

# INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2025

Public sitting

held on Tuesday, 7 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)

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**Verbatim Record**

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

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

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*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,

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*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,

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

Mr Niccolò 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 morning. The Special  
2 Chamber will now continue its hearing in the “*Heroic Idun*” (No. 2) Case, and my  
3 understanding is that Marshall Islands now wishes to call the second witness. Might  
4 I ask the Agent of the Marshall Islands to confirm this.

5  
6 **MS KIRBY:** Yes, Mr President, I confirm.

7  
8 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Madam. In this case,  
9 pursuant to the decision by the Special Chamber, to which I referred to yesterday,  
10 the next part of this sitting shall be held *in camera*. It is estimated that this will apply  
11 until the mid-morning break, and possibly after that.

12  
13 I therefore now request the Registry staff to ensure that the public has left the  
14 courtroom, and that the online broadcast has been interrupted.

15  
16 *(The hearing went in camera.)*

17  
18 **IN CAMERA PROCEEDINGS**

19  
20 **Part of the hearing not public in accordance with article 26 of the Statute**  
21 **and article 74 of the Rules of the Tribunal,**  
22 **pursuant to an agreement between the Parties**

23  
24 *(Resumed in public.)*

25  
26 So we now resume the public part of today’s sitting. The sitting may be extended  
27 until approximately 1.20 p.m.; 20 minutes past one o’clock.

28  
29 I now give the floor to, I believe, Mr Busco to make his statement. Excuse me,  
30 Mr Busco, may I ask the Agent to address the Court please.

31  
32 **MS KIRBY:** Yes, thank you, Mr President. The Marshall Islands would actually like to  
33 request that you call Sir Daniel Bethlehem to the podium.

34  
35 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Can you just repeat that. I didn’t  
36 get your –

37  
38 **MS KIRBY:** We would like – Sir Daniel Bethlehem is going to appear right now, just  
39 for a minute, before Dr Busco.

40  
41 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Good. Thank you very much.

42  
43 **SIR DANIEL BETHLEHEM:** Thank you, Mr President. Sorry, I just wanted to come  
44 to you with a housekeeping matter. We note that there are five minutes before the  
45 normal break and we wondered whether we might have the mid-morning break now  
46 and then Dr Busco will be able to commence his presentation immediately after the  
47 mid-morning break.

48  
49 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Very well, we can do that.

1 **SIR DANIEL BETHLEHEM:** Thank you very much.

2  
3 **THE PRESIDENT OF THE SPECIAL CHAMBER:** We will now break for 30 minutes.  
4 So we will resume again at five minutes to 12.00 p.m.

5  
6 **SIR DANIEL BETHLEHEM:** Thank you very much, Mr President.

7  
8 **THE PRESIDENT OF THE SPECIAL CHAMBER:** The session is adjourned.

9  
10 *(Adjourned at 11.22 a.m.)*

11  
12 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I now give the floor to Dr Busco to  
13 make his statement. Dr Busco.

14  
15 **DR BUSCO:** Thank you, Mr President. Mr President, Members of the Special  
16 Chamber, it is an honour to appear before you today and to do so on behalf of the  
17 Republic of the Marshall Islands.

18  
19 In this presentation, I will address what lies at the very heart of the Marshall Islands'  
20 case: that, by taking enforcement action against the "*Heroic Idun*" in the EEZ of  
21 São Tomé, Equatorial Guinea violated two fundamental rights of the Marshall Islands  
22 under UNCLOS. These are freedom of navigation and exclusive flag State  
23 jurisdiction.

24  
25 I will also address why Equatorial Guinea's belated invocation of piracy as a defence  
26 is misplaced and does not absolve Equatorial Guinea from its violations of  
27 international law.

28  
29 Mr President, Members of the Chamber, Equatorial Guinea does not appear to  
30 dispute that what it did to the "*Heroic Idun*" is, on its face, inconsistent with freedom  
31 of navigation and exclusive flag State jurisdiction. Equatorial Guinea's case is,  
32 instead, that its actions were justified under the guise of an anti-piracy operation. The  
33 core of this argument is that enforcement powers exercised to repress piracy are an  
34 exception to freedom of navigation and exclusive flag State jurisdiction.

35  
36 For brevity, I will refer to this argument by Equatorial Guinea as "the piracy defence".

37  
38 In essence, therefore, if one sets aside, for a moment, the piracy defence, there  
39 seems to be no agreement between the Parties that the apprehension and diversion  
40 of the "*Heroic Idun*" on the high seas would have been in breach of the Marshall  
41 Islands' rights under UNCLOS. The only issue that needs to be resolved is whether  
42 there is any merit in Equatorial Guinea's piracy defence.

43  
44 Mr President, Members of the Chamber, having clarified this, let me start with the  
45 law on freedom of navigation and exclusive flag State jurisdiction.

46  
47 Freedom of navigation is one of the pillars of the law of the sea. UNCLOS  
48 recognizes it at Article 87(1)(a), listing it among the freedoms of the high seas  
49 available to all States. In fact, we could say that freedom of navigation is the  
50 quintessential freedom of the seas. The oldest. The most well-established one.

1 Article 90 of UNCLOS, and I quote here from the words of the *Enrica Lexie* tribunal,  
2 “reinforce[s] the freedom of navigation provided for in Article 87.”<sup>1</sup> It does so by  
3 setting out that all States have “the right to sail ships flying [their] flag on the high  
4 seas.”  
5  
6 Article 92, you see here on the slides, on its part, sets out the principle of exclusive  
7 flag State jurisdiction. It provides that all “ships shall sail under the flag of one State  
8 only ... and shall be subject to its exclusive jurisdiction on the high seas.”

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<sup>1</sup> *The Enrica Lexie Incident (Italy v. India)*, Award on the Merits (Permanent Court of Arbitration, 21 May 2020), para. 1037.

1 ITLOS in “*Norstar*” called exclusive flag State jurisdiction, and I quote “a corollary of  
2 the open and free status of the high seas”, and drew a connection between freedom  
3 of navigation under Article 87, on the one hand, and exclusive flag State jurisdiction  
4 under Article 92, on the other. It said, and I quote, that “freedom of navigation  
5 would be illusory if a ship – a principal means for the exercise of the freedom of  
6 navigation – could be subject to the jurisdiction of other States on the high seas.”<sup>2</sup>

7  
8 The connection between Articles 87 and 92 is crucial and means that considerations  
9 that I will make in respect of freedom of navigation also apply to exclusive flag State  
10 jurisdiction.

11  
12 Mr President, Members of the Chamber, before addressing these three provisions  
13 further, I would like to make an important preliminary point. Articles 87(1)(a), 90  
14 and 92 apply not only on the high seas *strictu sensu*, that is to say, beyond the 200  
15 nautical miles mark; rather, as you heard from Sir Daniel yesterday, they also apply,  
16 by virtue of Article 58(2) of the Convention, in the Exclusive Economic Zone of a  
17 coastal State.

18  
19 As you also heard yesterday, in the relationship between Equatorial Guinea and the  
20 Marshall Islands, the EEZ of São Tomé is subject to the rules applicable to the high  
21 seas proper. This is because Equatorial Guinea is not the coastal State in respect of  
22 the Exclusive Economic Zone of São Tomé.

23  
24 Accordingly, Articles 87(1)(a), 90 and 92 apply there, just as they would apply on the  
25 high seas, beyond the 200 nautical miles. Equatorial Guinea, therefore, cannot  
26 invoke in the EEZ of São Tomé even the limited enforcement rights that a coastal  
27 State would be ordinarily able to invoke within its own EEZ.

28  
29 Mr President, Members of the Chamber, I now turn to the question of what forms of  
30 State conduct amount to a violation of flag States’ freedom of navigation and  
31 exclusive flag State jurisdiction.

32  
33 The answer to this question is that a very low threshold is necessary to establish a  
34 breach of Articles 87(1)(a), 90 and 92. In the *Enrica Lexie* case, the tribunal said that  
35 freedom of navigation “provides ships of any State with the right to traverse the high  
36 seas with no or minimal interference from any other State.”<sup>3</sup> I would like to  
37 emphasize this expression “no or minimal interference”.

38  
39 A number of law of the sea tribunals have given substance to this test of “no or  
40 minimal interference”. I will start from the lowest level of interference and move up to  
41 the highest levels of interference.

42  

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<sup>2</sup> *The M/V “Norstar” (Panama v. Italy)*, Judgment (International Tribunal for the Law of the Sea, 10 April 2019), para. 216.

<sup>3</sup> *The Enrica Lexie Incident (Italy v. India)*, Award on the Merits (Permanent Court of Arbitration, 21 May 2020), para. 468.

1 So, starting from the lowest level. In “*Norstar*”, this Tribunal held that “even acts  
2 which do not involve physical interference or enforcement on the high seas may  
3 constitute a breach of freedom of navigation.”<sup>4</sup>

4  
5 In that case, the Tribunal found that the mere exercise of prescriptive jurisdiction –  
6 specifically, the adoption of a decree targeting activities of a vessel on the high  
7 seas – was sufficient to breach freedom of navigation under Article 87 of the  
8 Convention.

9  
10 Now, moving up a notch in the ladder of prohibited interference. In *Enrica Lexie*, the  
11 tribunal said that interference with freedom of navigation, in breach of Article 87, can  
12 result from “non-physical forms of interference whose effect is that of instilling fear in,  
13 or causing hindrance to, the exercise of freedom of navigation.”<sup>5</sup> Again, no physical  
14 interference required to breach Article 87.

15  
16 Physical interference, however, represents the typical form of conduct that is  
17 incompatible with freedom of navigation; so much so, in fact, that this Tribunal in  
18 “*Norstar*” stated that “it goes without saying,” and I emphasize it, “it goes without  
19 saying that physical or material interference with navigation of foreign ships on the  
20 high seas violates freedom of navigation.”<sup>6</sup>

21  
22 And physical interference includes, as the tribunal put it in the arbitration between  
23 Croatia and Slovenia, “boarding, arrest, detention or diversion”<sup>7</sup> of a vessel.

24  
25 The use of force, or the threat of the use of force, is, of course, also a form of  
26 physical interference, and one of the gravest ones.

27  
28 In *Enrica Lexie*, the tribunal said that “a breach of freedom of navigation may result  
29 from acts including ... the threat of force against a foreign vessel, or non-physical  
30 forms of interference ....”<sup>8</sup>

31  
32 The adversative conjunction here – or – underscores that a threat of the use of force  
33 is, itself, a form of physical interference.

34  
35 Now, Mr President, Members of the Chamber, as I said, these considerations apply  
36 both in respect of Article 87(1)(a) of the Convention and also with regard to  
37 Articles 90 and 92.

38  
39 With respect to Article 90, the tribunal in “*Enrica Lexie*” expressly applied the “no or  
40 minimal interference” test and concluded that, and I quote, “prevent[ing] [a vessel]  
41 from navigates its intended course” and “caus[ing] [it] to change direction”

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<sup>4</sup> *M/V “Norstar” (Panama v. Italy)*, Judgment (International Tribunal for the Law of the Sea, 10 April 2019), para. 223.

<sup>5</sup> *The Enrica Lexie Incident (Italy v. India)*, Award on the Merits (Permanent Court of Arbitration, 21 May 2020), para. 472.

<sup>6</sup> *M/V “Norstar” (Panama v. Italy)*, Judgment (International Tribunal for the Law of the Sea, 10 April 2019), para. 222.

<sup>7</sup> *Arbitration between the Republic of Croatia and the Republic of Slovenia*, Award of 29 June 2017, para. 1129.

<sup>8</sup> *The Enrica Lexie Incident (Italy v. India)*, Award on the Merits (Permanent Court of Arbitration, 21 May 2020), para. 472.

1 constituted a breach not only of Article 87(1)(a), but also of Article 90 of the  
2 Convention.<sup>9</sup>

3  
4 As regards Article 92, in the *Arctic Sunrise* case, the Annex VII tribunal held that the  
5 boarding and diversion of a Dutch-flagged vessel by Russian authorities breached  
6 Article 92, as it stated, because “[a] Coastal State may only exercise jurisdiction,  
7 including law enforcement measures, over a ship with the prior consent of the flag  
8 State.”<sup>10</sup>

9  
10 The tribunal tells us that law enforcement measures are, therefore, capable of  
11 infringing Article 92.

12  
13 But other measures constituting an exercise of jurisdiction, yet falling short of  
14 enforcement, may also breach Article 92. The tribunal in “*Enrica Lexie*” observed in  
15 this regard, that “the principal of exclusive flag State jurisdiction ... is violated when a  
16 State other than the flag State seeks to prescribe laws, rules or regulations over a  
17 ship of the flag State.”<sup>11</sup>

18  
19 The “*Enrica Lexie*” tribunal evidently was not referring to physical interference. It was  
20 speaking of interference through the prescription of rules.

21  
22 Mr President, Members of the Special Chamber, one more point on the law, which  
23 also appears not to be contested between the Parties. Measures that are adopted in  
24 consequence of an unlawful apprehension on the high seas are *ipso jure* unlawful.  
25 The *Arctic Sunrise* tribunal, for example, found that Russia’s boarding, seizure and  
26 detention of the Dutch-flagged vessel *Arctic Sunrise* on the high seas breached  
27 several provisions of UNCLOS, including those that concern us here, namely,  
28 Articles 87 and 92.

29  
30 It then went on to conclude that, “given this conclusion,” namely, the unlawfulness of  
31 the apprehension, “all enforcement measures taken by Russia vis-à-vis the *Arctic*  
32 *Sunrise* subsequent to its unlawful boarding, seizures and detention of the vessel  
33 have no basis in international law.”<sup>12</sup>

34  
35 All these measures were declared, therefore, to be unlawful.

36  
37 In the present case, Mr President, Members of the Special Chamber, this means that  
38 the investigations undertaken by Equatorial Guinea and the detention of the vessel  
39 and crew, subsequent to the unlawful apprehension of the vessel, were, likewise, all  
40 unlawful enforcement measures.

41  

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<sup>9</sup> *The Enrica Lexie Incident (Italy v. India)*, Award on the Merits (Permanent Court of Arbitration, 21 May 2020), para. 1041.

<sup>10</sup> *Arctic Sunrise (Netherlands v. Russia)*, Award on the Merits (Permanent Court of Arbitration, 14 August 2015), para. 231.

<sup>11</sup> *The Enrica Lexie Incident (Italy v. India)*, Award on the Merits (Permanent Court of Arbitration, 21 May 2020), para. 527.

<sup>12</sup> *Arctic Sunrise (Netherlands v. Russia)*, Award on the Merits (Permanent Court of Arbitration, 14 August 2015), para. 333.

1 Critically, this also means that the fine imposed on the “*Heroic Idun*” was unlawful.  
2 This measure, too, was an enforcement measure adopted pursuant to an unlawful  
3 apprehension on the high seas.

4  
5 To paraphrase the *Arctic Sunrise* tribunal, the fine therefore had no basis in  
6 international law.

7  
8 Mr President, Members of the Chamber, having looked at the law on  
9 Articles 87(1)(a), 90 and 92, let me briefly recall that it is uncontested that Equatorial  
10 Guinea undertook enforcement action against the “*Heroic Idun*”. Equatorial Guinea,  
11 itself, in its pleading, states that it “deployed enforcement powers.” It expressly  
12 admits that it “apprehended the “*Heroic Idun*”<sup>13</sup> and it “instructed”<sup>14</sup> the vessel to  
13 proceed to Luba. It is also uncontested that this conduct occurred in the EEZ of  
14 São Tomé.

15  
16 The only thing that Equatorial Guinea disputes in this regard is that “no force was  
17 used at any stage of the apprehension.”<sup>15</sup> While, however, it may be that no shots  
18 were fired, force was undoubtedly threatened. I don’t need to go over this again, but  
19 I refer you to our evidence given by the Master and the Chief Officer here.<sup>16</sup>

20  
21 What I want to note, though, is that it is irrelevant, for purposes of assessing a  
22 breach of Articles 87, 90 and 92, that force be used or threatened. Minimal  
23 interference is sufficient to breach these provisions. There is no need whatsoever to  
24 prove that force was used or threatened, for purposes of a breach of exclusive flag  
25 State jurisdiction and freedom of navigation.

26  
27 Mr President, Members of the Special Chamber, in the light of these facts, let me  
28 wrap up the analysis up to this point. Equatorial Guinea, by its express admission,  
29 exercised enforcement powers against the “*Heroic Idun*” in the Exclusive Economic  
30 Zone of São Tomé and forced the “*Heroic Idun*” to Luba at gunpoint.

31  
32 Mr President, Members of the Chamber, there is no question that, on its face, this  
33 conduct is incompatible with Articles 87(1)(a), 90 and 92 of the Convention.

34  
35 Now, Mr President, Members of the Chamber, before addressing Equatorial  
36 Guinea’s piracy defence, I draw your attention to another breach that Equatorial  
37 Guinea has committed by the same conduct that I have discussed in my submission  
38 so far.

39  
40 This breach is ancillary to the core breaches of Article 87(1)(a), 90 and 92. It is  
41 ancillary because it does not concern freedom of navigation of the Marshall Islands.  
42 It concerns, rather, the manner in which Equatorial Guinea itself exercised its own  
43 freedom of navigation.

44  
45 Article 87(2) of the Convention, and you can see it on the slide in front of you,  
46 provides, in the relevant part, that

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<sup>13</sup> Rejoinder, para. 28.

<sup>14</sup> Rejoinder, paras. 43, 45.

<sup>15</sup> Rejoinder, para. 43.

<sup>16</sup> Memorial, para. 167. Annex RMI-1; Memorial, para. 168.

1           these freedoms [and this includes, of course, the freedom of navigation] shall  
2           be exercised by all States with due regard for the interests of the other States  
3           in their exercise of the freedom of the high seas ....  
4

5       Equatorial Guinea had freedom of navigation rights in the Exclusive Economic Zone  
6       of São Tomé. In exercising these rights in the Exclusive Economic Zone of  
7       São Tomé, it had to have due regard to the freedom of navigation rights of the  
8       Marshall Islands in that same area.  
9

10      The Marshall Islands' freedom of navigation, however, was unlawfully and  
11      unjustifiably impaired by Equatorial Guinea. This is because Equatorial Guinea  
12      unlawfully intercepted the "*Heroic Idun*" in the EEZ of São Tomé.  
13

14      What follows, having regard to Article 87(2), is that Equatorial Guinea did not  
15      exercise its freedom of navigation having due regard to the interests of the Marshall  
16      Islands. In fact, it did so unlawfully to impair the interests and the rights of the  
17      Marshall Islands in its own exercise of freedom of the high seas. This conduct,  
18      Mr President, Members of the Special Chamber, is in breach of Article 87(2) of the  
19      Convention.  
20

21      Mr President, Members of the Special Chamber, I now turn to Equatorial Guinea's  
22      piracy defence.  
23

24      Before I address this defence on its merits, I would like to make one observation.  
25      Equatorial Guinea engages in a fair degree of scaremongering. Running through its  
26      Counter-Memorial and Rejoinder is a very subtle leitmotif: that the Special Chamber  
27      should be careful not to undermine the laudable anti-piracy efforts in the Gulf of  
28      Guinea. This is why Equatorial Guinea devotes several pages of its pleadings to  
29      addressing what is actually beyond contention: the importance of international  
30      anti-piracy efforts and of the regional security architecture against piracy.<sup>17</sup> There is  
31      no question about this.  
32

33      And I would like to reassure Equatorial Guinea. The Marshall Islands, which, as you  
34      have heard from the Attorney General and the Agent, hosts the world's third-largest  
35      ship registry, cares very deeply about serious and effective anti-piracy efforts.  
36

37      But anti-piracy cannot serve as a smokescreen to justify abuse. As I will show you  
38      shortly, there is no trace whatsoever of piracy in this case. And invoking the fight  
39      against piracy in a wholly unjustified manner, as Equatorial Guinea does, is harmful,  
40      because it risks undermining and delegitimizing the international anti-piracy efforts  
41      that genuinely deserve protection.  
42

43      For Equatorial Guinea to invoke piracy as a defence, when piracy is entirely out of  
44      the picture, diminishes the credibility of the global fight against piracy.  
45

46      This, with respect, we believe is what should concern the Special Chamber in this  
47      case.  
48

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<sup>17</sup> Rejoinder, pp. 47-53.

1 Mr President, Members of the Chamber, having made this preliminary observation,  
2 I will now turn to the core of the Marshall Islands' response to Equatorial Guinea's  
3 piracy defence.

4  
5 The Marshall Islands has two propositions here: first, that Equatorial Guinea had no  
6 basis whatsoever to conclude that the "*Heroic Idun*" was a vessel suspected of  
7 piracy. In fact, all the information that Equatorial Guinea possessed indicated the  
8 exact opposite. That's our first proposition.

9  
10 The second proposition, which we make in the alternative, is that, even if Equatorial  
11 Guinea had any reason to suspect piracy, the apprehension of the vessel was  
12 nonetheless inconsistent with UNCLOS and international law.

13  
14 Mr President, Members of the Chamber, at tab 1 of your Judges' folder you have  
15 various provisions of UNCLOS concerning piracy. I will discuss several of these  
16 provisions in the following minutes. These, as you know, cover various issues:  
17 Article 100 concerns anti-piracy cooperation; Article 101 provides the legal definition  
18 of "piracy"; Article 103 defines the notion of a pirate vessel; Article 105 sets out the  
19 circumstances in which a vessel can be seized on grounds of piracy; Article 106 sets  
20 out the duty to compensate a vessel that was seized pursuant to Article 105, but  
21 without adequate grounds; Article 110 sets out the right to visit a vessel suspected of  
22 being engaged in piracy.

23  
24 I will not address these provisions in the order that UNCLOS presents them, but,  
25 rather, as necessary to substantiate my arguments. In any case, I think it is good that  
26 you have all of them in front of you.

27  
28 In order to address the first of the Marshall Islands' argument, I need to start from the  
29 definition of "piracy". The definition of "piracy" is in Article 101 of UNCLOS.  
30 Article 101 reads:

31  
32 Piracy consists of any of the following facts: (a) any illegal act of violence or  
33 detention, or any act of the depredation, committed for the private ends by the  
34 crew or the passengers of the private ship ... and directed (i) on the high seas,  
35 against any other ship ... or against the person or property on board such ships  
36 ... or (ii) against a ship ... in a place outside the jurisdiction of any State.

37  
38 I don't propose to address the last part of the definition as this is irrelevant for our  
39 purposes.

40  
41 The point is that, Mr President, Members of the Chamber, the definition of piracy is a  
42 matter of law. For an act to constitute piracy, there has to be violence, detention or  
43 depredation; these acts must occur on the high seas, and they must be directed  
44 against another ship or property or persons on board that ship.

45  
46 Now, I would like to consider the information on which Equatorial Guinea claims that  
47 it based its conclusion that the "*Heroic Idun*" was suspected of being a pirate vessel.  
48 These are two WhatsApp pages and a note verbale from Nigeria dated 10 August  
49 2022. I anticipate the conclusion of the analysis that will follow: there is no trace

1 whatsoever of allegations of piracy in respect of the “*Heroic Idun*” in these  
2 documents. Nigeria did not once raise allegations of piracy against the “*Heroic Idun*”.

3  
4 In its pleadings, Equatorial Guinea asserts that it cannot make submissions on the  
5 wording used by Nigeria in these documents and that, actually, only Nigeria could do  
6 so.<sup>18</sup> Yet, Mr President, Members of the Special Chamber, Equatorial Guinea acted  
7 on these documents because these documents constitute the only basis on which  
8 Equatorial Guinea claims to have formed its appreciation of piracy in relation to the  
9 “*Heroic Idun*” and to have seized the “*Heroic Idun*”. These documents are, therefore,  
10 central. They are crucial to our analysis.

11  
12 I will take you through them in turn. First, a WhatsApp message here on the left of  
13 your slide, from Nigeria, that Equatorial Guinea claims was received on 10 August  
14 2022 by Equatorial Guinea’s Director-General of Military Cooperation, reads, in the  
15 official translation provided by Equatorial Guinea as follows:

16  
17 Current intelligence indicates that a large crude carrier of oil, Heroic Idun [...]   
18 a 336-meter super tanker, came to load crude without approval and is  
19 suspected of being involved in an illegal fuel supply operation.

20  
21 I emphasize “an illegal fuel supply operation.”

22  
23 When NNS Gongola contacted them for interrogation, it raised a false alarm  
24 of piracy attack” – and I stress it, a false alarm of piracy attack – “and to avoid  
25 collateral damage, it left Nigerian waters [...] and therefore it is necessary to  
26 stop the vessel so that it can explain its activities in waters of Nigeria. It is  
27 kindly requested that, for example, the Navy tracks and stops the vessel.”<sup>19</sup>

28  
29 Then there is a second WhatsApp message. This one is on the right of your slide.  
30 This is from Nigeria, same recipient Equatorial Guinea, and Equatorial Guinea claims  
31 it received it again on 10 August 2022. This second WhatsApp message reads:

32  
33 The Nigerian CNS requests your help to stop the MV HEROIC IDUN involved  
34 in the theft of crude oil in Nigeria.<sup>20</sup>

35  
36 Last, there is a note verbale, dated also 10 August 202. Tthis is the last one out of  
37 the three documents that Equatorial Guinea relies on. This reads:

38  
39 The Embassy of the Federal Republic of Nigeria in Malabo, Equatorial Guinea,  
40 presents its compliments to the Ministry of External Affairs and Cooperation of  
41 the Republic of Equatorial Guinea and has the honour to kindly request the  
42 latter to intervene in the tracking, arrest and repatriation of an illegal Crude  
43 Carrier [...] HEROIC IDUN [...], a 336-meter super tanker which was involved  
44 in the illegal entry into Nigerian’s territorial water to load crude oil without  
45 proper approval.

46  
47 I would like to stress for a moment: “entry into Nigerian waters” and “to load crude oil  
48 without proper approval.”

---

<sup>18</sup> Rejoinder, para. 211.

<sup>19</sup> REG-002.

<sup>20</sup> REG-002.

1  
2 Then the note verbale goes on:

3  
4 It is pertinent to indicate that the “*Heroic Idun*” was a Martial Island [sic] flagged  
5 ship but escaped into Equatoguinean maritime domain by raising a false piracy  
6 alarm to avoid collateral damage.<sup>21</sup>  
7

8 Mr President, Members of the Chamber, the complaint from Nigeria is plain: “load  
9 crude oil without approval” and “illegal fuel supply”. No violence, no detention, no  
10 depredation as would be required under Article 101 of the Convention. In other  
11 words, no piracy.  
12

13 Equatorial Guinea now argues that the definition of piracy must account for the Gulf  
14 of Guinea’s peculiarities where piracy and oil theft are often linked.<sup>22</sup> This is fine, but  
15 the existence of a link does not mean that every case of oil theft becomes *ipso facto*  
16 a piracy incident or can be suspected to be a piracy incident without any other  
17 element pointing in the direction of piracy. The note verbale on which Equatorial  
18 Guinea relies does not even suggest oil theft; it refers only to loading oil without  
19 approval.<sup>23</sup>  
20

21 Mr President, Members of the Special Chamber, this is suggestive of an  
22 administrative infraction, not an act of piracy.  
23

24 I would like to add here: the term “infraction” is not Counsel’s attempt to play down or  
25 to minimize the matter. This is the very word used by Nigeria itself in the note  
26 verbale of 12 September 2022: “infraction”.<sup>24</sup> Equally, the suggestion by Equatorial  
27 Guinea that the “*Heroic Idun*” – a slow, extremely difficult to manoeuvre, 336-metre  
28 carrier requiring a crew of 26 people – might have been a pirates’ mother ship is  
29 entirely detached from reality. I don’t need to elaborate on this because the Chamber  
30 heard this clearly during yesterday’s witness examination. I refer the Chamber to that  
31 examination of the Chief Officer.  
32

33 The only reference to piracy in both the first WhatsApp message and the note  
34 verbale is to an alleged false piracy alarm raised by the “*Heroic Idun*”. Yet, accusing  
35 the “*Heroic Idun*” of launching a false piracy alarm is the very opposite of accusing  
36 the “*Heroic Idun*” of being a pirate vessel. What Nigeria was, in fact, alleging was  
37 that the “*Heroic Idun*” reported a piracy attack against it that never actually took  
38 place. Now, how could this possibly transform the “*Heroic Idun*” into a vessel  
39 suspected of piracy, let alone into a pirate vessel? Can Equatorial Guinea seriously  
40 maintain that Nigeria accused the vessel of issuing a false piracy alarm but then  
41 somehow failed to state that it had actually committed a suspected act of piracy, if  
42 that truly had been Nigeria’s position?  
43

44 Mr President, Members of the Special Chamber, there is more. As I have  
45 emphasized, piracy, under UNCLOS, can only occur on the high seas. Nigeria’s own  
46 note verbales to Equatorial Guinea, not once, but twice, located the incident in

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<sup>21</sup> REG-019.

<sup>22</sup> Rejoinder, paras. 200-210.

<sup>23</sup> REG-019.

<sup>24</sup> Counter-Memorial, para 60. REG-021.

1 Nigerian territorial waters.<sup>25</sup> Equatorial Guinea's explanation now is that reference to  
2 territorial waters must be disregarded.<sup>26</sup> But what is really happening here is plain.  
3 Equatorial Guinea is straining to recast the contemporaneous record to shoehorn at  
4 all costs Equatorial Guinea's appreciation of the incident into the legal definition of  
5 piracy.  
6

7 This is to the point of effectively rewriting the communication that it received from  
8 Nigeria.  
9

10 I would like to add one more point in this regard. Equatorial Guinea located the  
11 "*Heroic Idun*" 48 hours after receiving Nigeria's WhatsApp messages and notes  
12 verbales. This was, therefore, not a situation in which accuracy had to be sacrificed  
13 due to urgency or any other operational necessity.  
14

15 Equatorial Guinea had a full 48 hours, two days, to properly assess and consider the  
16 content of Nigeria's communication and confirm or dispel any suspicion of piracy, if  
17 that was Equatorial Guinea's concern.  
18

19 Mr President, Members of the Chamber, as we have seen, Nigeria never mentioned  
20 allegations of piracy prior to the interception of the "*Heroic Idun*."  
21

22 As we indicated in our pleadings, following the arrest of the "*Heroic Idun*", Nigeria  
23 issued further notes verbales to Equatorial Guinea and then also published a press  
24 release concerning the events.  
25

26 Now, this material, too, contains no reference whatsoever to piracy. On the contrary,  
27 it rules out piracy. Take, for instance, the press release of 20 August 2022<sup>27</sup> and the  
28 note verbale of 12 October 2020.<sup>28</sup>  
29

30 I don't propose to address this material, but they are in your Judges' folder at tabs 24  
31 and 25.  
32

33 What I want to say is that both documents made clear that the allegation concerned  
34 only an attempt to load crude oil without authorization at the Akpo Oil Field. Now,  
35 even if one were to accept *arguendo*, that an alleged act of loading crude oil without  
36 authorization could somehow be characterized as an act of violence, depredation or  
37 detention under Article 101 – which it plainly cannot – case law makes it clear that an  
38 attack against an oil platform cannot amount to piracy.  
39

40 The Akpo Oil Field was clearly not a ship. It was an oil platform. I recall in this regard  
41 the Annex VII tribunal's finding in the *Arctic Sunrise* case. And I quote from this  
42 decision:  
43

---

<sup>25</sup> REG 019, REG-020.

<sup>26</sup> Rejoinder, para 211.

<sup>27</sup> Annex SA/-5, referred to in the Counter-Memorial, para. 56.

<sup>28</sup> Letter from the Ministry of Defence of the Republic of Nigeria to the Ministry of Foreign Affairs of Equatorial Guinea dated 12 October 2022 (REG-040); see also Nigeria's Notes Verbales to Equatorial Guinea dated 26 October 2022 (REG-044) and 1 November 2022 (REG-046).

1 An essential requirement of Article 101 is that the act of piracy be directed  
2 “against another ship”. The *Prirazlomnaya* is not a ship. It is an offshore  
3 ice-resistant fixed platform. ... Having concluded that the *Prirazlomnaya* is not  
4 a ship, the Tribunal need not consider the other elements required to show  
5 piracy within the meaning of Article 101.<sup>29</sup>  
6

7 Mr President, Members of the Special Chamber, why did Equatorial Guinea fail to  
8 consider any of this information – both before and after the apprehension – which  
9 plainly ruled out piracy? Why did it never once raise the issue of piracy with Nigeria  
10 at the time of the events? Why did it not inform any international authority that a  
11 VLCC flying the Marshall Islands’ flag had been arrested on allegations of piracy?  
12 Why did it never raise it with the Marshall Islands during and in the aftermath of the  
13 events, despite numerous communications between Equatorial Guinea and the  
14 Marshall Islands at that time? And why did it raise piracy with the Marshall Islands for  
15 the first time in the Counter-Memorial in these proceedings on 15 July 2024?  
16

17 The answer is straightforward: because the apprehension of the “*Heroic Idun*” had  
18 nothing whatsoever to do with piracy – neither then nor now. Piracy is an *ex post*  
19 *facto* construct devised by Equatorial Guinea solely for the purposes of these  
20 proceedings, in the hope that it may provide the only defense capable of excusing  
21 conduct so manifestly inconsistent with the principles of freedom of navigation and  
22 exclusive flag State jurisdiction.  
23

24 Equatorial Guinea provides three arguments to seek to rebut this.  
25

26 First, it relies on a tweet by the Equatoguinean Vice-President dated 10 November  
27 2022.<sup>30</sup> This is in your Judges’ folder at tab 22.  
28

29 I emphasize this tweet marks the very first time, the very first time since the events of  
30 August 2022, that allegations of piracy were linked to the “*Heroic Idun*”.<sup>31</sup>  
31

32 Mr President, Members of the Chamber, this tweet is dated the same day the  
33 Marshall Islands commenced prompt release proceedings before ITLOS:  
34 10 November 2022. The same day. This is not a coincidence.  
35

36 This tweet serves only to confirm the Marshall Islands’ position that the piracy  
37 defense was concocted solely for the purpose of litigation; it was never a genuine  
38 issue.  
39

40 Second, there is a note verbale to which Equatorial Guinea refers dated 3 June  
41 2023, which Equatorial Guinea addressed to Nigeria, in which Equatorial Guinea  
42 made the point that the “*Heroic Idun*” had been pursued by Nigerian authorities  
43 because it had carried out an act of piracy.<sup>32</sup> It is Equatorial Guinea saying to Nigeria  
44 that Nigeria had been pursuing the “*Heroic Idun*” because of piracy. This is also in  
45 your Judges’ folder at tab 23.

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<sup>29</sup> *Arctic Sunrise (Netherlands v. Russia)*, Award on the Merits (Permanent Court of Arbitration, 14 August 2015), Award, paras. 238-240.

<sup>30</sup> SA/25.

<sup>31</sup> Rejoinder, para. 213(a). SA/25.

<sup>32</sup> Rejoinder, para. 213(b). REG-053.

1 Now, this note verbale came six months after the commencement of prompt release  
2 proceedings by the Marshall Islands and five months after the submission of this  
3 dispute through compulsory settlement under UNCLOS on 18 December 2022.

4  
5 But the issue with this note verbale is not simply one of timing. Equatorial Guinea  
6 appears to be putting words in Nigeria's mouth – hoping, perhaps, that Nigeria would  
7 say that, yes, piracy was the reason it pursued the "*Heroic Idun*."

8  
9 It is telling that there is nothing on the record, though, to suggest that Nigeria ever  
10 responded to that note verbale of 3 June 2023; so the note verbale, again, stands as  
11 a plainly self-serving unilateral exercise by Equatorial Guinea crafted solely for the  
12 purposes of this litigation.

13  
14 Last, Equatorial Guinea argues that "*Heroic Idun*" accepted liability for an offence  
15 under Nigerian, and I quote "piracy-related" legislation.<sup>33</sup>

16  
17 Now, if Equatorial Guinea intends this to be confirmation that the "*Heroic Idun*" could  
18 reasonably be suspected of being a pirate vessel, that suggestion is, with respect,  
19 dishonest.

20  
21 I will not go into the reasons why the vessel accepted liability; this was, in effect, an  
22 act of extortion. But what matters is that the offence in question had nothing to do  
23 with allegations of the vessel being a pirate vessel.

24  
25 The offence concerned the reporting of an alleged piracy incident – again, the  
26 allegation that the "*Heroic Idun*" falsely reported being the victim of a piracy attack.

27  
28 What Equatorial Guinea evocatively refers to in its pleading as "piracy-related"  
29 legislation is Nigeria's Suppression of Piracy and Other Maritime Offences Act of  
30 2019.<sup>34</sup> I emphasize: other maritime offences.

31  
32 It is for "another maritime offence" under the Act that the "*Heroic Idun*" accepted  
33 liability, and not for piracy.

34  
35 Mr President, Members of the Chamber, our analysis could end here. Equatorial  
36 Guinea had no information suggesting that Nigerian authorities were pursuing the  
37 "*Heroic Idun*" on suspicion of piracy. On the contrary, all the information it possessed  
38 point in the opposite direction.

39  
40 It is entirely immaterial to our analysis to examine the actual reasons why Nigeria  
41 may have requested the vessel's arrest.

42  
43 However, for completeness and context only, let me explain why the "*Heroic Idun*"  
44 was, in fact, being pursued. It was being pursued for what is, essentially, an act of  
45 defamation, for falsely raising a piracy alarm in waters that must be perceived as  
46 safe.

47  

---

<sup>33</sup> Rejoinder, para. 213(c).

<sup>34</sup> Rejoinder, para. 213(c).

1 Nigeria, itself, made this clear in a note verbale to Equatorial Guinea in which it  
2 complained that the “*Heroic Idun*”’s actions, and I quote, and you can see it here in  
3 the slide, “portray exaggerated insecurity in the general area”.<sup>35</sup>

4  
5 Now, Mr President, Members of the Special Chamber, if there is any risk of  
6 undermining anti-piracy efforts in this case, it is precisely this: that a vessel that, in  
7 good faith, reports a suspected piracy attack, that then turns to be unfounded, should  
8 be punished in the way the “*Heroic Idun*” and its crew were punished.

9  
10 Mr President, Members of the Special Chamber, I now turn to the Marshall Islands’  
11 second argument in response to Equatorial Guinea’s piracy defense. This is that,  
12 even if Equatorial Guinea had any basis to suspect the “*Heroic Idun*” of piracy, it’s  
13 seizure, diversion to Equatorial Guinea, and prolonged detention there, nonetheless  
14 violated UNCLOS. This is, as I said, an argument we make in the alternative.

15  
16 As I did in respect of the first part of my submissions, I will start first by addressing  
17 the law. UNCLOS provides for the possibility of exercising enforcement powers in  
18 respect of a pirate vessel.

19  
20 The definition of a pirate vessel is provided for in Article 103 of UNCLOS. It is in front  
21 of you in the slide and it provides that

22  
23 A ship ... is considered a pirate ship ... if it is intended by the persons in  
24 dominant control to be used for the purpose of committing one of the  
25 acts referred to in Article 101. The same applies if the ship ... has been  
26 used to commit any such act, so long as it remains under the control of  
27 the persons guilty of that act.

28  
29 Now, Article 105 of the Convention sets out the right of every State on the high seas  
30 to apprehend a pirate ship, it does so in the following terms:

31  
32 On the high seas, or in any other place outside the jurisdiction of any other  
33 State, every State may seize a pirate ship ... or a ship ... taken by piracy  
34 and under the control of pirates, and arrest the persons and seize the  
35 property on board.

36  
37 So, apprehension is authorized in two cases only: either the ship is a pirate ship, or it  
38 is a ship taken by piracy and under the control of pirates. At the risk of stating the  
39 obvious, allegations of falsely reporting a piracy attack do not trigger the powers  
40 under Article 105.

41  
42 Now Article 110 provides for the right of visit. In the relevant part, this provision sets  
43 out that “a warship which encounters on the high seas a foreign ship is not justified in  
44 boarding it unless there is reasonable ground for suspecting that, *inter alia*, (a) the  
45 ship is engaged in piracy”.

46  
47 Before addressing the relationship between these two provisions and Article 105 and  
48 10, I would like to make one observation. The enforcement powers conferred by

---

<sup>35</sup> REG-040.

1 UNCLOS are limited to piracy. They do not extend to other forms of criminal conduct  
2 that do not fall within the legal definition of Article 101. Equatorial Guinea has a  
3 tendency in its pleadings, especially when referring to the Yaoundé Code, to blur the  
4 lines a little, to mix piracy with other maritime offences or with crimes under domestic  
5 law, or with other forms of transnational crime. But the law is the law and the law is  
6 precise: universal enforcement powers are a narrow exception to the principles of  
7 freedom of navigation and exclusive flag State jurisdiction. Piracy alone justifies the  
8 exception.

9  
10 Mr President, Members of the Chamber, the Marshall Islands has explained in its  
11 pleadings that there is a relationship of progression between the right of visit under  
12 Article 110, and the right to seize a ship under Article 105.<sup>36</sup> In other words, that if  
13 there is a suspicion on reasonable grounds that a ship may be engaged in piracy,  
14 this may be visited. If it is confirmed to be a pirate ship, it may be seized.

15  
16 Equatorial Guinea contests this. First, it claims that Article 105 contains no express  
17 requirement to exercise the right of visit under Article 110 beforehand, and that the  
18 two provisions are therefore unconnected.<sup>37</sup> But contrary to what Equatorial Guinea  
19 claims, there is an evident connection between these two provisions. Article 105  
20 refers to a pirate ship – not a suspected pirate ship. Article 110, by contrast, speaks  
21 of reasonable grounds for suspecting that a ship is engaged in piracy. These are  
22 clearly different standards, standing in a progressive relationship to one another and  
23 entailing distinct enforcement powers, also standing in a relationship of progression  
24 to one another. This is the connection. Measures under Article 105 are considerably  
25 more intrusive and in greater tension with freedom of navigation than those permitted  
26 under Article 110. It is therefore entirely consistent with the ordinary meaning of the  
27 words in Articles 105 and 110, read in their context, that where only a suspicion of  
28 piracy exists, Article 110 powers should ordinarily be exercised.

29  
30 Second, Mr President, Members of the Special Chamber, Equatorial Guinea  
31 contends that there is no support for the Marshall Islands' position on the relationship  
32 between Articles 105 and 110 in leading UNCLOS commentaries.<sup>38</sup> Equatorial  
33 Guinea notes, as an example, that the leading Proelss commentary does not support  
34 the proposition of the Marshall Islands on the relationship between Articles 105 and  
35 110.<sup>39</sup> I think this must have been an oversight because the Proelss commentary  
36 notes, and I quote, that "such a seizure" and this is not part of the quote, but a  
37 seizure pursuant to Article 105, and I start quoting again, "can only follow boarding  
38 and inspection of a suspected vessel."<sup>40</sup> Mr President, Members of the Special  
39 Chamber, it could not have been stated more clearly. More broadly, I refer the  
40 Special Chamber here to our pleadings where the Marshall Islands has cited several  
41 established law of the sea scholars in support of its interpretation of the relationship  
42 between Articles 105 and 110.<sup>41</sup>

36 Reply, paras. 113-118.

37 Rejoinder, paras. 185-188.

38 Rejoinder, paras. 189-190.

39 Rejoinder, para. 189(a), footnote 329.

40 Alexander Proelß (ed.), *The United Nations Convention on the Law of the Sea: A Commentary* (C.H. Beck–Hart–Nomos 2017), page 754.

41 Reply, paras. 113-118.

1 Third, Equatorial Guinea asserts that the Marshall Islands' interpretation of the  
2 relationship between Articles 105 and 110 is neither realistic nor achievable.<sup>42</sup>  
3 However, Equatorial Guinea studiously mischaracterizes the Marshall Islands'  
4 position as suggesting that the exercise of powers under Article 105 is always  
5 strictly, and I quote, "under any circumstances" contingent upon the prior exercise of  
6 the right of visit under Article 110.<sup>43</sup>

7  
8 Mr President, Members of the Special Chamber, Equatorial Guinea is once again  
9 engaging in scaremongering, implying that the Marshall Islands seeks to dictate how  
10 Equatorial Guinea, or any other State, should conduct its anti-piracy operation in any  
11 given case. The Marshall Islands is not proposing a rigid checklist of how every  
12 vessel suspected of piracy must be confronted in any possible scenario.

13  
14 There may be exceptional situations where suspicion of piracy may warrant the  
15 triggering of Article 105 powers but evidently this will turn on the intensity of the  
16 suspicion, on the existence of corroborating elements, on the conduct of the  
17 suspected vessel, on any specific operational needs, and so on and so forth. I would  
18 like to refer you to a quote by Geiss and Anne Petrig in our pleadings: "on the basis  
19 of the wording of Article 105 of UNCLOS, a mere suspicion that a ship might be  
20 engaged in piracy would not seem to suffice to trigger the enforcement powers  
21 provided by Article 105 of UNCLOS."<sup>44</sup>

22  
23 Mr President, Members of the Special Chamber, a mere suspicion without anything  
24 else, is certainly not enough.

25  
26 Mr President, Members of the Special Chamber, ultimately let me make it clear, you  
27 do not need to determine the precise relationship between Articles 105 and 110 in  
28 every conceivable case, but only in this case. And on the particular facts and  
29 circumstances of this case, Equatorial Guinea should, at most, have exercised the  
30 right of visit of the "*Heroic Idun*." Let me explain this further.

31  
32 First, even assuming that Equatorial Guinea harboured a suspicion of piracy based  
33 on the communication it received from Nigeria, that suspicion was at best tenuous –  
34 a mere suspicion we would say. This is because, as I said, there is absolutely  
35 nothing in the document from Nigeria that even mentions piracy allegations.

36  
37 Second, when the "*Heroic Idun*" was located in the EEZ of São Tomé, it was  
38 instructed to stop its engines and the Master, as you heard, immediately complied.  
39 The Master communicated with "*Capitan David*" and remained fully cooperative  
40 without throughout the entire process. Now, what operational need justified  
41 interdiction in these circumstances? Equatorial Guinea does not say.

42  
43 Third, the "*Capitan David*" itself indicated that all they wanted to do was to  
44 investigate the vessel. I emphasize the word "investigate" here, because investigate

---

<sup>42</sup> Rejoinder, paras. 190-193.

<sup>43</sup> Rejoinder, para. 184.

<sup>44</sup> Reply, para. 116. Anna Petrig & Robin Geiß, *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden* (Oxford University Press, 2011), para. 56.

1 is language that brings us clearly into Article 110 territory. The right under Article 110  
2 is precisely to board to investigate suspicions of piracy.

3  
4 Fourth, the Master requested whether the Equatoguinean unit wanted to board the  
5 vessel and expressly invited them to do so. Mr President, Members of the Tribunal,  
6 they were expressly invited on board. What kind of pirate vessel would do that?  
7 Again, what kind of operational need required seizing the vessel in circumstances  
8 where the vessel invited them on board to investigate?

9  
10 In conclusion, the question that the Chamber needs to answer is this: was it lawful, in  
11 the circumstances, to seize the “*Heroic Idun*” without first taking the proportionate  
12 step that would plainly and easily have dispelled any allegation of piracy? The law  
13 tells us that it was not.

14  
15 Mr President, Members of the Chamber, I now turn to Article 100 and anti-piracy  
16 cooperation, on which Equatorial Guinea relies on heavily. Article 100 of UNCLOS  
17 provides that: “All States shall cooperate to the fullest possible extent in the  
18 repression of piracy on the high seas or in any other place outside the jurisdiction of  
19 any State.”

20  
21 Now, the central point here is that Article 100 is not even engaged in these  
22 proceedings, because this case is not about piracy. The reliance on Article 100  
23 suffers from the same flaw as Equatorial Guinea’s belated invocation of piracy: it is  
24 an *ex post facto* construct.

25  
26 In any event, Article 100 cannot provide Equatorial Guinea with an additional  
27 independent basis to interdict the “*Heroic Idun*” beyond what UNCLOS permits. In  
28 this case, it was unlawful for Equatorial Guinea to exercise Article 105 powers. It  
29 remained unlawful to do so, even in the context of a request for anti-piracy  
30 cooperation.

31  
32 Equatorial Guinea, again, tries to hide behind Nigeria, but a State cannot, under the  
33 guise of anti-piracy cooperation, do what it would otherwise have no lawful authority  
34 to do by itself.

35  
36 Anti-piracy cooperation, as any form of cooperation in international law, must remain  
37 within the bounds of what is lawful for the requested State.

38  
39 It is relevant in this regard that nothing in the wording of Article 100 of UNCLOS  
40 suggests that, in order to comply with this provision, the requested State is tied to the  
41 specific conduct or outcome requested by the requesting State. The International  
42 Law Commission’s commentary to Article 38, which is the precursor of Article 100 of  
43 UNCLOS, makes clear that the requested State is allowed “a certain latitude” in  
44 deciding how to cooperate in any given case.<sup>45</sup> This certain latitude is also to ensure  
45 that the requested State complies with its international obligations.

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<sup>45</sup> Report of the International Law Commission covering the work of its eight session, 23 April – 4 July 1956, A/3159 “Commentary to the articles concerning the law of the sea” in Yearbook of the International Law Commission, 1956, vol II, p. 265 at p 282.

1 Mr President, Members of the Special Chamber, I would now like to conclude my  
2 submissions by turning to Article 106 of the Convention, because, quite apart from  
3 the other arguments and considerations that I have made thus far, even if there were  
4 some merits in Equatorial Guinea's piracy defence, this would not absolve it of its  
5 obligations to compensate the Marshall Islands for the damage it caused.

6  
7 The provision is in front of you, and is clear: when a seizure is made without  
8 adequate grounds, the State making the seizure shall be liable to the State of  
9 nationality for any damage caused.

10  
11 In the present case, the seizure was carried out without adequate grounds. The  
12 assessment is *ex post facto* and it is objective: was the vessel a pirate vessel for  
13 purposes of Article 105? Was it under the control of pirates for purposes of  
14 Article 105?

15  
16 If the answer to both these questions is in the negative – as it plainly is in this case –  
17 then the seizure under Article 105 was made without adequate grounds.

18  
19 This is confirmed by comparing Article 106 and Article 110(3) of UNCLOS,  
20 concerning reparation in the case of boarding of a suspected pirate vessel.

21  
22 Article 110, paragraph 3 provides:

23  
24 If the suspicions [of piracy] proved to be unfounded and provided that the ship  
25 boarded has not committed any act justifying them, it shall be compensated  
26 for any loss or damage that may have been sustained.

27  
28 I would like to make four points to conclude my presentation.

29  
30 First, if a vessel is to be compensated under Article 110 for having been boarded,  
31 when the suspicions of piracy are unfounded, then it must also be compensated  
32 when it is seized, without actually being a pirate vessel.

33  
34 Second, "adequate grounds" for purposes of Articles 105 and 106 is clearly a  
35 different, and more stringent standard to a "reasonable suspicion" of piracy for  
36 purposes of Article 110. Equatorial Guinea's position is that it had "adequate  
37 grounds" to seize the vessel because it had a "reasonable suspicion of piracy". But  
38 this flies in the face of the distinction between Articles 105 and 110, which is a very  
39 material distinction that cannot be done away with.

40  
41 Third, when a vessel is boarded on the basis of an ungrounded suspicion of piracy, it  
42 must be compensated, provided it has not committed any act that would justify the  
43 boarding. No such qualifiers in Article 110(3) appear in Article 106.

44  
45 Fourth, and last, in any case, the "*Heroic Idun*" did not commit any act that would  
46 justify the seizure of the vessel, as I discussed today. Quite to the contrary, the  
47 vessel was cooperative throughout all its interactions with Equatorial Guinea.

48  
49 Whatever one may think of Equatorial Guinea's piracy defence, compensation to the  
50 Marshall Islands is due in any event under Article 106 of the Convention.

1 Mr President, Members of the Special Chamber, this concludes my presentation.  
2 Thank you very much for your attention.

3  
4 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Dr Busco for your  
5 submission.

6  
7 I now invite Ms Nevill to make her statement.

8  
9 **MS NEVILL:** Mr President, Members of the Special Chamber, I echo my colleagues  
10 in expressing my pleasure in appearing before you and on behalf of the Marshall  
11 Islands.

12  
13 My presentation today, Mr President, is probably over the 20 minutes that we have  
14 with your indulgence in this session, but I propose that I will see where I have gotten  
15 to at 1.20 p.m., and we can take it from there.

16  
17 As my colleague, Dr Busco, has set out, Equatorial Guinea has sought to defend its  
18 interception and detention of the “*Heroic Idun*” as anti-piracy cooperation under  
19 Article 100 of the Convention. As he has also explained, Equatorial Guinea cannot  
20 rely on Article 100. This is because the information on which Equatorial Guinea relies  
21 to justify its interception and detention of the vessel on 12 August 2022, which is  
22 information that it itself has produced in these proceedings, does not support its  
23 claim. The request from Nigeria, on which Equatorial Guinea alleges that it was  
24 compelled to act, did not state that an act of piracy had been committed by the  
25 “*Heroic Idun*” or that it had been overrun by pirates. Put simply, Article 100 did not  
26 apply and did not justify Equatorial Guinea’s conduct.

27  
28 Now, Equatorial Guinea attempts to get around this obvious difficulty by relying on  
29 the Yaoundé Code. Now, the Yaoundé Code is the shorthand title for the “Code of  
30 Conduct Concerning the Repression of Piracy, Armed Robbery Against Ships, and  
31 Illicit Maritime Activity in West and Central Africa”. It was developed with the  
32 technical support of the IMO and was signed in 2013, by 25 States in Western and  
33 Central Africa.

34  
35 In my submissions, I will explain why the Yaoundé Code does not assist Equatorial  
36 Guinea. In making this submission, the Marshall Islands does not seek to underplay  
37 the importance of the Yaoundé Architecture in global initiatives to combat piracy. It is  
38 simply that the Code does not, as Equatorial Guinea contends, provide legal cover  
39 for its egregious acts against the “*Heroic Idun*” and its crew in violation of the  
40 Convention and applicable law.

41  
42 Equatorial Guinea says, variously, in its written pleadings, that it had  
43 “commitments”<sup>46</sup> or a “clear duty”<sup>47</sup> or “obligations”<sup>48</sup> or “undertakings”<sup>49</sup> under the  
44 Yaoundé Code to act as it did in intercepting and detaining the “*Heroic Idun*” in light

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<sup>46</sup> Counter-Memorial, paras. 3, 106, 107, 125, 129, 139, 178, 178, 255, 344; Rejoinder, paras. 34, 117, 167, 216.

<sup>47</sup> Counter-Memorial, para. 43.

<sup>48</sup> Counter-Memorial, paras. 25, 129, 195, 231; Rejoinder, paras. 33, 257.

<sup>49</sup> Counter-Memorial, paras. 254, 257.

1 of Nigeria's request of 10 August. And in my oral statement, you will have footnote  
2 references to the relevant parts of the pleadings.

3  
4 Equatorial Guinea suggests that, had it failed to comply with this request, it would  
5 have been in breach of its "commitments" under the Code.<sup>50</sup> Equatorial Guinea also  
6 makes the extraordinary submission that, because the Code gives effect to its  
7 obligations under UNCLOS "regarding cooperation in the repression of piracy under  
8 Article 100",<sup>51</sup> that "Marshall Islands-flagged vessels present in the maritime zones  
9 of Central and West African States who are parties to the Yaoundé Code may be  
10 dealt with pursuant to the Code"<sup>52</sup> and "may be subject to the Code."<sup>53</sup>

11  
12 The Marshall Islands does not dispute that the States Parties to the Convention have  
13 an obligation under Article 100 to cooperate to combat piracy and that international  
14 cooperation on anti-piracy measures is critically important, or that the Yaoundé Code  
15 and other regional instruments, such as the "Djibouti Code", which is the shorthand  
16 for the 2009 Code of Conduct Concerning the Repression of Piracy and Armed  
17 Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden – it does  
18 not deny that these are an expression of that cooperation.

19  
20 Indeed, as emphasized by the Attorney General yesterday, the Marshall Islands, as  
21 the world's third-largest flag State, fully supports anti-piracy cooperation.

22  
23 However, what the Yaoundé Code does not do is authorize Equatorial Guinea to act  
24 in breach of the Convention,<sup>54</sup> nor does it impose obligations on the Marshall Islands  
25 and other flag States sailing in the Gulf of Guinea, or limit their rights and freedoms  
26 under the Convention. It does not do so as a matter of the application of the basic  
27 rules of treaty law, and it does not do so as a matter of the provisions of the Code  
28 itself. I address each of these in turn.

29  
30 There are at least five reasons why, as a matter of the application of the rules of  
31 treaty law, that the Yaoundé Code does not assist Equatorial Guinea.<sup>55</sup>

32  
33 First, the Marshall Islands is not a signatory to the Code.

34  
35 Second, the Code is not binding between its signatories, except possibly in one  
36 limited respect which does not apply. And this is expressly stated in Article 19(a) of  
37 the Code, shown on the slide, which says in relevant part that: "Nothing in this Code  
38 is intended to: (a) create or establish a binding agreement."<sup>56</sup>

39  
40 It follows that Equatorial Guinea did not, as it suggests,<sup>57</sup> have a really binding  
41 obligation under the Code to intercept and detain the "*Heroic Idun*" on Nigeria's

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<sup>50</sup> Counter-Memorial, para. 211; Rejoinder, para. 167.

<sup>51</sup> Rejoinder, para. 179.

<sup>52</sup> Rejoinder, para. 180.

<sup>53</sup> Rejoinder, para. 152.

<sup>54</sup> Cf. Rejoinder, para. 117.

<sup>55</sup> Reply, paras. 91, 94-96, 160-161.

<sup>56</sup> Reply, para. 162.

<sup>57</sup> Rejoinder, para. 158.

1 request. And, for the same reason, the Code is not a “rule of international law” for the  
2 purpose of Article 293(1) of the Convention.<sup>58</sup>

3  
4 Equatorial Guinea claims that it is moot that the Code is not binding, or that the  
5 Marshall Islands is not bound by it. In support of this proposition, it cites the Seabed  
6 Disputes Chamber’s reliance on the articulation of the precautionary principle in  
7 Principle 15 of the Rio Declaration in its Advisory Opinion on the Area, and it also  
8 cites the decision of the Annex VII tribunal in *Barbados v. Trinidad and Tobago* to  
9 take the 1990 Trinidad-Venezuela maritime delimitation agreement into account in  
10 delimiting the maritime boundary of Barbados and Trinidad and Tobago.<sup>59</sup>

11  
12 Neither example is apposite. Principle 15 was incorporated by express reference and  
13 to the Nodules and Sulphide Regulations, which, as the Seabed Chamber pointed  
14 out, “transform[ed] this non-binding statement into a binding obligation.”<sup>60</sup>

15  
16 As to the reliance on *Barbados and Trinidad and Tobago*, this case before us now  
17 does not concern a dispute concerning delimitation of maritime boundaries, where it  
18 is well-established that existing territorial and maritime delimitation agreements in the  
19 area may be taken into account.

20  
21 I move now to my third point. The Code only has 25 signatories, from which it follows  
22 that the Code is not a “subsequent agreement” between the 170 parties of UNCLOS  
23 “regarding its interpretation or the application of its provisions” for the purposes of  
24 Article 31(3)(a) of the Vienna Convention on the Law of Treaties.

25  
26 Fourth, for the same reason, the Code is not “subsequent practice in the application  
27 of the treaty which establishes the treatment of the parties” regarding the  
28 interpretation of the Convention within Article 31(3)(b) of the Vienna Convention. And  
29 you can see those provisions shown on the slide.

30  
31 Equatorial Guinea asserts that practice by the signatory States under the Code is  
32 subsequent practice under Article 31(3)(b), and I quote, “in its regional context”,<sup>61</sup> but  
33 the authority it cites in support of this proposition does not support “a regional  
34 context” approach to interpretation. And, as elaborated by the International Law  
35 Commission in its Draft conclusions on subsequent agreements and subsequent  
36 practice in relation to the interpretation of treaties”, Article 31(3)(b) is limited to  
37 “subsequent practice” as a means of authentic interpretation that establishes the  
38 agreement of “all the parties to the treaty”.<sup>62</sup>

39  
40 There is no evidence that the Marshall Islands, or any parties to UNCLOS which are  
41 not signatories to the Code, have all agreed to a “regional context” interpretation of  
42 the Convention in the Gulf of Guinea. Much less have they agreed to a “regional  
43 approach” which, on Equatorial Guinea’s construction of the Code, limits their

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<sup>58</sup> Reply, paras. 91, 93.

<sup>59</sup> Rejoinder, paras. 150-151.

<sup>60</sup> *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10, para. 127.

<sup>61</sup> Rejoinder, paras. 153, 155.

<sup>62</sup> Yearbook of the International Law Commission, 2018, vol. II, Part Two, p. 16, para. (16) of the commentary to conclusion 4.

1 freedom of navigation and, in effect, radically extends the definition of piracy and the  
2 grounds on which non-flag States can stop, board and detain vessels on the high  
3 seas and in the EEZs of third States. The Code, as interpreted by Equatorial Guinea,  
4 is plainly “incompatible with the Convention”. It, therefore, would not meet the  
5 requirements of Article 293(1), even if it were a rule of international law.  
6

7 Furthermore, UNCLOS already makes provision for the possibility for two or more  
8 States Parties to conclude agreements modifying the operation of the provisions of  
9 the Convention, in paragraph (3) of Article 311, but this is subject to meeting certain  
10 requirements. These requirements include that such modification only applies  
11 between the parties to that agreement and that it cannot affect the enjoyment by  
12 other States of their rights under the Convention.  
13

14 Therefore, Equatorial Guinea’s argument that the Marshall Islands and other States  
15 “may be the subject of the Code” is thus directly contradictory to UNCLOS itself.  
16

17 Equatorial Guinea’s submission also fails to take into account the presumption,  
18 articulated by the ILC in conclusion 7, paragraph 3, of its “Draft conclusions on  
19 subsequent agreements and subsequent practice” which is shown on the slide. It  
20 also fails to take into account the presumption that “the parties to a treaty, by an  
21 agreement or a practice in the application of the treaty, intend to interpret the treaty”  
22 – they don’t intend to “amend or modify it”. “The possibility of amending or modifying  
23 a treaty by subsequent practice of the parties has not generally been recognized.”  
24

25 In any event, even if the rules of treaty interpretation in Article 31(3)(a) or (b) could  
26 be relied on to amend UNCLOS in the way that Equatorial Guinea suggests, which  
27 they cannot, silence or any failure to object to the Code by the Marshall Islands and  
28 other parties to UNCLOS could not be characterized as acquiescence or a tacit  
29 understanding, and this is because, as I will come to shortly, the text of the Code  
30 does not purport to depart from UNCLOS.  
31

32 Turning to my fifth point under this heading, for the same reasons that the Code is  
33 not a subsequent agreement or practice for the purposes of Article 31(3)(a) and (b)  
34 of the Vienna Convention, the Code is not a rule of international law “applicable in  
35 the relations between the parties” of the Convention for the purpose of  
36 Article 31(3)(c) of the Vienna Convention on the Law on Treaties.  
37

38 Equatorial Guinea then maintains that, in any event, the Code qualifies as a  
39 supplementary means of interpretation of the Convention under Article 32 of the  
40 VCLT.<sup>63</sup> However, Equatorial Guinea has not met the criteria for the application of  
41 Article 32. It has not established that the Yaoundé Code, or its provisions, confirm  
42 the interpretation of Article 100 or the other anti-piracy provisions in UNCLOS  
43 “reached in the application of Article 31” nor that their interpretation of these  
44 provisions – to which Dr Busco has already referred – nor that the interpretation of  
45 these provisions according to Article 3 is manifestly absurd or unreasonable.  
46

47 There is nothing in Article 100 or any other provision of UNCLOS which provides that  
48 a breach of UNCLOS is excused because it is undertaken in furtherance of an

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<sup>63</sup> Rejoinder, paras. 154-155.

1 obligation of cooperation under Article 100. It follows that a breach of UNCLOS is not  
2 excused because it was undertaken in furtherance of commitments made in a  
3 non-binding instrument, which was itself concluded in furtherance of the obligation  
4 under Article 100. If that were the case, States could alter their obligations under the  
5 Convention and avoid responsibility by the simple expedient of concluding  
6 agreements invoking cooperation with one or more other State Parties. This is plainly  
7 not what the Convention or international treaty law provides or allows, nor is this  
8 what the Code itself provides or allows, and this is the subject to which I now turn in  
9 the second part of my submissions.

10  
11 The text of the Code itself simply does not support Equatorial Guinea's case, on  
12 either the construction of UNCLOS or of the Code itself. Crucially, the Yaoundé  
13 Code itself does not purport to depart from UNCLOS, does not purport to displace  
14 the signatories' obligations or rights under UNCLOS, and does not purport to impose  
15 obligations on third States.

16  
17 This is plain from the wording of the Code,<sup>64</sup> and I will show several provisions of the  
18 Code on the slides to illustrate my points. I will start with Article 2, "Purpose and  
19 scope." Paragraph 1 of Article 2 of the Code sets out the signatories' intention to  
20 cooperate in the repression of "transnational organized crime in the maritime  
21 domain, maritime terrorism, IUU fishing and other illegal activities at sea". But, as  
22 you will see there in the phrases highlighted on the slide, the intention to cooperate  
23 is to be consistent with applicable rules of international law.

24  
25 "Transnational organized crime in the maritime domain" is defined in paragraph 5 of  
26 Article 1. The definition lists 12 acts, including "piracy and armed robbery at sea" at  
27 subparagraph (c), "illegal oil bunkering" at (d), "crude oil theft" at (e), and  
28 "vandalization of offshore infrastructure" at (l).

29  
30 I note the references to "illegal oil bunkering", "crude oil theft" and "vandalization of  
31 offshore infrastructure" in the definition in Article 1(5) for two reasons. Firstly,  
32 because Nigeria's first request to stop the vessel said it was "suspected of being  
33 involved in an illegal fuel supply operation".<sup>65</sup> The second request said that it was  
34 involved in "theft of crude oil"<sup>66</sup> and the third was that it was "involved in the illegal  
35 entry into Nigeria's territorial waters to load crude oil without proper approval."<sup>67</sup>

36  
37 The second reason I note these references is because Equatorial Guinea argues  
38 that the inclusion of these acts in the definition "aligns with the well-known  
39 connection between piracy and other criminal maritime activity at sea." Somehow –  
40 and the argument is not entirely clear – this means that the definition of "piracy" or  
41 the agreement to cooperate in the repression of piracy under Article 100  
42 incorporates these other acts, so that the provisions in UNCLOS and the Code  
43 concerning seizure of pirate vessels also apply to "illegal oil bunkering", "crude oil  
44 theft" and "vandalization of offshore infrastructure".<sup>68</sup>

64 Reply, para. 163.

65 Reply, para. 100.a.

66 Reply, para. 100.b.

67 Reply, para. 100.c.

68 Rejoinder, paras. 178-180.

1 However, as I have already alluded to, the Code does not purport to make such a  
2 radical departure from the text of the Convention and conventional understandings of  
3 the meaning of “piracy”. The Code itself plainly distinguishes “piracy” from “armed  
4 robbery at sea”, “illegal oil bunkering”, “crude oil theft” and “vandalization of offshore  
5 infrastructure”.

6  
7 “Piracy” is defined in Article 1(3) of the Code in identical terms to Article 101 of  
8 UNCLOS, and the definition of a “pirate ship” at Article 1(7) is in materially identical  
9 terms to Article 103 of UNCLOS. The only reference in the Code to cooperation in  
10 seizing or rescuing vessels beyond the outer limit of any State’s territorial sea is in  
11 Article 6, “Measures to repress piracy.” This provision is limited to piracy. There is no  
12 equivalent provision suggesting seizure of vessels for the other acts listed in the  
13 definition of “transnational organized crime”, such as “armed robbery at sea”, and so  
14 on. The Code is, in this respect, entirely consistent with UNCLOS and other rules of  
15 international law concerning interdiction. Interdiction. Even SUA, the Convention for  
16 the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and its  
17 2005 protocol, which are cited in the preamble to the Code and regarded as  
18 advancing enforcement operations at sea, even SUA does not authorize actions  
19 against vessels flagged to other parties unless with the consent of the flag State.

20  
21 “Piracy” in the Yaoundé Code constitutes a basis to intend to cooperate in seizing  
22 pirate ships and vessels, and seizing pirate ships beyond the outer limit of any  
23 State’s territorial sea. So it provides a basis for that cooperation beyond the territorial  
24 sea. However, robbery at sea, illegal oil bunkering, crude oil theft, and vandalization  
25 of offshore infrastructure do not provide a basis for such cooperation under the  
26 Code.

27  
28 That the signatories to the Code do not and did not intend to go beyond the limits of  
29 UNCLOS and international law is confirmed in Article 19, paragraph (d), now shown  
30 on the slide. Article 19, paragraph (d) states:

31  
32       Nothing in this Code is intended to: ... apply to or limit boarding of ships  
33       conducted by any Signatory in accordance with international law, beyond the  
34       outer limit of any State’s territorial sea, including boardings based upon the  
35       right of visit, ... or an authorization from the flag State to take law enforcement  
36       or other action.

37  
38 And this is also consistent with the title of the Code. It is called a “Code of Conduct”,  
39 not an “agreement” or a “convention”.

40  
41 The language used throughout the Code is an important indicator of the signatories’  
42 intentions and its non-binding character.

43  
44 And I would just pause there, Mr President, to say that I have one more page of  
45 submission.

46  
47 As I was saying, the language used throughout the Code is also an important  
48 indicator of the signatories’ intentions and its non-binding character. It is hortatory,  
49 not mandatory. Articles 2 and 6 provide that the “signatories”, “intend to cooperate”:

1 it does not say they “shall” cooperate. Article 6, paragraph 2, provides that they  
2 “may”, not “shall”, “seize a pirate ship”. There is no obligation to seize pirate ships.

3  
4 Article 13, entitled “Assistance among signatories”, shown now on the slide, says  
5 that a signatory “may” request another signatory State to take “effective measures in  
6 response to reported transnational organized crime in the maritime domain”, but the  
7 requested State is not required to take any such measures by the Code.

8  
9 Mr President, Members of the Special Chamber, in conclusion, my submissions on  
10 the Code can be summarized in four brief points:

11  
12 First, the Yaoundé Code did not impose a binding obligation on Equatorial Guinea to  
13 comply with Nigeria’s request to interdict the “*Heroic Idun*” and its crew.

14  
15 Second, the Yaoundé Code did not even impose a non-legally binding obligation on  
16 Equatorial Guinea to respond to the request.

17  
18 Third, the Code is not a subsequent agreement or practice of the parties to the  
19 Convention, or a “relevant rule of law applicable in the relations between the parties”  
20 for the purposes of interpreting the Convention.

21  
22 Fourth, and this is my final point, it follows from points one to three that cooperation  
23 under the Yaoundé Code cannot, and does not, relieve Equatorial Guinea of its  
24 obligations to the Marshall Islands under UNCLOS, and it does not relieve the  
25 Marshall Islands of its rights under UNCLOS.<sup>69</sup> It simply does not provide a defence  
26 or excuse to Equatorial Guinea’s interception and detention of the “*Heroic Idun*” and  
27 its crew in violation of UNCLOS.

28  
29 And, Mr President, Members of the Special Chamber, this brings to a close the  
30 Marshall Islands’ submissions on its first claim. And Dr Busco will address you after  
31 the lunch adjournment on our second claim, Equatorial Guinea’s excessive exercise  
32 of prescriptive jurisdiction.

33  
34 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Ms Nevill, for your  
35 statements.

36  
37 This brings us to 1.20 p.m., and it is time for us to withdraw for lunch.

38  
39 So this brings us to the end of this morning’s sitting, and the hearing will be resumed  
40 after 3 p.m., when I will give the floor to Dr Busco for his statement. This sitting is  
41 now closed.

42  
43 *(The sitting closed at 3 p.m.)*

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<sup>69</sup> Reply, para. 160.