

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2025

Public sitting

held on Friday, 10 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,

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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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:

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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 I now
3 invite Mr Haeri to the podium to give his statement.

4
5 You have the floor, sir.

6
7 **MR HAERI:** Good morning, Mr President, distinguished Members of the Special
8 Chamber. It is an honour and a privilege for me to appear before you today and to do
9 so on behalf of the Republic of Equatorial Guinea.

10
11 I will continue Equatorial Guinea’s submissions today by first setting out a factual
12 overview of the events giving rise to the present dispute.

13
14 Mr President, Members of the Special Chamber, before I make my submissions on
15 the factual background of this case, I would like to make an observation on the
16 revised approach of the Marshall Islands we have heard during this hearing in the
17 relevant factual period.

18
19 Over the past three days, we have heard a lot about the period the vessel spent in
20 Equatorial Guinea, newly styled as the “92-day case”. However, we cannot forget
21 that the Marshall Islands does not limit its factual submissions to events that took
22 place in Equatorial Guinea. Rather, it makes extensive written submissions about
23 what it says transpired in Nigeria.

24
25 This reflects the Marshall Islands’ realization that what happened foundationally and
26 conclusively in Nigeria is germane to the period segued between when the vessel
27 was in Equatorial Guinea.

28
29 I will focus on what Equatorial Guinea submits are five key events. They
30 demonstrate that the salient events cannot be told without Nigeria.

31
32 First, the encounter between the “*Heroic Idun*” and the Nigerian naval authorities on
33 8 August 2022;

34
35 Second, Nigeria’s plea for help to the Equatoguinean authorities on 10 August 2022;

36
37 Third, the investigations Nigeria conducted while the vessel and crew were in
38 Equatoguinean territory and the treatment of the crew;

39
40 Fourth, Nigeria’s repeated requests to return the vessel to Nigeria, culminating in an
41 agreement between Nigeria and Equatorial Guinea for the vessel to be returned to
42 Nigeria;

43
44 And fifth, the plea bargain under which the vessel admitted criminal liability for
45 offences under anti-piracy legislation in Nigeria and under which \$15 million was
46 paid to Nigeria.

47
48 Mr President, Members of the Special Chamber, I turn to address the first of these
49 five points.

1 We have heard from two witnesses of the Marshall Islands: the Master and the Chief
2 Officer. In each case, their evidence reinforced the troubling picture of the actions of
3 the “*Heroic Idun*” on 8 August 2022 when it encountered the Nigerian naval vessel
4 *NNS “Gongola.”* There are seven points to which I would respectfully draw your
5 attention.
6

7 First, the Master confirmed that he overheard discussions between Akpo Terminal
8 and the “*Gongola.*” This also led the Chief Officer to think that “the vessel that was
9 speaking with the Terminal was a patrolling boat”.¹ This is the only reasonable
10 conclusion, since a pirate ship would not engage in communications with Akpo
11 Terminal at all, let alone before trying to hijack the “*Heroic Idun*”.
12

13 Second, the Terminal informed the Master not once, not twice, but three times that a
14 Nigerian Navy ship was heading in its direction, as the Chief Officer confirmed in his
15 oral evidence. This is a different point from the contention that the Master and Chief
16 Officer simply misheard the name of the vessel and, therefore, could not determine
17 whether it was a Nigerian Navy ship.
18

19 On that latter point, the Marshall Islands submitted that the multiple “references to
20 the “*Gongola*” in the transcript do not reflect what the crew actually heard”, as “the
21 VDR transcript was prepared months after the incident by lawyers”.²
22

23 The Marshall Islands has not submitted into evidence the recording of the VDR.
24

25 Third, the “*Heroic Idun*” and the “*Gongola*” engaged in a lengthy conversation prior to
26 the “*Heroic Idun*”’s flight.³ As the Master confirmed, the “*Gongola*” asked him many
27 administrative details: his name, his nationality, the port of registration, the owner of
28 the vessel, and the vessel’s agent in Nigeria, to name a few. It would be highly
29 surprising, it’s respectfully submitted, for pirates to engage in such a structured and
30 prolonged exchange focused on administrative details. This is particularly so having
31 seen the multiple requests for confirmation on how to spell certain names, which
32 would be relevant for the Navy, but useless information to a pirate.
33

34 Fourth, it was during this exchange with the “*Gongola*” that the “*Heroic Idun*”
35 admitted that it did not have the necessary clearances to load oil in Nigeria.⁴ Even
36 more extraordinary was the Master’s evidence that he was not aware he needed a
37 naval clearance and the NNPC clearance to load oil until he arrived at Akpo
38 Terminal, as he led the entry of a vessel the size of the Empire State Building into
39 Nigerian waters.⁵ To say that this is surprising, if it is true, is an understatement.
40

41 In any event, the Master admitted to knowing that he didn’t have the clearances that
42 were required when the Nigerian Navy addressed his ship as the “*Heroic Idun*” and
43 asked for them. This is relevant context.
44

¹ Witness statement of Chief Officer, 9 June 2023, RMI-5, para. 17.

² ITLOS/PV.25/C32/4, p. 16 (lines 20-24) (Ms Grafton).

³ ITLOS/PV.25/C32/3 (confidential), pp. 22 (lines 4-9); 22 (lines 11-14) (Master).

⁴ Memorial, para. 30; Transcript of audio from the bridge on the Voyage data recorder on the evening of 8 August 2022, MT-26, p. 271.

⁵ ITLOS/PV.25/C32/3 (confidential), p. 23 (lines 19-30) (Master).

1 Fifth, when it became clear that the Nigerian Navy wished to investigate the activities
2 of the “*Heroic Idun*,” the Master insisted that the “*Heroic Idun*” was in international
3 waters, not Nigerian waters – his point being to communicate, as he admitted, that
4 the Nigerian Navy would not have jurisdiction in international waters.⁶

5
6 But this supports that the Master understood that he was speaking with the Navy,
7 since it wouldn’t make sense to debate with pirates on the extent of their jurisdiction.

8
9 Sixth, the Master admitted twice that he told the Nigerian Navy that the next port of
10 call was Ceiba, Equatorial Guinea. Yet, he confirmed that, in fact, the real destination
11 was still Nigeria.⁷ The Master, therefore, told the Nigerian Navy something that was
12 untrue. Why would he do that?

13
14 In any event, after the flight of the “*Heroic Idun*,” it is, therefore, unsurprising that
15 Nigeria turned to Equatorial Guinea as the next apparent port of call of the “*Heroic*
16 *Idun*.”

17
18 Which takes me to my seventh and final point. In the counterfactual scenario,
19 meaning had Equatorial Guinea had not interdicted the vessel, the “*Heroic Idun*”
20 would have returned to Akpo Terminal in Nigeria. This is the counterfactual posited
21 by the Marshall Islands. That’s what they say would have happened had there been
22 no interdiction, the vessel would have returned to Nigeria.

23
24 As the Master explained: “Eventually, once the documentation was in place, now that
25 I knew the clearances were required and there should not be any problems, the
26 “*Heroic Idun*” would return to Nigeria once all the clearances were in place and the
27 Terminal allowed us to go back, we would go back just in time for loading”.⁸

28
29 Had the “*Heroic Idun*” returned to Nigeria as planned, it would have been
30 investigated in Nigerian territory, rather than Equatoguinean territory, and it would
31 have faced criminal prosecution in the same manner. This is an important point of
32 causation, and I will return to it on Saturday when I make submissions on that.

33
34 The Marshall Islands fails to explain how the “*Heroic Idun*” planned to then load oil
35 from Nigeria without explaining itself to the Nigerian authorities with the
36 consequences that we know followed.

37
38 Of these events, the Marshall Islands says they are merely “context”. But “without
39 context a piece of information is just a dot”, is how the essayist Michael Venture put
40 it.

41
42 I will now turn to the second fact to which I would like to draw the Chamber’s
43 attention, Nigeria’s plea for assistance.

44

⁶ ITLOS/PV.25/C32/3 (confidential), p. 24 (lines 30-37) (Master).

⁷ ITLOS/PV.25/C32/3 (confidential), p. 22 (lines 39-42); p. 25 (lines 28-39) (Master).

⁸ ITLOS/PV.25/C32/3 (confidential), p. 25 (lines 31-34) (Master). See also Witness Statement of the Master dated 15 December 2023, RMI-1, paras. 83-85; Witness statement of Chief Officer dated 9 June 2023, RMI-5, para. 40; Second Witness Statement of the Chief Officer (Sanu Jose), RMI-61, para. 8.

1 On 10 August 2022, Nigeria made a request to the Equatoguinean Director General
2 of Military Cooperation, in which it requested Equatorial Guinea's assistance in the
3 tracking, interdiction and repatriation of the "*Heroic Idun*" to Nigeria for investigation
4 following the events in Nigeria.⁹

5
6 Yesterday, we heard Captain Esono Nchama's testimony that he had suspicions of a
7 probability of piracy concerning the "*Heroic Idun*" when he received this request, and
8 the reasons why he did so.

9
10 As he explained in clear terms, VLCCs like the "*Heroic Idun*" can be used by pirates
11 as mother ships so that they can refuel without having to go onshore. Captain Esono
12 Nchama also testified to the importance of cooperation in the region as the only
13 effective way to combat piracy in the Gulf of Guinea. He told us no State can counter
14 piracy by itself.

15
16 Against this background, and in direct response to Nigeria's request, Captain Esono
17 Nchama ordered the "*Capitan David*" to interdict the "*Heroic Idun*".¹⁰ Recently, within
18 the last month, the Marshall Islands put into the record the VDR transcript of the
19 communications between the "*Capitan David*" and the "*Heroic Idun*" on the
20 12 August 2022. It clearly demonstrates that the "*Heroic Idun*" had to be asked not
21 once, not twice, but three times to stop its engines.¹¹

22
23 Captain Esono Nchama's evidence was that this conduct, following Nigeria's
24 request, further enhanced Equatorial Guinea's suspicions that the "*Heroic Idun*" was
25 probably involved in piracy, potentially as a mother ship. The transcript also shows
26 that efforts were made to investigate the vessel.

27
28 As we can see on the screen, at 14:32, the "*Capitan David*" asked, "Do you have a
29 small boat?" And requested that the Captain, Chief Engineer and an official come
30 aboard the "*Capitan David*".

31
32 In response, the Master of the "*Heroic Idun*" explained: "We don't have a small boat
33 ... We have lifeboat but ... a lifeboat cannot manoeuvre like that".¹²

34
35 As acknowledged by the Marshall Islands, "at this stage the vessel was in ballast,
36 sitting very high in the water, not yet having loaded any cargo".¹³ The Master further
37 confirmed the distance from the waterline to the main deck was some 15 metres,¹⁴
38 rendering impractical the Marshall Islands' suggestion that it should, and could only,
39 have been boarded at this time.

40
41 The "*Capitan David*" then accompanied the vessel to the Port of Luba. At no point
42 was any force used against the vessel by the "*Capitan David*".

43

⁹ See Request from Nigeria regarding Heroic Idun (WhatsApp messages), REG-002; Witness statement of Captain Juan Nsue Esono Nchama, 10 July 2024, REG-WS-001, para. 18.

¹⁰ Witness statement of Captain Juan Nsue Esono Nchama, 10 July 2024, REG-WS-007, para. 8.

¹¹ Witness statement of Master, 15 December 2023, RMI-1, paras. 88-90.

¹² VDR transcript of exchanges between the Vessel and Capitán David on 12 and 13 August 2022.

¹³ ITLOS/PV.25/C32/1, p. 19 (lines 22-23) (Sir Daniel).

¹⁴ ITLOS/PV.25/C32/3 (confidential), p. 8 (lines 30-35) (Master).

1 The “*Heroic Idun*” and its crew arrived safely in Luba Freeport on the evening of the
2 13 August 2022. The vessel remained stationed in Luba Freeport until its departure
3 on 11 November 2022, accompanied by Nigerian authorities.

4
5 The Equatoguinean Vice-President communicated publicly at that time that
6 Equatorial Guinea had responded to “the motto ‘zero tolerance’ for any act of piracy
7 in our area. We are proud to have collaborated with Nigeria for the *HEROIC IDUN*
8 arrest as a sign of respect for our agreements against maritime piracy”.¹⁵

9
10 In June 2023, Equatorial Guinea again communicated, this time to Nigeria, its
11 understanding that the vessel had been pursued by the maritime authorities of
12 Nigeria “due to having carried out illicit acts of illegal purchase of fuel and piracy”.¹⁶

13
14 I will now move on to the third fact, namely, that upon arrival to Equatorial Guinea,
15 Nigeria directly launched its investigations about the conduct of the “*Heroic Idun*”. It
16 is undisputed that Nigerian authorities conducted their own separate investigations,
17 in which Equatorial Guinea was not substantively involved. The evidence of the
18 “*Heroic Idun*”’s own crew members also notes that the interviews with the Nigerian
19 authorities focused on the actions of the vessel in Nigerian waters.¹⁷

20
21 Equatorial Guinea’s own investigation was concluded by 23 August 2022 with the
22 remainder of the time that the vessel and crew were in Equatorial Guinea being
23 necessary for Nigeria’s investigation. Apart from the fine imposed by Equatoguinean
24 authorities on 23 September 2022 under the CEMAC Code,¹⁸ Equatorial Guinea
25 took no other legal or judicial action against the vessel. The fine had no impact on
26 the safety of the vessel or the care and treatment of the crew. During the crew’s
27 interviews with the Equatoguinean authorities, representatives of Besora were
28 present and facilitated for translation to English for crew members all
29 communications from the authorities, as we heard very clearly from Mr Hernández
30 Martín’s evidence yesterday. The crew were ultimately read their statements in
31 English and were able to make amendments prior to signing, which they also did, as
32 he again confirmed.

33
34 On 20 August 2022, the Nigerian Navy issued a press release confirming that the
35 vessel was not cleared to be in Akpo oilfield at the time. It noted that the vessel’s
36 defiance of the Nigerian authorities led Nigeria to invoke and request the assistance
37 of Equatorial Guinea through the Yaoundé Code, and that a Nigerian Navy
38 surveillance facility was used to track and constantly update Equatorial Guinea on
39 the location of the vessel.¹⁹ This is not surprising since, as we heard, the Master had
40 wrongly told the “*Gongola*” that Equatorial Guinea was the next destination of the
41 “*Heroic Idun*”.

15 Tweet by Vice-President of Equatorial Guinea, 10 November 2022, SA-25.

16 Note No. 6014/023 from the Ministry of Foreign Affairs, International Cooperation and Diaspora of the Republic of Equatorial Guinea to the Embassy of the Federal Republic of Nigeria in Malabo, 3 June 2023, REG-053, p. 3.

17 Witness statement of Master, 15 December 2023, RMI-1, paras. 129-131; Witness statement of Chief Officer, 9 June 2023, RMI-5, para. 52.

18 Resolution from the Ministry of National Defence of Equatorial Guinea, 23 September 2022, REG-039.

19 Nigerian Navy Press Release, 20 August 2022, SA-5.

1 A note verbale from Nigeria to Equatorial Guinea on 24 August 2022 confirmed
2 Nigeria's profound gratitude for the prompt arrest and progress made so far
3 regarding the ongoing investigation.²⁰ Even the Marshall Islands' own diplomatic
4 communications around this time, this time within the 92-day period, evidence that it
5 acknowledged and understood Nigeria's central role in relation to the vessel.
6

7 On 17 and 18 August 2022, within the 92-day period, the Marshall Islands wrote to
8 Nigeria and Equatorial Guinea separately acknowledging that the "*Heroic Idun*"
9 evading Nigerian authorities and its subsequent apprehension may be directly
10 linked.²¹
11

12 On 30 August 2022, the Marshall Islands again wrote to Nigeria referencing its
13 interpretation of the position under UNCLOS regarding freedom of navigation and
14 exclusive flag State jurisdiction. The two points that Marshall Islands says are at the
15 heart of its case, and I will return to this point on the issue of inadmissibility.
16 Equatoguinean authorities were not copied to this letter.²²
17

18 On 13 September 2022, the Marshall Islands acknowledged that the Equatoguinean
19 investigation had been completed but they expressed concern at the allegations
20 made against the vessel by Nigerian authorities.²³
21

22 What this means is that during the 92 days, the Marshall Islands was writing to
23 Nigeria saying "you, Nigeria, are in breach of UNCLOS." Notably, this is before
24 Equatorial Guinea returned the vessel to Nigeria.
25

26 Mr President, Members of the Special Chamber, the Marshall Islands makes a series
27 of complaints about the treatment of the vessel and the crew. Very notable in this
28 regard is that the Marshall Islands fails to engage with the central role of Besora
29 Marítima, maritime agents responsible for the vessel and crew. The argument made
30 in the Marshall Islands' submissions that Equatorial Guinea did not itself provide
31 such amenities fundamentally misses that point.
32

33 The evidence from Mr Alberto Hernández Martín on this point was crystal clear. At all
34 times, Besora was authorized by the Equatoguinean authorities to have complete
35 and constant access to the crew, to facilitate and provide all necessary amenities,
36 food and provisions, and assist in the response to any other needs from the crew.
37 Mr Hernández Martín's evidence was similarly clear that the crew was provided with
38 any provisions or items requested during their stay in Equatorial Guinea. This
39 included food, clothing, toiletries, and necessities as well as recreational items such
40 as alcohol and cigarettes. Additionally, all the crew retained possession of their

²⁰ Note No. 142/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 24 August 2022, REG-020, p. 1.

²¹ Letter from the Marshall Islands' Maritime Administrator to the Chief of the Naval staff at Nigerian Naval headquarters, 18 August 2022, SA-7; Letter from the Marshall Islands' Maritime Administrator to Governor of Luba, 16 August 2022, SA-6, p. 85; Witness statement of William Gallagher, 17 December 2023, RMI-30, para. 29.

²² Letter from the Marshall Islands' Maritime Administrator to Director General of Nimasa, 30 August 2022, SA-10.

²³ Letter from the Marshall Islands' Maritime Administrator to the Attorney General of Equatorial Guinea, 13 September 2022, SA-11, p. 122.

1 mobile phones, received local SIM cards, and had complete access and
2 communications with Besora as their dedicated maritime agents.

3
4 The crew at all times had their own safe accommodation – either on board the
5 vessel, at the accommodation facility or at Hotel Anda.

6
7 On board the vessel, the evidence from the Chief Officer has shown that the crew
8 played sports on a regular basis, including with the guards,²⁴ shared meals with the
9 guards, and slept in their own rooms.

10
11 Those crew members stationed in Malabo were housed in suitable and safe
12 accommodation. Again, Mr Hernández Martín confirmed that the accommodation
13 facility was comfortable, being a brand new building, and had suitable rooms,
14 bathrooms and air conditioning. Besora arranged to furnish the accommodation
15 suitably with bedding and provisions. The crew at all times had access to safe
16 bottled drinking water and a variety of foods from different restaurants, including
17 Indian food made to order by a chef.

18
19 The crew stationed in Malabo also spent several days in Hotel Anda, chosen by
20 Mr Hernández Martín as one of the best hotels in Malabo, and had unrestricted
21 access to all its amenities. Neither the accommodation facility nor the hotel is
22 consistent with the Marshall Islands' suggestion of inhumane mistreatment.²⁵

23
24 The crew was also given complete access to medical care. It is undisputed that the
25 crew were seen and treated, several times, at La Paz, which Mr Hernández Martín
26 described as the "premier hospital in Equatorial Guinea".²⁶

27
28 It has not been disputed that it was Besora itself which would select and arrange the
29 crew's medical visits when requested. They would personally accompany the crew to
30 either a local hospital or to La Paz. The crew were also able to be visited and seen
31 individually by a chaplain, as confirmed by the Marshall Islands' evidence and by
32 Mr Hernández Martín.²⁷

33
34 In short, there is a stark contrast between the insinuation that the crew were
35 somehow deprived or denied medical care and the fact that they had regular and
36 unimpeded access to the country's top medical facility and hospital staff. No
37 suggestion is offered by the Marshall Islands explaining why La Paz was made
38 available to the crew at all, if there was an intention to mistreat them, nor would any
39 such suggestion be plausible.

40
41 In conclusion, the crew were never mistreated – physically or otherwise – by
42 Equatoguinean authorities. They were always treated well, with respect, as
43 Mr Hernández Martín confirmed very clearly.

44
45 Mr President, Members of the Special Chamber, the Marshall Islands also makes a
46 number of allegations about the conditions and position the "*Heroic Idun*" was in

²⁴ Log, 12 August - 8 September 2022, EK-4, p. 27.

²⁵ Witness statement of Alberto Hernández Martín, 11 July 2024, REG-WS-003, para. 22.

²⁶ Witness statement of Alberto Hernández Martín, 11 July 2024, REG-WS-003, para. 27.

²⁷ Email, 29 August 2022, 16:08, EK-18; Email, 31 August 2022, 00:42, EK-19.

1 during its time in Luba. As evidenced in the witness statement of Mr Howard
2 McDowall, the general manager of Luba Freeport, Luba Bay is well-situated to
3 receive and host vessels the size of the “*Heroic Idun*.”
4

5 As he makes clear, Luba Freeport is in a large, sheltered and protected bay, with
6 minimal tide and wave activity – compared to the port at Malabo, which is more
7 exposed to weather conditions, with larger waves. Luba port serves large oil
8 vessels,²⁸ and has two tug vessels available to assist at all times.
9

10 The Freeport’s VHF radio channel 16 is manned 24 hours a day to respond to
11 communications from vessels in the bay at any time, and the Freeport is well
12 equipped to respond to any safety incidents. At all times, the “*Heroic Idun*” had the
13 ability to contact port authorities in the event of any danger or threat.
14

15 And yet – how many such incident calls did the Freeport radio channel receive from
16 the “*Heroic Idun*”? Not a single one. In his examination, the Chief Officer stated that
17 he did not know he could contact Mr McDowall’s team in the event of danger. Such a
18 statement is simply not credible. VHF radio channel 16 is designated as an
19 international distress frequency, as reflected in the Akpo Terminal Handbook
20 attached to the Master’s witness statement as MT-14.²⁹
21

22 Throughout the entire time that the “*Heroic Idun*” was stationed at Luba
23 Freeport – including during the incidents that the Marshall Islands now suggests
24 posed a danger to the vessel – it is undisputed that not a single communication was
25 made via this channel to communicate distress to the vessel.
26

27 Again, the allegations presented by the Marshall Islands sit at odds with its own
28 evidence:
29

30 a) the condition survey report of the “*Heroic Idun*” conducted after its departure from
31 Nigeria indicates that “the vessel was found to be in good condition”.³⁰ The same
32 report also noted that the “vessel, machinery and outfitting were found to be in a
33 good condition which can be expected for a similar vessel with a similar age”.³¹
34

35 b) the chosen expert of the Marshall Islands, Ms Blount, is stated to be a trainee
36 solicitor at Reed Smith, Counsel on the record for the Marshall Islands in these
37 proceedings.³² That is an unusual choice for an independent expert. That said, as
38 noted even in Ms Blount’s assessment, “the “*Heroic Idun*” was not in imminent peril
39 during her detention”.³³
40

41 c) The Marshall Islands places much emphasis on two hypothetical scenarios
42 resulting from the “*Wele Nzas*” movement in Luba Freeport. However, it is not even
43 alleged that there was damage to the “*Heroic Idun*” as a result.
44

²⁸ Witness statement of Howard James McDowall, 2 July 2024, REG-WS-006, para. 9.

²⁹ Email and AKPO Terminal Regulations and Procedures, 1 August 2022, MT-14, p. 233.

³⁰ Condition Survey Report, EK-78, p. 280.

³¹ Condition Survey Report, EK-78, p. 299.

³² First Expert Report of Voirrey Blount including annexes, 24 November 2023, RMI-37, p. 264.

³³ First Expert Report of Voirrey Blount including annexes, 24 November 2023, RMI-37, para. 36.

1 d) Similarly, the Marshall Islands references the risk of potential twists in the vessel's
2 anchor.³⁴ In his first statement at paragraph 21, Mr Hernández Martín explained that
3 "the owner requested permission to lift the *"Heroic Idun"*'s anchor, as they thought it
4 was twisted. They requested permission to do this. I recall that eventually this
5 request also was approved although, in the end, there was no issue with the
6 anchor".³⁵

7
8 Having shown that no harm occurred to vessel or crew during their stay in Equatorial
9 Guinea pending Nigeria's investigation, I turn now to the fourth key fact: Nigeria
10 made multiple requests for the repatriation of the vessel to Nigeria during this 92-day
11 period. One of the key complaints of the Marshall Islands is that Equatorial Guinea,
12 out of the blue, returned the vessel to Nigeria in November 2022. This is clearly
13 contradicted by the evidence.

14
15 As we can see from the request for cooperation dated 10 August 2022, Nigeria
16 "kindly requests [Equatorial Guinea] to intervene in the track, arrest and repatriation
17 of an illegal VLCC *"Heroic Idun"*." Moreover, it says: "It would be highly appreciated
18 if, in line with subsisting defence cooperation protocols between the two countries,
19 Equatorial Guinea would track and arrest the vessel and hand them (both vessel and
20 crew) over to the Nigerian Government for proper investigation"³⁶ – investigation, in
21 other words, in the place where the incidents that were germane to that investigation
22 had taken place, as Captain Juan said.

23
24 The request is repeated on multiple occasions in subsequent consequent notes
25 verbales, for example:

26
27 a) On 12 September, Nigeria states that "... The Yaoundé Code of Conduct is a valid
28 legal basis for Equatorial Guinea to transfer the vessel and her crew to Nigeria."³⁷

29
30 We have highlighted the dates of these notes verbales, all of which occur within the
31 92-day period.

32
33 b) On 12 October, Nigeria reiterates that "The vessel by her actions between 7 and
34 8 August 2022 breached a number of international conventions ..." such as the
35 United Nations Convention on the Law of the Sea. "Consequently, it is desirable for
36 *M/T "Heroic Idun"* and her crew to be repatriated to Nigeria for investigations."³⁸

37
38 c) Also on 12 October, Nigeria sent a second note including the following:

39
40 The Federal Government of Nigeria is indeed sincerely appreciative of the
41 invaluable support and cooperation it has received so far from the good people
42 and Government of Equatorial Guinea in the case of *MT HEROIC IDUN*. It is
43 also proud of the good neighbourliness and spirit of African brotherhood that

³⁴ See for example, Witness statement of Eivind Kulblik, RMI-2, para. 73.

³⁵ Witness statement of Alberto Hernández Martín, 11 July 2024, REG-WS-003, para. 21.

³⁶ Note No. 138/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 10 August 2022, REG-019.

³⁷ Note No. 150/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 12 September 2022, REG-021.

³⁸ Request from the Ministry of Defence of the Federal Republic of Nigeria to the Ministry of Foreign Affairs of the Republic of Equatorial Guinea, 12 October 2022, REG-040.

1 exists between both nations. This further reinforces the ideals of the Yaoundé
2 Code of Conduct to which both countries are signatories, which allows States
3 in the Gulf of Guinea to cooperate to arrest persons and vessels involved in
4 illegalities at sea in addition to ensuring their prosecution. Accordingly, it is
5 necessary at this stage for Nigeria to take custody and continue with the
6 investigation of *MT HEROIC IDUN*.³⁹
7

8 d) And then Nigeria followed up on its repatriation request four times – on
9 26 October, 31 October, 1 November and 3 November.⁴⁰ You can see an example
10 and the relevant references on the slide.
11

12 These changes culminated in the official handover agreement between the Nigerian
13 and Equatoguinean authorities on 5 November, which Captain Juan referenced in
14 his evidence.⁴¹ Moreover, despite extensive submissions on human rights, Counsel
15 for the Marshall Islands has chosen not to address the fact that, as an addendum to
16 this agreement, Equatorial Guinea requested and obtained an undertaking from
17 Nigeria to treat the vessel's crew in accordance with the provisions of the
18 International Convention of Civil and Political Rights and to guarantee the safety of
19 the vessel while under investigation in Nigeria.⁴² The fact that Equatorial Guinea did
20 so is again simply not congruent with the suggestion of the Marshall Islands that
21 Equatorial Guinea intended to treat the crew inhumanely.
22

23 On 11 November 2022, the "*Heroic Idun*" left the port safely and without incident.
24 Accordingly, on 11 November 2022, Equatorial Guinea's involvement assisting
25 Nigeria in the matter of the "*Heroic Idun*" ended.
26

27 Turning to my fifth and final key fact, I would respectfully like to draw the Chamber's
28 attention to what we know happened in Nigeria: the vessel plead guilty to an offence
29 under Nigerian anti-piracy legislation.
30

31 As Captain Juan explained, "You could say I was wrong, if they hadn't plead guilty,
32 but they did, and I was right."
33

34 We know that, on arrival in Nigeria, the crew were handed charge sheets charging
35 them with two alleged offences under section 12 of Nigeria's Suppression of Piracy
36 and Other Maritime Offences Act 2019 and a third offence under section 1(17)(b) of
37 the Miscellaneous Offences Act of 2004.⁴³

³⁹ Request from the Ministry of Defence of the Federal Republic of Nigeria to the Minister of National Defence of the Republic of Equatorial Guinea, 12 October 2022, REG-043, p. 2.

⁴⁰ Note No. 167/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 26 October 2022, REG-044; Note No. 168/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 31 October 2022, REG-045; Note No. 167A/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 1 November 2022, REG-046; Note No. 169/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 3 November 2022, REG-048.

⁴¹ Ref to REG-50.

⁴² Official handing over of the tanker MT Heroic Idun between the governments, Addendum, 10 November 2022, REG-011.

⁴³ Notification and Statement of Claim, para. 55; Amended charge sheet from the Federal High Court of Nigeria, 14 November 2022, SA-32.

1 The charges were amended on 14 November 2022. The amended charges were,
2 amongst others, that the crew “conspired” amongst themselves “to commit a
3 maritime offence” under section 10 of the Suppression of Piracy and Other Maritime
4 Offences Act 2019.⁴⁴

5
6 In mid-January 2023, the Marshall Islands was contemplating bringing action against
7 Nigeria – noting it was “nearly ready”,⁴⁵ “but the feeling is that with things being so
8 sensitive, in terms of timing we will see what next week brings and reconsider this at
9 the end of next week.”

10
11 Then, in April of 2023, the vessel agreed to plead guilty to an offence under
12 section 16(5)(b) of the Suppression of Piracy and Other Maritime Offences Act. The
13 vessel also agreed to pay a statutory fine of \$15 million as “restitution”, and 5 million
14 Naira, (approximately 5,000 British pounds) and to make an apology in Lloyd’s List to
15 Nigeria. The owners of the vessel made payment on 12 May 2023.⁴⁶ The Marshall
16 Islands did not then bring a claim under UNCLOS against Nigeria as it had
17 previously threatened to do.

18
19 The Marshall Islands’ conduct shows the centrality of Nigeria to the Marshall Islands’
20 claims concerning freedom of navigation and exclusive flag State jurisdiction, a point
21 to which I will return on inadmissibility.

22
23 The Marshall Islands now, before this Chamber, seeks to deflect scrutiny from the
24 formative and concluding events, all of which occurred in Nigeria and culminated in
25 its guilty plea there. Yet, this covers the vast majority of a 10-month period in which
26 the vessel was held, a period of 289 days, of which 198 were spent in Nigeria.

27
28 Importantly, Nigeria, as shown, was also central to the period in which the vessel
29 was in Equatorial Guinea. Nigeria’s role is an unbroken continuum. It is not as
30 though Nigeria somehow disappeared during the 92 days when the vessel was in
31 Equatorial Guinea, as the Marshall Islands prefers to suggest, somehow reappearing
32 at the end of that period. The facts, we would respectfully submit, are clear on
33 Nigeria’s central role in the “*Heroic Idun*” saga.

34
35 Mr President, Members of the Special Chamber, this concludes my presentation on
36 the factual overview of this dispute, and I would respectfully request that,
37 Mr President, the Special Chamber invite Professor Akande to address you on
38 jurisdiction and applicable law.

39
40 Thank you.

41
42 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Mr Haeri for his statement,
43 and I now give the floor to Mr Dapo Akande. You have the floor, sir.

44
45 **MR AKANDE:** Mr President, Members of the Special Chamber, it is an honour to
46 appear before this Tribunal again and a privilege to do so on behalf of the Republic
47 of Equatorial Guinea. You have heard a lot this morning about the facts as seen from

⁴⁴ Notification and Statement of Claim, para. 55.

⁴⁵ Email, 15 January 2023, 10:06, EK-69.

⁴⁶ Proof of Payment of 15 million paid to Nigeria, 12 May 2023, EK-72.

1 the perspective of Equatorial Guinea. We now move to our legal arguments in the
2 case. The issues in this case are very wide ranging, but one thing that emerges from
3 the legal arguments of the Marshall Islands is that across this broad range of issues,
4 they encourage you to take a very expansive approach to the interpretation of the
5 law and of the Convention. In many places, their arguments, in effect, rewrite the
6 Convention.

7
8 Members of the Chamber, I will from time to time take you to provisions of the
9 Convention. I won't always put them up on the screen, but I understand they are in
10 tab 1 of your folder.

11
12 This morning, I will be setting out the grounds on which Equatorial Guinea contests
13 the jurisdiction of this Chamber to deal with some of the claims presented by the
14 Marshall Islands. In this section of our pleadings, I will be making three overlapping
15 points.

16
17 The first is that the Marshall Islands confuses the concepts of jurisdiction and
18 applicable law. It wrongly seeks to use the principle that rules of international law
19 other than the Convention may, in some cases, constitute applicable law, to extend
20 the jurisdiction of this Special Chamber.

21
22 The second is that, other than in limited cases, this Special Chamber does not have
23 jurisdiction to make determinations regarding alleged breaches of treaties or rules of
24 international law outside of the United Nations Convention on the Law of the Sea.

25
26 The third is that the Marshall Islands has a rather cavalier approach to applicable law
27 and indiscriminately seeks to have this Chamber apply rules of international law that
28 are not applicable to claims that fall within the jurisdiction of the Chamber.

29
30 Mr President, I begin with the first of those points: how the Marshall Islands confuses
31 jurisdiction and applicable law. In the submission of Equatorial Guinea, and in the
32 words of Article 288(1) of UNCLOS, this Special Chamber can only exercise
33 jurisdiction with respect to disputes "concerning the interpretation or application of
34 th[e] Convention which is submitted to it in accordance with [Part XV]" – "disputes
35 concerning the interpretation or application of this Convention".

36
37 The jurisdiction of this Chamber does not extend to disputes regarding the
38 interpretation or application of any other instrument of international law or rule of
39 customary international law.

40
41 There is a fundamental distinction between the provisions of Article 288(1) which
42 sets out and circumscribes the Special Chamber's jurisdiction on one hand and, on
43 the other hand, what is provided for in Article 293(1) regarding applicable law, the
44 law applicable to the case.⁴⁷ According to the latter provision, "[a] court or tribunal
45 having jurisdiction under this section shall apply this Convention and other rules of
46 international law not incompatible with this Convention."⁴⁸

47 *M/V "Norstar" (Panama v. Italy)*, Judgment, ITLOS Reports 2018–2019, p. 10, 10 April 2019, para. 136.

48 Emphasis added.

1 The important point here is that it is only after the Special Chamber has established
2 its jurisdiction over the dispute submitted to it, that it can then proceed to apply the
3 relevant law, i.e., the Convention and other rules of international law not
4 incompatible with it.

6 Contrary to what the Marshall Islands' case seems to suggest, the Special Chamber
7 does not have jurisdiction over a dispute regarding the interpretation or application of
8 any rule of international law that happens to be "not incompatible" with the UN
9 Convention on the Law of the Sea. The Chamber can apply such rules in resolving
10 disputes regarding the interpretation or application of the Convention

12 In the words of this Tribunal in the "*Norstar*" case: "Article 293 of the Convention on
13 applicable law may not be used to extend the jurisdiction of the Tribunal."⁴⁹

15 A similar point was made by the Annex VII tribunal in *Arctic Sunrise* when it stated:
16 "Article 293(1) does not extend the jurisdiction of a tribunal."⁵⁰

18 In the case before you, the Marshall Islands has sought to elide these two
19 provisions – and consequently the concepts of jurisdiction and applicable law – by
20 calling upon you to make findings regarding alleged violations of a whole host of
21 instruments and rules of customary international law that the Marshall Islands itself
22 recognizes are "outside" the Convention.⁵¹ It relies for such incorporation on a
23 number of so-called "gateway provisions"⁵² – their terminology. The Marshall Islands
24 attempts to use these provisions to expand the Special Chamber's jurisdiction so as
25 to cover essentially "any question of international law" – to borrow the language of
26 Article 36(2) of the Statute of the International Court of Justice.

28 In the oral pleadings you heard earlier this week, you were told repeatedly, that
29 Article 293(1) is injunctive,⁵³ in the sense that you are required to apply international
30 law. But this provision is not untethered from your jurisdiction. You must apply
31 relevant rules of international law but only in relation to matters within your
32 jurisdiction, as circumscribed by Article 288(1).

34 It is one thing for a tribunal under Part XV to be able to apply rules of international
35 law that are not incompatible with the Convention in order to resolve a dispute as to
36 the interpretation or application of the Convention. It is quite another for such a
37 tribunal to entertain disputes over the interpretation or application of all rules of
38 international law not incompatible with the Convention.⁵⁴ The former is an
39 appropriate recourse to other rules of international law as part of the applicable law.
40 The latter is to seek to confer jurisdiction with respect to disputes concerning other
41 rules of international law.

⁴⁹ *M/V "Norstar" (Panama v. Italy)*, Judgment, ITLOS Reports 2018–2019, p. 10, 10 April 2019, para. 136.

⁵⁰ *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on the Merits, 14 August 2015, para. 188.

⁵¹ Memorial, para. 108.

⁵² Memorial, paras. 125-126.

⁵³ See ITLOS/PV.25/C32/1, p. 36 (line 32) and p. 38 (line 2) (Bethlehem).

⁵⁴ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award, 18 March 2015, para. 316(c).

1 Mr President, Members of the Chamber, this leads me to my second point.
2 According to both the text of the Convention and the consistent jurisprudence of
3 tribunals constituted under Part XV, the jurisdiction of these tribunals with respect to
4 violations of international law only extend to breaches of the Convention. Such
5 jurisdiction does not, as a general matter, extend to making determinations about
6 violations of other treaties or other rules of international law. Now, one exception to
7 this jurisdictional limit is explicitly set out in Article 288(2) of the Convention
8 in relation to cases where an international agreement other than the Convention
9 specifically confers jurisdiction on the Tribunal. That exception is not applicable here.

10
11 The point that determination of violations of rules of international law other than the
12 Convention falls outside the jurisdiction conferred by Article 288(1) was explicitly
13 noted by the Annex VII tribunal in the *Arctic Sunrise* case, when it stated: “Article 293
14 is not ... a means to obtain determination that some treaty other than the Convention
15 has been violated.”⁵⁵

16
17 In that case, just like in this one, the Annex VII tribunal was asked by the Applicant to
18 make determinations that the Respondent had breached obligations under a human
19 rights treaty – the International Covenant on Civil and Political Rights (ICCPR). The
20 tribunal in that case clearly held:

21
22 This Tribunal does not consider that it has jurisdiction to apply directly
23 provisions such as Articles 9 and 12(2) of the ICCPR or to determine breaches
24 of such provisions.⁵⁶

25
26 The Annex VII tribunal in *Duzgit Integrity* took a similar position, holding that it was
27 “not competent to determine if fundamental human rights obligations were violated
28 by São Tomé.”⁵⁷

29
30 Now, in this case, the Marshall Islands, in the submissions which conclude its written
31 pleadings, has also urged you to find that Equatorial Guinea has breached
32 provisions of human rights treaties and customary international human rights law.
33 These are matters and determinations that, in our submission, fall outside the
34 jurisdiction of a court or tribunal constituted under Part XV

35
36 The Marshall Islands seeks to present its human rights claims as if they fall within
37 the scope of the Chamber’s jurisdiction by suggesting that it is only asking for
38 determination of a violation of the Convention, of UNCLOS. However, the wording of
39 its submissions makes it clear that it invites you to make determinations of breaches
40 of specific human rights treaties.

41
42 In paragraph (f) of those submissions, the Marshall Islands requests the Chamber to
43 adjudge and declare that Equatorial Guinea has failed “to respect and [has] violat[ed]

⁵⁵ *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on the Merits, 14 August 2015, para. 192.

⁵⁶ *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on the Merits, 14 August 2015, para. 198.

⁵⁷ *The Duzgit Integrity Arbitration (Malta v. São Tomé and Príncipe)*, PCA Case No. 2014-07, Award, 5 September 2016, para. 210.

1 the human rights of the crew, including as set out in the ICCPR and the African
2 Charter and in customary international law.”⁵⁸

3
4 In addition, the Marshall Islands, in its pleadings, is quite clear in repeatedly alleging
5 violations of these human rights treaties, even addressing the elements required by
6 these treaties and inviting you to make findings on those elements.⁵⁹

7
8 In addition to its human rights claims, the Marshall Islands asks the Tribunal to make
9 specific findings that Equatorial Guinea has breached obligations under various
10 instruments adopted under the auspices of the International Maritime Organization
11 (IMO). In particular, the Marshall Islands seeks findings of violations of the
12 Convention for the Safety of Life at Sea (SOLAS), the International Convention on
13 Standards of Training, Certification and Watchkeeping for Seafarers (the STCW), the
14 Convention on the International Regulations for Preventing Collisions at Sea (the
15 COLREGS). I will refer to them collectively as “the IMO instruments” or “IMO
16 treaties”.

17
18 The Marshall Islands argues that the Chamber has jurisdiction over these
19 instruments through Article 297(1)(c) of the Convention. It also argues that this
20 provision, 297(1)(c), confers jurisdiction on the Chamber so that claims can be made
21 independently of UNCLOS. However, this is not what the wording of Article 297
22 says. The *chapeau* to that article is actually very clear:

23
24 Disputes concerning the interpretation or application of this Convention with
25 regard to the exercise by a coastal State of its sovereign rights or jurisdiction
26 provided for in this Convention shall be subject to the procedures provided for
27 in section 2 in the following cases

28
29 And then (c) is one of those cases, “disputes concerning the interpretation or
30 application of this Convention ...”.

31
32 So the text allows for reference to external rules referred to in paragraph 1(c) but
33 with respect to disputes concerning the Convention.

34
35 However, Equatorial Guinea accepts that what the text of Article 297(1)(c) allows for
36 are determinations in relation to breaches of the external rules but in cases of
37 disputes under UNCLOS. If anything, the presence of Article 297(1)(c) confirms our
38 general argument on jurisdiction and applicable law that the fact that there is a
39 reference to external rules does not mean that claims can be brought under those
40 external rules, as they suggest.

41
42 If that proposition were true, Article 297(1)(c) would hardly be needed.
43 Article 297(1)(c) is an exception to the general rule.

44
45 Even broader than its human rights claims and claims regarding the IMO
46 instruments, the Marshall Islands seeks a determination that, and I quote from their
47 submissions, “all measures adopted by Equatorial Guinea subsequent to the arrest
48 of the *Heroic Idun* and her crew in the EEZ of São Tomé and Príncipe are without

⁵⁸ Memorial, paras. 438(f) and 281; Reply, para. 333(f).

⁵⁹ Memorial, para. 281.

1 basis not just in UNCLOS, but also in international law⁶⁰ It seeks a determination
2 that they are without basis in international law. This is the clear embodiment of the
3 point I made earlier that the Marshall Islands attempts to expand the Special
4 Chamber's jurisdiction so as to cover "any question of international law". The
5 jurisdiction of tribunals under Part XV does not go this far.

6
7 To paraphrase the Annex VII tribunal in the *Arctic Sunrise* case, Article 293 is not a
8 means to obtain determination that rules of international law other than the
9 Convention have been violated.

10
11 Mr President, Members of the Chamber, with your permission, I now turn to my third
12 point. The Marshall Islands has adopted a cavalier approach to the issue of
13 applicable law and indiscriminately seeks to have this Chamber apply rules of
14 international law that are not relevant to claims that fall within the jurisdiction of the
15 Chamber.

16
17 The Marshall Islands seems to have taken the view that, because Article 293(1)
18 provides that the Chamber may apply other rules of international law not
19 incompatible with the Convention, that it is then possible to import all of international
20 law, indiscriminately, into the Convention. It seems to assume that there is no need
21 to assess the relevance of the Convention provision or of the rule of international law
22 that is being invoked to the matters that are actually before the Tribunal.

23
24 However, this approach is plainly incorrect and inconsistent with the approach
25 adopted by tribunals under Part XV. It is of course correct that such tribunals may in
26 appropriate cases refer to relevant rules of international law in the exercise of their
27 jurisdiction under the Convention. The key question is, when is it appropriate to do
28 so? This will be determined by the relevant rule of the Convention at issue and which
29 it is sought and the rule which it is sought to interpret by reference to the other rules
30 of international law.

31
32 Let us look at the human rights claims put before you by the Marshall Islands. I noted
33 earlier that a tribunal exercising jurisdiction under Part XV may not make direct
34 determinations about breaches of human rights treaties. However, the Annex VII
35 tribunal in the *Arctic Sunrise* case considered that "if necessary, it may have regard
36 to general international law in relation to human rights in order to determine whether
37 law enforcement action such as the boarding, seizure, and detention of the *Arctic*
38 *Sunrise* and the arrest and detention of those on board was reasonable and
39 proportionate."⁶¹ Still, the tribunal denied that it had jurisdiction to find breaches of
40 provisions of the ICCPR "as such".⁶² Human rights was regarded as relevant, if at all,
41 "in order to assist in the interpretation and application of the Convention's provisions
42 that authorize the arrest or detention of a vessel and persons".⁶³ This is a very

⁶⁰ Memorial, para. 438(c); Reply, para. 333(c) (see ITLOS/PV.25/C32/1, p. 34 (lines 10-17) (Bethlehem)).

⁶¹ *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on the Merits, 14 August 2015, para. 197.

⁶² *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on the Merits, 14 August 2015, para. 197.

⁶³ *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on the Merits, 14 August 2015, para. 198 (emphasis added).

1 specific use of human rights law and it relates to the interpretation of specific rules of
2 UNCLOS. The tribunal did not imply that a tribunal exercising jurisdiction under
3 Part XV may assess all measures adopted by a State in the context of arrest and
4 detention of a vessel by reference to human rights law. That would be to turn these
5 tribunals into human rights tribunals. As the Annex VII tribunal noted in relation to the
6 ICCPR, “that treaty has its own enforcement regime and it is not for this Tribunal to
7 act as a substitute for that regime.”⁶⁴
8

9 Members of the Chamber, even when there is a specific reference to international
10 law in a provision of the Convention, this does not give room to import all of
11 international law into that provision. Let us take Article 2(3) that is relied on by the
12 Applicant. It is in tab 1 of the Judges’ folder. Article 2(3) which relates, of course, to
13 the territorial sea provides that “[t]he sovereignty over the territorial sea is exercised
14 subject to this Convention and to other rules of international law”. The Marshall
15 Islands then suggests that there is a breach of Article 2(3) whenever a State
16 breaches other rules of international law within its territorial sea. On this basis, it
17 asserts that violations of human rights treaties in the territorial sea, violations of the
18 IMO treaties in that zone, are automatically a violation of Article 2(3).
19

20 This approach to the incorporation of other rules of international law in interpreting
21 the Convention is neither logical nor consistent with the jurisprudence under the
22 Convention. It is not logical to take the view that any breach of other rules of
23 international law in the territorial sea is automatically a breach of Article 2(3). This
24 would mean that courts and tribunals exercising jurisdiction under Part XV are, in
25 effect, legally competent to assess violations of all rules of international law in the
26 territorial sea. There is nothing special about human rights law in this regard that
27 would make violations of human rights law in the territorial sea lead to violations
28 of 2(3), while violations of other rules of international law do not.
29

30 We can take two examples to see where this approach would lead. Imagine that a
31 coastal State takes measures within the territorial sea in relation to the imposition of
32 customs duties or tariffs which are alleged to be incompatible with its obligations
33 under the World Trade Organization Agreements. Could it then be argued that it is
34 not exercising sovereignty in accordance with other rules of international law, and so
35 this Tribunal could so hold on the basis of the breach of WTO law?
36

37 Take another example: a coastal State takes measures against a foreign-owned oil
38 platform or a foreign fishing vessel, foreign-owned submarine cable, located in its
39 territorial sea. It is alleged that this is a breach of its obligations under some
40 international agreement which protects foreign investment and foreign investors. It
41 could be that the State nationalizes this investment, it fails to protect the platform or
42 the cable as required by international investment law. Could it be argued that this
43 Tribunal can then determine a breach of Article 2(3) because of the breach of that
44 other international investment agreement?
45

⁶⁴ *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on the Merits, 14 August 2015, para. 197.

1 It seems inconceivable that the effect of Article 2(3) is to import into that provision
2 compliance with any and all rules of international law, and thus make them
3 applicable in cases before tribunals constituted under Part XV.

4
5 A similar point can be made with regard to Article 87(1), which of course provides
6 that freedom of the high seas “is exercised under the conditions laid down by this
7 Convention and other rules of international law”. In this regard, I note the point that
8 was made by the Annex VII tribunal in the *Chagos Marine Protected Area* arbitration:
9 “The formulation of Article 2(3) is identical to that of Article 87(1) concerning the high
10 seas and any interpretation the Tribunal may reach regarding the scope of the
11 obligation embodied in the former” – that’s 2(3) – “would apply equally to the latter.”⁶⁵
12

13 So you see where this approach would take us.

14
15 Other tribunals considering the interpretation of Article 2(3) have not, in fact, adopted
16 such an expansive approach that would bring in all other rules of international law. In
17 the *Chagos Marine Protected Area* arbitration, the tribunal accepted that Article 2(3)
18 is not merely descriptive, but that it does impose obligations. However, it then
19 “conclude[d] that the obligation in Article 2(3) is limited to exercising sovereignty
20 subject to the general rules of international law”.⁶⁶ Now, two points are worthy of
21 note in relation to that decision.

22
23 First, the tribunal engaged in an extensive review of the work of the International Law
24 Commission when it drafted the provision that is now reflected in Article 2(3). The
25 Tribunal found that, in the Commission, the view that prevailed was a desire to
26 reflect in this provision– what is now 2(3) – the specific limitations imposed by
27 international law on sovereignty over the territorial sea, in addition to importing
28 certain general rules of international law which are applicable in the matter, such as
29 the principle prohibiting the abuse of rights and, generally, the law of State
30 responsibility.⁶⁷

31
32 Second, in its actual decision in that case – this is the *Chagos MPA* arbitration – the
33 tribunal gave effect to the principle of good faith, especially as it applied to
34 undertakings dealing with fishing rights in the territorial sea.⁶⁸ It did not seek to
35 import all of international law into Article 2(3).
36

37 The Annex VII tribunal in the *South China Sea* arbitration also accepted that
38 Article 2(3) imposes an obligation, but its consideration of the other rules of
39 international law that were incorporated into that provision was also limited to fishing
40 rights. It stated that “[t]raditional fishing rights constitute a vested right, and the
41 Tribunal considers the rules of international law on the treatment of the vested rights

⁶⁵ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award, 18 March 2015, para. 503.

⁶⁶ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award, 18 March 2015, para. 516.

⁶⁷ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award, 18 March 2015, para. 511.

⁶⁸ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award, 18 March 2015, paras. 520, 535, together with paras. 417-456, particularly para. 455.

1 of foreign nationals to fall squarely within the ‘other rules of international law’
2 applicable in the territorial sea.”⁶⁹

3
4 The key point, Members of the Special Chamber, is that the so-called gateway
5 provision of Article 2(3) does not open the gate for incorporation and application of
6 all rules of international law, but only of those which specifically impose limitations on
7 sovereignty in the territorial sea.

8
9 Mr President, Members of the Special Chamber, permit me to make a further point
10 regarding when it will be appropriate to have resort to other rules of international law
11 for the purpose of interpreting or applying a provision of the Convention. The
12 applicable law before this Chamber may include other rules of international law to be
13 used in the interpretation and application of the Convention. However, such rules
14 must, in fact, be applicable. In other words, they must apply to the situation at hand.

15
16 This point was emphasized by the Annex VII tribunal in the “*Enrica Lexie*” case,
17 where, like here, Italy had invoked the references to other rules of international law
18 that you find in Article 2(3), 56(2), 58(2), 297(1). Italy invoked those references.
19 However, the attempt to use those provisions to import other rules of international
20 law was dismissed because, “in the view of the Arbitral Tribunal, these Articles are
21 not pertinent and applicable in the present case”.⁷⁰

22
23 Now, in our case, the Marshall Islands has alleged that the Chamber should find that
24 Equatorial Guinea is in breach of the IMO treaties. However, it has to be shown (i)
25 that the specified international rule actually applies; and (ii) that it is being used to
26 interpret or apply a provision of the Convention that is also applicable.

27
28 I will return to some of these points tomorrow when I address the merits of the
29 Marshall Islands’ claim under these IMO instruments. I will show then that these
30 instruments do not, in fact, impose any relevant obligations on Equatorial Guinea
31 with respect to the “*Heroic Idun*”.

32
33 But, for now, let’s focus on the provisions of the Convention through which the
34 applicant seeks to bring these IMO instruments in. The Marshall Islands says that
35 these IMO instruments may be applied because they are generally accepted
36 international rules and standards incorporated into the Convention through various
37 provisions, including Article 94, Article 217 and 297(1)(c).⁷¹ I have already dealt
38 with 297.

39
40 I note that the Marshall Islands fails to specify how the other Convention provisions
41 apply in this case. It is not at all clear how it matters in our case that Article 94 or 217
42 refers to “generally applicable international rules and standards”, when these
43 provisions, on their face and explicitly, refer to the duties of the flag State. Article 94
44 has that title: “Duties of the flag State”.

69 *The South China Sea Arbitration (The Republic of Philippines v. The People’s Republic of China)*, PCA Case No. 2013-09, Award, 12 July 2016, para. 808 (emphasis added).

70 *The “Enrica Lexie” Incident (Italy v. India)*, PCA Case No. 2015-28, Award, 21 May 2020, para. 798.

71 See ITLOS/PV.25/C32/4, p. 26 (lines 11- 23) (Grafton).

1 Paragraph 1 provides that “[e]very State shall effectively exercise its jurisdiction and
2 control in administrative, technical and social matters over ships flying its flag”.⁷²

3
4 Paragraph 3 provides that “[e]very State shall take such measures for ships flying its
5 flag.”⁷³

6
7 So, though the generally accepted international rules and standards are relevant to
8 these provisions, these UNCLOS provisions simply do not apply to the conduct of
9 Equatorial Guinea in our case, as it is not the flag State in relation to the vessel in
10 question.

11
12 There is no dispute regarding the interpretation or application of Equatorial Guinea’s
13 duties as a flag State to which, then, these IMO treaties could become relevant.

14
15 Article 217 is headed “Enforcement by flag States”, also inapplicable. Paragraph 1:

16
17 States shall ensure compliance by vessels flying their flag or of their registry
18 with applicable international rules and standards, established through
19 competent international organizations or general diplomatic conference.⁷⁴

20
21 No assistance is also to be gained by seeking to use Article 2(3) with respect to
22 conduct within the territorial sea, because the relevant obligations under these IMO
23 instruments are imposed on the flag State.

24
25 Indeed, the pleadings of the Marshall Islands themselves make that clear. In its
26 Memorial, when it sets out the relevant obligations incumbent on the Administration,
27 the Marshall Islands itself notes that, in these instruments, the Administration is the
28 Government of the flag State.⁷⁵

29
30 So it is not just the UNCLOS provisions which make clear that these treaties are only
31 applicable insofar as one is considering the duties of the flag State. The IMO treaties
32 themselves make that clear.

33
34 A similar point can be made in relation to Article 230, also relied on, which refers to
35 “applicable international rules and standards”. This provision also clearly refers to
36 imposition of penalties for the prevention, reduction and control of pollution of the
37 marine environment. Imposition of penalties for the prevention, reduction and control
38 of pollution of the marine environment.

39
40 There is no claim here that some action has been taken against the “*Heroic Idun*” for
41 the prevention, reduction and control of pollution of the marine environment.

42
43 Mr President, Members of the Chamber, let me conclude. Equatorial Guinea submits
44 that the jurisdiction of this Chamber is limited to disputes relating to the interpretation
45 and application of UNCLOS. Equatorial Guinea does not dispute that the Special
46 Chamber may have resort to rules of international law “not incompatible with the

⁷² Emphasis added.

⁷³ Emphasis added.

⁷⁴ Emphasis added.

⁷⁵ Memorial, paras. 297, 301.

Convention” in interpreting the provisions of the Convention whose violation is alleged in these proceedings. However, in our submission, the so-called “gateway provisions” do not allow for the jurisdiction of the Chamber to be extended to make determinations of breaches of treaties that are “outside” the UN Convention on the Law of the Sea or under general international law, other than in the exceptional cases I set out above.

Finally, Equatorial Guinea submits, that in assessing on the merits whether external rules of international law constitute part of the applicable law that should be taken into account in the interpretation and application of claims under the Convention, it is essential to consider whether such rules are, in fact, relevant to such provisions, and whether the provisions and other rules of international law are applicable to the facts of this case.

Mr President, that concludes my submissions for this morning. I thank you for your kind attention, and perhaps, in view of the time, this might be a convenient time to take the coffee break.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Akande. Indeed, I think this is an appropriate time to take a break of 30 minutes. So we will resume again at 10 minutes to 12.00 p.m.

So the hearing will resume then. The meeting is adjourned. Thank you.

(Adjourned at 11.22 a.m.)

THE PRESIDENT OF THE SPECIAL CHAMBER: I now invite Mr Haeri to continue his statement. You have the floor, sir.

MR HAERI: Thank you, Mr President, Members of the Special Chamber. I will address you now on the first issue of admissibility, namely the *Monetary Gold* or “indispensable third party” principle.

Mr President, Members of the Special Chamber, the Marshall Islands’ claims relating to the interdiction and the return of the “*Heroic Idun*” to Nigeria are inadmissible pursuant to the *Monetary Gold* or indispensable “third party principle”. This principle precludes the Marshall Islands’ claims regarding freedom of navigation and exclusivity of flag State jurisdiction, the heart of its case. Those claims necessarily impugn Nigeria’s legal rights and interests as a non-participating State in these proceedings, as it was Nigeria that made the request for the interdiction and return of the vessel.

The test is one of subject matter. The interdiction and return of the “*Heroic Idun*” is the subject matter of the Marshall Islands’ claims on freedom of navigation and exclusivity of flag State jurisdiction. That is why those claims are inadmissible.

If the Special Chamber were to find that Nigeria was wrong to have made that request for interdiction and return, this would on any analysis implicate Nigeria. Moreover, the Marshall Islands’ suggestion that Equatorial Guinea can be sanctioned for the interdiction and return of the vessel to Nigeria without

1 consideration of Nigeria's request to do so is contrived and unconvincing. The facts
2 are clear and undisputed that what took place here is that Equatorial Guinea lent its
3 hand of help to the aid and assistance of Nigeria. By positing that Equatorial Guinea
4 can in this context be treated in isolation, the Marshall Islands begs the question:
5 What Mr President, Members of the Special Chamber, is the sound of one hand
6 clapping? The position of the Marshall Islands, divorced as it is from reality, rings
7 hollow.

8
9 The international law parameters of the indispensable third party principle are well
10 rehearsed and have been opined on multiple times by the International Court of
11 Justice and the international adjudication *fora*. The principle applies to the
12 proceedings under UNCLOS, a point considered and so concluded by ITLOS in the
13 "*Norstar*" case in terms that resonate with that of the Court. Notably, the Parties
14 essentially agree on the legal ambit of the principle and their point of divergence is
15 its application in this case, namely, what is the subject matter at issue.

16
17 For the Marshall Islands, the subject matter, the vital issue in this case, is the
18 particular parameters of the right of visit under Article 110 of UNCLOS. Equatorial
19 Guinea doesn't agree. The attempt to narrow what is said to be the vital issue to be
20 decided in this case is self-serving and unpersuasive. Rather, Equatorial Guinea's
21 submission is that the subject matter is the interdiction and return of the "*Heroic*
22 *Idun*" to Nigeria. These respective positions of the Parties on the principle of
23 indispensable third party is the main point of disagreement between them.

24
25 Nigeria's legal rights and interests fall, in line with the jurisprudence, for prior
26 temporal and logical assessment regarding the Marshall Islands' claims on the
27 interdiction and return of the "*Heroic Idun*" to Nigeria. Temporally, Nigeria's request
28 for aid and assistance preceded Equatorial Guinea's subsequent giving of that aid
29 and assistance. Nigeria's request came first in time. Logically, Equatorial Guinea's
30 aid and assistance to Nigeria necessarily implicates Nigeria's request for that aid and
31 assistance. If Equatorial Guinea was wrong to provide that aid and assistance
32 previously sought by Nigeria, Nigeria must have been wrong to ask for it.

33
34 Mr President, Members of the Special Chamber, I turn now to the first of five
35 submissions that I will make in this regard. The first one concerns the subject-matter
36 test for the indispensable third party.

37
38 Mr President, Members of the Special Chamber, it is a well-recognized general
39 principle of international law that claims where the legal rights and interests of third
40 States "would form the very subject-matter of the decision" are inadmissible in
41 inter-State proceedings. Although some attempt was made by the Marshall Islands in
42 its opening to imply that this was somehow a marginal principle, without any
43 authority for such a suggestion, it is anything but.

44
45 On the contrary, it is a cardinal principle founded on the cornerstone of State consent
46 to inter-State proceedings. As there is no particular disagreement on the nature of
47 the test for the engagement of the principle, I will only very briefly recap some key
48 authorities on it.

1 The core test for assessing the applicability of this principle was first set out by the
2 International Court of Justice in its decision in *Case of the Monetary Gold removed*
3 *from Rome in 1943*. At its core, the test requires an identification of the “subject-
4 matter” of the claim at issue.

5
6 In particular, the Court found:

7
8 Where, as in the present case, the vital issue to be settled concerns the
9 international responsibility of a third State, the Court cannot, without the
10 content of that third State, give a decision on that issue binding upon any
11 State, either the third State, or any of the parties before it.⁷⁶

12
13 As Albania’s legal interest would have formed “the very subject-matter” of the
14 decision, the Court declined to exercise its jurisdiction.⁷⁷

15
16 A similar approach was taken by the Court in the *Case concerning East Timor*
17 *(Portugal v. Australia)*. In that case, Portugal objected to the conclusion of a treaty
18 between Australia and Indonesia which created a zone of cooperation in a maritime
19 area between the then Indonesian Province of East Timor and Australia.

20
21 The Court held that Australia’s behaviour could not be assessed without “first
22 entering into the question why it is that Indonesia could not lawfully have concluded”
23 the treaty in question. It again held that “the very subject-matter of the Court’s
24 decision” would require a determination of whether Indonesia could act as it had
25 done.⁷⁸

26
27 The Court accordingly held that it

28
29 could not rule on the lawfulness of the conduct of a State when its judgment
30 would imply an evaluation of the lawfulness of the conduct of another State
31 which is not a party to the case.⁷⁹

32
33 This was so even where the obligations were those *erga omnes*, holding that
34 “whatever the nature ... of the obligations invoked, the Court could not rule on ... the
35 lawfulness of the conduct of another State which is not a party to the case.”⁸⁰

36
37 Far from being a fringe issue, this indeed shows the importance of the principle, no
38 matter the nature of the obligations claimed to be at issue, whether *erga omnes* or
39 otherwise.

40
41 The suggestion was made in the Marshall Islands’ opening that the arbitration case
42 of *Larsen v. Hawaiian Kingdom* was somehow unhelpful to Equatorial Guinea’s
43 position because it had been addressed in a footnote in pleadings. The opposite is
44 the case.

⁷⁶ *Case of the monetary gold removed from Rome in 1943 (Preliminary Question)*, Judgment of 15 June 1954, I.C.J. Reports 1954, p. 19, p. 33.

⁷⁷ *Case of the monetary gold removed from Rome in 1943 (Preliminary Question)*, Judgment of 15 June 1954, I.C.J. Reports 1954, p. 19, p. 35.

⁷⁸ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 90, 30 June 1995, para. 28.

⁷⁹ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 90, 30 June 1995, para. 29.

⁸⁰ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 90, 30 June 1995, para. 29.

1 Firstly, in that case, the principle was raised by that distinguished tribunal *proprio*
2 *motu*, as the Marshall Islands accepts. Again, this underscores the importance of the
3 principle. Even when not pleaded, where it is at issue, it has inevitable
4 consequences. Nor is the Marshall Islands' suggestion correct that, because it is a
5 matter of admissibility, it is purely a matter of discretion, if that were suggested.

6
7 While judgment is of course required on the application of the test, it is not a
8 discretionary power such as would allow for it to be ignored.

9
10 Secondly, the relevant framing of the test in East Timor, which is highly germane,
11 was explicitly endorsed by the arbitral tribunal in *Larsen v. Hawaiian Kingdom*. The
12 tribunal cited with approval the Court's finding in *East Timor* that "the Court could not
13 rule on the lawfulness of the conduct of a State when its judgment would imply an
14 evaluation of the lawfulness of the conduct of another State which is not a party to
15 the case."⁸¹

16
17 As noted by Judge *ad hoc* Couvereur in *Guyana v. Venezuela*, "[p]arties to
18 proceedings before the Court cannot act in the place of a sovereign third party to
19 defend the latter's rights, nor can they be required to assume the burden of proving
20 that that State has performed its obligations."⁸²

21
22 The Tribunal in "*Norstar*", to which I will return later in more detail, adopted
23 essentially the same test as that of the Court. It held that "where 'the vital issue to be
24 settled concerns the international responsibility of a third State' or where the legal
25 interests of a third State would form 'the very subject-matter' of the dispute, an
26 international court or tribunal cannot, without the consent of that third State, exercise
27 jurisdiction over the dispute".⁸³ There can be no doubt, therefore, of the importance,
28 relevance, and consequences that flow from the indispensable third party principle.

29
30 This leads me on to my second submission, that the subject matter at issue is the
31 interdiction of the "*Heroic Idun*" and its return to Nigeria, which corresponds to claims
32 on freedom of navigation and exclusive flag State jurisdiction.

33
34 Mr President, distinguished Members of the Special Chamber, the crux of the
35 disagreement between the Parties is the application of the test I have just set out –
36 namely, what is the subject matter in this case, the vital issue to be decided? The
37 Marshall Islands suggests that it is the right of visit under Article 110 of UNCLOS.
38 This is in keeping with the theme of the Marshall Islands' new approach at the
39 hearing assiduously to direct your attention away from the picture, the jigsaw puzzle,
40 and towards a particular part of a particular piece on the board regarding Article 110.

41
42 The problem is that that piece makes no sense on its own. It's just a piece of a
43 puzzle. What possible motive could Equatorial Guinea have had to interdict and

⁸¹ *Larsen v. Hawaiian Kingdom*, PCA Case No. 1999-01, Arbitral Award, 5 February 2001, para. 12.15, citing *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 90, 30 June 1995, para. 29.

⁸² *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, Preliminary objections, 6 April 2023, Partly separate and partly dissenting opinion of Judge *ad hoc* Couvereur, para. 44.

⁸³ *M/V "Norstar" (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44, 4 November 2016, para. 172.

1 return the “*Heroic Idun*” to Nigeria with a story that is now said to start on 12 August
2 2022 with the vessel simply drifting in and out of the respective Exclusive Economic
3 Zones of Equatorial Guinea and São Tomé and Príncipe? This makes no sense.

4
5 Only a year earlier, Equatorial Guinea rescued a Marshall Islands’ vessel attacked
6 by pirates, the “*Sea Phantom*”. Why the change here, the Marshall Islands’ position
7 begs? But it doesn’t want the Chamber to consider the answer, because the answer
8 is terminal to the admissibility of claims it advances here.

9
10 So the other pieces of the jigsaw puzzle, the Marshall Islands submits, is what it
11 dismissively calls “context”. Well, “context is everything”, as neuroscientist Dr Beau
12 Lotto, has observed.

13
14 Context contains the reason why these events happened. Yet, for the Marshall
15 Islands, context is *just* context – to which this Chamber should have no regard. And
16 so, the *non sequitur* and flawed premise of the Marshallese position is that there is –
17 and can be – no reason.

18
19 Leaving aside that context is what makes an event understandable, have meaning,
20 this is a self-serving artifice. The subject matter of the case is not the right of visit
21 under Article 110; it is quite evidently the interdiction and return of the “*Heroic Idun*”
22 to Nigeria. This is where the Parties disagree on the application of the *Monetary*
23 *Gold* test.

24
25 As an aside here, I note that the Marshall Islands makes other claims, such as on
26 considerations of humanity and regarding the fine in Equatorial Guinea, which aren’t
27 affected by this admissibility objection and will be addressed separately.

28
29 Returning to the subject matter at issue, it is clear that the interdiction of the “*Heroic*
30 *Idun*” and its return to Nigeria concerns alleged breaches of freedom of navigation on
31 the high seas and the exclusivity of flag State jurisdiction.

32
33 Notably, and contrary to its Article 110 subject-matter argument, the Marshall Islands
34 accepts this in both of its written pleadings in these proceedings in the following
35 terms:

36
37 a) The Marshall Islands’ Memorial pleads that: “At its core, the dispute between the
38 Marshall Islands and Equatorial Guinea concerns Equatorial Guinea’s interception
39 and diversion of the ‘*Heroic Idun*’ and her crew ..., contrary to the principles of
40 freedom of navigation and exclusive flag State jurisdiction.”⁸⁴

41
42 b) Again, in its Reply, the Marshall Islands states: “At its core, however, the case
43 concerns the Marshall Islands’ freedom of navigation and exclusive flag-State
44 jurisdiction”⁸⁵

84 Memorial of the Marshall Islands, para. 18.

85 Reply of the Marshall Islands, para. 3.

1 We heard this in the Marshall Islands' opening from multiple speakers, including
2 Dr Busco, who called these two issues "the very heart of the Marshall Islands'
3 case."⁸⁶
4

5 On this, Equatorial Guinea agrees. The dispute regarding the interdiction and return
6 of the "*Heroic Idun*" to Nigeria – the very subject matter of this particular set of
7 claims – plainly corresponds to the Marshall Islands' claims about freedom of
8 navigation and exclusivity of flag State jurisdiction.
9

10 In this case, the sole and exclusive basis upon which the "*Heroic Idun*"'s navigation
11 was intercepted was Nigeria's request. The only reason the "*Heroic Idun*" was
12 intercepted – and the only reason the Parties are before this Chamber today – is
13 because of Nigeria's actions, Nigeria's assessments and Nigeria's request.
14

15 This request by Nigeria plainly impacted upon the "*Heroic Idun*"'s freedom of
16 navigation and Marshall Islands' flag state State jurisdiction. It was only to that
17 request that Equatorial Guinea responded.
18

19 Indeed, as Captain Esono Nchama explained before this Chamber yesterday,⁸⁷ and
20 as I noted earlier this morning, the "*Heroic Idun*" remained in Equatorial Guinea for
21 the period that it did until it was formally transferred to Nigeria pursuant to an
22 agreement between the governments of Nigeria and Equatorial Guinea;⁸⁸ the subject
23 matter of the dispute, therefore, necessarily implicates Nigeria.
24

25 The Marshall Islands notably acknowledges in its Reply that "Nigeria may ... be
26 relevant in respect of the Marshall Islands' claims that the "*Heroic Idun*" was arrested
27 on the high seas, and subsequently transferred to Nigeria"⁸⁹ Indeed, as
28 explained, Nigeria is undisputedly and necessarily not just relevant, but central, to
29 those claims.
30

31 Faced with the clear implications this has on the admissibility of its claims concerning
32 the interdiction and return of the "*Heroic Idun*" to Nigeria, the Marshall Islands
33 attempts to construe the subject matter at issue in an artificially narrow way.
34

35 In particular, in its written Reply, the Marshall Islands argues that the specific rights
36 and obligations contained in Article 110 of UNCLOS constitute "the very subject-
37 matter" of the dispute.⁹⁰ That is incorrect. The subject matter of the dispute is not the
38 right of visit under Article 110 of UNCLOS. The core subject matter, as elsewhere
39 acknowledged by the Marshall Islands, is the interdiction and return of the "*Heroic*
40 *Idun*" to Nigeria corresponding with claims of freedom of navigation and exclusivity of
41 flag State jurisdiction.
42

⁸⁶ ITLOS/PV.25/C32/3 (confidential), p. 32, lines 8-9 (Busco).

⁸⁷ ITLOS/PV.25/C32/6 (confidential), p. 40 (lines 43-46), p. 41 (4-7, 11-14) (Esono Nchama), p. 44 (lines 16-18) (Esono Nchama).

⁸⁸ Official handing over of the tanker *MT Heroic Idun* between the governments of the Republic of Equatorial Guinea and the Federal Republic of Nigeria, 5 November 2022, REG-050.

⁸⁹ Reply of the Marshall Islands, para. 67.

⁹⁰ Reply of the Marshall Islands, para. 73.

1 As such, this is the main point of disagreement between the parties. Is the “vital
2 issue” – the “core” of the dispute – really the particularities of the right of visit under
3 Article 110 of UNCLOS? Clearly, that is not a tenable position. Rather, in addressing
4 the vital issue of the interdiction and return of the “*Heroic Idun*” to Nigeria, the
5 triangular relationship between Nigeria as primary actor and requestor, Equatorial
6 Guinea as assisting State, and the Marshall Islands as flag State is at issue.

7
8 The consequence is that findings on freedom of navigation and exclusive flag State
9 jurisdiction would, in the words of the Court, “imply an evaluation of the lawfulness of
10 the conduct of another State which is not a party to the case.”⁹¹ As such, these
11 claims are inadmissible.

12
13 This leads me on to my third submission, that Nigeria’s legal rights and interests fall
14 for prior temporal and logical assessment.

15
16 Mr President, Members of the Special Chamber, it is not disputed that Equatorial
17 Guinea acted solely in compliance with Nigeria’s request to interdict the “*Heroic*
18 *Idun*”. This fact sits alongside accusations made by the Marshall Islands in its
19 opening submissions that Equatorial Guinea, and I quote from submissions on
20 Wednesday, acted “wantonly” and “baselessly”.⁹²

21
22 The reason it was wanton and baseless, so the Marshall Islands’ logic goes, is that
23 our story begins on 12 August 2022, with the “*Heroic Idun*” transiting between the
24 Exclusive Economic Zones of Equatorial Guinea and São Tomé and Príncipe,
25 minding its own business, when an Equatoguinean warship arrives all of a sudden.

26
27 Of course, it is self-evidently not wanton or baseless when you consider the request
28 Nigeria had made for the interdiction, a point dismissed as mere “context” but which
29 is, in fact, the whole point.

30
31 It is baseless, the Marshall Islands says, because you can’t inquire why it was done
32 if it’s not within the 92 days they try to delineate. But that’s completely circular. It’s
33 the equivalent of blaming someone for acting without any reason, while denying
34 consideration of the obvious reason, because it is said to have taken place too early
35 to be considered. If the reason is outside the 92-day case which has been
36 formulated as such, so the logic goes, there can’t be any reason. Thus, the Marshall
37 Islands arrives at its preordained conclusion that Equatorial Guinea acted
38 baselessly.

39
40 In referring back to the *Monetary Gold* decision, the International Court of Justice
41 noted in the case of *Certain Phosphate Lands* that the link between Albania’s
42 responsibility and the decision requested of the Court was “not purely temporal but
43 also logical”.⁹³ That test is equally met here.

⁹¹ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 90, 30 June 1995, para. 29.

⁹² ITLOS/PV.25/C32/5, p. 17 (line 25) (Casas).

⁹³ *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 240, 26 June 1992, para. 55, citing *Case of the monetary gold removed from Rome in 1943 (Preliminary Question)*, Judgment of June 15, 1954, I.C.J. Reports 1954, p. 19, p 32.

1 The determination of Nigeria's ability to request this under the Convention is
2 therefore a logical and temporal prerequisite to a determination of Equatorial
3 Guinea's compliance with its obligations in responding.

4
5 As to temporality, the Marshall Islands does not dispute that Nigeria's prior request
6 to Equatorial Guinea to intercept the "*Heroic Idun*" was the factual predicate to
7 Equatorial Guinea doing so: it was the *sine qua non*. Without Nigeria's request,
8 Equatorial Guinea would not have intercepted the "*Heroic Idun*". As a matter of
9 chronology, it is clear that Nigeria's request for assistance preceded Equatorial
10 Guinea providing it.

11
12 To briefly recap, on 8 August 2022, the "*Heroic Idun*" was approached by the
13 Nigerian Navy ship NNS "*Gongola*" in Nigeria's Exclusive Economic Zone. The
14 incidents that followed, interactions with the Nigeria vessel NNS "*Gongola*", triggered
15 Nigeria's subsequent request to Equatorial Guinea for the vessel's interdiction.

16
17 It is only because of these events in Nigeria that, in the early hours of 10 August
18 2022, Equatoguinean authorities received an urgent request from the Nigerian Navy
19 to interdict the "*Heroic Idun*", including providing the location and direction of travel of
20 the vessel. Relying on the information provided by Nigeria, Equatorial Guinea did so.
21 Nigeria's legal rights and interests clearly, therefore, fall for prior temporal
22 assessment to the Marshall Islands' claim against Equatorial Guinea for the
23 interdiction of the vessel.

24
25 Similarly, as a matter of logic, the subject matter of claims by the Marshall Islands
26 concerning the principles of freedom of navigation and exclusive flag State
27 jurisdiction directly concern Nigeria's rights and interests. To find that Equatorial
28 Guinea had contravened the Convention by responding to Nigeria's request to
29 interdict the vessel would necessarily require assessment – as a matter of prior
30 logical and legal necessity – of Nigeria's rights and interests, including its right to
31 have made such a request. That is, for Equatorial Guinea's action to be unlawful, the
32 preceding request by Nigeria must also have been unlawful.

33
34 In other words, the Chamber cannot consider whether such assistance was legally
35 provided by Equatorial Guinea without first examining whether Nigeria was entitled to
36 invoke such assistance. In this case, it is Nigeria's assessments on which its request
37 for Equatorial Guinea's assistance was grounded. If Equatorial Guinea acted
38 wrongfully in giving that assistance, Nigeria must necessarily have acted wrongfully
39 in requesting it.

40
41 Given that Equatorial Guinea was not present during the acts giving rise to Nigeria's
42 request to interdict the vessel, it was necessarily compelled to rely upon the
43 assessments and request made by Nigeria in this regard. Informational and
44 capability asymmetries exist throughout the Gulf of Guinea, and between Yaoundé
45 Code signatories.

46
47 Cooperation and assistance under the Yaoundé architecture rely upon assessments
48 and directives taken by one State given to another. Plainly, given the urgency of the
49 request, Equatorial Guinea responded accordingly, rather than allow the presence of

1 a serious maritime security threat to go unaddressed. This, too, was clear from the
2 evidence given yesterday by Captain Esono Nchama.

3
4 Simply put, the Marshall Islands submits that there was no factual or legal basis to
5 impede the “*Heroic Idun*”’s freedom of navigation or the exclusivity of the Marshall
6 Islands’ jurisdiction as its flag State. That claim necessarily implicates Nigeria’s rights
7 and interests as it was the State requesting the interdiction of the vessel that gives
8 rise to the subject matter of these claims.

9
10 This leads me to my fourth submission: the “*Norstar*” case supports that it is
11 Nigeria’s legal interests that form the subject matter of the dispute, not Equatorial
12 Guinea’s legal interests.

13
14 Mr President, Members of the Special Chamber, I turn now to examine the relevance
15 of the “*Norstar*” case. As I submitted earlier, the *Monetary Gold* principle has been
16 affirmed in application to cases under the Convention, particularly in “*Norstar*”.

17
18 That dispute raises several parallels to this case. In that case, a
19 Panamanian-flagged oil tanker was engaged in supplying gasoil to yachts off the
20 coast of France, Italy and Spain. On 11 August 1998, an Italian public prosecutor
21 issued a decree of seizure against the “*Norstar*” in the context of criminal
22 proceedings against eight individuals for alleged offences concerning smuggling
23 mineral oils and tax fraud. Subsequently, Italian authorities made a request pursuant
24 to, *inter alia*, the 1959 European Convention on Mutual Assistance in Criminal
25 Matters (or, “the Strasbourg Convention”). Spanish authorities seized the “*Norstar*”
26 when it was anchored in Palma de Mallorca in September 1998. Panama brought a
27 dispute against Italy, alleging violation of, among others, freedom of the high seas.

28
29 The Tribunal noted that Italy’s request was “central to the eventual arrest of the
30 vessel” by Spain. The Tribunal further held that it was clear that “without the Decree
31 of Seizure, there would have been no arrest.”⁹⁴ That is very similar to the situation
32 here. Nigeria’s request was evidently central to the interdiction of the “*Heroic Idun*”,
33 and without Nigeria’s request, there would have been no interdiction.

34
35 The Tribunal found that the detention carried out by Spain was part of the
36 investigation and proceedings of Italy against the “*Norstar*”. It was, accordingly,
37 the legal interests of Italy, not Spain, that formed the subject matter of the decision to
38 be rendered.

39
40 As the Tribunal noted:

41
42 The involvement of Spain in this dispute is limited to the execution of Italy’s
43 request for the seizure of the *M/V “Norstar”* in accordance with the 1959
44 Strasbourg Convention. Accordingly, it is the legal interests of Italy, not those
45 of Spain, that form the subject matter of the decision to be rendered by the
46 Tribunal on the merits of Panama’s Application.⁹⁵

⁹⁴ *M/V “Norstar” (Panama v. Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 44, 4 November 2016, para. 165.

⁹⁵ *M/V “Norstar” (Panama v. Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 44, 4 November 2016, para. 173.

1 The Tribunal held that Spain had “merely provided assistance in accordance with its
2 obligations under the Strasbourg Convention”⁹⁶ regarding the seizure of the
3 “*Norstar*”.

4
5 By contrast, as noted, it was the legal interests of Italy, not those of Spain, that
6 formed the subject matter of the decision to be rendered by the Tribunal.⁹⁷ For those
7 reasons, Italy was “the proper respondent” to Panama’s claim.⁹⁸

8
9 Mr President, Members of the Special Chamber, the position of Equatorial Guinea is
10 similar to that of Spain in the “*Norstar*” case, and Nigeria’s position is similar to that
11 of Italy.

12
13 Equatorial Guinea provided assistance to Nigeria in accordance with the Yaoundé
14 Code. Similar to the Strasbourg Convention, under which Spain was acting in
15 “*Norstar*”, the Yaoundé Code contains commitments to “cooperate to the fullest
16 possible extent in the repression of transnational organized crime in the maritime
17 domain”, including in “interdicting ships and/or aircraft suspected of engaging in
18 transnational organized crime in the maritime domain” and “ensuring that the
19 persons committing or attempting to commit in transnational organized crime in the
20 maritime domain ... are apprehended or prosecuted.”⁹⁹

21
22 Here, the seizure of the “*Heroic Idun*” occurred as a result of cooperation between
23 Nigeria and Equatorial Guinea, to which Nigeria’s request was foundational. Similar
24 to Italy’s Decree of Seizure in “*Norstar*”, Nigeria’s request was the only reason for the
25 interception of the “*Heroic Idun*”. Without Nigeria’s request, no interception of the
26 “*Heroic Idun*” by the Equatoguinean Navy would have occurred. Accordingly, it is the
27 legal interests of Nigeria, not those of Equatorial Guinea, that form the subject matter
28 of the decision to be rendered on the Marshall Islands’ claims regarding the
29 interdiction of the vessel and its return to Nigeria.

30
31 Like Spain in “*Norstar*”, Equatorial Guinea’s position in relation to the “*Heroic Idun*”
32 was secondary and facilitative of that State – here, Nigeria – which ordered the
33 interdiction and return of the vessel, and whose rights to do so form the “subject
34 matter” of the dispute. As for Spain in “*Norstar*”, the correct characterization of
35 Equatorial Guinea’s assistance to Nigeria was that it was just that – assistance. As
36 we have seen in “*Norstar*”, the Tribunal noted that “Spain merely provided assistance
37 in accordance with its obligations under the 1959 Strasbourg Convention”.¹⁰⁰

38
39 The Tribunal further noted in “*Norstar*”: “The present case, which involves the action
40 of more than one State, fits into a situation of aid or assistance of a State in the

⁹⁶ *M/V “Norstar” (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44,
4 November 2016, para. 167.

⁹⁷ *M/V “Norstar” (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44,
4 November 2016, para. 173.

⁹⁸ *M/V “Norstar” (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44,
4 November 2016, para. 168.

⁹⁹ Code of Conduct concerning the Repression of Piracy, Armed Robbery against Ships, and Illicit
Maritime Activity in West and Central Africa, 25 June 2013, REG-001, Article 2.

¹⁰⁰ *M/V “Norstar” (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44,
4 November 2016, para. 167.

1 alleged commission of an internationally wrongful act by another State.”¹⁰¹ This
2 fact-based approach and finding is equally apposite here. The present case similarly
3 fits into a situation of aid or assistance of a State in the alleged commission of an
4 internationally wrongful act. That doesn’t turn on the pleaded case being articulated
5 as one of joint responsibility. Rather, it turns on the fact-based approach taken by the
6 Tribunal in the “*Norstar*” and equally apposite here.

8 This points to the critical issue of relevance from the “*Norstar*”: like Spain, Equatorial
9 Guinea’s interdiction of a vessel was done only to assist another State, whose
10 request is necessarily implicated and forms the subject matter of the claim.

12 This brings me to my fifth and final submission, Mr President, Members of the
13 Special Chamber, that the Marshall Islands’ own pleadings in this case and its
14 contemporaneous correspondence with Nigeria support that Nigeria is an
15 indispensable third party.

17 In its Reply, the Marshall Islands states that it “could have decided to seek the
18 determination of Equatorial Guinea’s responsibility in aiding and abetting a possible
19 wrongful act by Nigeria – which may have required the prior logical determination of
20 Nigeria’s rights and obligations”.¹⁰² In doing so, the Marshall Islands acknowledges
21 that in such a situation of aid and assistance, the wrongfulness of the aid or
22 assistance given is dependent on the wrongfulness of the act of the main requesting
23 State.¹⁰³

25 However, the Marshall Islands argues that the way “it calibrated its submissions”¹⁰⁴
26 means that Nigeria’s rights and obligations are no longer relevant. It claims that
27 “whether *Monetary Gold* applies depends on how the Marshall Islands has presented
28 its claims”.¹⁰⁵

30 Of course, the Marshall Islands can formulate its claims as it sees fit. However, there
31 are limits to the purported elevation of form over substance. Here, the Marshall
32 Islands acknowledges that the relationship between Nigeria and Equatorial Guinea’s
33 actions can rightfully be characterized as one of aid and assistance.¹⁰⁶ This
34 necessitates the prior finding of a wrongful act by Nigeria for Equatorial Guinea’s
35 assistance to be implicated. But the Marshall Islands fails to explain why – on its
36 chosen characterization of the claims – the relationship is not one of aid and
37 assistance. As the Tribunal held in the “*Norstar*”, the relevant fact-based test is
38 whether the circumstance actually “fits into a situation of aid or assistance”.

40 While the Marshall Islands may formulate its claims with “calibration”, this cannot
41 obfuscate the subject matter upon which the dispute is based. That subject matter is
42 Nigeria’s interactions with the vessel and Nigeria’s request for the interdiction and

¹⁰¹ *M/V “Norstar” (Panama v. Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 44, 4 November 2016, para. 166.

¹⁰² Reply of the Marshall Islands, p 24, footnote 121.

¹⁰³ Reply of the Marshall Islands, p 24, footnote 121.

¹⁰⁴ Reply of the Marshall Islands, p 24, footnote 121.

¹⁰⁵ Reply of the Marshall Islands, para. 71.

¹⁰⁶ *M/V “Norstar” (Panama v. Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 44, 4 November 2016, para. 166.

1 return of the vessel which was the predicate to Equatorial Guinea's corresponding
2 assistance to Nigeria.

3
4 The logic of the Marshall Islands' counter-argument is essentially that primacy
5 should be given to what it refers to as the "calibration" of its claims over the subject
6 matter itself. Equatorial Guinea's respectful submission is that this is incorrect.
7 Rather, the proper characterization of the subject matter of claims concerning the
8 interdiction of the "*Heroic Idun*" necessarily implicates Nigeria, a point which no
9 amount of artful drafting can circumvent.

10
11 Mr President, Members of the Special Chamber, the evidence on the record
12 indicates that the Marshall Islands itself recognized the centrality of Nigeria to the
13 subject matter of the "*Heroic Idun*"'s interdiction.

14
15 In a letter sent by the Marshall Islands to Nigerian naval authorities on the 18 August
16 2022, the Marshall Islands noted that the incidents of 8 and 12 August may be
17 "directly linked", implicated provisions protecting flag State jurisdiction and freedom
18 of navigation and requested "an explanation of the actions taken by both Nigeria and
19 Equatorial Guinea".¹⁰⁷

20
21 This tracks correspondence of 16 August 2022 from the Marshall Islands' Maritime
22 Administrator to the Governor of Luba.¹⁰⁸ The Marshall Islands' own communications
23 to the Nigerian and Equatoguinean authorities accordingly show that the subject
24 matter of the dispute regarding freedom of navigation and exclusive flag State
25 jurisdiction applies equally to Nigeria.

26
27 Again, very similar words were used in a letter of 26 August 2022 addressed to
28 Equatorial Guinea by the Marshall Islands.¹⁰⁹ Thus, the Marshall Islands early on
29 recognized and characterized this dispute regarding the interdiction and return of the
30 "*Heroic Idun*" as relating to freedom of navigation and flag State jurisdiction vis-à-vis
31 Nigeria. That is, the very same "subject matter" to that advanced in these
32 proceedings against Equatorial Guinea was contemporaneously accepted by the
33 Marshall Islands to apply equally to Nigeria.

34
35 Mr President, Members of the Special Chamber, while the Marshall Islands may
36 seek to characterize the respective rights and obligations contained in Article 110 of
37 UNCLOS as constituting "the very subject-matter" of the dispute,¹¹⁰ as we
38 saw – which Equatorial Guinea does not accept – even on that case, it is notable
39 that the "subject-matter" has also been expressed by the Marshall Islands as relating
40 to Nigeria, from the references made to Article 110 in the letter to Nigeria of the
41 18 August, which I mentioned earlier at SA 7.¹¹¹

107 Letter from the Marshall Islands' Maritime Administrator to the Chief of the Naval staff at Nigerian Naval headquarters, SA 7.

108 Letter from the Marshall Islands' Maritime Administrator to Governor of Luba, SA 6.

109 Letter from the Marshall Islands' Maritime Administrator to the Attorney General of Equatorial Guinea, SA 9, pp 93-94.

110 Reply of the Marshall Islands, para. 73.

111 Letter from the Marshall Islands' Maritime Administrator to the Chief of the Naval staff at Nigerian Naval headquarters, SA 7.

1 The Marshall Islands has itself admitted in these proceedings that, “What happened
2 in Nigeria and the actions of various of its officials form part of the context and
3 factual matrix and, in part, explain the damage and injuries suffered by the Marshall
4 Islands ...”.¹¹² Yet, the position we heard earlier this week, where the purported
5 92-day case was reframed as such for the first time, is that the actions of Nigeria and
6 Equatorial Guinea can somehow be artificially disaggregated from each other. That
7 is untenable. Equatorial Guinea’s assistance to Nigeria cannot be divorced from its
8 “context”, a term the Marshall Islands disparagingly suggests is a distraction, but
9 which is more usually and properly understood as the situation in which something
10 happens and which helps you to understand it.

11
12 Equatorial Guinea’s assistance to Nigeria cannot be treated in isolation without
13 necessarily implicating Nigeria, whether explicitly or otherwise. The very provisions
14 pleaded by the Marshall Islands under the Convention necessitate a determination of
15 Nigeria’s legal position.

16
17 However, that cannot be done as the Marshall Islands decided for its own reasons
18 not to advance the proceedings it threatened against Nigeria, under UNCLOS.

19
20 Moreover, other communications by the Marshall Islands and evidence on the record
21 demonstrate the Marshall Islands’ own assessment at the time that the dispute
22 involved the responsibilities (and rights) of Nigeria. For example:

23
24 a) A note verbale from the Marshall Islands to Nigeria in November 2022 (mistakenly
25 titled to Equatorial Guinea) noted that “The Nigerian Navy has confirmed that the
26 arrest and detention of M/T HEROIC IDUN occurred at the behest of the Nigerian
27 authorities and that they intend to unlawfully bring the M/T HEROIC IDUN and her
28 crew into the custody and control of Nigeria authorities, including for purposes of
29 prosecution”. The Marshall Islands’ letter asserts that Nigeria was in breach of, *inter*
30 *alia*, Articles 58, 87, 92 of the Convention – strikingly, the very same provisions it
31 now accuses Equatorial Guinea of breaching;¹¹³ that, at SA 27.

32
33 b) On 4 November 2022, the Marshall Islands sent a letter to Nigeria threatening to
34 commence proceedings under UNCLOS unless the vessel and the crew were
35 released, reflecting the Marshall Islands’ awareness of Nigeria’s role.¹¹⁴

36
37 c) An email to the IMO in November 2022 referred to a then upcoming meeting in
38 London in which “Marshall Islands and other delegations will confront Nigeria about
39 its [*sic*] unlawful intended rendition by force tomorrow of the above vessel from
40 Equatorial Guinea”.¹¹⁵

41
42 d) An email from the vessel’s managers dated 15 November 2023, which we saw
43 earlier today, acknowledged that “the action against Nigeria is nearly ready”.¹¹⁶ That,
44 at EK 69.

¹¹² Memorial of the Marshall Islands, para. 23.

¹¹³ Note verbale with covering letter from the Marshall Islands to Equatorial Guinea, SA 27.

¹¹⁴ Letter from the Marshall Islands’ Maritime Administrator to Director General of the Nimasa,
4 November 2022, SA 19.

¹¹⁵ Email, SA 20.

¹¹⁶ Email, EK 69.

1 Further, Nigeria's own communications with Equatorial Guinea at this time evidence
2 that Equatorial Guinea's role was one of assistance to Nigeria.

3
4 On 24 August 2022, Nigeria expressed via note verbale the "profound gratitude of
5 the Nigerian Government to the Government and authorities of Equatorial Guinea for
6 the prompt arrest and progress made so far regarding the ongoing investigation" of
7 the vessel.¹¹⁷

8
9 Again on 9 November 2022, Nigeria via note verbale noted that the "*Heroic Idun*"
10 had been in Equatorial Guinea "at the behest of [Nigeria] for certain infractions within
11 the Nigeria maritime space".¹¹⁸

12
13 A tweet by the Equatoguinean Vice-President on 10 November 2022 noted that "...
14 we respond to the motto 'zero tolerance' for any act of piracy in our area. We are
15 proud to have collaborated with Nigeria for the *HEROIC IDUN* arrest as a sign of
16 respect for our agreements against maritime piracy".¹¹⁹

17
18 On 3 June 2023, the Equatoguinean Minister of External Affairs wrote to his Nigerian
19 counterpart explaining that it had acted "within the framework of respect for
20 international and subregional obligations, after being informed by the Nigerian
21 maritime authorities that a vessel was in Equatorial Guinean waters, which had been
22 pursued by the maritime authorities of Nigeria due to having carried out illicit acts of
23 illegal purchase of fuel and piracy, among others, our navy intervened on the vessel
24 in accordance with the Yaoundé Code At the same time, [the vessel] was
25 sanctioned and returned to Nigeria with the entire crew, in compliance with your
26 requirement".¹²⁰

27
28 The evidence unequivocally supports that Equatorial Guinea's interdiction of the
29 "*Heroic Idun*" was done to assist Nigeria. There is no evidence to the contrary. Thus,
30 the situation is one of aid or assistance, whether pleaded as such or not.
31 Accordingly, as the Marshall Islands tacitly indicates this, "may have required the
32 prior logical determination of Nigeria's rights and obligations".¹²¹ Indeed, that is the
33 case.

34
35 Mr President, Members of the Special Chamber, this brings me to the end of my
36 submissions on the indispensable third party principle and its applicability to the
37 case. With the permission of you, Mr President, and the Members of the Special
38 Chamber, this might now be a convenient moment for the lunch break, if that is
39 convenient. Thank you.

40

¹¹⁷ Note No. 142/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 24 August 2022, REG-020.

¹¹⁸ Note No. 171/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 9 November 2022, REG-051.

¹¹⁹ Tweet by Vice-President of Equatorial Guinea, 10 November 2022, SA 25.

¹²⁰ Note No. 6014/023 from the Ministry of Foreign Affairs, International Cooperation and Diaspora of the Republic of Equatorial Guinea to the Embassy of the Federal Republic of Nigeria in Malabo, 3 June 2023, REG-053, p. 2.

¹²¹ Reply of the Marshall Islands, p. 24, footnote 121.

1 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Haeri. I think we
2 can break now for lunch, so we will then resume at 3.00 p.m. this afternoon.

3
4 **MR HAERI:** Thank you.

5
6 **THE PRESIDENT OF THE SPECIAL CHAMBER:** The hearing is adjourned.

7
8 *(The sitting closed at 12.42 p.m.)*