
38 submission of a Reply by the Marshall Islands and of a Rejoinder by Equatorial
39 Guinea, and fixed 25 November 2024 and 24 March 2025, respectively, as the time-
40 limits for the filing of these two pleadings. The Reply and the Rejoinder were filed
41 within the prescribed time-limits.

42
43 I will now read out the submissions of the Parties.

44
45 In paragraph 333 of its Reply, the Marshall Islands makes the following submissions:

46
47 I QUOTE.

48
49 The Marshall Islands requests the Chamber to dismiss all of Equatorial
50 Guinea's defenses and to adjudge and declare that:

1
2 a. By intercepting the “*Heroic Idun*” and her crew in the EEZ of São Tomé and
3 Príncipe, forcing them to divert course, including under the threat of the use of
4 force, and placing them under military escort to Equatorial Guinea, Equatorial
5 Guinea breached Articles 87(1), 90 and 92 of UNCLOS.
6

7 [b]. By the same conduct, Equatorial Guinea breached Article 87(2) of
8 UNCLOS and/or Article 300, read alongside Articles 87(1) and 90, having
9 failed to exercise its own freedom of navigation in the EEZ of São Tomé and
10 Príncipe with due regard to the rights of the Marshall Islands to freedom of
11 navigation and/or abused its right to freedom of navigation and right to sail in
12 the EEZ of São Tomé and Príncipe.
13

14 [c]. All measures adopted by Equatorial Guinea subsequent to the unlawful
15 interception and diversion of the “*Heroic Idun*” and her crew in the EEZ of São
16 Tomé and Príncipe are without basis in UNCLOS and international law.
17

18 [d]. By enacting and implementing its criminal laws (including by the
19 imposition of lengthy periods of detention and hefty fines) in respect of
20 activities of the “*Heroic Idun*” and her crew in the EEZ of Equatorial Guinea
21 without any basis in UNCLOS, and/or by usurping the Marshall Islands’
22 exclusive prescriptive jurisdiction in respect of those activities, and/or by
23 exceeding the limits of prescriptive jurisdiction allowed by UNCLOS in respect
24 of those activities, Equatorial Guinea breached Articles 56(1), 58, 87, 89
25 and 92 of the Convention or Article 300 read with Part V of UNCLOS.
26

27 [e]. Equatorial Guinea in any case adopted measures in respect of the “*Heroic*
28 *Idun*” and her crew that were contrary to principle of reasonableness and
29 considerations humanity and, in so far as those measures purportedly
30 concerned the EEZ of Equatorial Guinea, it also failed to have due regard to
31 the rights of the Marshall Islands in that maritime zone, in breach of
32 Article 56(2) of UNCLOS.
33

34 [f]. By failing to respect and violating the human rights of the crew, including
35 as set out in the ICCPR and the African Charter and in customary
36 international law, and failing to observe the United Nations Standard Minimum
37 Rules for the Treatment of Prisoners, Equatorial Guinea acted contrary to
38 rules and principles of international law not incompatible with the Convention
39 to which the Chamber may have recourse under Article 293 and breached:
40

41 i. Article 87(1) of UNCLOS, in respect of its obligation to exercise its
42 freedom of the high seas under conditions laid down by “other rules of
43 international law;”
44

45 ii. Article 87(2) of UNCLOS, in respect of its obligation to have due
46 regard for the interests of the Marshall Islands;
47

48 iii. Article 2(3) of UNCLOS, in respect of its obligation to exercise
49 sovereignty in the territorial sea subject to other rules of international
50 law;

1
2 iv. Article 58(2), in respect of its obligation to comply with other
3 pertinent rules of international law and its obligation under Article 56(2)
4 to have due regard to the rights and duties of the Marshall Islands,
5 insofar as the relevant conduct concerned alleged activities in its EEZ.
6

7 [g]. By preventing the “*Heroic Idun*” from being properly manned, and by
8 refusing the Marshall Islands’ repeated requests in this regard, Equatorial
9 Guinea breached:

10
11 i. Article 1(b) of SOLAS, in respect of its obligation to take all necessary
12 steps to give SOLAS full and complete effect;
13

14 ii. Article 1(2) of the STCW, in respect of its obligation to take all
15 necessary steps to give the STCW full and complete effect;
16

17 iii. Article 1 of the COLREGS, in respect of its obligation to give effect
18 to the Rules contained therein;
19

20 iv. Article 87(1) of UNCLOS, in respect of its obligation to exercise its
21 freedom of the high seas under conditions laid down by “other rules of
22 international law,” in this instance Article 1(b) of SOLAS, Article 1(2) of
23 the STCW, and Article 1 of the COLREGS;
24

25 v. Article 87(2), in respect of its obligation to have due regard for the
26 interests of the Marshall Islands, as flag State, to meet its duties under
27 Articles 94 and 217 of the Convention;
28

29 vi. Article 2(3) to exercise its sovereignty over the territorial sea subject
30 to the Convention, including Article 87(1), and to other rules of
31 international law, including Article 1(b) of SOLAS, Article 1(2) of the
32 STCW, and Article 1 of the COLREGS.
33

34 [h]. By the unsafe manoeuvring of the naval vessel the “*Wele Nzas*” on
35 26 September 2022, Equatorial Guinea breached Rules 2, 6, 7 and 8 of the
36 COLREGS.
37

38 [i]. By preventing the “*Heroic Idun*” from being properly manned, requesting
39 the vessel to be moored in a location where it was at a significant risk of
40 collision, and by the unsafe maneuvering of its naval vessel “*Wele Nzas*” on
41 26 September 2022 in respect of the “*Heroic Idun*,” Equatorial Guinea
42 breached Article 225 of UNCLOS.
43

44 [j]. By failing to notify the Marshall Islands of, *inter alia*, (i) the interception,
45 diversion and detention of the “*Heroic Idun*” and her crew, (ii) the imposition of
46 a penalty on the Master of the Vessel, and (iii) the transfer of the Vessel to
47 Nigeria, Equatorial Guinea breached its duty to notify the Marshall Islands as
48 the flag State of enforcement measures adopted in respect of its Vessel,
49 which duty has general application in law of the sea and/or Articles 87(1)
50 and 87(2), read with Article 58(2), and Article 56(2) of the Convention.

1
2 [k]. By detaining the “*Heroic Idun*” and its crew for a period of 92 days, and by
3 continuing the detention despite the payment of a penalty amounting to two
4 million, one hundred and thirty-two Euros (€ 2,000,132), Equatorial Guinea
5 breached its obligation to release vessels promptly, which has general
6 application in law of the sea and/or Articles 87(1) and 87(2), read with
7 Article 58(2), and Article 56(2), and/or Article 294(2) of the Convention and/or
8 Article 300 of the Convention read alongside these provisions.
9

10 [l]. By repeatedly failing to engage with the Marshall Islands in respect of the
11 “*Heroic Idun*” and her crew, and by handing over control of the Vessel and
12 crew to Nigeria on 11 November 2022, after having been notified of the
13 Marshall Islands’ Prompt Release Application, Equatorial Guinea breached:
14

15 i. Article 283 of UNCLOS;

16
17 ii. Articles 286, 288, 292, 296 and/or 297(1) of the Convention, and
18 Article 300 of the Convention read alongside these provisions; and
19

20 iii. the general obligation not to aggravate the dispute with the Marshall
21 Islands.
22

23 END OF QUOTE.
24

25 The Marshall Islands further requests the Special Chamber, in paragraph 334 of its
26 Reply, to:
27

28 I QUOTE.
29

30 i. pay compensation to the Marshall Islands:
31

32 1. for material damage in the amount of forty-three million,
33 seventeen thousand, eight hundred thirty-seven dollars, with
34 seventy-two cents ([USD] 43,017,837.72);
35

36 2. for non-material damage of fifteen million and twenty-eight
37 hundred dollars ([USD] 15,028,000);
38

39 ii. insofar as not already paid as compensation, to pay two million, one
40 hundred and thirty-two Euros (€ 2,000,132) in restitution;
41

42 b. Order that Equatorial Guinea pay interest in respect of the sums specified
43 above calculated:
44

45 i. on sums awarded in US dollars, the US prime rate plus 1% (one per
46 cent), compounded at quarterly intervals;
47

48 ii. on sums awarded in Euros, the EURIBOR six-month rate plus 5%
49 (five per cent), compounded at six monthly intervals;
50

1 to run (as relevant) from the date of the commission of the wrongful act
2 or the date ... the costs/expenses were incurred (in respect of the
3 sums awarded in compensation) and from the date of payment of the
4 Fine until the date of restitution or (if awarded as compensation) the
5 date of payment of compensation.
6

7 c. Award costs of the present proceedings to the Marshall Islands;
8

9 d. Order that Equatorial Guinea:
10

11 i. revoke the Fine imposed on the Master;
12

13 ii. acknowledge its wrongful conduct in respect of the Marshall Islands;
14 and
15

16 iii. provide an assurance and guarantee of non-repetition.
17

18 END OF QUOTE.
19

20 These submissions correspond to the submissions made by the Marshall Islands in
21 paragraphs 438 and 439 of its Memorial.
22

23 Equatorial Guinea, in paragraph 432 of its Rejoinder, makes the following
24 submissions:
25

26 I QUOTE.
27

28 a) The claims brought by the Marshall Islands regarding the apprehension
29 of the *Heroic Idun* fall outside the jurisdiction of the Chamber, or in the
30 alternative are inadmissible, due to the *Monetary Gold* principle (...);
31

32 b) The Marshall Islands has failed to exhaust local remedies where this is
33 required by international law (...);
34

35 c) The Chamber's jurisdiction is in any event limited to claims made under
36 UNCLOS (...);
37

38 d) Equatorial Guinea acted in accordance with its duty to cooperate to
39 suppress piracy and did not breach the principles of freedom of
40 navigation or exclusivity of flag State jurisdiction (...);
41

42 e) Equatorial Guinea acted pursuant to lawful prescriptive jurisdiction (...);
43

44 f) Equatorial Guinea acted in accordance with Article 225 UNCLOS and
45 the principle of reasonableness (...);
46

47 g) Equatorial Guinea acted in accordance with the principle of humanity
48 towards the crew members of the *Heroic Idun* at all times (...);
49

- 1 h) Equatorial Guinea acted in accordance with the principle of due regard
2 under Article 56(2) UNCLOS (...)
3
4 i) There is no specific obligation to notify the flag State of enforcement
5 measures (...);
6
7 j) UNCLOS' prompt release obligations were not applicable to the present
8 circumstances and consequently, Equatorial Guinea has not violated
9 these obligations (...); and
10
11 k) Equatorial Guinea did not breach any obligations under the "gateway"
12 provisions (STCW, SOLAS and COLREGS) (...);
13
14 l) Equatorial Guinea did not breach its obligation to preserve the rights of
15 the Marshall Islands, nor aggravate the dispute pending proceedings
16 (...).

17
18 END OF QUOTE.

19
20 Equatorial Guinea further requests the Special Chamber, in paragraph 433 of its
21 Rejoinder, to:

22
23 I QUOTE.

- 24
25 a) Dismiss all of the Marshall Islands' requests for payment of
26 compensation for material and/or non-material damages (...);
27
28 b) Dismiss the Marshall Islands' requests for satisfaction (...);
29
30 c) Dismiss all of the Marshall Islands' requests for payment of interest
31 (...); and
32
33 d) Direct that each party should bear its own costs (...).

34
35 END OF QUOTE.

36
37 These submissions correspond to the submissions made by Equatorial Guinea in
38 paragraphs 399 and 400 of its Counter-Memorial.

39
40 By Order dated 13 May 2025, the President of the Special Chamber fixed 6 October
41 2025 – that is, today – as the date for the opening of the hearing.

42
43 Pursuant to the Rules of the Tribunal, copies of the written pleadings are being made
44 accessible to the public as of today. They will be placed on the Tribunal's website.
45 The hearing will also be broadcast on this website, except that some parts of the
46 hearing will be held *in camera* pursuant to a decision of the Special Chamber of
47 1 October 2025.

48
49 Mr President.
50

1 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Madam Registrar.

2
3 In accordance with the arrangements on the organization of the procedure decided
4 by the Special Chamber, the hearings will comprise a first and second round of oral
5 argument. The first round will begin today and will close on Saturday, 11 October
6 2025. The second round will take place on Monday, 13 October 2025 and on
7 Tuesday, 14 October 2025.

8
9 As mentioned by the Registrar, parts of the hearing will not be open to the public.
10 I will provide more information at the appropriate moment.

11
12 This morning's sitting, in the course of which Marshall Islands will present the first
13 part of its oral statement, will last until one o'clock and, as usual, there will be a 30-
14 minute break between 11:30 a.m. and midday.

15
16 I note the presence at the hearing of Agents, a Representative, Counsel and
17 Advocates of the Parties.

18
19 I now call on the Agent of the Marshall Islands, Her Excellency Ms Meredith Kirby, to
20 introduce the delegation of the Marshall Islands. You have the floor, Madam.

21
22 **MS KIRBY:** Good morning. Mr President, Members of the Special Chamber, we're
23 happy to be here. My name is Meredith Kirby. I'm a Deputy Commissioner of
24 Maritime Affairs of the Republic of the Marshall Islands' administrator and an Agent
25 for the Republic of the Marshall Islands.

26
27 With me today, I have Mr Bernard Adiniwin, Attorney General of the Marshall
28 Islands, as representative. I also have Sir Daniel Bethlehem KC, barrister, Twenty
29 Essex, London, United Kingdom, member of the Bar of England and Wales;
30 Miss Penelope Nevill, barrister, Twenty Essex, London, United Kingdom, member of
31 the Bar of England and Wales, barrister and solicitor of the High Court of New
32 Zealand; Mr Paolo Busco, barrister, Twenty Essex, London, United Kingdom,
33 member of the Bar of England and Wales, member of the Rome Bar; Dr Manuel
34 Casas Martinez, barrister, 20 Essex, London, United Kingdom, member of the Bar of
35 England and Wales, member of the Bar of New York, member of the Bar of Caracas;
36 and Miss Courtney Grafton, barrister, Twenty Essex, London, United Kingdom,
37 member of the Bar of England and Wales, as counsel and advocate.

38
39 Additionally, we have Mr Richard M. Gunn, partner, Reed Smith, LLP, London,
40 United Kingdom, Mr Jiahui Huang, barrister, Twenty Essex, London, United
41 Kingdom, member of the Bar of England and Wales, and Miss Julia Z. Cyron,
42 Associate, Reed Smith LLP, London, United Kingdom, as counsel.

43
44 And Mr James N. Myazoe, Deputy Commissioner of Maritime Affairs, Republic of the
45 Marshall Islands Maritime Administrator; Mr Joseph Bigler, Deputy Commissioner of
46 Maritime Affairs, Republic of the Marshall Islands Maritime Administrator, and, later
47 in the week, Mr Baron Bigler, Deputy Commissioner of Maritime Affairs, Republic of
48 the Marshall Islands Maritime Administrator, as advisers.

49
50 Thank you very much.

1
2 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank the Agent of the Marshall
3 Islands.

4
5 I now call on the Agent of the Equatorial Guinea, His Excellency Mr Carmelo Nvono-
6 Ncá, to introduce the delegation of Equatorial Guinea. You have the floor, sir.

7
8 **MR NVONO-NCÁ:** (*Interpretation from French*) Mr President, distinguished
9 Members of the Special Chamber, Madam Registrar, members of the delegation of
10 the Marshall Islands, and myself. (*Continued in English*) I am Ambassador of
11 Equatorial Guinea to France, Permanent Delegate to UNESCO and Agent of the
12 Republic of Equatorial Guinea in these proceedings.

13
14 It is my honour to introduce the members of the delegation of the Republic of
15 Equatorial Guinea in the “*Heroic Idun*” case. The members of the delegation are as
16 follows: As Counsel and Advocates, I introduce: Professor Hussein Haeri KC of
17 Withers LLP and SOAS, University of London; Ms Floriane Lavaud of Withers LLP;
18 Professor Dapo Akande of the University of Oxford, Barrister at Essex Court
19 Chambers and Member of the International Law Commission; and Mr Francisco
20 Moro Nve Obono from the State Lawyers Office of the Republic of Equatorial
21 Guinea.

22
23 As Counsel, I introduce: His Excellency Mr Juan Olo Mba Nseng, Vice-President of
24 the Legal Commission of State Lawyers of the Republic of Equatorial Guinea;
25 Professor Antonios Tzanakopoulos of the University of Oxford; Ms Clàudia Baró,
26 Ms Maanya Tandon, Ms Sudipta Purkayastha, Ms Eva Keita and Niccolo Dell’Alba of
27 Withers LLP; and Mr Adalberto Acumu Ncogo Angono and Ms Gladys Delcourt
28 Ncara Nzang from the State Lawyers Office of the Republic of Equatorial Guinea.

29
30 As Adviser, I have the honour to introduce: Ms Anouch Sedef, Adviser to the Ministry
31 of Transport, Telecommunications and Artificial Intelligence Systems of the Republic
32 of Equatorial Guinea and, finally, Ms Carmen Matas Gallardo, Communications
33 Adviser of the Republic of Equatorial Guinea.

34
35 Mr President, Members of the Special Chamber, Madam Registrar, I wish to
36 conclude this introduction of the delegation of the Republic of Equatorial Guinea by
37 assuring you and the delegation of the Marshall Islands of our full collaboration to
38 ensure that the hearing proceeds smoothly. (*Interpretation from Spanish*)
39 Mr President, Members of the Special Chamber, thank you.

40
41 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank the Agent of Equatorial
42 Guinea.

43
44 I now give the floor to the Agent of the Marshall Islands, Her Excellency Ms Kirby, to
45 make her opening statement.

46
47 **MS KIRBY:** Mr President, Members of the Special Chamber, it’s an honour and a
48 privilege to be before you today as Agent of the Republic of the Marshall Islands in
49 its claim against the Republic of Equatorial Guinea.

1 On 12 August 2022, shortly after midday, the “*Heroic Idun*”, a two-year-old very large
2 crude carrier, VLCC, registered in the Marshall Islands, was drifting in the exclusive
3 economic zone of São Tomé and Príncipe, awaiting confirmation of a laycan, when it
4 was intercepted and detained by the Equatoguinean Navy, and forced at gunpoint to
5 Luba Bay in Bioko Island.

6
7 What followed after that was an extraordinary series of events, of the utmost
8 seriousness and concern to the Marshall Islands as the flag State. The vessel and its
9 26 crew members were detained for over three months, in extremely challenging
10 conditions in Equatorial Guinea, never knowing from one day to the next what would
11 happen to them.

12
13 Repeated attempts by the Marshall Islands to intervene on behalf of the vessel and
14 its crew were ignored by the authorities. Although some officials agreed to meet with
15 the flag’s regional representative, Captain Mustafa in September, meetings were
16 repeatedly cancelled, and the two that did take place came to nothing.

17
18 Despite indicating to the “*Heroic Idun*”’s owners that it would release the vessel on
19 payment of an extortionate sum of over 2 million euros on 4 October, Equatorial
20 Guinea did not release the vessel and crew.

21
22 Instead, we eventually learned that Equatorial Guinea intended to hand the vessel
23 and crew over to Nigeria, but not because of any communication with the flag State.
24 Equatorial Guinea continued to ignore letters and note verbale from the Marshall
25 Islands.

26
27 In the Marshall Islands’ experience as flag State, Equatorial Guinea’s actions were
28 extraordinary and unprecedented. We concluded that Equatorial Guinea’s actions
29 left us with no choice but to initiate Prompt Release Proceedings before this
30 Tribunal, which we did on 11 November.

31
32 This was the first time the Marshall Islands had initiated proceedings under the
33 Convention. Despite being the world’s third largest open Registry, with almost 6,000
34 vessels in operation for over 30 years, the Marshall Islands had never before found it
35 necessary to bring an action to protect a vessel and its crew and its rights and
36 obligations as flag State.

37
38 But the story does not end there. In the face of the proceedings, and despite that
39 you, Mr President, had set the application down for a hearing on 24 November, and
40 with an extraordinary disregard for the Marshall Islands and its Convention
41 obligations, Equatorial Guinea handed the vessel and crew over to Nigeria.

42
43 In all, the ordeal of the vessel, the crew, their families and others involved lasted for
44 over ten months.

45
46 Equatorial Guinea will tell you that it did all of this because the vessel and crew were
47 suspected of piracy. This is simply not borne out by the facts. Furthermore, I can say
48 categorically that at no time, until its Counter-Memorial in these proceedings, did
49 Equatorial Guinea ever communicate to the Marshall Islands, as flag State, that it

1 was taking antipiracy measures against the vessel and crew, as would be expected if
2 that were really the case.

3
4 Throughout, Equatorial Guinea failed to meet its most basic obligations to the
5 Marshall Islands under the Convention and international law.

6
7 Mr President, Members of the Special Chamber, the Marshall Islands takes these
8 matters extremely seriously. It has brought this case because the fundamental
9 importance of the rules and principles of the laws at stake for flag States, for the
10 humane and fair treatment of seafarers, for the treatment and safety of vessels in the
11 marine environment, and for all engaged in international maritime trade. The system
12 only works if all parties involved respect and abide by the rules and agreements in
13 place; that is true for the vessels, true for the crews, and vitally important for both the
14 flag State and coastal and port States.

15
16 The Marshall Islands takes these responsibilities very seriously. We endeavour and
17 put a tremendous amount of resources behind fulfilling our obligations as flag State,
18 as the Attorney General will underline later.

19
20 Equatorial Guinea utterly disregarded every rule and principle. This simply cannot
21 happen, for the reasons I have given and for the good order of the seas and oceans.

22
23 Mr President, I now invite you to call on Mr Bernard Adiniwin, Attorney General for
24 the Republic of the Marshall Islands.

25
26 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Her Excellency, Ms Kirby.
27 I now invite Mr Bernard Adiniwin, Attorney General of the Marshall Islands, to make
28 his statement. You have the floor, sir.

29
30 **MR ADINIWIN:** Mr President, Members of the Special Chamber, I would like to
31 convey warm greetings of IAKWE from the Marshall Islands. In our language IAKWE
32 is a traditional greeting which translates to “you are a rainbow”. It is a great honour to
33 appear before you today on behalf of the Republic of the Marshall Islands. As my
34 country’s Attorney General, I will address you today on the importance of this case to
35 the Marshall Islands and its Ship Registry, and the importance of key issues of
36 substance beyond this case.

37
38 The interception and detention of the “*Heroic Idun*” and its crew in the EEZ of Sao
39 Tomé and Príncipe by Equatorial Guinea on 12 August 2022, and its subsequent
40 treatment of the vessel and crew over the following 92 days, were wholly exceptional
41 and unprecedented in the Marshall Islands’ 30 plus years’ experience as a large flag
42 State. It is for this reason that the Marshall Islands, for the first time, took the serious
43 step to initiate prompt release proceedings before this Tribunal against Equatorial
44 Guinea in November 2022, and why the Marshall Islands stands before you today.

45
46 The Marshall Islands may be one of the smallest countries in the world, but it is a
47 large-ocean nation. My country is an archipelago of 29 atolls and five single islands,
48 situated in the northern Pacific Ocean. More than 98 per cent of the territory of the
49 Marshall Islands is water.

1 International law, international cooperation, and ocean governance have always
2 been of the utmost importance to the Marshall Islands. As well as having a large
3 open shipping registry, which I will return to, the Marshall Islands has extensive
4 fisheries and, as a small island State, has faced and faces acute and daily
5 challenges, including the nuclear weapons testing on our islands and in our lagoons
6 from 1946 to 1958, to the current threat of climate change and sea level rise.

7
8 The Marshall Islands acceded to UNCLOS on 9 August 1991, even before it joined
9 the United Nations in September that year, and is a party to the Fish Stocks
10 Agreement. Most recently, in March this year, the Marshall Islands ratified the BBNJ
11 Convention. We are an active member of the International Maritime Organization,
12 having ratified and implemented all key IMO conventions and instruments. In 2009
13 we became a member of the International Labour Organization and a party to the
14 Maritime Labour Convention. The Marshall Islands is an active participant in United
15 Nations Oceans Conferences. Our President, Her Excellency Dr Hilda C. Heine,
16 spoke at the plenary of the most recent Oceans Conference in June this year.

17
18 The Marshall Islands' shipping registry is the third largest in the world. As of
19 30 September 2025, the Marshall Islands' registry is responsible for 11.2 per cent of
20 the global fleet, with 5,966 vessels totalling over 205 million in gross tonnage. With
21 almost 1,500 RMI-flagged ships transporting energy, it makes up 16.04 of the global
22 energy fleet, the largest of any flag administration. The Marshall Islands is, in
23 addition, the legal domicile of many of the world's largest shipping companies. The
24 Registry is supported on a day-to-day basis by International Registries, "IRI", with a
25 staff of over 500 highly qualified and experienced maritime professionals. IRI
26 provides administrative and technical support to the Registry and is located across
27 28 offices in major maritime centres around the world, offering around the clock
28 assistance and ready to assist the Maritime Administrator in response to any issue
29 arising concerning Marshall Islands' flagged vessels.

30
31 The Marshall Islands maintains a comprehensive legislative and regulatory
32 framework which fully implements and complies with internationally agreed upon
33 rules and standards. It maintains exceptional safety and regulatory compliance
34 standards, strong operational oversight, and enjoys a stellar reputation among
35 shipowners, port authorities, and regulators worldwide. This is evidenced, for
36 example, by the Marshall Islands' inclusion on the "white lists" of both the Paris and
37 Tokyo Memoranda of Understanding on Port State Control, certification by the U.S.
38 Coast Guard's Qualship 21 program for 21 consecutive years, and its status as a
39 top-performing flag on the International Chamber of Shipping's Flag State
40 Performance Assessment. All of this is to say that the Marshall Islands is not a flag
41 State of convenience, but a flag State that takes pride in the safety and
42 environmental compliance of its fleet, is actively engaged in maritime law issues, and
43 is committed to standing behind its fleet. It is critical that every vessel that flies our
44 flag should know that our country backs them.

45
46 As our Agent Ms Kirby, a Deputy Commissioner of Maritime Affairs, has set out, the
47 safety and stability of global maritime transport depends on everyone following the
48 rules of the road. Over the next two and a half days, Mr President, Members of the
49 Special Chamber, you will hear in detail how Equatorial Guinea did not follow these
50 rules. It failed in its most basic and fundamental obligations to the Marshall Islands

1 as flag State, the vessel, the crew and their families in August 2022 and the months
2 that followed.

3
4 Equatorial Guinea has defended its actions on the ground that it was meeting its
5 international obligation to cooperate to combat piracy. As a large flag State, the
6 Marshall Islands is acutely aware of the threat that piracy poses to shipping and the
7 importance of international efforts and cooperation to meet that threat. Marshall
8 Islands' Duty Officers are available 24 hours a day, seven days a week, to address
9 calls from vessels in distress and regional piracy reporting centres such as Maritime
10 Domain Awareness for Trade – Gulf of Guinea, the Inter Regional Coordination
11 Center, the International Maritime Bureau Piracy Reporting Center, the Maritime
12 Information Cooperation & Awareness Center, and United Kingdom Maritime Trade
13 Operations.

14
15 The Marshall Islands has also been an active participant and presenter at the Gulf of
16 Guinea Maritime Collaboration Forum / Shared Awareness and Deconfliction, and
17 the G7++ Group of Friends of the Gulf of Guinea, along with the multilateral exercise,
18 OBANGAME EXPRESS, to support the collective industry and military response to
19 pirate activity in the Gulf of Guinea region.

20
21 As such, the Marshall Islands is appreciative of the steps the coastal States in the
22 Gulf of Guinea have undertaken, with the technical support of the IMO, to combat
23 piracy off West Africa under the Yaoundé framework. We are of course grateful for
24 the assistance rendered by the Equatorial Guinea Navy to our flagged vessel the
25 "*Sea Phantom*" in February 2021, which Equatorial Guinea has referred to in its
26 written submissions.

27
28 It is precisely because of the importance of anti-piracy measures to the safety of
29 shipping and the international community that these measures should not be abused
30 or used as a pretext for action which breaches and undermines other fundamental
31 rules of the law of the sea, such as freedom of navigation and exclusive flag State
32 jurisdiction.

33
34 On 12 August 2022, when it was intercepted and detained by Equatorial Guinea, the
35 "*Heroic Idun*" had not been, and was not, engaged in piracy. Nor was it overrun by
36 pirates. Equatorial Guinea has produced no information in these proceedings that
37 said or suggested that it was. There was no basis in international law which could
38 have justified Equatorial Guinea's interception and detention of the vessel and crew
39 in the EEZ of São Tomé and Príncipe. As you will hear in the course of our
40 submissions over the next two and half days, Equatorial Guinea did not even raise
41 anti-piracy cooperation until these proceedings were well under way. Allegations that
42 a foreign-flagged vessel is engaged in piracy are a serious matter. Members of the
43 Chamber, no Marshall Islands-flagged vessel has ever been accused of piracy
44 before. If piracy was really the reason behind the apprehension and detention of the
45 vessel and crew, Equatorial Guinea was obliged to inform the Marshall Islands as
46 the flag State.

47
48 This is indicative of Equatorial Guinea's approach to the Marshall Islands as flag
49 State throughout. Members of the Chamber, it is remarkable that Equatorial Guinea
50 did not respond at all to the SEVEN letters and notes verbales transmitted by the

1 Marshall Islands concerning the “*Heroic Idun*” and its crew. While the Equatorial
2 Guinea Attorney General met with a regional flag representative sent by the Marshall
3 Islands on 13 September 2022, piracy was not raised and nothing changed after that
4 meeting. The Marshall Islands regards it of critical importance that coastal and other
5 States properly engage with flag States when issues concerning their flagged
6 vessels arise, or measures are taken against their vessels. This is the only way of
7 ensuring proper protection and balancing of the rights and interests involved. It is,
8 moreover, an expected norm of conduct, which is reflected in all maritime treaties
9 and understandings.

10
11 For the same reason, the Marshall Islands also regards it as critical that the States
12 Parties to UNCLOS observe and respect their dispute settlement obligations.
13 Equatorial Guinea did not do that. Instead, it transferred the vessel and its crew to
14 Nigeria on 11 November 2022 in the face of prompt release proceedings before this
15 Tribunal which had already been set for a hearing less than two weeks later, on
16 24 November.

17
18 It is for these reasons that I stand before you in the current proceedings and invite
19 you to safeguard the balance between the rights and obligations of the parties to the
20 Convention, by affirming and upholding the rights of the Marshall Islands as a flag
21 State.

22
23 Mr President, that concludes my remarks. I now invite you to recall Ms Kirby to
24 outline the structure of the Marshall Islands’ submissions over the next two and a
25 half days.

26
27 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Mr Adiniwin, and I give the
28 floor again to the Agent of the Marshall Islands, Her Excellency Ms Kirby, to make a
29 further statement.

30
31 **MS KIRBY:** Thank you, Mr President. I shall now briefly reintroduce the members of
32 the delegation representing the Marshall Islands before the Special Chamber and
33 outline and outline the scheme of the Marshall Islands’ submissions over the next
34 two and a half days. Sir Daniel Bethlehem KC appears as lead Counsel for the
35 Marshall Islands, together with Ms Penelope Nevill, Dr Paolo Busco, Ms Courtney
36 Grafton and Dr Manuel Casas as Counsel. The names and titles of the other
37 members of the Marshallese delegation have already been duly communicated to
38 the Special Chamber.

39
40 Sir Daniel Bethlehem will open with an overview of the facts and evidence in the
41 case. He will also address you on jurisdiction, admissibility and applicable law.
42 Following, Ms Courtney Grafton will address the Special Chamber on the facts,
43 addressing the key evidence and facts in dispute. She will then invite you to call the
44 first witness for direct examination, followed by cross-examination by Equatorial
45 Guinea. We anticipate that this will take us up to the close of today’s afternoon
46 session.

47
48 Ms Grafton will call the second witness for examination tomorrow morning. Following
49 the witness evidence tomorrow, Dr Busco will address the Marshall Islands’ first
50 claim, Equatorial Guinea’s breach of the Marshall Islands’ freedom of navigation and

1 exclusive flag State jurisdiction by its interception and detention of the vessel, and
2 why Equatorial Guinea's piracy defence is unfounded under the Convention.
3 Ms Nevill will thereafter address the Yaoundé Code and why it does not provide
4 Equatorial Guinea with a defence.

5
6 Dr Busco will address you on the second of the Marshall Islands' claims: Equatorial
7 Guinea's excessive exercise of prescriptive jurisdiction, in breach of UNCLOS.

8
9 Ms Grafton, Dr Casas and Ms Nevill will address Equatorial Guinea's other alleged
10 breaches of UNCLOS, breach of the principles of humanity, and the failure to respect
11 the human rights of the crew, breach of the obligations of due regard, breaches of its
12 obligations under IMO instruments, breaches of Article 225 of UNCLOS, and
13 breaches of its obligations to notify the flag State of enforcement measures and
14 release the vessel and crew promptly without undue delay.

15
16 On Wednesday morning, Sir Daniel will open with brief submissions on Equatorial
17 Guinea's breaches of its duties not to aggravate the dispute and to preserve the
18 Marshall Islands' rights pending proceedings. Ms Nevill and Dr Casas will thereafter
19 address you on remedies.

20
21 Mr President, this concludes my opening. I now invite you to call Sir Daniel
22 Bethlehem to the podium.

23
24 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Her Excellency Ms Kirby.
25 I now call on Sir Daniel Bethlehem to make his statement.

26
27 I recall that this sitting will adjourn at approximately 11.30, Sir Daniel, so I would,
28 thus, invite you to interrupt your statement at a convenient moment. With that
29 understanding, I give you the floor.

30
31 **SIR DANIEL:** Thank you very much, Mr President. I hope I won't interrupt my
32 statement, but just pause it very briefly. Mr President, as you have just raised the
33 issue of timing, perhaps I could just put on the agenda, because we would seek your
34 guidance in due course. I understand that we will have the accommodation of the
35 introductory period that was taken by the Tribunal this morning to be added to our
36 time allowance, and it would be helpful to know, perhaps, after the short mid-morning
37 break, whether you would anticipate extending a little bit beyond 1 p.m., or perhaps
38 starting a little bit before 3 p.m.

39
40 Thank you very much, Mr President.

41
42 Mr President, Members of the Special Chamber, it is an honour to appear before you
43 in these proceedings representing the Republic of the Marshall Islands. As you have
44 just heard from the Attorney General and from our Agent, this case is of immense
45 importance to the Marshall Islands, a small island State with an outsized imprint on
46 law of the sea and maritime matters. From the very moment of the beginnings of the
47 incident that is at the heart of this dispute, the Marshallese authorities and the
48 country's Registry were actively engaged in efforts to secure the release of the crew
49 and the vessel and to safeguard the Marshall Islands' freedom of navigation rights
50 and exclusive flag State jurisdiction. These efforts are addressed, *inter alia*, in the

1 two Witness Statements of Mr William Gallagher, the Senior Deputy Commissioner
2 of Maritime Affairs of the Marshall Islands.¹

3
4 As Mr Gallagher's evidence and the very fact of these proceedings attest, the
5 Marshall Islands is acutely aware both of its rights and of its responsibilities under
6 UNCLOS, and of its duties in respect of every ship that flies its flag, pursuant to
7 Article 94 of UNCLOS, as well as other provisions of the Convention. Flag State
8 jurisdiction, pursuant to Articles 91 and 92 of UNCLOS, is rooted in a close link
9 between the flag State and the ship and its crew, manifest through the flag State's
10 responsibilities and duties in respect of the exercise of jurisdiction over such ships
11 and their crew, exclusively so, when the ship is on the high seas. It is also manifest
12 in respect of the exercise of flag State freedom of navigation rights, as well as other
13 rights under UNCLOS and other relevant and applicable rules of international law.

14
15 Mr President, Members of the Chamber, I note here, simply as a matter of formality,
16 as the point is not contested, that both the Marshall Islands and Equatorial Guinea
17 are States Parties to UNCLOS. While Equatorial Guinea has raised a number of
18 objections to the jurisdiction of the Special Chamber, to which I will come a little later,
19 there is no dispute that both Parties are bound by UNCLOS.

20
21 In bringing these proceedings, the Marshall Islands has in sharp focus both its rights,
22 as flag State of the "*Heroic Idun*" and of its attendant responsibilities in respect of the
23 vessel and its crew.

24
25 Starting on 12 August 2022, as you have heard, through the interception and
26 detention of the "*Heroic Idun*" by the Equatoguinean navy, the rights of the Marshall
27 Islands under UNCLOS and under other relevant rules of international law, were
28 violated. Its right of freedom of navigation. Its right, and indeed its duty, to exercise
29 jurisdiction over the "*Heroic Idun*", as the flag State of the vessel. From that date,
30 12 August 2022, until Equatorial Guinea rendered, unlawfully, the "*Heroic Idun*" and
31 its crew to Nigeria on 11 November 2022, the vessel and the crew were under the
32 jurisdiction and control of Equatorial Guinea, in manifest breach of the rights of the
33 Marshall Islands under UNCLOS. The vessel and the crew were detained for 92
34 days in Equatorial Guinea. The 26 crew members were unlawfully deprived of their
35 liberty. They were held hostage. They were thereafter rendered unlawfully by
36 Equatorial Guinea to Nigeria, transferred under the guns of the Equatoguinean navy,
37 while still in Equatorial Guinea waters.

38
39 Mr President, Members of the Chamber, the conduct that is in issue in these
40 proceedings is that of Equatorial Guinea, and of Equatorial Guinea alone, in the
41 period 12 August to 11 November 2022 – those 92 days. There were Nigerian
42 bookends to Equatorial Guinea's conduct, before 12 August and after 11 November,
43 but that is context. Nigeria's rights and duties are not in issue in these proceedings.
44 This case concerns the 92 days, not the events that occurred on either side of them.

45
46 In these proceedings, Equatorial Guinea wishes to play a "get out of jail free" card.
47 Given the wider context of these events that took place on those 92 days, Equatorial
48 Guinea says that there is an absent defendant in this Chamber. That Nigeria should

¹ Annex RMI/-30 and Annex RMI/-53.

1 be here but isn't. And, accordingly, that the Special Chamber has no jurisdiction over
2 Equatorial Guinea because you can't address the legality of Equatorial Guinea's
3 conduct without first determining the legality of Nigeria's conduct.
4

5 Mr President, Members of the Chamber, this case is not about the lawfulness or
6 otherwise of Nigeria's conduct. It is about, and only about, the illegality of Equatorial
7 Guinea's conduct. The Marshall Islands does not come before you seeking any
8 award against Nigeria, for anything. You are neither asked nor are you required to
9 reach any conclusions about the lawfulness of Nigeria's conduct. The only conduct
10 that is in issue in these proceedings that requires your legal assessment is that of
11 Equatorial Guinea, and of Equatorial Guinea alone – its conduct in those 92 days. It
12 cannot, in these proceedings, hide behind an assertion of an absent defendant. And
13 I will address these issues more fully later on in my statement.
14

15 Mr President, Members of the Chamber, let me step back a little to give you a
16 roadmap of my submissions before I get to the meat of them.
17

18 You should each have in front of you a Judges' Folder of core documents looking
19 like that. And we will update this bundle in advance of each session as the hearing
20 progresses. Given the time constraints of the hearing, we do not propose to ask you
21 to turn up individual documents in the bundle as we proceed. The Folder is intended
22 to assist your deliberations in due course by drawing together the key documents, or
23 extracts from them, to which we will refer you in the course of our submissions. We
24 will also be using slides to exhibit particular extracts we would like to highlight. And I
25 note that the slides for this session, in case you want to annotate them, are already
26 in the Folder. You will find these at Tab 19 of the Folder.
27

28 Mr President, Members of the Chamber, as Ms Kirby has anticipated, I expect to be
29 on my feet for the rest of this morning session and for a brief while afterwards, after
30 the lunch break. My purpose is to give you an overview of the facts and the evidence
31 of the Marshall case. In doing so, I will be anticipating the submissions of those
32 who will follow me, covering the ground more fully than I will do. My object is to give
33 you a sense of the topography of the case, before we take you to the detail and
34 contours of the landscape. And I appreciate that the metaphor of topography and the
35 details of the landscape perhaps do not sit quite so easily with a maritime matter, but
36 nonetheless that is the case. I appreciate that you will all be familiar with the issues
37 from the written pleadings, but what I would like to do is to pick up key elements of
38 the argument and elements of the evidence and put that before you.
39

40 In addition to a high-level overview of the facts and the evidence of our case, I will
41 also address issues of jurisdiction, admissibility and applicable law. In this context, I
42 will return to Equatorial Guinea's absent defendant argument, amongst other
43 contentions going to jurisdiction and admissibility. There is, as I've already noted, a
44 wider context to what took place at the hands of Equatorial Guinea during those 92
45 days. You need to know something of that wider context, both because Equatorial
46 Guinea seeks to use it as distraction, but also because, when it comes to the issue
47 of damages, you will have to consider whether Equatorial Guinea can properly be
48 held liable for loss, damage and injury that occurred after 11 November in
49 consequence of its unlawful action before 11 November. It is our contention that
50 Equatorial Guinea is liable not only for the loss, damage and injury that it caused

1 during those 92 days but also for wider consequential loss. But we will return to
2 these issues.

3
4 Following my submissions, you will hear this afternoon from Ms Grafton who will pick
5 up the baton on our factual case.

6
7 With Ms Grafton's submissions, and our witness evidence, you will have heard our
8 facts on the case. After these submissions and testimony, we will turn to our
9 allegations of breach and submissions of law, and on remedies. Our Agent has
10 already given you a roadmap of those, and I don't propose to say anything more
11 about them.

12
13 Mr President, Members of the Chamber, I turn now to give you an overview of the
14 facts and evidence. This review will necessarily be abbreviated. I will, though,
15 endeavour to point you to key elements of the evidence as I go along. Mr President,
16 Members of the Chamber, in keeping with the established practice of the Tribunal
17 with respect to transcripts of its proceedings, my colleagues and I have included
18 bare-bones references in the footnotes of our scripts that you have, which are strictly
19 limited to footnote references that identify where the evidence and supporting
20 documents can be found. We hope that will be helpful to you. There is no argument,
21 needless to say, that is included in the footnotes.

22
23 So I turn to the "*Heroic Idun*" and its crew. As you have already heard, the "*Heroic*
24 *Idun*" is a Very Large Crude Carrier registered in the Marshall Islands. It is owned by
25 Idun Maritime Limited, which is an Isle of Man company and I will return to this point
26 a little bit later. The company is also registered in the Marshall Islands as a "Foreign
27 Maritime Entity". For ease of expression I am going to refer to the "*Heroic Idun*" as
28 the vessel, although, on occasion, I will also refer to it as "the tanker", just to
29 differentiate it from other vessels that are engaged. And you will see a picture of the
30 "*Heroic Idun*" on the screen. I note that it is named here the "*Hunter Idun*" but as you
31 will see in the annotation at the bottom of the picture, it was renamed the "*Heroic*
32 *Idun*". Mr President, Members of the Chamber, you will appreciate the enormous
33 size of the vessel from this picture. It is a very large ship indeed, almost of the
34 dimensions of the Empire State building. It is slow to manoeuvre, with a maximum
35 speed in ballast of 15 knots per hour. And, as this goes to a key aspect of Equatorial
36 Guinea's case, to any seafarer, or to anyone with any knowledge of ships and of the
37 threat of piracy, it is utterly absurd to suggest that a tanker of this size, and speed
38 and manoeuvrability constraints, could ever be a pirate mothership.

39
40 I note in this regard that the "*Heroic Idun*" operated two mandatory electronic
41 tracking systems, which are required under Regulations 19 and 19-1 of Chapter V of
42 the Safety of Life at Sea Convention (SOLAS), mandatory for ships of this size, and
43 the requirements of which are tightly prescribed and regulated by the International
44 Maritime Organization, the IMO,² and the fitting and operation of which are
45 fundamental elements of flag State jurisdiction and responsibility, to which the
46 Marshall Islands is assiduously attentive.

² IMO Chapter V, Safety of Navigation, Regulation 19 (Carriage requirements for shipborne navigational systems and equipment) and Regulation 19-1 (Long-range identification and tracking of ships) (**Core Bundle, Tab 2**). *Guidance on the Implementation of the LRIT System*, IMO MSC.1/Circ.1298, 8 December 2008 (**Core Bundle, Tab 3**).

1
2 The first of these mandatory electronic tracking systems is the Automated
3 Identification System, or AIS.³ And you will hear something more of this from my
4 colleagues as well, as we go on. The AIS is a VHF (Very High Frequency)
5 transceiver that transmits a unique ship identification, its position, its course and its
6 speed, both to other ships and to shore authorities. And indeed, I believe that there
7 is an app that can be downloaded and we can all track the AIS of ships around the
8 world. While the AIS can be turned off, there are very limited circumstances in which
9 it is permitted to do so – and doing so would immediately raise suspicions about
10 control of the ship and about why it was seeking to hide its identity and coordinates
11 from other ships and authorities.
12

13 The second electronic identification system is the Long-Range Identification system,
14 or LRIT.⁴ This was introduced largely after 9/11 as a mandatory requirement to
15 enhance security of shipping for safety and marine environmental protection. Under
16 SOLAS Chapter V, Regulation 19-1, the LRIT System must automatically transmit
17 the identity of the ship, the exact position of the ship, and the date and time that the
18 position is provided. It is the responsibility of the flag State to regulate compliance
19 with the LRIT regulations.
20

21 The “*Heroic Idun*”’s AIS and LRIT systems were operating throughout the period with
22 which we are concerned. There was no attempt by anyone on board the vessel to
23 turn these systems off, as might have been the case had the vessel been overrun by
24 pirates. The AIS and LRIT transmissions would have been readily accessible to the
25 Equatoguinean navy and port authorities, enabling the authorities to know the exact
26 position of the “*Heroic Idun*” at all times.
27

28 Mr President, Members of the Chamber, this case is not just about States and not
29 just about vessels, it is about crew as well. The vessel had a crew of 26, of whom 15
30 were Indian, including the Master and the Chief Officer, 9 were Sri Lankan, 1 was
31 Filipino, and 1 was Polish. With 24 members of the crew from the Indian sub-
32 continent, as you can imagine, the detention of the crew was felt particularly heavily
33 in that part of the world.
34

35 In August 2022, the vessel was sub-chartered to BP with orders to load crude oil at
36 Akpo Offshore Terminal which was located 71 miles off the Nigerian coast in
37 Nigeria’s exclusive economic zone.
38

39 So Mr President, Members of the Chamber, I turn to the events of 7 and 8 August
40 2022 and I note, in doing so, that the events with which we are concerned in these
41 proceedings began on Friday, 12 August 2022, on a Friday afternoon. Some wider
42 context to these events is warranted, however, taking us back five days, to 7 August.
43 This context gives perspective about what happened subsequently, but it is not
44 ultimately relevant to any question of responsibility and liability of Equatorial Guinea
45 for its conduct during the 92 days.
46

³ IMO “AIS transponders”: <https://www.imo.org/en/ourwork/safety/pages/ais.aspx>.

⁴ IMO “Long-range identification and tracking (LRIT)”:
<https://www.imo.org/en/ourwork/safety/pages/lrit.aspx>.

1 Given its loading orders, the “*Heroic Idun*” arrived off Akpo Terminal in Nigeria’s EEZ
2 on the evening of 7 August 2022 where it awaited loading instructions. The area off
3 Akpo is within a designated High-Risk Area for piracy. The area in proximity to the
4 Terminal benefits from the Terminal’s security cover.

6 You will see now on the screen slide 4 – the chart, which is taken from Figure 1 of
7 the Marshallese Memorial, showing the track of the “*Heroic Idun*”. The red line, in the
8 direction of the arrows, shows the track of the vessel in the period from 7 to
9 13 August.

11 And we can keep this slide on the screen, as I take you through the facts. Having
12 arrived off the Akpo Terminal on the evening of 7 August, the following day, on
13 8 August 2022, the Terminal notified the Master that there was as yet no cargo
14 nomination and requested the Master to move the vessel clear of the Terminal.
15 Given the piracy risks, the Master was wary about moving the vessel to an area
16 where it would not have any security cover from the Terminal. After exchanges
17 between the Master and the Terminal, therefore, the Master moved the vessel to just
18 outside 10 nautical miles of the Terminal to await further instructions. In doing so, he
19 posted a further lookout on the bridge and kept the engines at the ready in case of
20 pirate attack. And I should note, and you will see later on in one of the slides
21 projected by my colleagues, a different picture of the “*Heroic Idun*” in ballast, so you
22 will see quite how high in the water it is riding. But at this stage, the vessel was in
23 ballast, sitting very high in the water, not having yet loaded any cargo. This is all
24 addressed in the Master’s first Witness Statement.⁵

26 You can see on slide 4 on the screen the track of the vessel on 8 August in the
27 vicinity of the Akpo Terminal. And it is a very tight track if you look around Akpo –
28 you can see the trajectory of the vessel.

30 Now there followed an incident on the date in question, on 8 August, which lasted
31 about 90 minutes, that was followed, four days later, by the unlawful interception of
32 the “*Heroic Idun*” by the Equatoguinean navy and the incarceration of its crew in
33 Equatorial Guinea until 11 November, the 92 days.

35 At 20.16 UTC – 21.16 Local Time – on Monday, 8 August, an unidentified boat
36 approached the “*Heroic Idun*”. Visibility was poor that night; the night was overcast,
37 and there was no moon. The approaching vessel had its AIS, its Automatic
38 Identification System, turned off, which was both highly unusual and highly suspect,
39 given the piracy threat. Given the poor conditions, the approaching vessel could not
40 be visually identified by the Master and the crew of the tanker. Making contact with
41 the “*Heroic Idun*” over the VHF radio, the unidentified boat asserted that it was a
42 Nigerian navy boat and asked the Master to follow it to Bonny Fairway Buoy in
43 Nigeria’s territorial sea for investigation regarding its clearances. As he was unable
44 to identify the approaching boat, the Master of the “*Heroic Idun*” was concerned that
45 it was a pirate boat. And, Mr President, Members of the Chamber, I very much invite
46 you to have a look at paragraph 79 of the Master’s first Witness Statement, where
47 this particular issue is addressed in some detail.⁶

⁵ Annex RMI/-1 (Memorial, Volume II).

⁶ Annex RMI/-1 (Memorial, Volume II).

1
2 The exchanges that ensued are recounted in the Marshallese Memorial at
3 paragraphs 30 to 33, as well as in the Witness Statements of the Master and the
4 Chief Officer and of other members of the crew attached to the Marshallese
5 Memorial and Reply. Mr President, Members of the Chamber, I commend all of
6 these Witness Statements to you for close attention. They bring to the fore the acute
7 human dimension of the events that took place, both that night and over the 92 days
8 that followed. Slide 5 on the screen references each of these 26 Witness Statements
9 by members of the crew along with a brief notation of what each statement
10 addresses. Before we move on from this slide, we have set this out, Mr President
11 and Members of the Chamber, for your convenience as a quick and easy guide of
12 both where to find these witness statements and also the key issues they address.
13 And as I say, Mr President and Members of the Chamber, we very much commend
14 the details of those statements to you. We are here in Hamburg, but there are real
15 lives at the heart of this narrative.

16
17 We go back to slide 6, the next slide. For completeness, for your ease of reference,
18 we also have Slide 6, now on the screen – an additional slide which gives you a
19 similar overview of the other Witness Statements and of the Expert Reports annexed
20 to our Memorial and Reply.

21
22 Mr President, Members of the Chamber, the Witness Statements apart, the most
23 compelling evidence addressing what transpired on the night of 8 August is the
24 transcript of the Voice Data Recording of the VHF exchanges and those on the
25 bridge that took place that night. The Voice Data Recorder, or VDR, is an automated
26 audio and data recording system on the bridge. In this case, the VDR captured the
27 entirety of the exchanges that took place on the bridge of the “*Heroic Idun*” on the
28 night of 8 August, including the VHF exchanges with the unidentified boat. Now I
29 interpolate here, briefly, noting that it subsequently transpired, although only
30 sometime later – my understanding is that it was about 12 hours later, perhaps a
31 little further – that the boat was in fact a small Nigerian navy patrol boat, the
32 “*Gongola*”, but this was not known by those on board the “*Heroic Idun*” at the time,
33 and it is evident from the VDR recording that the conduct of the “*Gongola*” that night
34 was highly erratic throughout the course of the incident. This highly erratic conduct,
35 coupled with poor visibility of a small, highly manoeuvrable and fast-moving boat
36 approaching the “*Heroic Idun*”, bolstered the appreciation by those on the bridge of
37 the “*Heroic Idun*” that they were under pirate attack.

38
39 The VDR transcript runs from just before 7.00 p.m. UTC, 8.00 p.m. Local Time, to
40 just before 11.00 p.m. UTC, midnight Local Time on 8 August, a period of four hours.
41 Amongst the exchanges that the VDR captured are the following – and I’ll just list a
42 number of them but the detailed evidential references are in the footnotes:

- 43
44 • First of all, it records the repeated threats by the unidentified ship to “use
45 maximum force against” and “open fire” on the “*Heroic Idun*”;⁷
46

⁷ MT/-26 (Memorial, Volume II), *inter alia*, at page 273: 20:49:48, 20:50:05, 20:51:00.

- 1 • It records the Master's instruction to the crew to go to the citadel, the safe
2 room in the vessel that provided a secure place of refuge for the crew in the case of
3 a pirate attack;⁸
- 4
- 5 • It recorded the crew taking refuge in the citadel;⁹
- 6
- 7 • It recorded the Master's statement to the unidentified vessel that the "*Heroic*
8 *Idun*" was in international waters;¹⁰
- 9
- 10 • It recorded the Chief Officer's repeated, repeated May Day calls;¹¹
- 11
- 12 • And it recorded requests both from the "*Heroic Idun*" but also from other
13 vessels in the vicinity to the unidentified ship to please please please turn on its AIS
14 to enable it to be identified;¹²
- 15
- 16 • And it finally records an all clear at 22.46 local time after the unidentified ship
17 gave up its pursuit of the "*Heroic Idun*" which, by that point, had significantly
18 increased speed in an attempt to evade the unidentified boat.¹³ As the tanker was
19 high in the water in ballast, it posed challenges to potential boarders, but the risks to
20 an oil tanker attendant from heavy gun fire were high.

21
22 While Equatorial Guinea puts its own spin on the events that took place that night,
23 there can be no serious contention whatsoever about the facts and the genuine
24 sense of risk on the part of those on board the "*Heroic Idun*".

25
26 Mr President, Members of the Chamber, I turn to address Equatorial Guinea's
27 responsibility which is engaged by the events of 12-13 August 2022, five days or four
28 days later.

29
30 In the days that followed the incident, the "*Heroic Idun*" sailed out of the High-Risk
31 Area through the EEZs of Nigeria, of São Tomé and Príncipe, and of Equatorial
32 Guinea while awaiting instructions to return to Akpo to load cargo. This was
33 eventually due to take place on 17 August.

34
35 While they were waiting for the 17 August, the "*Heroic Idun*" was drifting in the EEZ
36 of São Tomé and Príncipe on Friday, 12 August when it was approached by the
37 Equatoguinean warship, the "*Capitan David*". The relevance of the location of the
38 "*Heroic Idun*" in the EEZ of São Tomé at this point is twofold. First, it excludes any
39 basis for a claim by Equatorial Guinea that it was purporting to investigate or enforce
40 its own regulations applicable in its own EEZ. This was not the Equatoguinean EEZ.
41 Second, it underlines that the relevant UNCLOS legal regime applicable between the

⁸ MT/-26 (Memorial, Volume II), *inter alia*, at page 273 – 274: 20:49:03, 20:50:42, 20:51:32, 20:53:10, 20:57:30.

⁹ MT/-26 (Memorial, Volume II), *inter alia*, page 273: 20:52:52, 20:53:24, 20:54:16.

¹⁰ MT/-26 (Memorial, Volume II), *inter alia*, page 274: 20:58:24.

¹¹ MT/-26 (Memorial, Volume II), *inter alia*, page 274 - 276: 21:04:02, 21:05:19, 21:06:17, 21:09:43, 21:10:57, 21:16:14, 21:32:34, 21:35:58.

¹² MT/-26 (Memorial, Volume II), *inter alia*, page 274: 21:05:52, 21:08:34, 21:08:48, 21:09:23, 21:12:06.

¹³ MT/-26 (Memorial, Volume II), page 277: 21:46:12.

1 Marshall Islands and Equatorial Guinea were the UNCLOS provisions applicable to
2 the high seas, in other words, those in Part VII of the Convention.

3
4 Mr President, Members of the Chamber, let me pause for just a moment at this point
5 to emphasize that at this point – at the point of the interdiction of the “*Heroic Idun*” by
6 the “*Capitan David*” on 12 August 2022 – at this point, the responsibility of Equatorial
7 Guinea is engaged as a matter of international law, both under UNCLOS and under
8 customary international law. Until this point, Equatorial Guinea had not been part of
9 the narrative. All of this changes from 12.37 UTC on 12 August 2022. This is the
10 start of the 92 days. This case is about 92 days. It is from this moment, until the
11 “*Heroic Idun*” and its crew were unlawfully rendered by Equatorial Guinea to Nigeria
12 on 11 November 2022, that you will be called upon to assess the lawfulness of
13 Equatorial Guinea’s conduct and responsibility for what the Marshall Islands says are
14 a manifest breach of UNCLOS, of other relevant and applicable conventions, and of
15 relevant and applicable rules of customary international law by Equatorial Guinea.

16
17 Mr President, Members of the Chamber, if we go back to slide 4, you can see where
18 the vessel was on 12 August, if you look in the left-hand quadrant, at the midpoint,
19 you will see the date 12/8/2022, firmly within the EEZ of São Tomé and Príncipe.
20 And this is not disputed.

21
22 As I have just noted, pursuant to Article 58 of UNCLOS, high seas freedom of
23 navigation rights under Article 87 apply in the exclusive economic zone of a State.
24 And there is no credible suggestion that the “*Heroic Idun*” was not within its rights in
25 the EEZ of São Tomé and Príncipe on 12 August when it was intercepted by the
26 “*Capitan David*”. For all relevant purposes, São Tomé not being in any way involved,
27 the relevant legal regime that is applicable is the legal regime of the high seas. I note
28 in this regard that the exclusive jurisdiction of the Marshall Islands, as flag State,
29 applied pursuant to Article 58(2) and Article 92(1) of UNCLOS. Dr Paolo Busco will
30 return to this issue in his submissions tomorrow.

31
32 Amongst the additional documents submitted by the Marshall Islands, under cover of
33 the Agent’s letter to the Special Chamber of 10 September 2025, was the VDR
34 transcript of the VHF exchanges between the “*Capitan David*” and the “*Heroic Idun*”
35 on 12 and 13 August. Mr President, Members of the Chamber, once again, this
36 makes interesting reading as it is unimpeachable evidence that corroborates the
37 accounts given of those in the witness statements of the Master, of the Chief Officer
38 and of other members of the crew, which are appended to the Marshall Islands’
39 Memorial and Reply.¹⁴ And if we go back to the slide detailing witness evidence, in
40 addition to those of the Master and the Chief Officer, amongst the other Witness
41 Statements that have a particular bearing on this issue, I note those from the Second
42 Officer,¹⁵ from the Junior Third Officer,¹⁶ from the Third Engineer,¹⁷ and from the
43 Fourth Engineer.¹⁸

14 Annex MT/-46 (Memorial, Volume III-A).

15 Annex RMI/-6 (Memorial, Volume II).

16 Annex RMI/-8 (Memorial, Volume II).

17 Annex RMI/-12 (Memorial, Volume II).

18 Annex RMI/-13 (Memorial, Volume II).

1 The events that unfolded on 12 and 13 August are addressed in paragraph 58 of the
2 Marshall Islands' Memorial. I note simply at this stage that the "*Heroic Idun*" was
3 intercepted by the "*Capitan David*" under threat of force. That interception, we say,
4 was in breach of UNCLOS. No reason was given for the interception other than that
5 it was "for investigation" and that the "*Capitan David*" stated that it had orders to
6 escort the "*Heroic Idun*" to Malabo, the capital of Equatorial Guinea. To this effect,
7 the "*Capitan David*" was joined by another Equatoguinean navy ship, the "*Wele*
8 *Nzas*", with the two naval vessels positioning themselves to port and starboard of the
9 "*Heroic Idun*", with guns trained on it, while escorting the tanker to what in fact was
10 Luba anchorage, to the south-west of Malabo on Bioko Island. You will hear more
11 about what took place at this point from Ms Grafton and from the testimony of the
12 Master and the Chief Officer.

13
14 Mr President, Members of the Chamber, at no time during this period – from the
15 interception of the "*Heroic Idun*" to its movement to Luba anchorage – at no time
16 during this period, did the Equatoguinean authorities inform the Marshall Islands, in
17 its capacity as flag State, of these developments, as it was required to do under
18 UNCLOS. Ms Penelope Nevill will address this issue in greater detail in her
19 submissions.

20
21 Mr President, Members of the Chamber, although it is not applicable in the
22 circumstances of this case, I note in passing that Article 97(3) of UNCLOS precludes
23 the arrest or detention of a ship on the high seas, even as a measure of
24 investigation, by any authorities other than those of the flag State. Now, this
25 provision is not engaged in this case, as it addresses the exercise of penal
26 jurisdiction in matters of collision or any other incident of navigation, but I
27 nonetheless reference it in passing as it reflects a fundamental principle that
28 underpins the law of the sea, namely, that of flag State jurisdiction even in the most
29 egregious of circumstances, such as may warrant the exercise of penal jurisdiction.
30 No State may arrest or detain a ship on the high seas other than the flag State, even
31 as a measure of investigation.

32
33 Dr Busco and Ms Nevill will address different elements of Equatorial Guinea's claim
34 that it was exercising enforcement jurisdiction with respect to the repression of
35 piracy. Ms Nevill will also address Equatorial Guinea's argument that it acted within
36 the reasonable bounds of its right with respect to the protection and preservation of
37 the marine environment.

38
39 Mr President, I note that we are coming up to the mid-morning break, perhaps I
40 might continue just for another few minutes and break at 11.30.
41 And I turn to address the detention of the vessel and the incarceration and
42 mistreatment of the crew by Equatorial Guinea. On arrival at Luba anchorage, 15 of
43 the 26 crew members, including the Master, were disembarked from the vessel and
44 taken on shore under naval armed guard. The remaining 11 crew, including the Chief
45 Officer, were detained on board, with armed guards stationed on the vessel. The
46 treatment of the crew, both detained onshore and detained onboard, is addressed in
47 paragraphs 46-55 and 63-65 of the Memorial as well as in the Witness Statements
48 given by each of the 26 members of the crew members. And again, you can see
49 these identified on slide 5. The poor conditions of the crew's detention onshore is
50 documented in these Statements. You will hear more on this from Ms Grafton and

1 from the testimony of our witnesses. This incarceration of the crew by Equatorial
2 Guinea, both onshore and onboard, extended over 92 days, despite diplomatic
3 efforts by the Marshall Islands to secure their release, as well as by extensive efforts
4 of others on the ground. The efforts are, once again, attested to in the Witness
5 Statements by Mr Gallagher, which I mentioned in opening, also by Mr Stephen
6 Askins, a London-based lawyer who was acting for the Owners and was in constant
7 contact with the crew and others in Malabo,¹⁹ and Mr Eivind Kulblik, a Fleet Director
8 of OSM Maritime Group, the managers of the “*Heroic Idun*”.²⁰

9
10 In addition to the Witness Statements from the Master and the Chief Officer,
11 amongst the other Witness Statements that have a particular bearing on the issue of
12 the treatment of the crew, I note, for the record, those given by the Second Officer,²¹
13 by the Deck Cadet,²² by the Third Officer,²³ by the Fourth Engineer,²⁴ by the
14 Electrician,²⁵ by the Pumpman,²⁶ by Able Seaman No.1,²⁷ by Able Seaman No.2,²⁸
15 by Ordinary Seaman No.2,²⁹ and by Motorman No.3.³⁰ I also draw your attention –
16 we have this in your Core Bundle, I will come back to it – to the Psychological Report
17 of Dr Lesley Perman-Kerr, a highly experienced Consultant Counselling
18 Psychologist, who attested to the severely traumatizing effects of the crew’s
19 detention and treatment.³¹ I will come on to mention, amongst the traumatizing
20 events identified by Dr Perman-Kerr, that one of the particularly traumatizing
21 elements was the Equatoguinean decision not to release the crew at a point at which
22 they had been led to believe that they would be released, but rather to render them
23 to Nigeria. The treatment of the crew and the conditions of their detention in
24 Equatorial Guinea is also addressed at length in the First Witness Statement of
25 Mr Kulblik, which includes, amongst the annexes to his Witness Statement,
26 contemporaneous correspondence about the treatment of the crew.³²

27
28 The increasing risks to the vessel from unsafe manning are addressed in paragraphs
29 49, 66 and 67 of the Memorial, in the First Witness Statement of the Master,³³ in the
30 Witness Statement from the Electrician,³⁴ in the First Witness Statement of
31 Mr Kulblik,³⁵ and in the Expert Report of Mrs Voirrey Blount.³⁶

32
33 Mr President, if this is convenient for the Special Chamber, that may be a convenient
34 point to pause.

¹⁹ Annex RMI/-3 (Memorial, Volume II); Annex RMI/-52 (Reply, Volume II).

²⁰ Annex RMI/-2 (Memorial, Volume II).

²¹ Annex RMI/-6 (Memorial, Volume II).

²² Annex RMI/-9 (Memorial, Volume II).

²³ Annex RMI/-10 (Memorial, Volume II).

²⁴ Annex RMI/-13 (Memorial, Volume II).

²⁵ Annex RMI/-14 (Memorial, Volume II).

²⁶ Annex RMI/-16 (Memorial, Volume II).

²⁷ Annex RMI/-17 (Memorial, Volume II).

²⁸ Annex RMI/-18 (Memorial, Volume II).

²⁹ Annex RMI/-21 (Memorial, Volume II).

³⁰ Annex RMI/-26 (Memorial, Volume II).

³¹ Annex RMI/-38 (Memorial, Volume II). (**Core Bundle, Tab 4**).

³² Annex RMI/-2 (Memorial, Volume II).

³³ Annex RMI/-2, paras. 99-101.

³⁴ Annex RMI/-14.

³⁵ Annex RMI/-2.

³⁶ Annex RMI/-37.

1
2 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Sir Daniel. I believe
3 that this is indeed an appropriate time for the Special Chamber to withdraw for a
4 break of 30 minutes. We will continue the hearing at 12 noon, 12 p.m.
5

6 **SIR DANIEL:** Mr President, I note that it is not just the Special Chamber that needs
7 a break, it is also Counsel.
8

9 **THE PRESIDENT OF THE SPECIAL CHAMBER:** So the Chamber will now
10 withdraw.
11

12 *(Break)*
13

14 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I now invite Sir Daniel Bethlehem
15 to continue his statement, but before you do, according to our calculations, you have
16 about 25 minutes' additional time because of the time we took up this morning for the
17 introductory part. So I think it would be a good idea for you to continue until 1.15 p.m.
18 and if you need some further time, to continue after 3 p.m. this afternoon. Would that
19 be in order?
20

21 **SIR DANIEL:** Thank you very much, Mr President. I suspect that I'm making
22 reasonably good time, but I'm very grateful for the latitude to go a little bit beyond
23 1.00 p.m. We will try not to intrude too much into the lunch break, but I'm very
24 grateful for your latitude. Thank you very much.
25

26 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you. Please go ahead.
27

28 **SIR DANIEL:** Thank you. Mr President, Members of the Chamber, just before the
29 break, I was in the midst of the narrative of the detention and incarceration of the
30 crew and the detention of the vessel. Amongst the many egregious developments
31 that occurred while the vessel and the crew were detained by Equatorial Guinea, the
32 Memorial recounts the details, with considerable supporting evidence, of the
33 approximately EUR 2 million fine that was levied on or about 28 September by the
34 Equatoguinean authorities, purportedly for the vessel's illegal entry into the
35 jurisdictional waters of Equatorial Guinea, for sailing without flying any flag, and for
36 sailing and remaining in the Equatoguinean EEZ without authorization. As you will
37 see from the witness evidence, this fine was regarded by the Marshall Islands and all
38 on our side as an extortion, a demand for a ransom payment by Equatorial Guinea
39 on a promise to release the vessel and the crew. And you will hear more about this
40 from the Master. It is also addressed in unambiguous terms in the witness evidence
41 of Mr Askins,³⁷ as well as the witness evidence of Mr Kulblik.³⁸ There is, additionally,
42 a great deal of contemporaneous correspondence referring to the promise of release
43 to which Ms Grafton will refer you this afternoon. And Mr President, Members of the
44 Chamber, I very much encourage you to review this evidence closely. The fact and
45 extent of this EUR 2 million fine is a key component of the Marshallese reparations
46 claim.
47

³⁷ Annex RMI/-3, paras. 24-29; Annex RMI/-52, para. 5.

³⁸ Annex RMI/-2, para. 42.

1 Although the fine was regarded as unjustified and as an extortion, given the
2 increasingly precarious situation of both the crew and the vessel, the Owners of the
3 vessel paid the EUR 2 million fine on 4 October. They received – I don't know
4 whether the slides are working – a signed proof of payment the following day and the
5 receipt of payment of this EUR 2 million is on the screen. Notwithstanding this
6 payment, and the assurances that the vessel and the crew would be promptly
7 released, this did not happen and they remained in detention in Equatorial Guinea.

8
9 Mr President, Members of the Chamber, around 4 November, when the crew and the
10 vessel had already been in detention in Equatorial Guinea for 84 days, and a month
11 after the EUR 2 million ransom payment had been made, the Marshall Islands, along
12 with the crew and the Owner of the vessel, became aware that Equatorial Guinea
13 decided that it was going to hand over the vessel and the crew to Nigeria after 84
14 days. Once again, no official communication was sent to the flag State. The vessel
15 and the crew were at this point under armed restraint of Equatorial Guinea, they
16 were either in Equatoguinean waters or on land, in Equatorial Guinea, they were
17 unquestionably within Equatorial Guinea's jurisdiction and under its control.

18
19 Mr President, Members of the Chamber, I referred you, just before the break, to the
20 Expert Psychological Report by Dr Lesley Perman-Kerr, which addressed the trauma
21 suffered by the crew. We have on the screen – this is the first of two pages – we
22 have on the screen now an extract of her conclusions. I would like to take a moment
23 to read her assessment for you. And I read as follows, and there are four
24 paragraphs, two here and two on the following slide. She says the following:

25
26 Swift transition from “a normal routine trip” to hostile detention in EG was a
27 shocking experience for the crew. They described their period of detention in
28 EG, where 15 were held for a period in an on-shore detention facility with 11
29 remaining on board the vessel, as being extremely traumatic. They described
30 being in constant fear regarding their physical safety at the hands of
31 aggressive guards who, as the crew reported, were regularly intoxicated while
32 in charge of weapons. Those of the crew on-shore in EG suffered further
33 anxieties being in close proximity to the authorities with the threat of
34 interrogation or worse and were forced to witness the torture of another
35 detainee at the Malabo police station with the threat that they could be next.
36 Additional traumatising was caused by the insanitary conditions, harassment
37 during the night and the negligent delay in attending to some significant health
38 needs.

39
40 For the men taken on-shore in EG, the reported poor and dangerous
41 conditions and the intentional infliction of mental anguish, in my professional
42 opinion meets the criteria for psychological torture defined by Hong et al
43 (2023), [that's an academic reference] as “the intentional infliction of suffering
44 without resorting to direct physical violence, in what is known as ‘no touch’
45 torture.” The crew still on-board the vessel reported aggressive intimidation
46 from the EG guards and were fearful regarding the fate of their fellow crew and
47 whether they may too be taken to the on-shore detention facility.

48
49 Moving to the next slide:

50
51 Once it was possible to speak to the crew, they reported the events
52 experienced in EG and their symptoms, which clearly met APA [that's the

American Psychiatric Association] defining criteria for a post-trauma mental health condition. In my professional opinion, it is likely that most, if not all, of the crew could receive a formal diagnosis of PTSD [Post Traumatic Stress Disorder]. Furthermore, if it was triggered by events they experienced in EG as I believe to be the case, by the time their detention ended at the end of May 2023 their PTSD would be a chronic condition which is a longer lasting form of the disorder diagnosed when symptoms continue in excess of 3 months. The difference between the chronic and the acute condition is that sufferers are likely to have more severe ingrained core symptoms and experience depressive states and interpersonal difficulties.

And then the final paragraph 37:

The overall length of time in detention (EG and Nigeria), the levels of fear and uncertainty when EG decided to hand over the vessel to Nigeria [that period from 4 November 2022, after the 84 days in detention, a month after there had been assurances of release, from that period – this is what she is addressing – “the levels of fear and uncertainty when EG decided to hand over the vessel to Nigeria”], the fear of a long prison sentence should the court decide to convict them, the lack of information regarding actions of OSM and their lawyers and their families’ wellbeing due to the severe restrictions on communication and the lack of psychological and pastoral care, all compounded the initial traumatic experience in EG and resulted from the vessel being handed over to Nigeria. In my professional opinion, these experiences have had extremely damaging psychological consequences for the men, and by implication for their families, the ramifications of which are likely to impact them in varying degrees for the rest of their lives in terms of personality changes and depression linked to loss of status, stigma, employment and relationship difficulties. In support, as concluded by Brooks and Greenberg (2021), “The psychological impact on those wrongfully accused appears to be vast, severe and long-lasting.”

Mr President, Members of the Chamber, this is chilling in its analysis and assessment.

Now, I turn briefly to Equatorial Guinea’s rendition of the vessel and crew to Nigeria. I will come on to address this only very briefly. Before doing so, I draw Dr Perman-Kerr’s assessment to your attention at this point in some detail because it addresses this critical moment of transition in the events with which we are concerned. As I said just a moment ago, after 84 days of detention and incarceration in Equatorial Guinea, the Equatoguinean authorities decided that they would render the vessel and the crew to Nigeria. Mr President, Members of the Chamber, I have been using the terms “rendition” and “render” as they signify an extra-judicial transfer from the jurisdiction of one State to the jurisdiction of another State that engages the international legal responsibility of the transferring State, in other words, of Equatorial Guinea. It does not *per se* address the legal responsibility of the receiving State, here Nigeria. As I have said, the Marshall Islands makes no claim against Nigeria in these proceedings, and you are not called upon to assess the lawfulness of Nigeria’s conduct.

Mr President, Members of the Chamber, I recall the recitation, Mr President, that you made and the prayer for relief that was read by the Registrar at the start of this

1 hearing and your recollection that these proceedings were commenced in April 2023.
2 When these proceedings were commenced in April 2023, the period of detention in
3 Nigeria was not over. There is no claim against Nigeria in these proceedings. We are
4 concerned with the 92 days. This is the 92-day case. At the point at which Equatorial
5 Guinea came to decide to render the "*Heroic Idun*" and its crew to Nigeria, the vessel
6 and its crew were within the jurisdiction and under the sovereign control of Equatorial
7 Guinea. The decision to render the vessel and the crew was a sovereign
8 Equatoguinean decision. And that sovereign decision has consequences. It must
9 have consequences.

10
11 One of those consequences, though, was in respect of the escalated trauma of the
12 crew. As Dr Perman-Kerr notes, the decision to render the vessel and crew to
13 Nigeria elevated the levels of fear and uncertainty of the crew. The decision to hand
14 over the vessel and the crew, and its subsequent implementation, especially against
15 the backdrop of the payment of the fine and the assurances of release, compounded
16 the crew's trauma. In Dr Perman-Kerr's assessment, what had been an acute
17 traumatic experience, by early November 2022, became a chronic trauma. As she
18 describes it, a chronic trauma is "a longer lasting form of the disorder diagnosed
19 when symptoms continue in excess of 3 months [in which the] sufferers are likely to
20 have more severe ingrained core symptoms and experience depressive states and
21 interpersonal difficulties [...] the ramifications of which are likely to impact them in
22 varying degrees for the rest of their lives".

23
24 Mr President, Members of the Chamber, UNCLOS reflects and incorporates an
25 acute sensitivity to the plight of detained ships and crew. Provisions addressing the
26 release of detained vessels and crew are found in multiple places in the Convention.
27 A detaining State may in certain circumstances require the payment of a bond. Other
28 conditions may also apply. The principle, though, is that the holding hostage of a
29 vessel and its crew is an anathema against which there must be safeguards.
30 Whether it is Article 73(2) or Article 292 or some other provision of UNCLOS, the
31 prompt release of a detained vessel and crew is expected, and, in the case of
32 detained crew, a matter of humanitarian necessity.

33
34 Mr President, Members of the Chamber, let me hasten to add that I am not, by these
35 observations, fighting the *Heroic Idun* (No. 1) case, the Prompt Release Application.
36 I am simply completing the narrative of this case, of which you are now seized. As
37 soon as humanly possible after it became apparent that Equatorial Guinea was
38 intent on rendering the vessel and its crew to Nigeria, the Marshall Islands filed an
39 Application for the prompt release of the "*Heroic Idun*" and the crew. This was
40 submitted on 9 November 2022.³⁹ And these dates now assume significant
41 importance. It was submitted on 9 November 2022. At 16.07 p.m. local time on
42 10 November, the ITLOS Registrar informed the Marshall Islands that a certified
43 copy of the Prompt Release Application had been transmitted to Equatorial Guinea.
44 By an Order, Mr President, above your signature dated 11 November 2022, ITLOS
45 fixed 24 November 2022 as the date for the opening of the hearing on the Marshall
46 Islands' Prompt Release Application.⁴⁰

³⁹ https://www.itlos.org/fileadmin/itlos/documents/cases/30/RMI_PromptRelease_09112022_Redacted.pdf.

⁴⁰ https://www.itlos.org/fileadmin/itlos/documents/cases/30/C30_Order_2022-2_11.11.2022.pdf.

1 Equatorial Guinea continued its rendition regardless. That same day – the same day,
2 Mr President, that you signed that Order – on 11 November, in the face of the
3 Prompt Release Application a few days earlier and the ITLOS Order, the vessel was
4 forced to set sail for Nigeria, with the Equatoguinean navy alongside, in
5 Equatoguinean waters. The vessel and the crew having been transferred by
6 Equatorial Guinea from its jurisdiction and control to the jurisdiction and control of
7 Nigeria, Equatorial Guinea steps away from the narrative. On 12 November, the
8 vessel and crew arrived at Bonny anchorage, off the Nigerian coast. They remained
9 there for a further 197 days.

10
11 Mr President, Members of the Chamber, Equatorial Guinea seeks to wash its hands
12 of any responsibility for the events from 12 August to 11 November 2022. It seeks to
13 wash its hands of its responsibility for those 92 days. All it did, it says, was to
14 cooperate with Nigeria. It says in these proceedings that the Special Chamber has
15 no jurisdiction as Nigeria is an essential party but is absent from this Chamber. We
16 are not, though, concerned in this case with Nigeria's conduct. But for some
17 consequential issues to which we will come in due course, I conclude our narrative of
18 the 92 days here, 92 days from the point Equatorial Guinea, through the "*Capitan*
19 *David*", detained the "*Heroic Idun*" and its crew in the exclusive economic zone of
20 São Tomé and Príncipe and escorted them to Luba anchorage. Equatorial Guinea is
21 responsible for its conduct during these 92 days – for its breaches of UNCLOS and
22 other relevant and applicable conventions; for its breaches of relevant and applicable
23 customary international law. Equatorial Guinea, and Equatorial Guinea alone, is
24 liable for the loss, damage and injury that occurred during those 92 days. Beyond
25 that, we say that Equatorial Guinea is also liable for the loss, damage and injury that
26 occurred thereafter that is directly traceable to Equatorial Guinea's unlawful actions.
27 These aspects will be addressed by Ms Nevill and Dr Casas in their submissions on
28 reparations on Wednesday morning.

29
30 Mr President, Members of the Chamber, I have taken you through the Marshall
31 Islands' appreciation of the facts. It is an appreciation that is anchored in the
32 evidence, firmly anchored in the evidence, both documentary and witness evidence.
33 For its part, Equatorial Guinea seeks to explain its conduct by putting a spin on the
34 facts, by saying, for example, that the 8 August incident with the "*Gongola*" is central
35 and that it was all the fault of the "*Heroic Idun*" and by pleading that everything else
36 that took place was at the request of or in support of Nigeria, for legitimate purposes
37 and using reasonable means. Mr President, Members of the Chamber, Equatorial
38 Guinea cannot, however, so readily slip the surly bonds of its own international
39 responsibility. Insofar as Equatorial Guinea may have been acting in support and at
40 the request of Nigeria, it did so in exercise of its own sovereign powers. It acted
41 through its own State apparatus and organs of State. Apart from the interdiction on
42 12 August in the EEZ of São Tomé and Príncipe, Equatorial Guinea acted at all
43 times within its own sovereign territory and in exercise of its own jurisdiction. It
44 asserted control through its naval and other armed forces, as well as through other
45 State agents and officials. And its violations of law are its violations of law alone.

46
47 The spin and the excuses and the explanations apart, it is significant that Equatorial
48 Guinea does not contest the key facts that stand at the heart of the narrative that I
49 have just recounted – of the interception and detention of the "*Heroic Idun*" on
50 12 and 13 August; of the separation of the crew into onshore and onboard detainees;

1 of its detention of the vessel; of its incarceration of the crew under armed guard for
2 92 days. Equatorial Guinea does not contest the fact of the EUR 2 million payment. It
3 does not contest the fact of the rendition of the vessel and crew to Nigeria on
4 11 November. While Equatorial Guinea takes issue with certain allegations of poor
5 conditions and mistreatment, its evidence on this front is paltry, and you are well
6 placed to form an assessment of where the balance of truth is to be found. But on
7 the essence and sweep of the facts and the evidence, there is not and there cannot
8 be any effective rebuttal.

9
10 Mr President, Members of the Chamber, that is all that I propose to say about the
11 facts and the evidence. Ms Grafton will pick up the baton on these issues this
12 afternoon. In the time that remains to me, I would like to turn to address issues of
13 jurisdiction, admissibility and applicable law. The issues and the arguments on these
14 points have been fully canvassed in our Memorial and, in particular in our Reply in
15 response to Equatorial Guinea's objections. And I commend, for your attention,
16 Chapters 3 and 4 of our Memorial and Chapter 3 of our Reply.

17
18 So I turn to Equatorial Guinea's objections to jurisdiction and admissibility and its
19 narrow reading of applicable law, which might be characterized as an applicable
20 objection.

21
22 Mr President, Members of the Chamber, your jurisdiction in this case is rooted in
23 Article 288(1) of UNCLOS. The basis of jurisdiction under this provision is addressed
24 in paragraphs 104-116 of the Marshall Island's Memorial and they do not require
25 further elaboration from me, at this point. But for three objections to jurisdiction and
26 admissibility advanced by Equatorial Guinea, to which I will come momentarily, there
27 is no wider contestation of this Chamber's jurisdiction.

28
29 Equatorial Guinea does, however, advance three objections going to jurisdiction and
30 admissibility and, in this context, also contends for a narrow reading of the law
31 applicable to these proceedings. Its arguments on applicable law overlap with the
32 third of its objections to jurisdiction, and I will for this reason make some
33 observations on the issue of applicable law as part of my submissions on jurisdiction.
34 In doing so, I emphasize – I emphasize – that it is no part of my purpose to erode the
35 distinction between jurisdiction and applicable law. On the contrary, it is Equatorial
36 Guinea that is somewhat loose in its contentions. Issues arising in respect of the
37 scope of the applicable law arise only once jurisdiction is established. But, just as
38 Article 293(1) of UNCLOS cannot be used as a lever to widen jurisdiction, so too it
39 cannot be used as a pre-emptive limitation on jurisdiction, as Equatorial Guinea
40 appears to be intimating.

41
42 Equatorial Guinea's objections to jurisdiction are the following. It says, first, that, as
43 Nigeria's rights and interests would form the essential subject-matter of the issues
44 you are called upon to decide, Nigeria is an indispensable third party in the
45 proceedings. As Nigeria is not before you in this case, however, Equatorial Guinea
46 says that you are precluded from addressing the legality of Equatorial Guinea's
47 conduct that is said to be contingent on Nigeria's conduct and on Nigeria's exercise
48 of rights. This is the so-called *Monetary Gold* objection. In Equatorial Guinea's words
49 and I quote from the Counter-Memorial:

1 the rights and interests of Nigeria, a third State not party to this dispute, form
2 “the very subject-matter of the decision” of several of the Marshall Islands’
3 claims and thereby render them outside the Chamber’s jurisdiction or
4 alternatively, inadmissible.⁴¹ End quote.

5
6 Mr President, Members of the Chamber, I note that this objection is said to arise in
7 respect of, quote, “several of the Marshall Islands’ claims”,⁴² close quote. It is not
8 directed to the entirety of the Marshall case.
9

10 I note also that this objection is made as an objection to jurisdiction and that, in the
11 alternative, it is made as an objection to admissibility, but on essentially identical
12 grounds. In other words, Equatorial Guinea says that, if you, the Special Chamber,
13 are not with Equatorial Guinea on its objection to jurisdiction on *Monetary Gold*
14 grounds – in other words, that the Marshall case claims are not cognizable as a matter
15 of law – you, the Special Chamber, should nonetheless, in exercise of your
16 discretion, throw them out on admissibility grounds. The short response is that, while
17 we acknowledge that you have the power to exclude claims on admissibility grounds
18 that otherwise fall within your jurisdiction, there is no basis whatsoever for doing so
19 in this case. Equatorial Guinea’s case under this head must stand or fall as an
20 objection to jurisdiction. It cannot survive as an objection to admissibility.

21
22 The second objection is characterized as one of admissibility, formally so, namely,
23 that, quote, “the Marshall Islands failed to exhaust local remedies”,⁴³ close quote.
24 This objection is also addressed to, quote, “several of the claims brought by the
25 Marshall Islands”, close quote, not to the entirety of the Marshall case. The
26 objection relates, in Equatorial Guinea’s words, to, quote, “preponderantly to the
27 treatment of the crew members of the Vessel”,⁴⁴ close quote. Mr President,
28 Members of the Chamber, in advancing this objection, Equatorial Guinea also
29 implies an applicable law objection, although it does not state this in quite these
30 terms, and its applicable law objection is to the effect that the Marshall Islands’
31 contentions on considerations of humanity and reasonableness are based on
32 international human rights instruments that are, in Equatorial Guinea’s words,
33 “plainly not related to the rights of the Marshall Islands under UNCLOS”, close quote.
34 In the alternative, Equatorial Guinea says the claims in question concerning the
35 treatment of the crew, quote, “plainly ... *preponderantly* relate to allegations
36 concerning treatment accorded by Equatorial Guinea to the foreign nationals of the
37 *Heroic Idun* crew”, close quote, and that it is, quote, “well established that allegations
38 of human rights violations of individuals cannot be brought before an international
39 tribunal without the prior exhaustion of local remedies.”⁴⁵
40

41 Mr President, Members of the Chamber, the third objection by Equatorial Guinea is
42 that “the claims of the Marshall Islands regarding alleged breaches of treaties other
43 than UNCLOS necessarily fall outside the Chamber’s jurisdiction”.⁴⁶ This objection
44 as well relates to “several claims” by the Marshall Islands, not to the entirety of its

⁴¹ Counter-Memorial, para. 106.

⁴² Counter-Memorial, paras. 104 and 105 *et seq.*

⁴³ Counter-Memorial, para. 104.

⁴⁴ Counter-Memorial, para. 149.

⁴⁵ Counter-Memorial, para. 150.

⁴⁶ Counter-Memorial, paras. 104 and 156 *et seq.*

1 case. The objection is focused on the Marshallese claims under SOLAS and its
2 Protocols, under the International Convention on Standards of Training, Certification
3 and Watchkeeping for Seafarers at Sea (the STCW Convention), under the
4 Convention on the International Regulations for Preventing Collisions at Sea (the
5 COLREGS), and on the African Charter on Human and People's Rights and the
6 International Covenant on Civil and Political Rights (the ICCPR).⁴⁷

7
8 With regard to this objection, it warrants comment that, while Equatorial Guinea
9 objects to the Chamber's jurisdiction in respect of these, quote, "other rules of
10 international law", close quote, Equatorial Guinea itself, seeks to rely heavily on the
11 Yaoundé Code, an instrument that plainly falls outside the scope of the "other rules"
12 *renvoi* in UNCLOS. This issue is addressed in paragraphs 93-97 of the Marshall
13 Islands' Reply and Ms Nevill will address this more fully in her submissions
14 tomorrow.

15
16 Mr President, Members of the Chamber, before I get to the detail of our response, let
17 me give you the Marshall Islands' response, in overview, to these three objections to
18 jurisdiction and admissibility.

19
20 Our response, in overview, can be broadly stated as follows.

21
22 On the *Monetary Gold* objection, our case is simple – the indispensable third-party
23 principle does not apply. There is nothing in the Marshallese case that calls for you
24 to address and assess the lawfulness or otherwise of Nigeria's conduct. No claim is
25 made in these proceedings, either directly or indirectly, expressly or impliedly,
26 against Nigeria. What is characterized by Equatorial Guinea as an objection to
27 jurisdiction is in fact simply a proxy for its defence on the merits to the Marshall
28 Islands' claims, that Equatorial Guinea acted lawfully, they say, under UNCLOS
29 because it acted purportedly in support of Nigeria. Mr President, Members of the
30 Chamber, this is a merits defence, it is not an objection to jurisdiction or admissibility,
31 and it needs to be addressed as a merits defence.⁴⁸ If a person purports to act in
32 assistance of another, but does so manifestly unlawfully, it cannot escape the
33 accusations levelled against it by the plea that the person who had requested
34 assistance is not before the court. Equatorial Guinea is responsible for its own
35 conduct during the 92 days.

36
37 On the exhaustion of local remedies objection, our response is twofold, in broad
38 overview. First, there was no requirement to exhaust local remedies. The claims in
39 issue, and the rights that require vindication in these proceedings, are the claims and
40 the rights of the Marshall Islands. This is not a claim of diplomatic protection. I will
41 come onto this in more detail momentarily. The Marshall Islands is not asserting the
42 claims of the crew or of the Owners of the vessel. It is asserting its own claims,
43 rooted in its rights and duties as flag State. It is those rights, the Marshallese rights,
44 that were violated by Equatorial Guinea. There were, of course, serious
45 repercussions for the crew from Equatorial Guinea's conduct. But the rights in issue,
46 and the reparations due, are the rights of the Marshall Islands and the reparations
47 warranted in respect of the breach of the Marshallese rights. Insofar as the Marshall

⁴⁷ Counter-Memorial, para. 158.

⁴⁸ Reply, para. 70.

1 Islands has advanced its reparation claim, in part by reference to quantifiable loss,
2 damage and injury suffered by members of the crew, this is an exercise of good faith
3 and of discipline to give this Chamber assurance that the Marshall Islands is not
4 simply plucking figures from the air. But it is the rights of the Marshall Islands –
5 based on damage suffered by the unit of the vessel, a phrase that is long recognized
6 by ITLOS – it is the rights of the Marshall Islands based on damage suffered by the
7 unit of the vessel that are being pursued in this case, not damages claims by
8 individual members of the crew through claims in respect of which the Marshall
9 Islands is simply a litigation proxy. You have before you the Attorney General of the
10 Marshall Islands and its senior officials from the Registry. This is a claim that is put
11 before you by the Marshall Islands.

12
13 The second element of our response is that the claims to which Equatorial Guinea
14 objects are rooted in UNCLOS and in its express *renvoi* to other rules of international
15 law. Ms Grafton will address this aspect more fully tomorrow. The short point is that
16 Equatorial Guinea is in reality advancing an applicable law objection under the guise
17 of an objection to admissibility. I will come to the applicable law shortly. For the
18 moment, the point is straightforward. Article 295 of UNCLOS, which will be very
19 familiar to you, addressing exhaustion of local remedies, does not apply on its terms.
20 There was no requirement under international law, in the circumstances of this case,
21 to exhaust local remedies. And the claims that are advanced in these issues are
22 claims that rest squarely on UNCLOS and on its express *renvoi* to other rules of
23 international law not incompatible with the Convention.

24
25 Turning to the third objection, the non-UNCLOS Rules objection, to give you our
26 broad overview response, the Marshall Islands, in response, relies on the express
27 terms of, amongst other provisions, Article 2(3), Article 56(2), Article 58(2), Article
28 87(1), Article 87(2) and Article 297(1)(c) of UNCLOS. By reference to SOLAS, the
29 STCW Convention, the COLREGS, the African Charter and the ICCPR, the Marshall
30 Islands is not purporting to enlarge the Chamber's jurisdiction beyond UNCLOS. It is
31 simply relying on instruments to which UNCLOS contains a *renvoi* and permits
32 recourse.

33
34 Moreover, Mr President, Members of the Chamber, the Marshall Islands is not
35 requesting from the Chamber any finding that Equatorial Guinea is in breach of the
36 African Charter or the ICCPR. I'll take you to this in just a moment. What the
37 Marshall Islands is requesting is findings in respect of the alleged breaches of
38 UNCLOS. The same applies to the Marshall Islands' claims under SOLAS, the
39 STCW Convention and the COLREGS, although, with respect to these rules, these
40 three conventions – SOLAS, STCW and the COLREGS – with respect to these rules
41 alone, the Marshall Islands is additionally requesting a finding of a breach of those
42 rules directly, and we do so having regard to the terms of Article 297(1)(c) of
43 UNCLOS, as interpreted in the jurisprudence, and I will come back to this.

44
45 Mr President, Members of the Chamber, I come to some observations on the
46 Marshall Islands' requests for relief, before I elaborate on our response to the
47 objections a little more fully. The Registrar this morning read the very lengthy
48 paragraphs 333 and 334 of the Marshalllese Reply, and I am grateful to the Special
49 Chamber that these were read into the record as is appropriate. The requests therein
50 are many and detailed. I do not propose to take you through them line by line,

1 although you will of course have to come to the detail in due course for purposes of
2 your judgment. I would, though, like to familiarize you with the sweep of what is set
3 out therein and to use the brief review of what is said there to address a number of
4 broader issues. The detail of each element of what the Marshall Islands is requesting
5 will be addressed over the coming two days in the submissions by my colleagues.
6

7 Now we have on the screen and on two following pages – there are three slides
8 altogether, slides 10 through to 12. We have on the screen now the first of three
9 pages that reproduce the Marshall Islands' final submissions from its Reply,
10 paragraphs 333 and 334. Mr President, Members of the Chamber, and to the
11 honourable Registrar, as we look over this text, I note – as no doubt the Registrar
12 will have identified when she came to read out the final submissions – that a
13 typographical gremlin crept into the printed text of the Reply in the paragraphs as
14 originally transmitted, with the sub-paragraph numbering having gone awry. What we
15 have endeavoured to do on the slides that follow is to correct the sub-paragraph
16 numbering but otherwise this is a completely faithful reproduction of the text of the
17 Final Submissions at the close of the Marshallese Reply.
18

19 So if we have a look at this, paragraph 333(a) addresses Equatorial Guinea's
20 interception and diversion of the "*Heroic Idun*", in breach of UNCLOS Articles 87(1),
21 90 and 92. That is sub-paragraph (a) of paragraph 333. If you then move on to sub-
22 paragraphs (b) and (c) of paragraph 333, these address consequential breaches
23 arising from the same conduct. So paragraphs (a), (b) and (c) are all linked. These
24 are the headline claims that have been advanced by the Marshall Islands, and they
25 concern the breach of the Marshall Islands' freedom of navigation rights under
26 UNCLOS.
27

28 If we then move to paragraph 333(d), this addresses Equatoguinean law and what
29 the Marshall Islands contends is an exercise of prescriptive jurisdiction by Equatorial
30 Guinea, in a manner that is contrary to UNCLOS. And we refer here to Article 56(1),
31 58, 87, 89, 92 and 300 of UNCLOS. The allegation here is that Equatorial Guinea,
32 through its legislation, established a legislative foundation for the breach of the
33 Marshall Islands' exclusive flag State jurisdiction. So we have there 333(a), (b) and
34 (c), and then paragraph (d), which address the Marshallese rights by reference to
35 exclusive prescriptive jurisdiction and freedom of navigation.
36

37 We then come to the requests for relief that address Equatorial Guinea's detention of
38 the vessel and treatment of the crew. That is on the right-hand side of the page.
39 Paragraph 333(e) alleges a failure by Equatorial Guinea to have due regard – that is
40 language to which we will return and language with which you are familiar – to the
41 Marshall Islands' rights, contrary to Article 56(2) of UNCLOS. There follows
42 thereafter, in Paragraph 333(f), the rather lengthy *chapeau* and then the four sub-
43 paragraphs that follow. We have there a request for a finding that Equatorial Guinea,
44 by failing to respect and by violating the human rights of the crew by reference to the
45 African Charter, the ICCPR, customary international law, and UN Standard Minimum
46 Rules for the Treatment of Prisoners, quote, "acted contrary to rules and principles of
47 international law not incompatible with the Convention to which the Chamber may
48 have recourse under Article 293", close quote. The request that is made of the
49 Chamber is for findings of a breach of Article 87(1), 87(2), 2(3) 58(2) and 56(2) of
50 UNCLOS.

1
2 Mr President, Members of the Chamber, I will come back, very briefly, to some other
3 aspects of the prayer for relief, the Final Submissions, in just a moment, but I would
4 like to interpolate here with some brief submissions going to Equatorial Guinea's
5 non-UNCLOS Rules and applicable law argument. So I pause in my review of the
6 Final Submissions. What is dubbed as, I quote, the "gateway" provisions
7 jurisdictional argument advanced by Equatorial Guinea, and perhaps it is more
8 appropriately described, on our side as well, as the "other rules of international law"
9 jurisdictional argument, these will be addressed by Dr Casas, Ms Grafton and
10 Ms Nevill in their submissions going to the application of specific provisions of
11 UNCLOS that contain an express *renvoi* to "other rules of international law", and how
12 these operate for jurisdictional purposes. And I don't purport to tread onto their turf.
13 This issue, however, has been bound up in Equatorial Guinea's pleadings with an
14 implied applicable law objection, namely, that the rules and standards relied upon by
15 the Marshall Islands, quote, "are plainly not related to the rights of the Marshall
16 Islands under UNCLOS",⁴⁹ close quote. Citing Article 293(1) of the Convention, with
17 which you will be very familiar but we will put it on the screen in just a moment, which
18 addresses applicable law, Equatorial Guinea goes on to say that the Marshall
19 Islands, quote, "repeatedly invites the Chamber to find Equatorial Guinea's conduct
20 incompatible with treaties external to UNCLOS, such as by application of so-called
21 'gateway' provisions", close quote. It continues, and I quote from Equatorial Guinea's
22 Counter-Memorial, Paragraph 174. They say, quote:

23
24 The correct approach is not to categorise such articles as "gateways" to the
25 wholesale application of external international rules and agreements. Rather,
26 such provisions may at most allow a tribunal to have reference to other rules
27 of international law to interpret or apply them, to the extent that such rules are
28 not incompatible with UNCLOS under Article 293. Therefore, while the
29 Chamber may have regard to general international law to determine issues
30 under UNCLOS, this does not *per se* allow the Chamber to determine whether
31 there has been a breach of external treaties, whether human rights or other
32 treaties.⁵⁰ [Close quote]
33

34 Mr President, Members of the Chamber, Equatorial Guinea here cites to the Award
35 on the Merits in *Arctic Sunrise* in which the Annex VII tribunal held that it could have
36 regard, and I am quoting here from the *Arctic Sunrise* award, "to general
37 international law in relation to human rights in order to determine whether law
38 enforcement action such as the boarding, seizure, and detention of the *Arctic*
39 *Sunrise* and the arrest and detention of those on board was reasonable and
40 proportionate." That is the language from the *Arctic Sunrise* tribunal: whether it was
41 reasonable and proportionate. This, the *Arctic Sunrise* tribunal held, quote, "would be
42 to interpret the relevant Convention provisions by reference to relevant context",
43 close quote. The *Arctic Sunrise* tribunal went on to distinguish this approach from
44 one which required a determination of whether there has been a breach of the
45 ICCPR as such, noting that the ICCPR has its own enforcement regime and that it
46 was not for the *Arctic Sunrise* tribunal to act as a substitute for that enforcement
47 regime.⁵¹

⁴⁹ Counter-Memorial, para. 150.

⁵⁰ Counter-Memorial, para. 174.

⁵¹ *Arctic Sunrise Arbitration*, Award of 14 August 2015 (Merits), para. 197. **(Core Bundle, Tab 5)**

1
2 Mr President, Members of the Chamber, the Marshall Islands is entirely content to
3 stand on this formulation by the *Arctic Sunrise* tribunal. We do not come before you
4 asking you to determine a breach of the African Charter or of the ICCPR or of any
5 other international instrument that safeguards minimal human rights. What the
6 Marshall Islands is requesting is that you have regard to general international law in
7 order to determine whether Equatorial Guinea's actions in detaining the crew of the
8 "*Heroic Idun*", in incarcerating them for 92 days, in mistreating them, all in what
9 Equatorial Guinea contends was *bona fide* assistance in response to Nigeria,
10 whether this was, in the words of the *Arctic Sunrise* tribunal, "reasonable and
11 proportionate", having regard to the rights and duties of other States and basic
12 human rights norms. You are not asked to find a breach of any instrument other than
13 UNCLOS with respect to these human rights concerns. You are only asked to
14 determine whether, by reference to the conduct in question and to general
15 international law, including rules of customary international law and general
16 principles relating to human rights, Equatorial Guinea acted in breach of the Marshall
17 Islands' rights under international law and under UNCLOS, including Article 87(1),
18 87(2) and 2(3) of UNCLOS. Dr Casas and Ms Grafton will address these issues in
19 greater detail in their submissions tomorrow.
20

21 Mr President, Members of the Chamber, I make one further point on Article 293 in
22 the event that this Chamber, as a Chamber of ITLOS, rather than as an *ad hoc*
23 Annex VII tribunal, considers that it wishes to revisit the *Arctic Sunrise* formulation,
24 either to lend its imprimatur to it or to vary it. And we have here on the screen, just so
25 that the language is absolutely precisely clear, the text of Article 293(1).
26

27 And I of course emphasize that Article 293(1) is not a jurisdictional provision. It is an
28 applicable law provision. It states the applicable law in circumstances in which a
29 court or tribunal is seized of a matter, once jurisdiction is established. And this is
30 clear from the opening words, "A court or tribunal having jurisdiction under this
31 section", in other words, jurisdiction having already been established. Article 293(1)
32 is both injunctive in its terms and goes wider than stating simply a rule of
33 interpretation. And it is, for example, to be contrasted with Article 31(3)(c) of the
34 Vienna Convention on the Law of Treaties, with which we will all be very familiar and
35 I don't propose to put it on the screen, which mandates, for purposes of
36 interpretation, reference to "relevant rules of international law applicable in the
37 relations between the parties."
38

39 In contrast, leaving this slide on the screen, Article 293(1) of UNCLOS says in
40 express terms that a court or tribunal having jurisdiction, quote, "shall apply this
41 Convention and other rules of international law not incompatible with this
42 Convention." The formulation is mandatory, and it requires the application of the
43 other rules of international law that are not incompatible with the Convention.
44 Application goes beyond interpretation. It requires the other rules of international law
45 to be applied. The Marshall Islands does not need more than was given by the *Arctic*
46 *Sunrise* Annex VII tribunal, but that tribunal's formulation does not fully comport with
47 the express terms of Article 293(1) and their express injunction to apply other
48 relevant and compatible rules of international law.

(<https://pcacases.com/web/sendAttach/1438>).

1
2 To be clear, Mr President, Members of the Chamber, the Marshall Islands is not
3 saying that, through the medium of an applicable law provision, the jurisdiction of this
4 Chamber to address breaches of other instruments of international law widens. We
5 are not saying that, and I underline that point. The limits on your jurisdiction remain
6 but you are required, you are mandated, you shall apply, alongside the Convention,
7 other rules of international law not incompatible with the Convention.
8

9 Mr President, Members of the Chamber, before we adjourn for the lunch break, I
10 have just got some brief further submissions. I will not detain us much beyond the
11 latitude, Mr President, that you have given. But I would like just to return briefly to the
12 Marshall Islands' request for relief, and go back to slide 11 here. We come here – at
13 the top of the page on the left-hand side, in paragraph 333(g) of the Marshall Islands'
14 Reply – to the Marshall Islands' requests in respect of SOLAS – you can see there –
15 the STCW Convention and the COLREGS, as well as in respect of the *renvoi*
16 provisions of UNCLOS that let these instruments in. Here, there is a request by the
17 Marshall Islands that you find a breach of what is described in Article 297(1)(c) of
18 UNCLOS as, quote, “international rules and standards”, close quote, for the
19 protection and preservation of the marine environment which are applicable to the
20 coastal State. Mr President, Members of the Chamber, I do not need to take you to
21 the express terms of Article 297(1)(c) but I simply note that it has been accepted,
22 notably by the *Chagos Marine Protected Area* tribunal, and in referencing the
23 *Chagos* tribunal, let me say on this point that it has been accepted by the tribunal
24 unanimously. There were of course two dissents in respective aspects of the *Chagos*
25 tribunal's findings but on this particular point, on 297(1)(c), it was accepted
26 unanimously that, in the words of the *Chagos* tribunal, and I am quoting here:
27

28 Article 297(1) expands the jurisdiction of a Tribunal over the enumerated cases
29 beyond that which would follow from the application of Article 288(1) alone. In
30 addition to describing disputes relating to the interpretation and application of
31 the Convention itself, each of the three specified cases in Article 297(1)
32 includes a *renvoi* to sources of law beyond the Convention itself. [And the
33 *Chagos* tribunal then goes on to say:]
34

35 Article 297(1) thus expressly expands the Tribunal's jurisdiction to certain
36 disputes involving the contravention of legal instruments beyond the four
37 corners of the Convention itself and ensures that such disputes will not be
38 dismissed as being insufficiently related to the interpretation and application
39 of the Convention.⁵² [Close quote]
40

41 That is from the *Chagos* tribunal. And the *Chagos* tribunal goes on to note that,
42 quote, “Article 297(1)(c) also expressly refers to ‘rules and standards ... established
43 by this Convention”, and that it is not limited in this *renvoi*.
44

45 Mr President, Members of the Chamber, and I should say, Mr President, I have just
46 got another five minutes or so before the break, Article 297(1)(c) goes to Equatorial
47 Guinea's non-UNCLOS Rules objection to jurisdiction. Pursuant to this provision, you
48 are afforded jurisdiction in respect of the Marshall Islands' claims in respect of

⁵² *Chagos Marine Protected Area Arbitration*, Award of 18 March 2015, para. 316; also para. 321.
(**Core Bundle, Tab 6**). (<https://files.pca-cpa.org/pcadocs/MU-UK%2020150318%20Award.pdf>).

1 SOLAS, the STCW Convention, and the COLREGS. And, beyond issues of
2 jurisdiction, by reference to Article 293(1), and its injunctive prescription about
3 applying “other rules of international law” that are not incompatible with the
4 Convention, as well as other provisions to similar effect, in exercise of your
5 jurisdiction you are mandated to “apply” such other rules. Ms Nevill will develop this
6 argument further in her submissions tomorrow.

7
8 Mr President, Members of the Chamber, in the interests of time, I do not propose to
9 take you through the remaining paragraphs of the request for relief – they are on the
10 slides and they are of course in the pleadings. I note simply that each of those
11 requests addresses conduct by Equatorial Guinea, and by Equatorial Guinea alone,
12 that took place in the 92 days in the period 12 August to 11 November 2022. Nigeria
13 is nowhere referred to other than in the context of Equatorial Guinea’s transfer of the
14 “*Heroic Idun*” and the crew on 11 November. The *petita* of the Marshall Islands’ claim
15 seeks no finding, no declaration, no award against Nigeria. And it is clear that the
16 breaches by Equatorial Guinea that are alleged in the *petita* are breaches arising
17 from the individual sovereign conduct of Equatorial Guinea, through its State
18 apparatus, through its officials, and through its agents, all carried out within the
19 92 days from 12 August to 11 November 2022.

20
21 Mr President, Members of the Chamber, and this is the point, Mr President, at which
22 I will stop. It is just a brief bridge to what is to come in the afternoon. This brings me
23 to the meat of our response to Equatorial Guinea’s objections to jurisdiction and
24 admissibility, and I will get to these immediately after the break. Mr President,
25 Members of the Chamber, just to indicate how we propose to proceed after the
26 break. I will come back immediately after the break at 3 p.m. and address – I have
27 some succinct submissions, so it is not going to take me terribly long – on the
28 objections to jurisdiction and admissibility. Ms Grafton will then make some initial
29 submissions on fact, and she will then call the Chief Officer to give his testimony. We
30 expect and hope that his testimony, based on the estimates that have been given,
31 and allowing for some latitude, will be concluded by the end of the day today.
32 Ms Grafton may then have – depending on time availability – some further brief
33 submissions to make and we propose to call the Master first thing tomorrow morning
34 so that there can be an uninterrupted session of evidence on the part of the Master
35 without any issues of sequestration overnight. So, Mr President, with gratitude to you
36 for allowing, I think, two of our 25 minutes to be used up, now just going beyond
37 1 p.m. That would be a very suitable place to adjourn if that is convenient to the
38 Special Chamber and we will be ready to resume again at 3 p.m.

39
40 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Sir Daniel. So we will
41 then continue at 3.00 p.m. You will continue with your own statement, followed by
42 that of Ms Grafton and then the witness examination thereafter. This brings us to the
43 end of this morning’s session. The hearing will be resumed at 3 p.m. The sitting is
44 now closed.

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46 *(The sitting closed at 1 p.m.)*