

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2025

Public sitting

held on Wednesday, 8 October 2025, at 10 a.m.,
at the International Tribunal for the Law of the Sea, Hamburg,
President of the Special Chamber, Judge Albert J. Hoffmann, presiding

THE M/T “HEROIC IDUN” (No. 2) CASE

(Marshall Islands/Equatorial Guinea)

Verbatim Record

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

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

The Marshall Islands are represented by:

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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,

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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,

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Equatorial Guinea is represented by:

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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. I now give
3 the floor to Ms Penelope Nevill to make a statement.

4
5 You have the floor, Madam.

6
7 **MS NEVILL:** Thank you, Mr President.

8
9 Mr President, Members of the Special Chamber, we move now to the legal
10 consequences entailed by Equatorial Guinea’s wrongful acts.

11
12 The Marshall Islands seeks full reparation for the injuries caused by Equatorial
13 Guinea’s breaches of the Convention and applicable law. The prayer for relief set out
14 in the Reply includes compensation for material damage of \$42,915,536.07¹ and
15 \$15,028,000 for non-material damage² suffered by the crew. As regards the fine of
16 €2,000,132, the Marshall Islands recognizes that this could be awarded as either
17 restitution or compensation. The Marshall Islands seeks, in addition, interest on
18 those amounts³ and the costs of these proceedings,⁴ satisfaction and assurances
19 and guarantees of non-repetition.⁵ Dr Casas will shortly take you through the detail
20 of each of these remedies claims.

21
22 Before he does so, I will first address you on the law and key differences of principle
23 between the Parties relevant to the assessment of damage. I will not address the
24 aspects of Equatorial Guinea’s arguments on compensation in Chapter 6 of its
25 Rejoinder which repeats its arguments on liability.⁶

26
27 The Parties agree that Article 31 of the ILC’s Articles on State Responsibility is to be
28 taken into account in the assessment of damage,⁷ and this is well-established in the
29 Tribunal’s jurisprudence.⁸

30
31 That is, “1. The responsible State is under an obligation to make full reparation for
32 the injury caused by the internationally wrongful act” and “2. Injury includes any
33 damage, whether material or moral, caused by the internationally wrongful act of a
34 State.”

35
36 There is broad concurrence between the Parties as to the applicable standard of
37 causation and both Parties make reference to the discussion of the requirements of
38 the “causal link” in paragraph (10) of the commentary to Article 31.⁹
39

¹ Letter to the Registrar dated 10 September 2025.

² Memorial, paras. 416-423.

³ Memorial, paras. 424-427.

⁴ Memorial, paras. 428-431.

⁵ Memorial, paras. 432-437.

⁶ See, e.g. heading C, p. 100, para. 364.

⁷ Counter-Memorial, para. 349; Reply, para. 401.

⁸ *Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 10 (“*Activities in the Area*”), para. 194, *Virginia G, Judgment*, para. 429, *Norstar, Merits Judgment*, para. 318.

⁹ Counter-Memorial, para. 349-350; Reply, para. 279.

1 The Marshall Islands relies on the articulation of the standard by this Tribunal in the
2 *M/V “Norstar”* as one of “directness”, that is, that “only damage directly caused by
3 the wrongful act ... is the subject of compensation”.¹⁰

4
5 Equatorial Guinea relies on the articulation of the standard by the International Court
6 of Justice, in *Diallo, Armed Activities* and other cases, of “whether there is a
7 sufficiently direct and certain causal nexus between the wrongful act ... and the injury
8 suffered”,¹¹ and also references to the language in “*Virginia G*” of “direct
9 consequences” and “direct nexus”.¹²

10
11 Equatorial Guinea also cites the second report of the fourth ILC Special Rapporteur
12 on State Responsibility, Mr Arangio-Ruiz of 1989, where he said that “[r]ather than
13 the ‘directness’ of the damage, the criterion ... is the presence of a clear and
14 unbroken causal link”. However, this formulation was not adopted by the ILC in its
15 final report on the topic in 2001, and it is not the standard that has been adopted by
16 the ICJ or this Tribunal. Subject to this qualification, the Parties are broadly aligned
17 on the standard the Chamber is to apply.

18
19 Equatorial Guinea does not dispute that the requirements of causation are met for
20 the immediate losses caused by its acts in the 92 days in the EEZ of São Tomé and
21 Príncipe and in Equatorial Guinea and in, and in respect of, its territorial sea and
22 EEZ.

23
24 Its case on immediate losses is that the acts which caused those injuries were not
25 wrongful or did not cause any loss, or it contests evidence of quantum. The key
26 difference between the Parties lies in the treatment of loss after the 92 days.¹³

27
28 Before I turn to that, I wish to dwell on one point concerning the nature of the causal
29 nexus required, and this can be illustrated by reference to Equatorial Guinea’s
30 argument that it is not responsible because the “prompt release application did not
31 result in any ... order to release the Vessel.”¹⁴

32
33 Only one of the Marshall Islands’ 10 heads of claim alleges breach of a primary rule
34 requiring release of the vessel. The ICJ explained in the *Armed Activities* case, that
35 “[t]he causal nexus required may vary depending on the primary rule violated and the
36 nature and extent of the injury.”¹⁵ Similarly, the ILC in its commentary to Article 31
37 says that a relevant factor includes “whether the harm caused was within the ambit
38 of the rule which was breached, having regard to the purpose of that rule”, and that
39 “the requirement of a causal link is not necessarily the same in relation to every
40 breach of an international obligation”.¹⁶

41
42 It follows that the causal nexus required may vary between each of the Marshall
43 Islands’ claims by reference to the primary rule or rules relied on and the nature and

¹⁰ Para. 334.

¹¹ *Diallo* (2012), para. 14.

¹² Counter-Memorial, para. 352, referring to *Virginia G*, pars. 435-436.

¹³ Rejoinder, para. 368.

¹⁵ Para. 93

¹⁶ Para. (10), p. 93.

1 extent of the Marshall Islands' injuries. Whether there is an obligation to make
2 reparation for a particular injury will turn on whether that injury was caused by the
3 breach of the primary rule under consideration.

4
5 This can be illustrated by reference to the Marshall Islands' non-aggravation claim,
6 where Equatorial Guinea's conduct in respect of the prompt release application is
7 directly in issue. The primary rules concerned are not an obligation to release the
8 vessel, but the obligation not to aggravate a dispute and prejudice the rights of the
9 other party pending proceedings. Handing over the vessel and crew to Nigeria in the
10 face of prompt release proceedings is relied on as evidence of breach. When
11 considering the causal nexus required between the wrongful act and the injury
12 suffered in relation to that primary rule, a relevant consideration is that the nature of
13 the Marshall Islands' injuries is not only monetary and that one of the forms of
14 reparation it seeks is satisfaction.

15
16 I move now to the key point of difference between the Parties. Equatorial Guinea
17 maintains that the Marshall Islands has not established a causal link for its losses
18 after the 92 days because it was the actions of Nigeria, not Equatorial Guinea, that
19 directly caused those injuries, and that the Marshall Islands is requesting that
20 "Equatorial Guinea pay for Nigeria's actions".¹⁷

21
22 This is wrong. The question before this Chamber is Equatorial Guinea's
23 responsibilities for its breaches of the Convention and the applicable law, and your
24 role is to ascertain the damage caused by those wrongful acts. It was Equatorial
25 Guinea's choice to act as it did.

26
27 There can be no question but that Equatorial Guinea is responsible for – in addition
28 to the immediate losses that were quantifiable within the 92 days – for the loss,
29 damage and injury that occurred thereafter, and that became visible thereafter, that
30 were a direct consequence of its conduct during the 92 days.

31
32 Equatorial Guinea also says, referring to its arguments on admissibility, that it cannot
33 be liable for Nigeria's wrongful acts because the conditions of Article 16 of the
34 Articles on State Responsibility are not satisfied,¹⁸ and, in any event, relying on
35 Article 16 engages the *Monetary Gold* principle.¹⁹

36
37 As to its Article 16 point, Equatorial Guinea is contesting a case that the Marshall
38 Islands does not make. The Marshall Islands is not relying on Article 16. It also
39 agrees with Equatorial Guinea that Article 47 of the Articles on State Responsibility is
40 not relevant²⁰ because it is not claiming that Equatorial Guinea and Nigeria are
41 responsible for the same internationally wrongful act or acts, and it is not seeking to
42 recover by way of compensation more than the damage that it has suffered.

43
44 As to the *Monetary Gold* principle, this goes to the admissibility of a claim. It stands
45 or falls as a threshold matter. It does not rise up like a phoenix at the point of
46 ascertaining damage. Notably in "*Norstar*", the *Monetary Gold* principle, which had

¹⁷ Rejoinder, para. 369.

¹⁸ Rejoinder, paras. 370-373.

¹⁹ Rejoinder, para. 374.

²⁰ Rejoinder, paras. 381-382.

1 been unsuccessfully pleaded by Italy in the Preliminary Objections phase, was not
2 referred to again in the Merits phase by the Tribunal or by the parties.

3
4 Furthermore, it would be unjust if a State could effectively wash its hands and
5 immunize itself from responsibility for injuries caused by its wrongful acts, simply by
6 invoking the involvement of another State in the chain of events.

7
8 There is, in any event, no need to import *Monetary Gold* admissibility into the
9 causation analysis. The relevance, if any, of the involvement of a third State in the
10 chain of events can be addressed through the ordinary application of the rules on
11 State responsibility and the “directness” standard of causation.

12
13 Equatorial Guinea also says as regards the losses suffered after the 92 days, that it
14 had no knowledge or involvement during this period and “only Nigeria can provide
15 information”.

16
17 Having knowledge of or involvement in the suffering of damage is not the test for, or
18 a prerequisite of, the existence or establishment of a causal link, and it is plainly not
19 correct that only Nigeria can provide that evidence. The Special Chamber has before
20 it first-hand evidence concerning the direct consequences of Equatorial Guinea’s
21 actions and their long-term impact.

22
23 To conclude, although the context to this case involves another State, the rules of
24 State responsibility are capable of addressing this situation.

25
26 Mr President, Members of the Special Chamber, Dr Casas will now address you on
27 the detail of Equatorial Guinea’s responsibility under each of the Marshall Islands’
28 heads of claim.

29
30 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank you, Ms Nevill, and I give
31 the floor to Dr Casas.

32
33 **DR CASAS:** Mr President, Members of the Special Chamber, good morning. It is a
34 pleasure to be with you again today. I will be addressing you for the next hour on the
35 topic of remedies. My submissions will cover five topics: material damages;
36 non-material damages; interest; costs; and satisfaction and guarantees of
37 non-repetition.

38
39 I will start by addressing the Marshall Islands’ claim for material damages. Before
40 I delve into the details of those claims, I want to briefly address three points
41 regarding the Marshall Islands’ approach to its claim for material damages.

42
43 I should start with the observation that our claim for material damages falls broadly
44 into two categories. The first category are the claims that were caused by Equatorial
45 Guinea and that were visible and quantifiable during those 92 days. These are
46 immediate losses. But the second category are the claims for the losses that are, we
47 say, a direct consequence of Equatorial Guinea’s conduct, but which only
48 crystallized after this 92-day period, or claims that only became visible and
49 quantifiable after that period.

1 As you have just heard from Ms Nevill, we say we are entitled to recover claims for
2 both categories. Moreover, as I will explain throughout my submissions, there are
3 some cases in which the lines between those two categories are blurred.
4

5 The second point relates to the evidence that the Marshall Islands has adduced. The
6 Marshall Islands has been extremely thorough. It has produced a significant amount
7 of supporting evidence. This has resulted in eight annexes with almost 2,000 pages
8 of documents. We are very far from a situation where a claim for damages has not
9 been supported with granular evidence.
10

11 One key aspect of the Marshall Islands' approach is that we have sought to provide
12 the Chamber with all the underlying documents for each claim, instead of presenting,
13 for instance, just a headline invoice.
14

15 Let me provide a concrete example. In a line item dealing with travel costs, we have
16 included, for instance, the invoices for the airfare, hotels, taxis and subsistence items
17 purchased during those travels. Our friends across have, with forensic skill, gone
18 through all those documents, the 2,000 pages of them, with a fine-toothed comb.
19 They have tried to identify any issues that may be used against the Marshall Islands
20 to cast aspersions on our claims; however, we say that is incorrect.
21

22 First, Equatorial Guinea is only able to credibly criticize a very small fraction of the
23 Marshall Islands' claims and those are mainly for very minor expenses rather than,
24 for instance, the loss of hire or fine claims which are worth million of dollars.
25

26 Second, in any event, and critically we say, those expenses were incurred because
27 of the detention.
28

29 The third general point is that, contrary to what Equatorial Guinea claims, the
30 Marshall Islands has indeed provided a detailed breakdown of the different heads of
31 damage it is pursuing.
32

33 The Marshall Islands is claiming for nine different heads of damage. Most of those
34 are, in turn, comprised of different subclaims. The Marshall Islands has provided a
35 detailed breakdown for each of them.
36

37 This is evident from the Marshall Islands' Rejoinder,²¹ which we have on screen,
38 where the components of the first head of damage are set out in detail. We find the
39 same throughout that entire section of the Reply. For instance, at paragraphs 293,
40 298, 301, 308 and so on.
41

42 Insofar as Equatorial Guinea complains that the Marshall Islands has not provided a
43 detailed breakdown of how each of these claims is supported by evidence, a
44 breakdown of each invoice, that criticism, we say, is unfair. Detailed spreadsheets,
45 showing with absolute granularity how tallies of invoices add up, may be common in
46 some proceedings, say, in construction arbitrations, but they are not normally
47 adduced in inter-State proceedings.
48

²¹ Para. 285.

1 Nevertheless, Mr President, Members of the Chamber, insofar as it would be helpful
2 to the Chamber, and also to nip this criticism in the bud, I will be providing detailed
3 tallies throughout my submissions.

4
5 When addressing each specific head of damage, we will project on the screen a
6 table that shows how each figure for every sub-item of every head of claim is
7 calculated. This will also include a brief description of the documentary evidence that
8 supports that claim, with the corresponding annex and page reference.

9
10 With this, the Chamber will see how all the numbers add up – I am cautious saying
11 that as a lawyer, but we say they do add up – and how they are all supported by
12 evidence. That may not be entirely correct. There are two items, sub-items, for which
13 we have not been able to obtain supporting documents. Their combined value is less
14 than \$2,000. They are identified as such in the tables.

15
16 If the Chamber would benefit from being taken to any specific invoice or document,
17 or has any questions about them, I am more than happy to address that. However,
18 for obvious reasons, including being respectful of the Chamber's time and attention,
19 I am not proposing to take the Chamber to each individual invoice; rather, I will focus
20 on discussing the legal principles applicable and how they support the Marshall
21 Islands' claim.

22
23 For the issues that I will not be able to cover due to time constraints, I remit the
24 Chamber to the Marshall Islands' written pleadings.²²

25
26 Now, in terms of structure in sequencing, I propose following a slightly different
27 approach to the one followed in the Rejoinder. I will address the Marshall Islands'
28 heads of damage in decreasing order of their quantum, beginning by the largest
29 claim and then going down.

30
31 And the reason I propose doing this is simple. The Marshall Islands' claim for
32 material damages is just under \$43 million. However, \$36 million, so almost 84 per
33 cent of our claims, is based on only two heads of damage: loss of hire and the
34 payments made to secure the release of the vessel and the crew.

35
36 The other seven heads of material damage only represent about \$7 million. So what
37 I propose doing is approaching these claims in a proportionate manner. And I will
38 start with the loss of hire claim; it is also perhaps the most complex one.

39
40 Mr President, Members of the Chamber, the Marshall Islands is claiming \$19.3
41 million for loss of hire.²³ That is, essentially, a claim for lost profits. There are four
42 points, factual and legal, I would like to touch upon.

43
44 First, a point of legal principle. The Marshall Islands is entitled to recover lost profits
45 caused by the detention of the vessel. Law of the sea tribunals have accepted, for a
46 long time, that flag States can claim damages for lost profits based on the loss of
47 hire of a merchant vessel, and that is because they are entitled to claim for the unit

²² Memorial, paras. 398-415; Reply, paras. 284-317.

²³ Reply, paras. 308-313.

1 of the vessel. This has been articulated by ITLOS since the *M/V “Saiga” (No. 2)*,²⁴
2 which we have on screen.

3
4 More recently, the *Duzgit Integrity* tribunal awarded compensation for loss of hire.
5 And if we can move to the next slide. That tribunal held at paragraph 87 of its Award
6 on Reparation that:

7
8 While wrongfully detained in São Tomé, the *Duzgit Integrity* was unavailable
9 for service by any charterer ... Malta [the flag State] is entitled to claim for the
10 harm to its vessel that follows from this unavailability.²⁵
11

12 This proposition is widely recognized. This Tribunal, for example, in both “*Virginia G*”
13 and *M/V “Norstar”*, held and recognized that flag States could claim for lost profits
14 arising from the detention of a vessel. In those cases, it refrained from doing so
15 based on evidentiary shortcomings which, in my submission, we do not have here.²⁶
16

17 Mr President, Members of the Chamber, the “*Heroic Idun*” is a state-of-the-art, very
18 large crude carrier. It was not available for service by any charterer. It simply could
19 undertake no work, and of course that entailed an important economic loss.
20

21 Second, Equatorial Guinea contends that a claim for loss of hire is inherently
22 speculative. With respect, that is wrong. Here, the claim for lost profits relates to the
23 profits that would be generated by the hire of a very large crude carrier. There is a
24 market for this – the large tanker market – it is commoditized. It is a market for which
25 we have robust economic benchmarks, and those robust economic benchmarks can
26 be used to ascertain the applicable freight rates the “*Heroic Idun*” would have been
27 able to obtain. All of this allows us to determine with specific precision the profits that
28 the “*Heroic Idun*” would have been able to generate. We are in a case where we
29 have calculation, not speculation.
30

31 And of course, until December 2023, the amounts the vessel would have been able
32 to earn are even more easily ascertainable, because they can be calculated based
33 on the applicable charter in place at that time. Those amounts are fixed. They were
34 invoiced. We know them with complete certainty, so there is no speculation there.
35

36 Third, to support its claim, the Marshall Islands presented an expert report by Mr Tim
37 Horne.²⁷ Mr Horne is a shipbroker with more than three decades of experience in the
38 tanker market.²⁸
39

40 Mr Horne’s report is based on hard economic data. It is derived from the vessel’s
41 own charter as well as from market sources that are used daily throughout the
42 shipping world.
43

²⁴ *M/V “Saiga” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, ITLOS Reports 1999 at para. 172.

²⁵ *Duzgit Integrity*, Award on Reparation, para. 87.

²⁶ *M/V “Virginia G” (Panama v. Guinea-Bissau)*, Judgment of 14 April 2014, ITLOS Reports 2014 at paras. 432–434; *M/V “Norstar” (Panama v. Italy)*, Merits Judgment of 10 April 2019, ITLOS Reports 2018–2019 at paras. 322–323.

²⁷ Memorial, Vol. II, Annex RMI/-39, page 478.

²⁸ Memorial, Vol. II, Annex TH/-1, page 498-501.

1 Now, pausing there, Equatorial Guinea has not produced a rebuttal report. Nor does
2 it challenge the accuracy or reliability of Mr Horne's calculations. Nor does it
3 challenge the accuracy or liability of his data. There are some criticisms made in
4 legal submissions, which the Marshall Islands has answered in legal submissions,
5 but there is no competing expert report challenging Mr Horne's findings.
6

7 Now, what Mr Horne does is, he calculates three periods of hire, which we have on
8 screen, and he applies the daily rate for each of those periods.²⁹ The Chamber and
9 the Judges will have his report at tab 29 of the Judges' folder.
10

11 Now, as Mr Horne explains,³⁰ the first period starts on 12 August – that is the date
12 the vessel was detained – and it ends on 26 December 2022, the date the time
13 charter ended.
14

15 The second period, period B, was calculated between 26 December until 27 May
16 2023. That is the period the vessel was detained in Nigeria.
17

18 And the third period, period C, was calculated between 27 May 2023 – and that is
19 when the vessel was released from Nigeria – and runs until 24 July 2023, when the
20 vessel re-entered operations under a new time charter. This last period also covered
21 the time the vessel had to go to the UAE for drydocking and repairs.
22

23 Mr President, Members of the Chamber, I will now explain how Mr Horne calculated
24 the applicable hire rate for the first hire period that you have on screen.
25

26 Now, a basic charter agreement would normally establish a daily rate. We would
27 then multiply that daily rate by the number of days of detention, you would get a
28 number, and that would be the end of it.
29

30 However, this charter is a bit more complex and, in a way, reflects the type of entity
31 that hires a sophisticated vessel such as this. I will need to ask for the Chamber's
32 indulgence; this is one issue I will need to cover in detail.
33

34 Now, Mr Horne explains the time charter set hire rates at a variable level, following a
35 formula. He explains at paragraph 48(A), he says: "Here, the daily rate set out in the
36 hire clause ... was not expressed as a pre-agreed daily figure, but as a formula
37 based on a variable index which sought to reflect the prevailing market rate."³¹
38

39 This is evident from the text of the charter itself. We have this at rider clause 55.³²
40 Very briefly, if you have that on screen, and this is described in the first line under
41 the heading, we see "an index based time charter – fully floating."
42

43 As to the methodology used for that, we see right at the bottom: "profit sharing
44 methodology". Then if we can go to the next page, we see: "based on an Agreed
45 Excel Calculator using Baltic Exchange methodology for TD3C TCE, Middle East

²⁹ Memorial, Vol. II, Annex RMI/-39, page 493, para. 57.

³⁰ Memorial, Vol. II, Annex RMI/-39, page 492.

³¹ Memorial, Vol. II, Annex RMI/-39, page 490.

³² Memorial, Vol. II, Annex TH/-2, p. 553.

1 Gulf to China". And further there in that clause, we have reference to other variables,
2 such as speed, port costs and bunkering prices.

3
4 The key point I would like the Chamber to focus on is the use of the TD3C TCE rate.
5 That is a lot of acronyms, but we will break them down. To simplify, that refers to the
6 index – the average price – of freight costs for crude or petroleum products between
7 the Middle East and China. That is a common route for this type of vessel. Mr Horne
8 explains that the TD3C index is considered "the benchmark route for VLCC spot
9 market earnings".³³

10
11 That is the right benchmark to use, for a very simple reason: it is the one agreed on
12 by the parties in the charter. It is also the one widely used to determine the earnings
13 of these types of vessels. Now, the information on which that index is calculated is
14 compiled by the Baltic Exchange, an independent entity and a leading provider of
15 shipping market information.

16
17 Mr Horne included in his report the calculator and the hire invoices. I will invite the
18 Chamber to quickly look at the calculator.³⁴ There are a lot of numbers, but,
19 Mr President, Members of the Chamber, I promise you that, for our purposes, only a
20 few are relevant.

21
22 We can see at the top left-hand corner that the variables are in red. Then we can see
23 the reference to the Worldscale rate. We see that in red at the top, 69.08. Then we
24 see, also in red, the prices for HSFO and MGO, that is, fuel, bunkers, and then we
25 have in the other column in red the port costs. This leads to the highlighted figure at
26 the bottom, where we have 48.224, and that is called the TCE, which stands for
27 "Time Charter Equivalent" and that is, for our purposes, the way of calling the daily
28 rate.

29
30 Over the page, we can very quickly see the inputs. These are the figures that were
31 then plugged into the calculator, to use a Latin term. We see bunker prices, we see
32 the reference to the index in the first column. WS means Worldscale, TD3. Then we
33 see those rates are applied for every single day of the month, and then we have an
34 average at the bottom, and that is the figure they used in the calculator.

35
36 Then over the page, we see how all this information is reflected, thankfully,
37 somewhat more simply, in the hire invoice.³⁵ This was sent by the owners of the
38 vessel to the charterer. We see the daily rate. We see we had the 48.224 TCE figure
39 from the calculator. We see this labelled here as a daily rate. We have that multiplied
40 by the number of days in the month, and then we end with the total rate. That same
41 calculation was done for August, September, October, November, December; that is
42 the time the charter was in place.³⁶

43
44 The Chamber will no doubt note that there is a marked increase in the applicable
45 daily rate between August and December, and this is because the VLCC market is
46 subject to seasonal volatility. That volatility peaks in October/November and is

³³ Memorial, Vol. II, Annex RMI/-39, para. 39, page 486.

³⁴ Memorial, Vol. II, Annex TH/-4, page. 646.

³⁵ Memorial, Vol. II, Annex TH/-4, page. 648.

³⁶ Memorial, Vol. II, Annex RMI/-39, para. 55, page 492.

1 related to the start of the winter season in the northern hemisphere, which, of course,
2 has an impact on energy demands.

3
4 We can easily visualize this fluctuation in the graph provided by Mr Horne.³⁷ We
5 have it on screen. We see the yearly fluctuation of the index, and we can see the
6 rates start on the left-hand side at about \$20,000 per day in July, and then they go
7 up to almost \$120,000 per day in November. To be very clear, this index covers the
8 movements of the entire tanker market. It's not only the *Idun*, it's the entire market.

9
10 Pausing there, the Chamber has, for two-and-a-half days, heard how this case has
11 centred on the 92 days the vessel was detained in Equatorial Guinea. But, as I said
12 at the start of my submissions, the Marshall Islands is also claiming for damage that
13 was a direct consequence of Equatorial Guinea's actions, even when that damage
14 only crystallized after the vessel had left Equatorial Guinea.

15
16 However, if the Chamber is not with us on that proposition, then we have, on screen,
17 the calculation of the loss of hire for the 92-day period the vessel was detained in
18 Equatorial Guinea. As you can see here, that calculation is very straightforward: we
19 take the daily rate applied by the calculator, we multiply it by the relevant number of
20 days, and then we get a total.

21
22 The Tribunal will see that comes up to \$5.3 million. This is, of course, a substantial
23 sum. It is almost, however, a quarter of the total \$19 million amount the Marshall
24 Islands is claiming.

25
26 However, in this scenario, we would nevertheless say that, even if the Chamber is
27 inclined to exclude loss of hire for the time the vessel was in Nigeria, the Marshall
28 Islands should nevertheless be able to recover loss of hire for at least part of the
29 period after the vessel was released from Nigeria, but before it became seaworthy
30 again in July 2023, following repairs.

31
32 In particular, the Marshall Islands should recover for the time the vessel took to sail
33 for the crew change, the time the vessel took to get to the drydock and be repaired,
34 and for the short time (less than a week) before it could start its new contract of
35 employment.

36
37 The reason we say we are entitled to this is because those damages are a direct
38 consequence of Equatorial Guinea's conduct. Our case is that they would have
39 happened, regardless of whatever happened in Nigeria.

40
41 I invite the Chamber to test the point this way: had Equatorial Guinea released the
42 vessel on 11 November 2022, as we say they promised, the vessel would have
43 needed to go to drydock for repairs and inspection before it could resume service.
44 And, in any event, it would have needed to be repaired anyway, too. The vessel
45 would have been unavailable for hire during all that time, and that is a direct
46 consequence of Equatorial Guinea's detention.

47

³⁷ Memorial, Vol. II, Annex RMI/-39, para. 40, page 487.

1 The marine growth on the vessel's hull, the damage to the vessel's paint, the
2 damage to the pumps caused by inactivity – all of that would have happened
3 regardless of the detention in Nigeria. That period may have augmented that
4 damage, but it did not cause it.

5
6 As a conservative estimate, the time I mentioned post release adds up to 46 days.
7 The Tribunal has on screen the calculation for that.³⁸ A claim, we say, for lost profits
8 is appropriate for that time, too.

9
10 The Tribunal will see that the daily rate applicable at that time is lower, and that
11 reflects the season of volatility. The figures we have for those months are quite
12 lower.

13
14 I will now take the Chamber more quickly through the calculations for the second and
15 third periods.

16
17 Essentially, what Mr Horne did was calculate the Time Charter Equivalent figure, the
18 daily rate that we talked about, based on the TD3C index for those periods, and that
19 is set out in his report which we have on screen.

20
21 What Mr Horne did, and it's something that our friends across take issue with, is he
22 added a bunker adjustment, and that is for the simple reason of reflecting the greater
23 efficiency of the "*Heroic Idun*". To briefly explain, the index is based on the earnings
24 of a generic vessel. It means an older, less efficient vessel than the almost brand
25 new, highly efficient "*Heroic Idun*".

26
27 This is a very important point. The Chamber has heard for the past days about the
28 size, the speed, the manoeuvrability, or lack thereof, of the "*Heroic Idun*". It has not
29 heard much about the technical specifications of the vessel. The "*Heroic Idun*" is a
30 state-of-the-art ship. It was built in 2020 by Daewoo Shipbuilding. That is a first-class
31 shipyard in Korea. It has top line efficiency and environmental features, such as a
32 scrubber and an exhaust gas cleaning system. And what those features do, is that
33 they reduce the vessel's emissions – which has environmental benefits – but,
34 critically, they also operate with less fuel, and that is one of the main costs for a
35 vessel; so more efficiency in fuel use leads to higher earnings.

36
37 I have taken the Tribunal through some figures. I hope I will have a more
38 light-hearted slide next, and I will provide a land-based example to illustrate this
39 point.

40
41 Fuel is one of the main costs. Imagine you are running a taxicab business. One of
42 your taxis is a 20-year-old car. It runs on petrol. It has a large, inefficient motor. You
43 also have a brand new car, with a hybrid engine, hi-technical specs; it is much more
44 efficient and consumes much less fuel. Logically, the earnings from the new taxi will
45 be higher than for the older, less efficient taxi. And it is that very difference that
46 Mr Horne addressed by adding an adjustment to reflect that. And then, based on that

³⁸ First Witness Statement of Eivind Kulblik, Memorial, Vol. II, Annex RMI/-2, paras. 90-96 and 101-104, pages 47-48 and 50.

1 adjustment, if we can move on, that leads to a daily rate that he then just multiplies
2 for the period.³⁹

3
4 Now, very briefly, our friends across take issue with Mr Horne and they say that he
5 does not take into account the expenses that would have “naturally arisen in the
6 course of operation”. That is incorrect. Mr Horne did take those expenses into
7 account.

8
9 I have already taken the Chamber through the formula; I do not intend to do so
10 again. But you will recall the formula included the price of HSFO and MGO – that is,
11 fuel. The Chamber will also recall that it includes port costs. What this shows is that
12 the charter party calculator, again, a document prepared by sophisticated entities in
13 the shipping industry, itself already included those costs.

14
15 Further, when Mr Horne relies on the indices – say, the TD3C index – he relies on
16 the Time Charter Equivalent figure, the TCE, and that is why he uses that as a
17 figure. Mr Horne explains that the TCE, and I cite, is “widely used in the shipping
18 industry to calculate a vessel’s daily revenue.”⁴⁰ The key operative word is
19 “revenue.”

20
21 He then explains that the freight calculations under the TCE already deducts “voyage
22 costs (bunkers, port costs, fees, agency etc).” What this means, very simply, is that
23 the TCE figure that he uses is already adjusted downwards to adjust for those
24 expenses.

25
26 In short, Mr Horne’s calculations are well founded and the Marshall Islands is entitled
27 to recover damages for loss of hire.

28
29 Mr President, Members of the Chamber, you will perhaps be relieved to hear that all
30 the other heads of damage can be dealt with much faster.

31
32 The second largest of the Marshall Islands’ claims is for the payments made to
33 secure the release of the vessel and the crew.⁴¹ This claim is very straightforward. It
34 is composed of only two elements. The first one is the €2 million paid to Equatorial
35 Guinea for the fine. This is directly and immediately associated with Equatorial
36 Guinea’s breaches of UNCLOS. The Chamber already heard yesterday in detail why
37 the imposition of the fine was in breach of the Convention, why the Marshall Islands
38 considered it was extortionate, etc., so I will not repeat that point now.

39
40 The second element is the \$15 million paid to Nigeria. Equatorial Guinea says this
41 was a result of a plea bargain. It says it had no involvement in that. Be that as it may,
42 we say that it is also a direct consequence of Equatorial Guinea’s wrongful conduct,
43 namely, Equatorial Guinea’s rendition of the vessel and crew to Nigeria.

44
45 Moving on, the Marshall Islands is also entitled to recover the costs incurred for
46 bunkers consumed and agency fees.⁴² This is in our pleadings what we call “costs

³⁹ Memorial, Vol. II, Annex RMI/-39, para. 57, page 493.

⁴⁰ Memorial, Vol. II, Annex RMI/-39, para. 24, page 484.

⁴¹ Reply, paras. 295-297.

⁴² Reply, paras. 293-294.

1 and expenses relating to the vessel and crew” which we will have on the screen
2 shortly. This is a straightforward claim. It is for approximately \$3 million. To clarify,
3 the Marshall Islands has withdrawn the claims related to vessel investigation
4 expenses and for provisions, so this claim is only composed of two elements which
5 we have detailed on screen.⁴³

6
7 So the claim for bunkers consumed, this claim is supported by the purchase invoices
8 for the bunkers. They show the amounts paid, and the Marshall Islands also relies on
9 the vessel’s engine logs. These are contemporaneous documents which show the
10 amount of bunkers that were consumed at different points in time. In part, this is also
11 necessary because some of the bunkers that were consumed during the 92 days the
12 vessel was detained in Equatorial Guinea were already on the vessel when it arrived
13 there, so there are obviously no invoices for that.

14
15 Briefly, the other component is agency fees, and we can see on the table how the
16 invoices add up, and we have the specific annex references for them.

17
18 Moving on, the Marshall Islands is also claiming compensation for the costs and
19 expenses it incurred to assist the crew during detention,⁴⁴ admittedly, both in
20 Equatorial Guinea and Nigeria and afterwards.

21
22 This claim is approximately for \$1.7 million. This claim, as the Chamber will have
23 seen from our submissions, is based on 12 sub-categories. In the interest of time,
24 I will combine these into four broader categories.

25
26 The first category is additional payments to the crew. This includes additional salary,
27 Christmas, high-risk, and additional bonuses paid to the crew, as well as a
28 disembarkation bonus.

29
30 I want to be absolutely clear on one point: the Marshall Islands is not claiming the
31 regular salary of the crew. We are not claiming what they would have been paid
32 during normal operations. We are only claiming the additional payments made during
33 detention, and we say that is because those payments were made because of the
34 detention.

35
36 The Marshall Islands is entitled to recover those additional payments because they
37 would not have been made but for the detention.

38
39 Moreover, in some cases, those payments were made due to legal obligations
40 arising under the applicable collective bargaining agreements. For example, the
41 Chamber will now see on screen the collective bargaining agreement applicable to
42 Indian officers. The Chamber knows a large percentage of the crew were from the
43 Indian subcontinent, and we have Article 17 of the CBA; this applies when the vessel
44 enters into high-risk or warlike operations areas.⁴⁵ You have on screen clause 17.3.
45 The third bullet provides that if the vessel is in a warlike operations area, the crew
46 will receive a bonus equal to 100 per cent of the daily basic wage. And this is not an
47 uncommon provision in this type of agreement.

⁴³ Letter from the RMI to the Registrar, dated **.

⁴⁴ Reply, paras. 285-292.

⁴⁵ Reply, Volume IV, page 1082.

1
2 The second broad category relates to medical and psychological assistance. This
3 includes medical treatment during detention. It also covers ongoing medical
4 treatment at home. Some conditions, as the Chamber has heard, started being acute
5 but then became chronic, that required treatment at home, and the Marshall Islands,
6 we say, is entitled to recover that. This component also includes the cost to provide
7 psychological support.
8

9 The third broad category is correspondent costs, and these are BUDD's expenses
10 and they are for, among other things, defending the case against the authorities.
11

12 Finally, the fourth category is travel costs. This is a smaller claim for about \$69,000.
13 It includes costs of OSM, the managers, to travel to the Indian subcontinent to have
14 discussions and support meetings with the crew's families. We have heard how
15 those families were reasonably, understandably distressed; the managers went there
16 to update them and to support them. The managers also had discussions with the
17 Indian authorities.
18

19 Moving on to the fifth head of damage, that is for the costs and expenses to
20 repatriate the crew and for the vessel's call to Cape Town.⁴⁶ That is where the crew
21 change occurred. This is for almost \$700,000. It has three components, very briefly:
22 the first one is the cost of a security escort vessel and security guards, and that was
23 to accompany the vessel after it sailed from Nigeria into Cape Town. This was
24 necessary given the understandable fright the crew had when sailing after being
25 detained.
26

27 This component also includes travel wages and the standby payment for the
28 on-signing crew, the replacement crew.
29

30 Finally, the cost of the vessel's call to Cape Town. This includes the port call costs,
31 hotel expenses for crew and owners, and the flight expenses of owners'
32 representatives, and, importantly, that of the clinical psychologist, Dr Perman-Kerr,
33 who flew to Cape Town to provide assistance and assess the crew.
34

35 Moving on, we have costs and expenses to repair the vessel.⁴⁷ The Marshall Islands
36 is claiming these costs. These repairs, in total, we have an updated amount of
37 approximately \$438,000. To be clear, some of the original items that we were
38 including here have been withdrawn, so the figure we have now is reduced.
39

40 Mr President, Members of the Chamber, ITLOS has allowed claims for vessel repairs
41 in cases when those claims have arisen because of detention. In "*Virginia G*", the
42 Tribunal stated that:
43

44 In the view of the Tribunal, only damages and losses related to the value of
45 the gas oil confiscated and the cost of repairing the vessel are direct
46 consequences of the illegal confiscation.⁴⁸
47

⁴⁶ Reply, paras. 298-300.

⁴⁷ Reply, paras. 301-307.

⁴⁸ Paragraph 42.

1 There are now just three items: the first one, if we can go back to the table, is the
2 drydocking and deslopping costs; the second one is painting; the third one is the
3 repair of the Scanjet machines. These are a component of the vessel's pumps.

4
5 The Marshall Islands is entitled to recover these damages because these are not
6 caused by regular wear and tear. Rather, as Mr Kulblik explained,⁴⁹ these were
7 caused by the vessel's detention. These type of vessels are not meant to be
8 stationary for months and months, as what happened here. These damages
9 occurred because of the vessel being stopped. Yesterday, the Tribunal saw, the
10 Chamber saw a chart showing how the vessel was gyrating on its own axis,⁵⁰ round
11 and round, on its anchor. That caused damage to the vessel. There was also marine
12 growth, barnacles, similar damage occurring because the vessel was stationary, and
13 that does not occur in normal operations.

14
15 Critically, and I touched on this at the start, these damages would have been
16 incurred regardless if the vessel had been released from Equatorial Guinea after the
17 92 days. The damage to the vessel suffered during that period of detention was
18 enough to warrant and require drydock repairs and inspections.

19
20 Moving on, we have a claim for the Marshall Islands' wasted costs in the prompt
21 release proceedings.⁵¹ For the avoidance of any doubt, this is not a claim for costs.
22 I will address that subsequently. It is, rather, a claim for wasted costs and these
23 costs were wasted, as we have explained, because Equatorial Guinea improperly
24 transferred the vessel to the Nigerian authorities in the face of prompt release
25 proceedings before ITLOS. Because of that, those proceedings were frustrated. The
26 Marshall Islands had already incurred costs for those proceedings, it had incurred
27 costs to make the application and to prepare for the hearing, and all of those costs
28 were wasted. Now, this is supported by a two-page invoice. A table is not necessary
29 here.⁵²

30
31 Equatorial Guinea contends that there is no authority to support this proposition.
32 That is correct; there is none. And that just goes to show how extraordinary
33 Equatorial Guinea's conduct was. There is no principled reason why the Marshall
34 Islands should not be able to recover those costs when it was Equatorial Guinea's
35 wrongful conduct that rendered them moot.

36
37 Mr President, Members of the Chamber, that concludes my submissions on material
38 damages. I will now turn much more briefly to the claims for non-material damage.

39
40 We have provisionally estimated this claim at approximately \$15 million. I will
41 address five points.

42
43 First, as a matter of legal principle, it is well established in international practice,
44 including that of ITLOS, including that of Annex VII tribunals, and including that of the
45 ICJ, that an award for damages for non-material injury that is caused by detentions is
46 appropriate.

⁴⁹ Witness Statement of Eivind Kulblik, Annex RMI/-2, paras. 99-102, pages 49-50.

⁵⁰ Memorial, Volume 5, Annex EK/-66, page 211.

⁵¹ Reply, paras. 316-317.

⁵² Reply, Annex X.

1 For instance, the *Duzgit Integrity* tribunal held that, and I cite, “the prolonged
2 detention of the ship (with the crew on board) and the Master ... formed part of the
3 circumstances the Tribunal considered to be disproportionate ... an award for moral
4 damages in respect of the treatment of the Master and Crew would further the
5 objectives of achieving full reparation.”⁵³

6
7 Second, the approach that international courts and tribunals have generally followed
8 to ascertain this amount of compensation is generally, but not necessarily, to
9 determine a daily rate and then multiply that daily rate by the number of days the
10 person was detained, but there is no hard and fast rule. It should be calculated
11 based on the factors and circumstances of the detention. It is ultimately a matter of
12 equitable considerations.

13
14 There has been, admittedly, some variation in the applicable rates that international
15 courts have used. To focus on the more recent authorities, we have that the ICJ in
16 *Diallo* used a figure that, if we adjust for inflation, was almost \$1,500 per day.⁵⁴

17
18 In contrast, the *Arctic Sunrise* tribunal set a rate which, if adjusted for inflation, is
19 \$420 per day.⁵⁵ There is some variation.

20
21 Third, the Marshall Islands is claiming a rate of \$2,000 per day per detained crew
22 member.

23
24 Mr President, Members of the Chamber, this rate is higher than the rate set out in
25 *Diallo*, but we say it is justified. It is justified based on equitable considerations due to
26 the circumstances of the case.

27
28 In any event, insofar as there is a parallel with another case, the detention here is
29 much closer, much more analogous to the situation in *Diallo* rather than the situation
30 in *Arctic Sunrise*.

31
32 In fact, the *Arctic Sunrise* tribunal itself drew a distinction with the approach taken by
33 the ICJ in *Diallo* on account that the ICJ “also considered the significant
34 psychological suffering and loss of reputation”, caused by the detention.⁵⁶

35
36 And there are two important points of distinction between our case and the *Arctic*
37 *Sunrise*.

38
39 First, the crew in the *Arctic Sunrise* were committed environmental activists. They
40 were deliberately engaging in high-profile protest activities in Russia. That is
41 admirable. They were courageous. But it implied serious risk that those persons
42 willingly, voluntarily assumed.

43
44 Here, in contrast, we have the crew that were merchant seamen that were simply
45 doing their jobs.

⁵³ Award on Compensation, para. 183.

⁵⁴ Reply, para. 419.

⁵⁵ Reply, para. 420.

⁵⁶ *Arbitration regarding the Arctic Sunrise (Netherlands v. Russia)*, Award on Compensation of 10 July 2017 (2019) R.I.A.A. XXXII 317 at para. 75.

1 Second, the *Arctic Sunrise* crew were only detained for two months and, critically,
2 they were later granted an amnesty by the Russian Federation. That is in stark
3 contrast with the situation here, where the crew were held for 92 days in Equatorial
4 Guinea and then for almost 300 days in total.

5
6 Further, this case is closer to *Diallo*. There, the ICJ identified four factors that
7 informed its decision on compensation. Three of those factors arise here.

8
9 First, the ICJ considered that Mr Diallo was “arrested without being informed of the
10 reasons for his arrest and without being given the possibility of a remedy”.⁵⁷ Pausing
11 there, this tracks with the situation here. The crew were simply held, they were not
12 told why, they were not told what they were charged with, and there was not even an
13 attempt of a legal process. They were not even given access to lawyers when they
14 were being interrogated.

15
16 Second, the ICJ held that Mr Diallo, and I cite, “was detained for an unjustifiably long
17 period pending expulsion.”⁵⁸ The period in *Diallo* was 72 days – 20 days shorter than
18 the time of detention here.

19
20 Third, Mr Diallo was made, and I cite, “the object of accusations that were
21 unsubstantiated”.⁵⁹ Again, that is parallel with the circumstances here.

22
23 Fourth, the loss of reputation suffered by the crew was arguably more severe than
24 that considered in *Diallo*. The crew were honourable, honest merchant seamen.
25 They were wantonly, baselessly, we could even say perhaps maliciously, accused of
26 either being oil thieves, or, even worse, pirates.

27
28 More than 2,000 years ago, pirates were described in *The Odyssey* as being those
29 who risk their lives at sea to bring disaster to other people.⁶⁰ And I want to
30 emphasize this point because an accusation of piracy, of being a pirate, is arguably
31 the strongest, most damaging allegation that could be made against an honest
32 seafarer.

33
34 Equatorial Guinea’s handling of the issue aggravated the reputational injury to the
35 crew and their families. The presumption of innocence was not respected; rather,
36 there was a presumption of guilt. It was accompanied, that presumption of guilt, by
37 very public, very serious accusations.

38
39 These accusations, whether of oil theft or of piracy, had profound reverberations on
40 the Indian subcontinent, they had a profound negative impact on the crew’s families.
41 At times, they faced social backlash. That backlash reached the point where some
42 had to pull children out of school because of bullying. Some were not even able to

⁵⁷ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012*, at para. 21.

⁵⁸ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012*, at para. 21.

⁵⁹ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012*, at para. 21.

⁶⁰ Homer, *The Odyssey*, (Emily Wilson, trans), 2018, 250.

1 leave their houses. This is reflected in the crew statements the Chamber has.⁶¹
2 These are concrete, real-world consequences of severe reputational harm.

3
4 Mr President, Members of the Chamber, critically, as you heard on Monday and
5 yesterday, the detention also had an impact on the livelihoods of some of the crew.
6 Because of this ordeal they went through, because of the trauma they endured,
7 some of them were unable to return to sea.

8
9 The Chamber has heard first-hand from both the Master and the Chief Officer, men
10 who were at the pinnacle of their vocation – they were Masters of vessels – they
11 have nevertheless had to transition to shore-based jobs, which have, as they have
12 told the Chamber, lower pay. This represents a serious long-term negative impact on
13 their livelihoods.

14
15 The Chamber has already heard in detail the circumstances of their detention; I will
16 not belabour that point again.

17
18 Fifth, the Marshall Islands has provided evidence of non-material harm. It has
19 provided witness statements from the entire crew that was taken when they arrived
20 in South Africa. The Chamber has also heard from the Master and the Chief Officer.
21 It has also seen the expert report of Dr Lesley Perman-Kerr. To reiterate, she is a
22 clinical psychologist with a long track record, working with parties involved in
23 traumatic incidents, including kidnapping, piracy and captivity.⁶²

24
25 Equatorial Guinea attempts to discard that evidence – we say, with respect, on
26 spurious grounds. Instead of engaging with the substance of that evidence, with the
27 facts, it attempts to cast doubts on the credibility of those witnesses on the basis of a
28 purported conflict of interest. They claim that the crew have a “vested interest in the
29 success of this particular claim”, and they say that is the case because they stand to
30 gain substantial sums if it succeeds.⁶³ Mr President, Members of the Chamber, that
31 is unfair and, with great respect, it is a somewhat callous argument.

32
33 Equatorial Guinea’s attempt to discount the evidence of the individuals it detained
34 because they stand to gain from any award for non-material damage is inherently
35 misconceived. The victims of wrongful conduct – be they torts, be they crimes, be
36 they internationally wrongful acts – generally testify in proceedings where those torts,
37 crimes or internationally wrongful acts are being adjudicated. That is a basic premise
38 of the legal system. In any event, the Chamber has heard from Marshall Islands’
39 witnesses. It has had them here. It will be able to form its own view as to their
40 credibility.

41
42 Finally, as to psychological harm, Equatorial Guinea has tried to discredit this by
43 saying that the crew could have received adequate psychological assistance
44 remotely. There is no evidence for that assertion. But, in any event, the
45 contemporaneous record shows that owners tried to arrange for a psychologist to

⁶¹ 2nd Engineer-1, Memorial, Vol. II, Annex RMI/-11, para. 29; 3rd Officer-1, Memorial, Vol. II, Annex RMI/-8, para. 28; Able Seaman No 1-1, Memorial, Vol. II, Annex RMI/-17, para. 25.

⁶² Report by Dr Perman-Kerr, Memorial, Vol. II, Annex RMI/-39, page. 498 and ss.

⁶³ Rejoinder, para. 414.

1 visit the crew in Equatorial Guinea. That was not possible given Equatorial Guinea's
2 refusal to allow them into the country.⁶⁴

3
4 In sum, the Marshall Islands is entitled to recover non-material damages based on
5 the treatment, injury, and suffering of the crew.
6

7 Mr President, moving on to interest. First, the Marshall Islands is entitled to interest
8 and that should not be controversial. Interest is considered a constitutive element of
9 full reparation. That is reflected in Article 38 of the Articles on State Responsibility.
10 Moreover, both ITLOS and Annex VII tribunals have awarded interest. In the case of
11 ITLOS, this has been the position since the "*M/V Saiga*" judgment.
12

13 Second, to go to a more recent authority, according to the *Duzgit Integrity* tribunal,
14 determining what amount – and type – of interest depends on three issues.⁶⁵
15

16 The first one is the rate of interest applicable to the award of damages. The *Arctic*
17 *Sunrise* tribunal considered that the applicable interest rate should be that of the
18 "commercial conditions prevailing in the countries where the expenses were
19 incurred".⁶⁶
20

21 Here, for material damages, the correct rate should be the US prime rate plus one.
22 The overwhelming majority of the sums were paid in US dollars. For the fine, which
23 was paid in euros, we say the applicable rate is the EURIBOR six-month rate, plus 5
24 per cent.
25

26 The second element is whether simple or compound interest should be awarded.
27 Again, law of the sea tribunals have accepted that compound interest can be
28 applicable. For example, in "*Virginia G*", ITLOS held that interest should compound
29 annually.⁶⁷ Here, we say an award of compound interest is appropriate with
30 semi-annual compounding, as that reflects current market conditions.
31

32 The third one is the date, or dates, from which interest should run, and the Marshall
33 Islands' position is that ascertaining those dates is straightforward: interest should
34 start running either from the date of the commission of the wrongful act, or from the
35 date the costs or expenses were incurred, and they should run until compensation is
36 paid.
37

38 Third, and finally, Equatorial Guinea contends that interest for any award for
39 non-material damages must be different from the rate applicable to an award for
40 material damages.
41

42 Equatorial Guinea relies on the Tribunal's decision in "*Saiga*", and that is true; that
43 was the approach taken in that case, which is now more than 25 years old. There,

⁶⁴ Witness Statement of Eivind Kulblik, Annex RMI/-2, para. 33, page 38.

⁶⁵ *Arbitration regarding the Duzgit Integrity (Malta v. São Tomé and Príncipe)*, Award on Reparation of 18 December 2019 at para. 205.

⁶⁶ *Arctic Sunrise*, Award on Compensation at para. 122.

⁶⁷ *M/V "Virginia G" (Panama v. Guinea-Bissau)*, Judgment of 14 April 2014, ITLOS Reports 2014 at para. 445.

1 the Tribunal applied different rates for different types of damage. But that is not the
2 approach taken by more recent decisions.

3
4 Both the ICJ in *Diallo* as well as international human rights tribunals, such as the
5 European and Inter-American courts of human rights, have all held that interest for
6 compensation for non-material damages should run at commercial rates.⁶⁸ That is
7 the current more updated position.

8
9 In short, the Marshall Islands is entitled to interest at the rates and periods that I
10 have mentioned, which are set out in our written submissions.

11
12 Moving on to the fourth issue, costs. Mr President, Members of the Chamber, the
13 Marshall Islands is, we say, entitled to recover its costs in these proceedings. I will
14 address this briefly.

15
16 It is true that, so far, ITLOS has not yet awarded costs. Nevertheless, it is also
17 undisputed that Article 34 of the Statute authorizes the award of costs, and here,
18 there are three reasons which justify the Marshall Islands receiving its costs.

19
20 First, despite the Marshall Islands' attempts to diplomatically engage with Equatorial
21 Guinea, Equatorial Guinea simply refrained from doing so. Had there been
22 diplomatic engagement, these proceedings may have been completely unnecessary.

23
24 Second, Equatorial Guinea misled the owners and the crew into believing that, if they
25 paid the fine, they would be released. In reality, they were planning on rendering
26 them to Nigeria.

27
28 Third, Equatorial Guinea aggravated this dispute by transferring the vessel and crew
29 to Nigeria in the face of prompt release proceedings before the Tribunal. As I said,
30 an extraordinary fact.

31
32 Therefore, even if the standard practice is for each party to bear its own costs,
33 Equatorial Guinea's conduct in these proceedings justifies a cost award in the
34 Marshall Islands' favour.

35
36 Finally, the Marshall Islands are entitled to satisfaction and the guarantee of
37 non-repetition.

38
39 Mr President, Members of the Chamber, a mere declaration that Equatorial Guinea's
40 conduct has breached UNCLOS would not suffice in these particular circumstances.

41
42 The Chamber has heard from the Marshallese Attorney General and its Agent the
43 particular importance that this case has for the Marshall Islands as a flag State, as

⁶⁸ *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo), Compensation, Judgment of 19 June 2012, I.C.J. Reports 2012* at para. 56; see e.g., *Drozdyk and Mikula v. Ukraine*, Applications nos. 27849/15 and 33358/15, Judgment dated 24 October 2024, at dispositive point 5(a)–(c), applying the same interest rate to payments for pecuniary and non-pecuniary damage; see e.g., *Caso Hidalgo v. Ecuador, Merits, Reparations and Costs* (Series C No. 534), Judgment dated 28 August 2024, at para. 139.

1 the third-largest flag State in the world, and it has heard how it can potentially impact
2 the thousands of vessels flying its flag.

3
4 Given the severity of Equatorial Guinea's breaches and the importance that this
5 issue has before the Marshall Islands as a flag State, and we could say for the
6 shipping world more broadly, it is appropriate and necessary, in these particular
7 circumstances, for the Chamber to order Equatorial Guinea to provide an assurance
8 and a guarantee of non-repetition.

9
10 Mr President, Members of the Chamber, this concludes my submissions. I am
11 grateful for your attention on what may be sometimes a slightly arid subject.

12
13 Mr President, we will have short submissions from Sir Daniel and from the Attorney
14 General.

15
16 Should we break and then return, or should we continue?

17
18 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Dr Casas, I believe we can
19 continue until the break, and if we haven't finished with the statement, perhaps we
20 take the break and then continue thereafter. So Sir Daniel may make a statement
21 now.

22
23 So thank you, Dr Casas.

24
25 You have the floor, Sir Daniel.

26
27 **SIR DANIEL BETHLEHEM:** Thank you, Mr President.

28
29 Mr President, I note that my submissions may go marginally beyond the break; if you
30 would be content to sit, perhaps, for five or six minutes beyond the break, that would
31 allow us to come to the end of the session.

32
33 **THE PRESIDENT OF THE SPECIAL CHAMBER:** That is quite in order.

34
35 **SIR DANIEL BETHLEHEM:** Thank you very much, Mr President.

36
37 Mr President, Members of the Chamber, you have had almost two-and-a-half days of
38 detailed submissions from the Marshall Islands on the facts, on the evidence and on
39 the law, and you have heard from our principal witnesses.

40
41 Before we close our argument, I would like to step back a little from the detail and
42 pull together key elements of our case.

43
44 And in doing so, Mr President, Members of the Chamber, I note that this is a
45 portentous case; it is a case of very considerable moment. It is wide-ranging in its
46 scope and its scale, with freedom of navigation, flag State jurisdiction and
47 interference with flag State responsibility at its heart, but it also draws in other issues
48 of fundamental importance going to the welfare of seafarers and considerations of
49 humanity, which are an unspoken pillar of UNCLOS. Your judgment in this case,
50 Mr President, Members of the Chamber, on the issues of which you are seized in

1 these proceedings will mark the course of the development of UNCLOS dispute
2 settlement for some considerable time to come. It is a portentous case.

3
4 As you heard from our Agent and from the Attorney General of the Marshall Islands,
5 the imperative behind this case is the looming issues of principle that the Marshall
6 Islands considers need affirmation in the clearest and most ringing of terms. This is
7 not simply a dispute between the Marshall Islands and Equatorial Guinea that comes
8 before you for binary settlement – who is right and who is wrong. The case raises
9 issues that go far beyond that narrow circumference to encompass wide systemic
10 questions of the interpretation and application of UNCLOS, of the jurisdictional reach
11 of ITLOS and the other adjudicatory bodies under its umbrella, such as Annex VII
12 tribunals, and of the scope of the applicable law and whether this requires the
13 application of other rules of international law not incompatible with the Convention or
14 casts them only as an aid to interpretation.

15
16 Mr President, Members of the Chamber, we were given an inkling of Equatorial
17 Guinea's case to come in the brief cross-examination of the Master and the Chief
18 Officer over the last days. The key focus of the questions was the events of 8 August
19 involving the incident with the Nigerian navy boat, the "*Gongola*", unidentified at the
20 time with the AIS off in the dark of night, in a high-risk area for piracy, threatening
21 gunfire against an oil tanker. This of course goes to Equatorial Guinea's narrative
22 that this case is all about Nigeria, nothing about Equatorial Guinea. We expect to
23 hear a good deal more in the coming days about the 8 August incident and no doubt
24 also about the events after 12 November. Less so, I imagine, about the events
25 during the 92 days in which the "*Heroic Idun*" and its crew were in the physical
26 custody of Equatorial Guinea under its sovereign control within its jurisdiction and
27 under its guns.

28
29 The other theme of the cross-examination seemed intent on laying the groundwork
30 for a claim that the crew were actually treated quite well. The Hotel Anda, where the
31 crew were taken after approximately 84 days in a squalid detention centre. We were
32 told by Counsel from Equatorial Guinea – and I mean no disrespect to my friends
33 opposite – we were told by my friend from Equatorial Guinea testifying to his
34 experience that it was a "very nice hotel", "quite an upgrade", with a pool and two
35 restaurants – an observation that persisted in the face of evidence of illness, of
36 elevated anxiety at the uncertain prospects of release and of continuing restrictions
37 on the part of those held there.⁶⁹ The medical facility, we were similarly told in
38 testimony from Equatorial Guinea's Counsel, was "really impressive",⁷⁰ an
39 observation that was seemingly impervious to the shocking and quite extraordinary
40 testimony that we heard from the witness a little earlier, which you will find in the
41 transcript at the reference provided in my speaking note,⁷¹ having regard to the
42 sensitivity of that part of the *in camera* testimony. We will listen closely to how that
43 aspect of Equatorial Guinea's case is developed in the coming days.

44
45 With these anticipatory snippets of Equatorial Guinea's case to come, let me identify
46 the key elements of our case as advanced over the past two-and-a-half days.

69 ITLOS/PV.25/C32/3 (**Confidential**), page 28, line 11 - page 29, line 9.

70 ITLOS/PV.25/C32/3 (**Confidential**), page 27, line 49.

71 ITLOS/PV.25/C32/3 (**Confidential**), page 11, lines 24-38.

1 First and foremost, it is a case about Equatorial Guinea's conduct, and about its
2 conduct alone, in the 92 days from the interception of the "*Heroic Idun*" on the
3 12 August 2022 to its rendition of the vessel and the crew to Nigeria on the
4 11 November 2022. This was all Equatorial Guinea's time – the vessel and crew held
5 within its sovereign jurisdiction, under the guns of its officers, mistreated by its
6 officials, extorted by its Navy; all Equatorial Guinea, no one else. This case is not
7 concerned with pre-12 August and post-11 November developments. We do not hide
8 from those events, but they are context. They are not an excuse and they are not a
9 defence for Equatorial Guinea's conduct. Nigeria's conduct is not in issue in these
10 proceedings.

11
12 The claims of the Marshall Islands, and our requests for relief, are set out in detail in
13 our pleadings, and will be addressed in our final submissions at the close of our
14 argument on Monday. Let me identify them, though, in high level summary.

15
16 First, there is the violation of the Marshall Islands' freedom of navigation rights.

17
18 Second, there is the violation of the Marshall Islands' flag State jurisdiction rights.

19
20 Third, there is the violation of Equatorial Guinea's due regard obligations in respect
21 of the exercise of the Marshall Islands' flag State jurisdiction duties, including with
22 respect to SOLAS, STCW and its COLREGS responsibilities, and I note also in this
23 regard the Marshall Islands' Detention Order in respect of the "*Heroic Idun*", having
24 regard to the unsafe crew manning levels and the safety of the vessel.

25
26 Fourth, there is the breach of the Marshall Islands' rights and responsibilities with
27 respect to the crew of its flagged vessel.

28
29 Fifth, there is the breach of the rules and principles of humanity regarding the
30 detention and care and treatment of the crew.

31
32 These are simply the headlines, Mr President, Members of the Chamber, and there
33 are also a range of other more detailed claims.

34
35 These rights and claims are overwhelmingly, not just preponderantly,
36 overwhelmingly and manifestly the rights and claims of the Marshall Islands. This is
37 not a claim of diplomatic protection.

38
39 The Marshall Islands makes no claim against Nigeria in these proceedings. We seek
40 no determination of Nigeria's rights. We make no request for any findings of law in
41 respect of any conduct by Nigeria in these proceedings.

42
43 Equatorial Guinea's case on piracy is an afterthought. It was not raised at the time of
44 the interception and detention of the vessel and of its crew on 12 August, nor at any
45 other time in close proximity to these events. Indeed, it was not raised at all with the
46 Marshall Islands, even in the face of successive correspondence seeking to engage
47 with Equatoguinean officials, and even at the point at which prompt release
48 proceedings were commenced. The first time that Equatorial Guinea raised a piracy
49 claim with the Marshall Islands, as the flag State of the "*Heroic Idun*", was in its

1 Counter-Memorial in these proceedings, filed on 15 July 2024, almost two years after
2 the interception and detention of the vessel.

3
4 Mr President, Members of the Chamber, Equatorial Guinea was simply making
5 things up as it went along. On the evidence, the piracy claim was and is a sham, a
6 dissembling fiction, aimed at diverting attention away from proper scrutiny of
7 Equatorial Guinea's conduct.

8
9 Article 293(1) of UNCLOS, the applicable law provision, is injunctive in its terms,
10 requiring that once jurisdiction is established, the application of rules of international
11 law not incompatible with the Convention is required. It is injunctive in its direction to
12 the application of these rules of international law.

13
14 There is a panoply of rights, both express and implicit in UNCLOS, as well as
15 properly in focus through the "other rules" *renvoi* clauses in the Convention, that
16 address considerations of humanity with regard to seafarers. Your jurisdiction has
17 clearly in focus, and must have clearly in focus, those considerations of humanity
18 in respect of the crew of the "*Heroic Idun*" in the circumstances of this case.

19
20 Mr President, Members of the Chamber, I commend, as I have done once before,
21 I commend for your close attention and careful review, the psychological report of
22 Dr Lesley Perman-Kerr appended to our Memorial.

23
24 When it comes to remedies, the breaches committed by Equatorial Guinea cannot
25 simply be addressed and resolved through declarations of breach and just
26 satisfaction. More is required. There were flagrant and continuous violations of the
27 law over an extended period. There was extortion. As you have just heard from
28 Dr Casas, there was lasting loss, damage and injury to the crew. There was damage
29 to the vessel. Equatorial Guinea's egregious conduct requires response. Violations
30 of this moment must have, and must be seen to have, consequences.

31
32 Reputations due in this case cannot be limited to addressing the loss, damage and
33 injury that was apprehended at the point of the commission of the unlawful acts.
34 Reparations are not, and cannot be, just what was visible and quantifiable in those
35 92 days. It must address all loss, damage and injury that is a direct consequence of
36 Equatorial Guinea's unlawful conduct.

37
38 You have heard and you have seen the Master and the Chief Officer. You have
39 before you the witness statements of the other 24 members of the crew. You have
40 Dr Perman-Kerr's expert report. There is lasting damage that is a direct
41 consequence of Equatorial Guinea's actions.

42
43 You have also heard from Ms Nevill and Dr Casas this morning about the wider
44 direct loss, damage and injury, both to the vessel and to the crew, in consequence of
45 Equatorial Guinea's conduct.

46
47 As you have just heard from Dr Casas, this loss, damage and injury falls to be
48 assessed in two categories: the first is the loss, damage and injury that was caused
49 by Equatorial Guinea that was visible in the 92 days. This is the immediate loss,
50 damage and injury caused by Equatorial Guinea. The second category is the loss,

1 damage and injury that was a direct consequence of Equatorial Guinea's conduct in
2 the 92 days but which only crystallized after this period or only became visible and
3 quantifiable after this period.

4
5 A ready example of this second category is that addressed by Dr Perman-Kerr,
6 concluding that what had been an acute trauma for the crew during the 92 days
7 became a chronic and more severe trauma after the crew were rendered to Nigeria
8 on 11 November.

9
10 Similarly, as you have just heard from Dr Casas, there is loss, damage and injury to
11 the vessel that was a direct consequence of Equatorial Guinea's conduct in the 92
12 days but only crystallized after this period or only became visible and quantifiable
13 after this period. This includes the damage to the hull that required drydock repairs
14 and led to consequent loss of hire. The proximate cause of the damage was the
15 initial period of three months' detention at Luba anchorage in Equatorial Guinea, that
16 loss, damage and injury only becoming visible and quantifiable after the vessel was
17 released from Nigeria.

18
19 Mr President, Members of the Chamber, the critical question, for purposes of
20 reparation, is whether the loss, damage and injury was a direct consequence of
21 Equatorial Guinea's conduct. In other words, the question is whether Equatorial
22 Guinea's conduct was the proximate cause of the loss, damage and injury. It is a
23 question of causation, without temporal limitation.

24
25 Mr President, Members of the Chamber, to address this issue, you do not need to
26 make determinations of law about Nigeria's conduct. We acknowledge that loss,
27 damage and injury caused by Nigeria cannot be the subject of reparations in these
28 proceedings. This said, the illegality of Equatorial Guinea's conduct in rendering the
29 vessel and the crew to Nigeria requires that all consequential loss, damage and
30 injury that is sufficiently proximate to this unlawful act is properly traceable to
31 Equatorial Guinea, and requires recompense. This is our case. Mr President,
32 Members of the Chamber, this will require your careful assessment and your wise
33 judgment.

34
35 Mr President, Members of the Chamber, the Marshall Islands will listen attentively to
36 Equatorial Guinea's case over the coming days and we will be ready to address any
37 issue that may arise that warrants our response in our second-round submissions on
38 Monday.

39
40 Mr President, Members of the Chamber, that concludes my submissions and that
41 concludes the substantive submissions of the Marshall Islands in this first round of
42 opening. Mr President, though, before you close the proceedings, may I ask you to
43 call upon the Attorney General for the Marshall Islands to make some very, very brief
44 closing remarks.

45
46 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Sir Daniel. I now
47 invite Mr Bernard Adiniwin, Attorney General of the Marshall Islands, to make a
48 statement. You have the floor, sir.

1 **MR ADINIWIN:** Thank you. Mr President, Members of the Special Chamber,
2 I wanted to say a few words before I leave Hamburg tomorrow to return to the
3 Marshall Islands.

4
5 The Marshall Islands takes this case very, very seriously and I am grateful for all the
6 careful attention you have shown our submission over the last two-and-a-half days.
7 We will continue to monitor the case closely from the capital, but you are in very safe
8 hands with our Agent and the rest of our team from the Marshall Islands who will
9 remain here for the rest of the hearing. Thank you very much.

10
11 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Mr Adiniwin, Attorney
12 General of the Marshall Islands, for those closing remarks.

13
14 This brings us to the end of this morning's sitting and also concludes the first round
15 of oral argument of the Marshall Islands.

16
17 The hearing will be resumed tomorrow, 9 October, at 2:30 p.m., not 3:00, at
18 2:30 p.m., to hear the first round of oral arguments of Equatorial Guinea.

19
20 This sitting is now closed.

21
22 *(The sitting closed at 11.35 a.m.)*