

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2025

Public sitting

held on Monday, 6 October 2025, at 3 p.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,

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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,

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and

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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 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Good afternoon. The Special
2 Chamber will now continue its hearing in *The “Heroic Idun” (No. 2) Case*. I give the
3 floor to Sir Daniel Bethlehem to continue his statement.
4

5 **SIR DANIEL:** Thank you, Mr President, Members of the Chamber. Just before the
6 adjournment, I had taken you through some key aspects of the prayer for relief, and
7 I’d also addressed some aspects of the Marshall Islands’ response to the objections
8 raised by Equatorial Guinea, both the sort of the broad overarching response in
9 respect to the three objections, but also our response on the issue of applicable law.
10

11 Mr President, Members of the Chamber, I have just got two elements that I would
12 like to address now, and I am going to be relatively succinct. The first is to speak a
13 little bit more about the *Monetary Gold* objection and the second is to speak a little
14 bit about the exhaustion of local remedies objection.
15

16 So the first objection to both jurisdiction and admissibility, but on the basis of the
17 same allegations that Equatorial Guinea advances is the *Monetary Gold*
18 indispensable third-party objection.
19

20 The parties largely agree on the content of the principle and the jurisprudence that
21 addresses it. We disagree, though, quite fundamentally, on the application of the
22 principle. Equatorial Guinea seeks to elevate an almost invariably rejected, fringe
23 principle of jurisdiction to centre stage for purposes of evading having to answer for
24 its conduct.
25

26 The Marshall Islands says that you must see the principle, the *Monetary Gold*
27 principle, for what it is – a tightly constrained limitation on the exercise of a
28 jurisdiction that would otherwise be manifest – because the issues of which the court
29 or tribunal is seized cannot be addressed without passing on the legality of the
30 conduct of a party that is not before the court or tribunal.
31

32 The *Monetary Gold* principle is a principle that has as its sole purpose the protection
33 of the rights of the absent party. Its purpose is not to shield from scrutiny the conduct
34 of the respondent’s stake that is present in the proceedings, and this is a
35 fundamental point that needs to be borne in mind.
36

37 Its purpose is to protect the rights of the absent party, not to shield from scrutiny the
38 conduct of a respondent that is present in the proceedings.
39

40 It is an acknowledgment of the reach of jurisdiction based on consent. It is an
41 objection, Members of the Chamber; it is an objection that has never before been
42 upheld by ITLOS or by an Annex VII tribunal. It is not a “get out of jail free” card that
43 can be played to evade scrutiny and responsibility for acts undertaken in the
44 exercise of sovereign authority.
45

46 Mr President, Members of the Chamber, I will come on to Equatorial Guinea’s
47 arguments in just a moment. Before I get there, let me identify the largely
48 agreed-upon core of the *Monetary Gold* principle.
49

1 This was succinctly stated by ITLOS in its 2016 Preliminary Objections judgment in
2 the “*Norstar*” case between Panama and Italy. Rejecting Italy’s argument that Spain,
3 which was not before the Tribunal, was an indispensable third party, ITLOS
4 described the *Monetary Gold* principle as follows, and I quote:

5
6 ... where “the vital issue to be settled concerns the international responsibility
7 of a third State” or where the legal interests of a third State would form “the
8 very subject-matter” of the dispute, a court or tribunal cannot, without the
9 consent of that third State, exercise jurisdiction over the dispute.¹

10
11 Mr President, Members of the Chamber, to this statement of the principle expressed
12 in “*Norstar*”, I add that of the International Court of Justice in its Judgment in *Certain*
13 *Phosphate Lands in Nauru*, between Nauru and Australia, in which the ICJ rejected
14 Australia’s *Monetary Gold* contention by reference to the interests of New Zealand
15 and the United Kingdom, who were not before the court.

16
17 And in rejecting Australia’s claim, the court observed that, and I quote from the ICJ
18 judgment, that

19
20 the determination of the responsibility of New Zealand or the United Kingdom
21 is not a prerequisite for the determination of the responsibility of Australia,
22 [which was] the only object of Nauru’s claim.²

23
24 Mr President, Members of the Chamber, I pause to draw the threads of these
25 elements together. Based on settled jurisprudence, including of this Tribunal, the
26 *Monetary Gold* principle operates in circumstances, and only in circumstances in
27 which the vital issue in contention in the case comprising the legal interest of a third
28 State that forms the very subject matter of the dispute must be decided by the court
29 or tribunal as a prerequisite for the determination in that case. These are the only
30 circumstances in which the principle would conceivably apply.

31
32 And I use the word “conceivably”, “conceivably apply”, as there is jurisprudential
33 support for a narrowing of the principle still further, and I will come to this
34 momentarily.

35
36 Mr President, Members of the Chamber, Equatorial Guinea cannot show any vital
37 issue comprising a legal interest of Nigeria that forms the very subject matter of the
38 dispute of which you are seized, that you would be called upon to decide as a
39 prerequisite to your determination of the issues between the Marshall Islands and
40 Equatorial Guinea.

41
42 The Nigerian context of this case, before and after the 92 days of Equatoguinean
43 violations of the Marshall Islands’ UNCLOS rights is just that: it is context.
44

¹ *M/V Norstar*, Judgment of 4 November 2016 (Preliminary Objections), para. 172. (Core Bundle, Tab 7) (https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.25/Preliminary_Objections/published/C25_PO_Judgment_20161104.pdf)

² *Case Concerning Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Judgment of 26 June 1992 (Preliminary Objections, para. 55. (**Core Bundle, Tab 8**) (<https://icj-cij.org/sites/default/files/case-related/80/080-19920626-JUD-01-00-EN.pdf>)

1 Nigeria's international responsibility is not in issue in these proceedings. Its legal
2 rights do not stand as the very subject matter of the dispute. You are not asked to,
3 nor need to, address the lawfulness of Nigeria's conduct.

4
5 Nigeria's actions, however they may be characterized, do not, and cannot, excuse
6 Equatorial Guinea's violations of the law.

7
8 In its written submissions, Equatorial Guinea, with block quotes from the ICJ's 1954
9 *Monetary Gold* judgment, endeavours to create an impression that the *Monetary*
10 *Gold* principle has a long and illustrious pedigree of success. It does not.

11
12 While it is much advanced by respondents, it is virtually never upheld. Indeed, for all
13 the detailed footnoted references in Equatorial Guinea's pleadings, it identifies only
14 three cases in which the principle has been applied; and let me address those three
15 cases briefly.

16
17 The first of these is the *Monetary Gold* case of 1954, a case in which, in proceedings
18 between the United Kingdom and Italy, it was concerned with a question of whether
19 Albania could be deprived of its national holding of gold, which had been looted by
20 the Nazis, on the alleged ground that Albania had committed an internationally
21 wrongful act. Italy sought the gold on the basis that Albania had committed an
22 internationally wrongful act.

23
24 Unsurprisingly, the Court took the view that, to proceed with the case would require it
25 to pass on the legality of Albania's alleged conduct in its absence. Albania's rights
26 were at the very core of the case.

27
28 The second case in which the principle was applied was the 1995 case between
29 Portugal and Australia concerning the legality of a maritime zone of cooperation that
30 had been agreed between Australia and Indonesia, in what Portugal said was a
31 violation of its administering power status in respect of what was then
32 pre-independence East Timor, now Timor-Leste.

33
34 Indonesia was not before the court in the proceedings. The legality of Indonesia's
35 conduct was expressly and directly and centrally an issue in the proceedings.
36 Unsurprisingly, the Court declined jurisdiction.

37
38 Mr President, Members of the Chamber, we then come to the third case to uphold
39 the *Monetary Gold* principle, which Equatorial Guinea references in a footnote, but
40 studiously does not expressly rely upon, and this is the 2001 arbitral award in the
41 case of *Larsen v. The Hawaiian Kingdom*.

42
43 This was a claim that alleged that the Government of the Hawaiian Kingdom was in
44 violation of an 1849 Treaty of Friendship, Commerce and Navigation with the United
45 States, by allowing the unlawful imposition of U.S. municipal law over the claimant, a
46 Hawaiian subject.

47
48 The case, in other words, was a challenge to U.S. sovereignty over Hawaii through
49 the device of a claim against a respondent whose status was, at the very least,
50 uncertain and was certainly contestable: the Hawaiian Kingdom.

1
2 In the circumstances of the case, the tribunal raised the question *proprio motu* of
3 whether the United States was a necessary party to the dispute.

4
5 In its Award, applying the *Monetary Gold* principle, the tribunal records that the
6 respondent – in other words, the Hawaiian Kingdom – the respondent endeavoured
7 to persuade the tribunal that the *Monetary Gold* test was unsatisfactory and that it
8 ought to be reformulated to enable the case to go ahead.

9
10 So we had the bizarre circumstance of the respondent, usually the party advancing
11 the *Monetary Gold* principle, here trying to urge on the tribunal to enlarge the
12 *Monetary Gold* principle to enable the case to go ahead.

13
14 The case was, in other words, a collusive action in which both parties wanted the
15 tribunal to opine on the merits in terms that they hoped would be to the detriment of
16 the absent third party, the United States. The Tribunal, composed of James
17 Crawford, Christopher Greenwood and Gavin Griffiths, declined to do so, dismissing
18 the case, *inter alia*, on *Monetary Gold* grounds.

19
20 Interestingly, Mr President, Members of the Chamber, and this is perhaps the reason
21 why Equatorial Guinea buries reference to the case in a footnote, which elides
22 relevant detail; interestingly, the tribunal in that case noted that, even in the face of
23 an absent third party whose interests constituted the very subject matter of the
24 dispute, the *Monetary Gold* principle would likely not apply in circumstances in which
25 the anticipated findings involving the absent third party would be “merely a finding of
26 fact, not entailing or requiring any legal assessment or qualification of that party’s
27 conduct or legal position.”³

28
29 So the tribunal in *Larsen*, in fact, identified a further limitation on the application of a
30 *Monetary Gold* principle.

31
32 Mr President, Members of the Chamber, even were you to be persuaded of
33 Equatorial Guinea’s *Monetary Gold* argument, *quod non*, which we say you should
34 not be so persuaded, the exception to it identified by this pre-eminent *Larsen* tribunal
35 would sink Equatorial Guinea’s case.

36
37 Not only does the case before you not put Nigeria’s responsibility in issue, not only
38 do Nigeria’s legal rights not stand as the very subject matter of the dispute, not only
39 are you not asked to address the lawfulness of Nigeria’s conduct, nor need to do so,
40 but, even were you to consider that you may be required in some manner to address
41 the events involving Nigeria, and even beyond this, to make certain findings, the
42 *Monetary Gold* principle would not preclude you from making findings of fact that do
43 not entail or require any legal assessment or qualification of Nigeria’s conduct or
44 legal position.

45
46 So, Mr President, Members of the Chamber, I come to the last part of my
47 submissions, which is Equatorial Guinea’s exhaustion of local remedies objection,

³ *Larsen v. Hawaiian Kingdom*, para. 11.24. (<https://pca-cpa.org/en/cases/35/>)

1 and I note, in doing so, that the applicable law component of this, I have already
2 addressed.

3
4 The objection rests on Article 295 of UNCLOS. This provision does not, however,
5 require local remedies to be exhausted. It says simply that local remedies must be
6 exhausted “where this is required by international law”.

7
8 Citing the *Virginia G* judgment, Equatorial Guinea says that when a claim contains
9 elements of both injury to a State and injury to an individual, for the purpose of
10 deciding the applicability of the exhaustion of local remedies rule, the Tribunal has to
11 determine which element is preponderant.⁴ What is now referred to as the
12 “preponderant test” is widely accepted, including I note, Mr President, by the six joint
13 dissenters in their Joint Dissenting Decision on this issue in the *Virginia G* case.
14 I think the word used was that it was “unremarkable” or “unexceptional”.

15
16 Applying the preponderant test, the *Virginia G* tribunal undertook a holistic review of
17 the rights said to have been violated and concluded that, and I quote, “the principal
18 rights” said to have been violated were rights that belonged to Panama, the applicant
19 State, and thus amounts to a direct injury to Panama. As such, there was no
20 requirement to exhaust local remedies.⁵

21
22 Now, Mr President, Members of the Chamber, the *Virginia G* judgment was split on
23 this issue by 14 votes to 9. The joint dissent by six of the nine who voted against the
24 decision accepted the majority statement of the preponderant test as, and the word
25 used in the joint dissent was “unexceptionable”, but took issue with the majority’s
26 application of the test to the facts.

27
28 Whereas the majority had looked to what they described as the “principal rights” said
29 to have been violated, the minority, citing the International Court of Justice in the
30 *Electronica Sicula* case, concluded that the matter which coloured and pervaded the
31 Panamanian claim as a whole, was the alleged damage to the owner of the
32 *M/V Virginia G*; the alleged damage to the owner of the *M/V Virginia G*. Applying
33 what the minority described as the “but for” test, which asks whether the claim would
34 have been brought were it not for the claim on behalf of the owner – and I pause
35 here to emphasize – the owner was a Panamanian company. So asking whether the
36 claim would have been brought were it not for the claim on behalf of the owner, the
37 Panamanian company, the minority concluded that it would not have been brought.
38 They concluded, therefore, that the claim was, thus, preponderantly a claim for
39 diplomatic protection.

40
41 Mr President, Members of the Chamber, although the majority and the minority
42 diverged in the application of the test of the facts, there was agreement that the
43 claim, as a whole, had to be assessed, and that this required an evaluation of where
44 the preponderance lay vis-à-vis the claims of direct injury to the claimant State and
45 the claims “on behalf of the injured national”. The majority adopted a “principal rights”
46 claimed test. The minority adopted a “but for” test.

⁴ Counter-Memorial, para. 148, footnote.

⁵ *M/V Virginia G*, Judgment of 14 April 2014, ¶¶ 157–158. (Core Bundle, Tab 9)
(https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.19/judgment_published/C19_judgment_140414.pdf)

1
2 Mr President, Members of the Chamber, in the present case, the Marshall Islands is
3 content to rest on either test. A review of the claims advanced by the Marshall
4 Islands in this case will certainly show an acute concern for the loss, damage and
5 injury to the crew of the "*Heroic Idun*".

6
7 It will also show a concern for the loss, damage and injury to the vessel.

8
9 But the overwhelming preponderance of the rights that the Marshall Islands claims to
10 have been violated, whether preponderance is assessed in numerical terms or in
11 terms of importance, the overwhelming preponderance of the rights that the Marshall
12 Islands claims to have been violated are the rights of the Marshall Islands as the flag
13 State.

14
15 Mr President, Members of the Chamber, making my submissions in these
16 proceedings in the name of the Marshall Islands, I do so under the control of the
17 Attorney General of the Marshall Islands in these proceedings, and the Agent in
18 these proceedings, in response to the question of whether the Marshall Islands
19 would have brought a claim "but for" the loss, damage and injury to the vessel and
20 the crew, I can say here, formally and unambiguously and on instructions,
21 absolutely; a case would certainly have been brought. As a responsible flag State,
22 highly attentive to both its rights and its duties, the assertion and vindication of the
23 Marshall Islands' flag State rights are paramount.

24
25 Mr President, Members of the Chamber, I note also, as this appeared to weigh
26 heavily on the minority in the *Virginia G* case, that the owner of the "*Heroic Idun*" is
27 not Marshallese. It is a company incorporated in the Isle of Man, a British Crown
28 Dependency.

29
30 While the company is registered in the Marshall Islands as a Foreign Maritime Entity,
31 the Marshall Islands could not bring a claim of diplomatic protection on behalf of the
32 company, the owner of the "*Heroic Idun*". Nor could it bring a claim of diplomatic
33 protection on behalf of any member of the crew, none of whom were Marshallese
34 nationals. The rights that the Marshall Islands can assert, and does assert, in respect
35 of the conduct of Equatorial Guinea are its own rights.

36
37 Mr President, Members of the Chamber, I conclude on this point and my
38 submissions with the following additional observation. The "*Heroic Idun*" and its crew
39 were intercepted outside the territorial jurisdiction of Equatorial Guinea, while lawfully
40 in the EEZ of São Tomé and Príncipe, the relevant rules being the UNCLOS rules on
41 the high seas.

42
43 They were brought within the jurisdiction of Equatorial Guinea unlawfully, under the
44 guns of the Equatoguinean Navy.

45
46 As ITLOS made plain in the *M/V Saiga (No. 2)*, and as was addressed by Judge
47 Rüdiger Wolfrum, then the Vice-President of the Tribunal, in his Separate Opinion in
48 that case, the rule on the exhaustion of local remedies is contingent on the existence
49 of a prior voluntary jurisdictional connection between the State in question and the
50 putative claimant. Where, however, there is no such prior voluntary jurisdictional

1 connection, the local remedies rule does not apply.⁶ As Judge Wolfrum put it, and I
2 quote from his Separate Opinion, he says,

3
4 ... the local remedies rule ... is only applicable if a prior voluntary link exists
5 between the individual and the Respondent State In consequence, it does
6 not apply ... in cases where the State, having taken measures, acted outside
7 the scope of its jurisdiction. In particular when a State had no jurisdiction
8 concerning the measures taken, ... the requirement to exhaust local remedies
9 would amount to a recognition of the jurisdiction of that State. This is certainly
10 not the objective of the concept of the exhaustion of local remedies.⁷

11
12 That's from Judge Wolfrum's Separate Opinion, and, in doing so, he references the
13 *M/V Saiga (No. 2)* judgment at paragraph 100 of that judgment.

14
15 In this case, to require the exhaustion of local remedies, even were there any
16 effective remedies to be exhausted, which is denied, would be to accept Equatorial
17 Guinea's assertion of jurisdiction, which is precisely the point in dispute.

18
19 Mr President, Members of the Chamber, Equatorial Guinea's objections to
20 jurisdiction, to admissibility, and its narrow construction of Article 293(1) have no
21 merit. They are an attempt to evade having to answer for what was utterly egregious
22 conduct, violative of UNCLOS, violative of other relevant and applicable rules of
23 international law, and brutally violative of principles of humanity that lie at the heart of
24 the law of the sea.

25
26 Mr President, Members of the Chamber, that concludes my submissions, for today at
27 least. Mr President, may I ask you to call upon Ms Courtney Grafton to continue the
28 Marshall Islands' submissions.

29
30 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Sir Daniel.
31 I now give the floor to Ms Grafton to make her statement.

32
33 **MS GRAFTON:** Mr President, Members of the Chamber, it is an honour to appear
34 before you on behalf of the Republic of the Marshall Islands.

35
36 My aim, in the next 30 minutes or so, is to outline the contours of the factual case,
37 before I call two of the Marshall Islands' witnesses: Mr Tanuj Mehta, the Master, and
38 Mr Sanu Jose, the Chief Officer.

39
40 Before I embark on my submissions, I'd like to make two overarching points.

41
42 First, as Sir Daniel has noted, although Equatorial Guinea's conduct often belies
43 belief, almost none of its conduct is in dispute. Equatorial Guinea accepts – as it
44 must, based on the witness evidence and the extensive documentary record – that it

⁶ *M/V Saiga (No. 2)*, Judgment of 1 July 1999, para. 100.
(https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_2/published/C2-J-1_Jul_99.pdf).

⁷ *M/V Saiga (No. 2)*, Judgment of 1 July 1999, Separate Opinion of Judge Wolfrum, para. 55
(https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_2/published/C2-J-1_Jul_99-SO_W.pdf).

1 committed almost all of the alleged conduct. Accordingly, as I take you through the
2 relevant facts today, I will endeavour to identify the considerable common ground.

3
4 Second, where the parties do disagree, I note that there is a dearth of documentary
5 evidence to support Equatorial Guinea's account. For instance, Equatorial Guinea
6 has not evidenced the legal basis on which it detained the crew for 92 days, nor has
7 it provided any contemporaneous documentation from its interviews of the crew.

8
9 Similarly, there is a lack of witness evidence: none of the guards or police officers
10 who detained the crew have provided evidence, nor have many of the key
11 decision-makers on the ground, such as the Port Captain of Malabo, Mr Genaro
12 Ngueme Ndong, or the Navy lawyer who was present in all of the crew's interviews.
13 If Equatorial Guinea's arguments on the facts were credible, it should have provided
14 evidence to support them.

15
16 Turning then to the relevant facts. As Sir Daniel noted, none of the facts surrounding
17 the interception and diversion of the vessel on 12 August are in dispute. In short, the
18 "*Heroic Idun*" turned off its engines at the request of the "*Capitan David*", and when
19 the "*Capitan David*" was safely within shooting range, it demanded that the "*Heroic*
20 "*Idun*" follow it to Malabo, and it threatened to open fire if it did not. The Master
21 immediately complied with this demand and sailed to Equatorial Guinea.

22
23 The journey there took more than 24 hours, and, at all times, the guns on the
24 "*Capitan David*", and the "*Wele Nzes*", when it joined the escort, were trained on the
25 "*Heroic Idun*". The convoy arrived in Luba on 13 August just before midnight.

26
27 As will become a constant refrain for me: Equatorial Guinea did not notify the
28 Marshall Islands of any of these events.

29
30 Immediately after the vessel arrived in Luba, 10 members of the crew, including the
31 Master, were disembarked under armed guard. Five additional crew were
32 disembarked later that day, leaving the vessel with 11 crew and severely
33 undermanned.

34
35 The safe manning certificate of the vessel is displayed on the screen. You'll see that
36 it requires 16 crew on board at a minimum, and it stipulates the necessary grade and
37 capacity of those crew members.⁸

38
39 On the same day the crew were disembarked, eight Equatoguinean armed guards
40 came aboard with two camera crews, two customs officers and five inspectors.
41 Inspections were then carried out of the vessel's cargo tanks, and customs officers
42 inspected the vessel, including the crew's bags.

43
44 The authorities concluded that the tanks were not carrying any cargo and they
45 declared the vessel "innocent".⁹ Equatorial Guinea has provided a report, which you
46 can see on the screen, prepared by the officers which confirmed that the vessel was,
47 I quote, "without any customs violations being noted."¹⁰

⁸ Annex RMI/-37 (Volume II) [Judges' Folder, Tab 18].

⁹ Annex EK/-5, p. 34 (Memorial, Volume V).

¹⁰ Annex REG-037 (Counter-Memorial, Volume III).

1
2 Back onshore, the crew members who were disembarked were taken by convoy to
3 Malabo.

4
5 First, they were taken to a local police station. There, they were not provided with
6 food, water or access to toilets, and the police beat other prisoners in front of the
7 crew, in an attempt to intimidate them. None of this has been disputed.

8
9 Later that night, the crew was transferred to a government-owned facility on the edge
10 of the city. I will refer to this as the “detention facility” in my submissions.

11
12 For the avoidance of doubt, at no time on 14 August, or at any time thereafter, were
13 the crew formally arrested or informed of any legal charges against them.
14 Notwithstanding, the crew’s passports were taken on arrival, and they were detained
15 24 hours a day under armed guard.

16
17 In short, for the entirety of their stay in Equatorial Guinea, all 26 crew members were
18 deprived of their liberty, without any charge or legal basis. This, too, appears to be
19 undisputed.

20
21 Equatorial Guinea did not notify the Marshall Islands of any of these events.

22
23 When the 15 crew members arrived at the detention facility late that night, it had no
24 furniture, so they slept on the floor their first night. However, because both the
25 managers of the vessel and the protection and indemnity insurers paid for the
26 services of local agents, there was someone on hand to provide for the crew when
27 Equatorial Guinea failed to do so. It was the local agent who provided the crew with
28 mattresses, albeit they were on the floor. A picture is on the screen.

29
30 And it was the local agents who provided the crew with clean drinking water, food
31 and clothing, all of which was paid for by the owners.

32
33 Indeed it’s not disputed that Equatorial Guinea never, not once, provided the crew
34 with any provisions during their time in detention in Equatorial Guinea. Everything
35 was provided by the local agents and paid for by the owners.

36
37 In fact, because of this, Equatorial Guinea argues that “there can be no case of
38 ill-treatment against [it]”¹¹ – ‘take it up with the local agents’, it appears to suggest.
39 This is a remarkable submission. The owners stepped in because Equatorial Guinea
40 was failing to provide for its own prisoners. The financial generosity of the owners
41 and the work of the local agents cannot absolve Equatorial Guinea of its
42 responsibility.

43
44 Returning to events on the ground, by 16 August, the owners had made the Marshall
45 Islands aware of unfolding events in Equatorial Guinea. It therefore wrote on that day
46 to the Governor of Luba expressing concern regarding the detention of the “*Heroic*

¹¹ Rejoinder, para. 70 (Volume I).

1 *Idun*” and noting that the actions of Equatorial Guinea were in violation of
2 UNCLOS.¹² The Governor of Luba did not respond.

3
4 On 17 August, the Master was interrogated for approximately 11 hours without legal
5 representation by the Equatoguinean authorities. The Second Officer and the Chief
6 Engineer were also questioned for hours.

7
8 In its Rejoinder, Equatorial Guinea makes two points regarding these interviews,
9 neither of which withstands scrutiny.

10
11 First, Equatorial Guinea states that there is no evidence that it was Equatorial
12 Guinea who refused the crew access to lawyers.¹³ This is wrong. The three crew
13 members state multiple times in their witness statements that Equatorial Guinea
14 denied them access to lawyers. I have provided the references in the footnotes to my
15 speech.¹⁴

16
17 Perhaps cognizant that this submission is not a good one, Equatorial Guinea
18 secondly attempts to recharacterize these interviews. It asserts that the crew was
19 not, I quote, “subject to a criminal investigation requiring legal counsel”.¹⁵ Instead, it
20 refers to the interviews as nothing more than “routine fact-finding discussion[s]”,¹⁶ as
21 part of, I quote, “a purely administrative process which does not require legal
22 representation”.¹⁷

23
24 This, too, is wrong. Not only does Equatorial Guinea not refer to any law –
25 Equatoguinean or otherwise – to support its submission, but its bald submission is
26 contradicted by its own evidence. In particular, the translation of the fine that
27 Equatorial Guinea levied in this case, which you can see on the screen,
28 unequivocally states that the Master is, I quote, “criminally liable as perpetrator”.¹⁸
29 The Spanish original states the same. In short, it is plain that Equatorial Guinea was
30 conducting a criminal investigation, and it resulted in criminal charges against the
31 Master.

32
33 In any event, it is fantastical to suggest that an individual can be detained for 92 days
34 without legal charge but is not entitled to legal representation in interviews pertaining
35 to that detention. I will return to the implications of this conduct in my submissions
36 tomorrow.

37
38 The Marshall Islands was not notified of these interviews by Equatorial Guinea, but it
39 learned of them via the crew and the owners. Having learned of the interviews, the
40 Marshall Islands wrote to the Attorney-General of Equatorial Guinea on 26 August

¹² Annex SA/-6 (Memorial, Volume IV) [Judges’ Folder, Tab 12].

¹³ Rejoinder, para. 60 (Volume I).

¹⁴ Annex RMI/-1 (Memorial, Volume II), paras. 122-127 (“we were expressly told that no lawyers were allowed to be present during the interviews”; “no lawyer was permitted”; “our requests for lawyers were refused”); Annex RMI/-6 (Memorial, Volume II), para. 18 (“I was not allowed access to a lawyer”); Annex RMI/-7 (Memorial, Volume II), para. 11 (“I was questioned by E.G. Officials on 17th August 2022 without any lawyer”). See also RMI/-2 (Memorial, Volume II), para. 18.

¹⁵ Rejoinder, p. 79.

¹⁶ Rejoinder, para. 61 (Volume I).

¹⁷ Rejoinder, para. 61 (Volume I).

¹⁸ REG-039 (Counter-Memorial, Volume III) [Judges’ Folder, Tab 12].

1 expressing concern about the questioning of the crew without legal representation or
2 formal charge. It also alerted the Attorney-General to the threat to the vessel posed
3 by its failure to meet safe manning requirements.¹⁹ The Attorney-General of
4 Equatorial Guinea did not respond.

5
6 Instead, the Equatoguinean authorities facilitated the repeated questioning of various
7 members of the crew by Nigerian officials. On each occasion, an Equatoguinean
8 lawyer was present in the interviews – but is conspicuously absent from the present
9 proceedings – and the crew’s requests for lawyers were denied.

10
11 Given the increasingly precarious situation on the ground, the Marshall Islands sent
12 a flag State representative to Equatorial Guinea. On 8 September, he met with the
13 Director-General of Ports of Equatorial Guinea and, with the Attorney-General of
14 Equatorial Guinea a few days later. He also tried to access the vessel to speak with
15 the crew, but his request was refused.

16
17 In light of this, the Marshall Islands wrote again to the Attorney-General. It requested
18 that its representative be allowed to board the vessel. It also repeated its concerns
19 about the denial of legal representation and the unsafe manning of the vessel.²⁰
20 Again, the Attorney-General of Equatorial Guinea did not respond.

21
22 Finally, on about 28 September, more than six weeks after the crew was detained,
23 the Ministry of Defence criminally charged the Master and issued an exorbitant fine
24 of approximately €2,000,132.

25
26 Dr Busco will address the charges and the fine in more detail in his submissions, but
27 I do wish to make one passing remark to demonstrate the unlawful nature of the fine,
28 and that is that one of the two laws which provided to foundation for the fine had, in
29 fact, been repealed when the fine was issued and the Master was charged. It is for
30 this reason, among others, that Mr Askins, a London-based lawyer acting for the
31 owners, describes the fine as, I quote, “a contrived afterthought which was, in effect,
32 extortion or a demand for a payment akin to a ransom, rather than a legitimate
33 demand founded in local law”.²¹ For the avoidance of doubt, Equatorial Guinea
34 accepts in its Rejoinder that the relevant law had been repealed, so this, too, is not in
35 dispute.²²

36
37 Mr Askins also explains that, notwithstanding the baseless nature of the fine, the
38 owners were prepared to pay it because Equatorial Guinea had assured the Master
39 and the local agents and the local lawyers on multiple occasions that payment of the
40 fine would see the “*Heroic Idun*” and her crew promptly released. The owners saw it
41 as the only way to get the crew and the vessel out of an increasingly precarious,
42 insecure and uncertain situation.

43
44 Captain Esona Nchama says that he did not give any such assurance. My colleague
45 will discuss this issue with the witness in due course. But in any event, I note, and
46 you can see some of the excerpts on the slide, that there is overwhelming

¹⁹ Annex SA/-9 (Memorial, Volume IV) [Judges’ Folder, Tab 13].

²⁰ Annex SA/-11 (Memorial, Volume IV) [Judges’ Folder, Tab 14].

²¹ RMI/-52 (Reply, Volume II), para. 5.

²² Rejoinder, footnote 397 (Volume I).

1 contemporaneous evidence which shows that this assurance was given. I refer you
2 to Annexes SA-47 and EK-49, 55, 56, 57, 58, 80, 81 and 82. Again, the extracts are
3 on the screen, but I don't propose that we read them all now. There is, however, a
4 voice note from Mr Hernández Martin, a witness in these proceedings for Equatorial
5 Guinea, and I would like to play that now for the Chamber.

6
7 (Audio recording played.)
8

9 Again, my colleagues will return to this in due course.

10
11 Given the assurances, the owners paid the fine on 4 October, but Equatorial Guinea
12 continued to detain the crew.

13
14 On 18 October, the Marshall Islands wrote to the Attorney-General of Equatorial
15 Guinea again, repeating its request and noting that the crew's ongoing detention was
16 having a serious impact on their physical and mental well-being.²³ Again, the
17 Attorney- General did not respond.

18
19 Finally, in late October, there appeared to be a glimmer of hope. The local agents
20 were informed by the Equatoguinean authorities that the "*Heroic Idun*" and her crew
21 were to be formally released after the necessary paperwork was completed. The
22 15 crew at the detention facility were accordingly moved to a hotel, albeit still under
23 armed guard, to await formal release.

24
25 Equatorial Guinea places much emphasis on the crew's short stay at the Hotel Anda.
26 This emphasis is odd. It has never been disputed that the hotel was an improvement
27 on the detention facility, but the crew only spent 10 of the 92 nights that they were
28 detained in Equatorial Guinea in the hotel. Nor has it ever been disputed that the
29 crew were particularly grateful to be transferred to the hotel. But they were grateful
30 because they were made to understand (wrongly, as it turned out) that it meant they
31 were about to be released.

32
33 The Marshall Islands has repeatedly queried in this case why Equatorial Guinea
34 transferred the crew to a hotel and granted them additional privileges, only to render
35 them to Nigeria days later. Equatorial Guinea still has not provided an explanation.
36 The only logical conclusion is that either Equatorial Guinea was going to release the
37 crew – as it had promised to do in exchange for more than €2 million – but it
38 changed its mind. Or Equatorial Guinea wanted to give the crew a false sense of
39 comfort before unlawfully rendering them to Nigeria.

40
41 By the end of October, the crew had still not been released, so the Ministry of
42 Foreign Affairs of the Marshall Islands sent a note verbale to Equatorial Guinea. It
43 stated that if no diplomatic resolution could be reached, the Marshall Islands would
44 have to submit the matter to the dispute settlement procedures under UNCLOS.²⁴
45 For the fifth time, Equatorial Guinea did not respond.
46

²³ Annex SA/-15 (Memorial, Volume IV) [Judges' Folder, Tab 15].

²⁴ Annex SA/-16 (Memorial, Volume IV) [Judges' Folder, Tab 16].

1 As Sir Daniel explained, matters took a turn for the worst around 4 November, when
2 the crew learned that Equatorial Guinea planned to render them to Nigeria. The crew
3 were distraught. By way of example only, I highlight a few of their statements.

4
5 The Second Officer wrote:

6
7 We were very emotional, crying and stressing, as we did not know what would
8 happen to us or who would take care of our families. I would not wish this
9 experience on my worst enemy.²⁵

10
11 The Third Officer states:

12
13 It was the worst experience of my life. I thought I was going to die because of
14 the way we were being treated. I thought I would never see my family again.²⁶

15
16 And the Pumpman states:

17
18 My wife, who was eight months pregnant at the time, also fell and had to be
19 taken to the hospital for treatment. It was an extremely difficult time for both of
20 us.²⁷

21
22 A detailed description of what occurred on the ground between 4 and 11 November
23 is set out in our Memorial at paragraphs 68 to 87. I will not repeat these events, but
24 I do wish to emphasize that these events are not disputed. All that Equatorial Guinea
25 does in its pleadings is attempt to paint one event – taking the Chief Officer off the
26 vessel and holding him hostage separately to try and force the vessel to sail – as a
27 positive experience. It plainly was not, but I will leave that to the Chief Officer to
28 address later today.

29
30 As to the Marshall Islands' conduct from 4 November: when the Marshall Islands
31 learned of Equatorial Guinea's intention to transfer the vessel to Nigeria, it
32 immediately wrote to the Attorney-General of Equatorial Guinea and protested in
33 strong terms.

34
35 The Marshall Islands stated that, in the absence of any positive response, it would
36 be forced to commence proceedings under UNCLOS.²⁸ For the sixth time, Equatorial
37 Guinea did not respond.

38
39 On 7 November, while the Chief Officer was being held hostage separately, the
40 Marshall Islands issued a detention order, which you can see on the screen. The
41 Master presented this to the Equatoguinean officers to try and convince them to
42 release the Chief Officer.

43
44 The final straw for the crew was on 11 November. That morning, the Equatoguinean
45 guards left the vessel and were replaced by heavily armed guards from the Nigeria
46 Navy Special Boat Service.

²⁵ Annex RMI/-6 (Memorial, Volume II), para. 22.

²⁶ Annex RMI/-10 (Memorial, Volume II), para. 19.

²⁷ Annex RMI/-16 (Memorial, Volume II), para. 23.

²⁸ Annex SA/-18 (Memorial, Volume IV) [Judges' Folder, Tab 17].

1
2 At gunpoint, they demanded that the crew start the engines, failing which they
3 threatened to take them to Nigeria on a Nigerian naval vessel and tow the vessel to
4 Nigeria.

5
6 In fear, and to avoid the vessel being damaged by being improperly towed to Nigeria,
7 the crew started the engine. The vessel left Luba at around 2 p.m. local time on
8 11 November and arrived at Bonny anchorage in Nigeria around 1 p.m. local time on
9 12 November.

10
11 I emphasize that this is only a snapshot of events over 92 days. The detail is in the
12 Memorial and Reply, in the witness statements of the crew, and in the overwhelming
13 documentary evidence annexed to the witness statements which supports their
14 accounts.

15
16 That, Mr President, Members of the Chamber, concludes my overview of the
17 relevant facts; and, with that, I would like to call the Chief Officer of the vessel,
18 Mr Sanu Jose.

19
20 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Ms Grafton. Before
21 proceeding with the witness examination, as you requested, I wish to inform the
22 public that, further to a request from the Marshall Islands, to which Equatorial Guinea
23 did not object, the Special Chamber has decided, in accordance with Article 74,
24 paragraph 1 of the Rules of the Tribunal, that the parts of the hearing during which
25 witnesses will be examined will be conducted *in camera*. Thus, the next part of this
26 sitting will be held *in camera*. Only the Special Chamber, the parties' representatives
27 and teams, the witness under examination, and the Registry staff will be able to
28 attend this sitting.

29
30 The general public is requested to leave the courtroom.

31
32 This part of the hearing will not be broadcast on the internet. It is estimated that this
33 will apply to the remainder of this afternoon's sitting.

34
35 I therefore now request the Registry staff to ensure that the public has left the
36 courtroom and that the online broadcast has been interrupted. This might take a
37 couple of minutes.

38
39 *(Short adjournment)*

40 41 **IN CAMERA PROCEEDINGS**

42
43 **Part of the hearing not public in accordance with article 26**
44 **of the Statute and article 74 of the Rules of the Tribunal,**
45 **pursuant to an agreement between the Parties**

46
47 *(Resumed in open session at 5:27 p.m.)*

48
49 **MS GRAFTON:** Mr President, if I could make one more point before I commence.
50

1 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Please, Ms Grafton.

2
3 **MS GRAFTON:** And that is that, because we had not planned to do these ten
4 minutes of submissions today, you don't have the – my submissions in front of you.

5
6 What we can do is, we can send it to you this minute, this second, so that you could
7 pull it up on the screen, if you'd like; but you won't, of course, have it in paper copy.
8 Is that acceptable to you?

9
10 **THE PRESIDENT OF THE SPECIAL CHAMBER:** That would be – that would be,
11 yes.

12
13 **MS GRAFTON:** Thank you, Mr President.

14
15 **THE PRESIDENT OF THE SPECIAL CHAMBER:** So we now resume the public part
16 of today's sitting, and I give the floor to Ms Grafton to make your statement.

17
18 **MS GRAFTON:** Thank you, Mr President.

19
20 As I mentioned, before I call the Master tomorrow, I would like to make a few brief
21 points about the conditions at the detention facility. You will recall that this is where
22 15 members of the crew were detained onshore for approximately three months in
23 Equatorial Guinea.

24
25 Equatorial Guinea goes to great lengths to defend the cleanliness of this facility, and
26 I'll ask the Master about the facility tomorrow, but I would say that his written
27 evidence to date is clear: yes, the building appeared new, but the conditions were
28 very bad.

29
30 All of the crew detained there attest that there was poor sanitation, dirty water, which
31 regularly ran out, common toilets, poor-quality mattresses on the floor, and many
32 mosquitoes, rats and cockroaches.

33
34 The evidence of the crew is also that those detained in the detention facility
35 contracted malaria and typhoid, in contrast to the crew detained on the vessel. The
36 crew is confident that they contracted typhoid because the water at the detention
37 facility was not clean, and the communal toilet facilities meant that the typhoid
38 spread quite quickly amongst them.

39
40 As I discussed with the Chief Officer earlier today, Equatorial Guinea notes that one
41 member of the crew who was detained on board, the Third Ordinary Seaman,
42 allegedly did contract typhoid, and, as I said, this is based on a note by the local
43 agent.

44
45 However, if we look at the witness statement of the Third Ordinary Seaman, he
46 doesn't mention any diagnosis of typhoid. He does refer to a trip to the hospital, but
47 he doesn't mention typhoid.

48
49 Instead, he says, I quote: "I was not provided with proper treatment or medication."
50 And he suffered from high blood pressure and obesity.

1
2 So what this means is either the Third Ordinary Seaman was diagnosed with
3 typhoid, but he wasn't made aware of this diagnosis, and so the crew wouldn't have
4 been aware either, or he was not diagnosed with typhoid, and the local agent's note
5 is not accurate.
6

7 In any event, even if he did contract typhoid, he was the exception. The reality is that
8 7 of the 15 crew members in the detention facility contracted typhoid and/or malaria,
9 whereas, at most, one member – the Third Ordinary Seaman – on board contracted
10 typhoid, and none contracted malaria.
11

12 In any event, Equatorial Guinea's hyper focus on typhoid attempts to distract from
13 the long list of other illnesses that the crew suffered. By way of example only, the
14 Pumpman had a seizure and was diagnosed with a suspected cyst in his head.
15 Another crew member was diagnosed with acute gastroenteritis. Another with
16 depressive anxiety disorder. And another with lumbago. Moreover, many crew
17 members expressed suicidal thoughts.
18

19 In addition, Equatorial Guinea ignores the many important life events that the crew
20 were forced to miss during their detention. The list is long.
21

22 By way of example only: The Third Engineer's grandmother, who had raised him
23 since he was 1, died in September 2022, and he could not travel home for her
24 funeral; the brother of the Third Ordinary Seaman and the brother of the Third
25 Motorman both died while they were detained; the electrician missed the birth of his
26 first child; and the Pumpman missed the birth of his daughter; and the First Ordinary
27 Seaman missed his own wedding.
28

29 And the crew, of course, lost valuable time with their families. The cook, perhaps,
30 said it best. I quote:
31

32 I lost precious time that I could have instead spent with my family. No one can
33 give me back this time. I am disappointed and I want justice to be served.
34

35 Finally, before we close today, I'd like to play a video that the Master recorded in that
36 critical period between 4 and 11 November, when the 15 crew members, who had
37 been detained on land, were being moved back and forth between various places of
38 detention.
39

40 His video was played on Indian national news, and so there will be some
41 commentary around it. You can find the video at Annex MT-44, but I will play it now.
42

43 (Video played).
44

45 **MS GRAFTON:** Mr President, Members of the Special Chamber, with that
46 background, I'd like to conclude my submissions today, and call the Master tomorrow
47 morning.
48

1 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Ms Grafton. I think
2 this brings us to the end of today's proceedings, so we will – the Chamber will then
3 resume in session tomorrow morning at 10 o'clock. The meeting is adjourned.
4
5

(The hearing adjourned at 5.25 p.m.)