

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2025

Public sitting

held on Saturday, 11 October 2025, at 3 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,
President of the Special Chamber, Judge Albert J. Hoffmann, presiding

THE M/T “HEROIC IDUN” (No. 2) CASE

(Marshall Islands/Equatorial Guinea)

Verbatim Record

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

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

The Marshall Islands are represented by:

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

as Agent;

and

Mr Bernard J. Adiniwin, Attorney-General,

as Representative;

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

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

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

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

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

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

Mr Samuel K. Lanwi, Jr., Deputy Permanent Representative Embassy and Permanent Mission of the Republic of the Marshall Islands to the UN Office and other international organizations in Geneva, Switzerland,

as Advisers.

Equatorial Guinea is represented by:

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

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

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

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

as Counsel;

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

as Adviser.

1 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Good afternoon. The Special
2 Chamber will now continue its hearing in the “*Heroic Idun*” (No. 2) Case. I invite
3 Mr Haeri to the podium again to make his statement. You have the floor, sir.

4
5 **MR HAERI:** Thank you. Good afternoon, Mr President, Members of the Special
6 Chamber. I will address you now on the issues of causation and the remedy claim
7 respectively.

8
9 The focus of the Marshall Islands’ remedy claim is for compensation, which it now
10 quantifies, after numerous shifts in its assorted claims, at the extraordinary sum of
11 nearly \$58 million. As already addressed, several of the Marshall Islands’ claims are
12 inadmissible or relate to treaties for which there is no jurisdiction in these
13 proceedings. The Marshall Islands has, moreover, failed to establish the liability of
14 Equatorial Guinea. For each of these two reasons, the Marshall Islands’ claims for
15 remedies are unavailing.

16
17 I will now address two further reasons why the Marshall Islands’ claims for relief
18 should be dismissed.

19
20 Firstly, there is a lack of causation, as a matter of international law, between any
21 internationally wrongful act of Equatorial Guinea and the alleged damage claimed by
22 the Marshall Islands. As such, the claims fail at this stage too.

23
24 Finally, I will address the very serious deficiencies in the compensation claim put
25 forward by the Marshall Islands, which render it in any event unviable.

26
27 Firstly, causation. On causation, which I will now address, I will make four main
28 submissions. I will briefly summarize them, before addressing them in turn.

29
30 The first submission is that, as a matter of international law, the causal link at issue
31 between an allegedly wrongful act and the damage claimed must be direct, certain,
32 clear and unbroken before compensation could be theoretically possible. This is a
33 rigorous threshold, squarely addressed in the jurisprudence, and a terminal barrier
34 here to the claims advanced.

35
36 Secondly, I will address that it was the actions of the “*Heroic Idun*” in Nigeria and
37 Nigeria’s subsequent request to Equatorial Guinea to interdict the “*Heroic Idun*” and
38 return it to Nigeria that caused the alleged damage. In our respectful submission, this
39 is quite apparent in any realistic assessment of causation. It cannot be said that
40 Equatorial Guinea was somehow the direct or clear cause of these events; it was
41 merely responding to Nigeria’s request. Leaving aside, for this purpose, the issue of
42 inadmissibility under the *Monetary Gold* principle, or liability, this is also a key issue
43 of causation. Nigeria’s request was cause; Equatorial Guinea’s responsive
44 assistance was consequence.

45
46 Third, I will address the counterfactual of the Marshall Islands’ case that the “*Heroic*
47 *Idun*” intended to return to Nigeria after the events that had occurred there. This
48 renders irrelevant – from a causation perspective – Equatorial Guinea’s assistance
49 to Nigeria in the interdiction and return of the vessel to Nigeria. Equatorial Guinea
50 could not have been responsible for the consequences of events in Nigeria that

1 would have transpired in any event in the “but for” world in the Marshall Islands’ own
2 case. Put simply, there is no reason to conclude that Nigeria would have acted any
3 differently than the way it did once the “*Heroic Idun*” had voluntarily returned to
4 Nigeria, as is said would have happened.

5
6 Fourth and finally, I will address the later events in Nigeria, including the “*Heroic*
7 *Idun*”’s guilty plea and payment of a fine, which would, irrespectively, break any
8 chain of causation said to have somehow started in Equatorial Guinea.

9
10 I turn now to the first of these four submissions: the causal link must be “direct”,
11 “certain”, “clear” and “unbroken”.

12
13 International law firmly establishes that there must be a “direct”, “certain”, “clear” and
14 “unbroken” causal link between an internationally wrongful act of a State and the
15 damage claimed.¹ The ILC Commentary on the Articles on State Responsibility
16 confirms that the damage suffered must be “consequential”; it must not be too
17 “indirect”, “remote”, “speculative” or “uncertain”.² As counsel for the Marshall Islands
18 also agreed, with reference to the *Armed Activities* case, “[t]he causal nexus required
19 may vary depending on the primary rule violated and the nature of and extent of the
20 injury”.³

21
22 ITLOS jurisprudence supports the requirement of a direct nexus between conduct
23 alleged to be in breach of UNCLOS and the compensation sought.⁴ Indeed, in its
24 Reply, the Marshall Islands concedes, with reference to the *M/V “Norstar”*, that “only
25 damage directly caused by the wrongful act ... is the subject of compensation”.⁵ The
26 Marshall Islands, moreover, does not refute that the causation nexus must
27 additionally be “sufficiently direct and certain”.⁶

28
29 The Marshall Islands does not refute the well-accepted principle that it falls to the
30 party seeking compensation to establish the causal nexus,⁷ though it does fail to
31 establish that nexus.

¹ See *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation, Judgment, I.C.J. Reports 2012, p. 324, 19 June 2012, para. 14; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment, I.C.J. Reports 2022, p. 13, 9 February 2022, para. 93; International Law Commission, Second report on State responsibility of the Special Rapporteur, Mr. Gaetano Arangio-Ruiz, A/CN.4/425 & Corr.1 and Add.1 & Corr.1, 1989, Extract from the *Yearbook of the International Law Commission*, 1989, vol. II(1), para. 37.

² International Law Commission, “Responsibility of States for Internationally Wrongful Acts”, *Yearbook of the International Law Commission*, 2001, Volume II, Part Two, Report of the Commission to the General Assembly on the work of its fifty-third session, A/CN.4/SER.a/2001/Add.1 (Part 2), Commentary on Article 31, pp. 92-93, para. 10, and p. 104, para. 27, fn. 566.

³ ITLOS/PV.25/C32/5, p. 2 (lines 34-36, 42-43), p. 3 (line 1) (Nevill).

⁴ *M/V “Virginia G” (Panama/Guinea-Bissau)*, Judgment, ITLOS Reports 2014, p. 4, 14 April 2014, paras. 435-436; *M/V “Norstar” (Panama v. Italy)*, Judgment, ITLOS Reports 2018–2019, p. 10, 10 April 2019, para. 370.

⁵ Reply, para. 279.

⁶ See *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation, Judgment, I.C.J. Reports 2012, p. 324, 19 June 2012, para. 14; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment, I.C.J. Reports 2022, p. 13, 9 February 2022, para. 93.

⁷ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations, Judgment, I.C.J. Reports 2022, p. 13, 9 February 2022, para. 93.

1 This brings me on to the second submission on causation – namely, that Nigeria was
2 the primary cause of later events. The first event in the chain of causation regarding
3 the apprehension of the “*Heroic Idun*” is the conduct of that vessel in Nigeria and
4 Nigeria’s request to Equatorial Guinea to apprehend and return it to Nigeria. In other
5 words, the foundational and direct event in the chain of causation is not something
6 done by Equatorial Guinea, but, rather, by Nigeria. If the causal link is seen as an
7 extending chain, the chain starts with Nigeria’s request for assistance.

8
9 Consider the counterfactual: had Nigeria not asked Equatorial Guinea to interdict
10 and return it to Nigeria, the Marshall Islands would not have incurred the alleged
11 damage. This chain of causation does not start with Equatorial Guinea, and
12 Equatorial Guinea accordingly cannot be said to have directly caused the losses
13 claimed.

14
15 The Marshall Islands defensively argues that “Nigeria’s actions or what happened in
16 Nigeria are entirely irrelevant to most of the Marshall Islands’ claims”.⁸ This
17 protestation is unconvincing. It is, moreover, irreconcilable with the Marshall Islands’
18 request for compensation from Equatorial Guinea for various acts of Nigeria.⁹
19 Strikingly, the vast majority of claims advanced in these proceedings relate to events
20 that occurred directly in Nigeria.

21
22 Consider the three main heads of claim put forward by the Marshall Islands from a
23 quantum perspective: firstly, the fine of \$15 million imposed by Nigeria; secondly,
24 lost profits; and, thirdly, non-material damage. These, together, account for
25 approximately \$50 million of the almost \$58 million claimed. They all relate to events
26 occurring in or by Nigeria. Therefore, the vast majority of the Marshall Islands’
27 compensation claim leads directly to Nigeria from a causation perspective.

28
29 Let me address these three heads briefly in turn to illustrate this point:

30
31 The first head of claim is the \$15 million claimed for payments made to Nigeria by
32 the owners of the “*Heroic Idun*” to secure the release of the vessel and her crew from
33 Nigeria.¹⁰ From a causation perspective, it is self-evident that Nigeria was the direct
34 cause of the fine it imposed on the “*Heroic Idun*”, not Equatorial Guinea. In any
35 event, the plea bargain accepted by the owners would, on any analysis, break the
36 chain in causation.

37
38 The second head of claim is for \$19.3 million claimed for loss of hire.

39
40 Most of this claim relates to the loss of hire during the time spent in Nigeria, for which
41 Nigeria is the direct cause, not Equatorial Guinea. For the first time, on Day 3 of this
42 hearing, the Marshall Islands sought to distinguish the loss of hire for the time spent
43 in Nigeria from that in Equatorial Guinea. However, the quantification put forward by
44 the Marshall Islands is at odds with the calculations of its own expert.¹¹

⁸ Reply, para. 66.

⁹ Memorial, para. 413.

¹⁰ Memorial, para. 413(c).

¹¹ Counsel for the Marshall Islands claims for, roughly USD 5.3 million for loss of hire for the period the vessel spent in Equatorial Guinea. However, its own expert shows that roughly USD 2.7 million were paid during that period. In fact, there was no loss for the month of August 2022. Therefore,

1 Moreover, as it was Nigeria that requested the interdiction of the vessel by Equatorial
2 Guinea, it cannot be said that any loss of hire was caused by Equatorial Guinea, let
3 alone being “directly” caused by Equatorial Guinea. Rather, this head of claim is
4 again referable directly to Nigeria from a causation perspective. That is all the more
5 so given the counterfactual scenario since the vessel was going to return to Nigeria
6 in any event.

7
8 For the period when the “*Heroic Idun*” was in Equatorial Guinea, Mr Horne relies on
9 the charterparty to calculate lost profits. Counsel for the Marshall Islands spent a
10 considerable amount of time explaining the labyrinthic calculations of Mr Horne
11 based on this document. However, the charterparty was apparently novated on
12 4 July 2022 to reflect a change of ownership. Mr Horne admits this, and he also
13 admits that he has not seen the novation document.¹² The Marshall Islands, despite
14 producing almost 3,000 pages of quantum documents, has not provided this basic
15 document, either to its expert or during the proceedings. Without it, we cannot know
16 which provisions of the charterparty stand, if at all, and which ones were modified to
17 take account for the change of ownership. Accordingly, there cannot be any certainty
18 that the numbers relied upon by Mr Horne are correct.

19
20 In such cases, this tribunal in *M/V “Norstar”* has made clear that a loss of profits
21 claim cannot stand. In that case, the tribunal noted the absence of information or
22 documents to demonstrate the possible revenues and expenses related to the
23 operation of the vessel, which led the Tribunal to reject the claim for loss of profits.¹³
24 The same defect is present here, which should lead the Chamber, with respect, to
25 the same conclusion.

26
27 The third head of claim is for \$15 million claimed in non-material damages “to
28 compensate the unlawful detention of the vessel’s crew”,¹⁴ it is said, “for each day
29 that the Master and crew were detained by Equatorial Guinea and Nigeria”.¹⁵ As
30 already explained, any consideration of causation regarding the detention of the
31 vessel inevitably leads to Nigeria, not Equatorial Guinea. The overwhelming majority
32 of the time that this amount is claimed for was spent in Nigeria under the direct
33 control of the Nigerian authorities. Even while in Equatorial Guinea, it was the
34 Nigerian investigations which caused the stay of the vessel and its crew, which again
35 cannot be said to have been caused by Equatorial Guinea. This head of claim is
36 therefore also referable directly to Nigeria as a matter of causation.

37
38 Beyond these three areas which make up the vast majority of the Marshall Islands’
39 claims, the Marshall Islands has submitted numerous invoices for expenses claimed
40 to have been incurred in Nigeria and has frequently marked them as being related to
41 the “Nigerian Conflict” and “Nigeria Conflict”, even for expenses incurred while the
42 crew was in Equatorial Guinea. We can see that on this slide, RMI 60, page 528,

Mr Horne quantifies the loss at a much lower level than counsel for the Marshall Islands. See First Expert Report of Tim Horne including annexes, paras. 55-56.

¹² Expert Report of Tim Horne, RMI 39, para. 8.

¹³ *M/V “Norstar” (Panama v. Italy)*, Judgment, ITLOS Reports 2018–2019, p. 10, 10 April 2019, para. 432.

¹⁴ Reply, para. 318.

¹⁵ Memorial, para. 423 (emphasis added).

1 where the reference is “Nigeria Conflict” and the date is 22 October 2022 within the
2 92-day period when the vessel and its crew were in Equatorial Guinea.¹⁶

3
4 Even the Marshall Islands’ own internal categorization of the State with which it
5 considered itself to be in “conflict” leads to Nigeria. The disconnect between that
6 reality and the damages claim now said to have been “caused” by Equatorial Guinea
7 is striking. Contemporaneous evidence demonstrates that some of these costs were
8 incurred, and I quote “[...] following incident in Nigeria port on 08/08/2022”.¹⁷ That’s
9 in RMI 60. The causation chain starts with, and flows from, what happened with
10 Nigeria on 8 August 2022, as the Marshall Islands’ own evidence shows.

11
12 Although the Marshall Islands contends that it is not attempting to attribute
13 responsibility of the “actions of another sovereign State” to Equatorial Guinea, that is
14 exactly what its quantum case demonstrates.¹⁸

15
16 This leads me to the third submission: the Marshall Islands’ counterfactual would
17 have seen the “*Heroic Idun*” return to Nigeria in any event, exemplifying that its
18 causation case against Equatorial Guinea is misplaced.

19
20 Under the Marshall Islands’ own case concerning lost profits, the “*Heroic Idun*” would
21 have continued its operations by returning to Nigeria and would therefore have had
22 to address the situation caused by its evasion of the Nigerian Navy.¹⁹ As the
23 Marshall Islands’ own evidence shows and as its witnesses have confirmed, the
24 vessel was to obtain clearance to load oil and remain drifting offshore before
25 returning to Akpo Terminal for loading on 17 August 2022.²⁰

26
27 We can see that reflected here: 12 August, the vessel awaits return to Akpo
28 Terminal; the two blue dots reflect the actual world; the two orange dots, what the
29 evidence was given as to what would have happened but for the interdiction in
30 Equatorial Guinea. 17 August 2022, the vessel was to return to Akpo Terminal; and
31 from August 2022 to May 2023, therefore, Nigeria would have been expected to
32 conduct its investigations as it did.

33
34 Thus, whatever actions Nigeria has taken in the present case would have been
35 taken when the vessel returned to Nigeria in any event. This means that, under the
36 Marshall Islands’ own counterfactual scenario, its lost profits claim fails as there is no
37 possible scenario in which the “*Heroic Idun*” would have been allowed to continue its
38 operations in Nigeria without accounting for its actions.

39
40 It cannot therefore be said that Equatorial Guinea is causally responsible for events
41 which occurred in Nigeria that would have taken place there in any event in the

¹⁶ Costs and expenses to assist the crew during detention, RMI 60, pp. 528, 749, 783, 960, 964, 965, and 975.

¹⁷ Costs and expenses to assist the crew during detention, RMI 60, p. 1023.

¹⁸ Reply, para. 281.

¹⁹ ITLOS/PV.25/C32/1, p. 21 (lines 30-33) (Bethlehem). All references are made to uncorrected versions of the transcripts received by the Parties at the time of drafting. See also Reply, para. 26; Witness Statement of the Master, RMI 1, paras. 85-86.

²⁰ ITLOS/PV.25/C32/1, p. 21 (lines 30-33) (Bethlehem). All references are made to uncorrected versions of the transcripts received by the Parties at the time of drafting. Email from Akpo to the Master, 11 August 22 at 21:41, MT 34, p. 313.

1 Marshall Islands' own case of what "should have" happened, as it says. This clearly
2 breaks any causation nexus said somehow to have been commenced by Equatorial
3 Guinea.

4
5 Turning now to my fourth and final point on causation, a notable feature of this case
6 is that the vessel and its owners secured release of the vessel by signing a plea
7 agreement in April 2023 when the vessel accepted liability under Nigeria's anti-piracy
8 legislation. It therefore paid a fine in furtherance of such plea agreement on 12 May
9 2023.²¹ On any account, at this point, any causal chain said somehow to have
10 "commenced" in Equatorial Guinea was decisively broken.

11
12 This is not a question of whether the owners now wish to say they disagreed with the
13 fine that they agreed to pay to Nigeria, or even whether they have reason to so
14 disagree. While Equatorial Guinea is not in a position to address the fine that the
15 owners agreed to pay in Nigeria, the fact of the matter is that the owners agreed to
16 pay that fine. On any analysis, that would break a so-called causal chain said to
17 have started in Equatorial Guinea.

18
19 In conclusion, the Marshall Islands has failed to establish the causal chain between
20 its alleged damage incurred and any alleged internationally wrongful act of
21 Equatorial Guinea. This essentially renders redundant the Marshall Islands' remedy
22 claims for compensation.

23
24 I come on now to the second part of my submissions this afternoon, which is the
25 remedy claim, starting first with material damages and then moving on to
26 non-material damages.

27
28 So I will now move on to address the irremediable deficiencies in the Marshall
29 Islands' compensation claim for material damages, and I will start by making two
30 overarching points:

31
32 Firstly, the Marshall Islands has failed to meet its burden of proof. It has not shown
33 that it has suffered any alleged damages caused as a result of an internationally
34 wrongful act attributable to Equatorial Guinea.

35
36 Secondly, there are numerous irregularities in the documents said to underpin the
37 claims. This includes expenses which bear no relation whatsoever to the present
38 case.

39
40 I will address these two points in turn.

41
42 Firstly, the failure to substantiate damage claimed under the various heads of losses.

43
44 The Marshall Islands failed to provide any damages evidence with its Memorial. After
45 Equatorial Guinea pointed this out in the Counter-Memorial, the Marshall Islands
46 filed many volumes of evidence with its Reply with no reference as to which
47 document related to which specific claim. A month ago, on 11 September, it
48 unloaded even more documents into the record, many of which were duplicates of

²¹ Proof of Payment of 15 million paid to Nigeria, EK 72.

1 documents already put in the record by the Marshall Islands. On Day 3 of the
2 hearing, we received a number of new tables supposedly setting out which items
3 belong under which category. It is clearly unreasonable for Equatorial Guinea to be
4 expected to reply to such an ever-shifting damages case. Moreover, and in any
5 event, the Marshall Islands fails to show the causal link between an internationally
6 wrongful act of Equatorial Guinea and the damages claims. It even fails to show how
7 a number of expenses it claims were calculated.

8
9 Another critical issue is double counting, which has already been acknowledged to
10 be an issue. Following Equatorial Guinea's objections in its Rejoinder,²² on
11 11 September the Marshall Islands admitted that it double counted several of its
12 claims and withdrew not one, not two, but seven of them.²³ However, the duplication
13 of documentation and lack of proper reconciliation of figures means this continues to
14 be an issue.

15
16 I move on to my second submission in this respect: the irremediable flaws in the
17 Marshall Islands' compensation claim.

18
19 Turning to my second overarching point, what can be gleaned from the quantum
20 documents of the Marshall Islands presents a troubling picture. The documents
21 submitted show numerous expenses allegedly incurred, firstly, for items whose
22 relevance are unknown; secondly, by unknown individuals; and, thirdly, at times
23 when Equatorial Guinea was not involved in this matter, including before 12 August
24 2022. These flaws appear across the Marshall Islands' various heads of claims and
25 beg three key questions that the Marshall Islands has failed to address on the
26 compensation claimed, namely: What? Who? And when? I will address these three
27 questions in turn with reference to the Marshall Islands' evidence. In the interests of
28 time, this is necessarily going to be indicative of the issues they raise and multiple
29 deficiencies they reflect.

30
31 A more comprehensive exposition is set out in Equatorial Guinea's Rejoinder based
32 on what it had received at that time.

33
34 Firstly, what? The first question is what? The Marshall Islands' documents relate to a
35 variety of expenses that do not appear to have any link to its various heads of
36 claims. I will provide some illustrative examples.

37
38 You can see here on the slide invoices of unexplained cash payments of, firstly,
39 \$50,000 to the Master and another cash payment of an additional \$20,000 to the
40 Master.²⁴ What head of damages do these unexplained cash payments relate to? It's
41 not explained.

42
43 We also have receipts for hard liquor and alcohol consumption of OSM employees.
44 We can see that here at RMI 60 at page 180, with some expenses labelled as "Beer

²² Rejoinder, paras. 391(b)(i), 393(a), 394.

²³ Letter from the Marshall Islands to the Registrar, 10 September 2025, p. 3.

²⁴ Costs and expenses to repatriate the crew, RMI 63, p. 77; Costs and expenses to repair the vessel, RMI 64, p. 120.

1 All Day” and “Liquor [sic] All Day”.²⁵ Again, what claim does this go to? It’s not
2 explained.

3
4 Expenses for materials to equip the “*Heroic Idun*” for future operations in July
5 2023 – meaning more than a month after the vessel was released by Nigeria – such
6 as flat screen smart TVs, kitchen appliances and air conditioning.²⁶ What’s not
7 explained is, what claim does this relate to?

8
9 Random expenses such as a barely legible receipt for a two-year gold membership
10 for glasses for crew members, RMI 60, at page 928.²⁷ Again, what does the claim
11 relate to?

12
13 The Marshall Islands needs to show how each of these expenses has been incurred
14 as a result of an internationally wrongful act attributable to Equatorial Guinea. For
15 example, had Equatoguinean authorities damaged kitchen appliances in the “*Heroic*
16 *Idun*”, such expenses might potentially have been claimable. That is clearly not the
17 case here and it is not even alleged by the Marshall Islands. So why are these things
18 being claimed for?

19
20 Importantly, a significant number of these expenses are not appropriate. This
21 includes the bar tab of OSM employees at the pool bar of a 5-star hotel in Dubai.
22 The Marshall Islands has filed these expenses in duplicate under two claims; “Costs
23 and expenses to repair the vessel” and “Costs and expenses relating to the vessel
24 and crew”, but these invoices clearly bear no connection to any allegedly wrongful
25 act of Equatorial Guinea under either head of claim.

26
27 Despite the fact that Equatorial Guinea has highlighted these inappropriate expenses
28 in its Rejoinder and even though the Marshall Islands has belatedly amended its
29 quantum claim since then, it has chosen to maintain its claim for these duplicated
30 items.

31
32 Regarding expenses incurred assisting the crew, the Marshall Islands claims for a
33 number of additional wages and bonuses said to be paid to the crew “due to their
34 detention”.²⁸ However, the Marshall Islands has not demonstrated how these wages
35 and bonuses are anything other than voluntary payments by the owners.²⁹ In fact,
36 their own witness Mr Kulblik appears to admit as much in paragraphs 97 and 98 of
37 his first statement.

38
39 The Tribunal in *M/V “Virginia G”* dismissed claims for additional salaries during
40 detention and maintenance of crew.³⁰ The Marshall Islands’ claims for the various
41 wages and bonuses to the crew should be similarly rejected.

²⁵ Rejoinder, p. 104; Costs and expenses to assist the crew during detention, RMI 60, pp. 180, 645; Costs and expenses to repatriate the crew, RMI 63, pp. 158, 167; Costs and expenses to repair the Vessel, RMI 64, pp. 56-57, 59, 64-68.

²⁶ Costs and expenses to repair the Vessel, RMI 64, pp. 179, 190-193.

²⁷ Costs and expenses to assist the crew during detention, RMI 60, p. 928.

²⁸ Reply, para. 285(d)-(h).

²⁹ Costs and expenses to repatriate the crew, RMI 63, pp. 6-8.

³⁰ *M/V “Virginia G” (Panama/Guinea-Bissau)*, Judgment, ITLOS Reports 2014, ¶ 439 with reference to Reply of Panama, ¶¶ 448, 450-453.

1 This leads me on to the second of the three questions: Who?

2
3 I will now address that question: Who incurred the costs and expenses claimed for?
4 For a number of them, the answer is that we do not know. There are multiple actors
5 whose relevance to this case are unknown and unexplained. I will provide just two
6 examples of many to illustrate this point.

7
8 The Marshall Islands has presented expenses of an individual in the Taj Hotel in
9 Colombo, including for various alcohol consumption.³¹ The references are there.
10 Who this person is and how he incurred expenses as a result of an internationally
11 wrongful act of Equatorial Guinea have not been explained. You can see that in
12 RMI 60 at pages 149, 153, 614 and 618.

13
14 The Marshall Islands has also submitted receipts for medical treatment and tests for
15 individuals other than crew members and for children who were obviously not aboard
16 the "*Heroic Idun*" at any point in time.³² Again, this is not explained.

17
18 The Marshall Islands has not established who these actors are and how their
19 expenses relate to its heads of claim.

20
21 This leads me to the third question: When?

22
23 Briefly, on the third question we must consider when expenses were incurred.
24 Notably, the Marshall Islands claims for expenses incurred before Equatorial Guinea
25 even knew of the existence of the "*Heroic Idun*".

26
27 This is an invoice from Gard, the insurer of the vessel whose representatives are
28 attending this hearing, relating to a claim from the 9 August about, "escaping
29 perceived hijacking".³³ This is a day before Equatorial Guinea was even requested to
30 apprehend the "*Heroic Idun*".

31
32 Similarly, the Marshall Islands has also presented a receipt for medical services in
33 India dated 11 August 2022. The crew had not even made contact with the
34 Equatoguinean Navy at that time.

35
36 The Marshall Islands also includes receipts for medical tests conducted before the
37 interdiction of the "*Heroic Idun*" by Equatorial Guinea for people who were not even
38 aboard the "*Heroic Idun*" at that time,³⁴ and this can be seen in RMI 60 at pages 952
39 and 953.

40
41 Similarly, the Marshall Islands apparently also claims for the provisions that the
42 vessel, at that point still the "*Hunter Idun*", purchased for its voyage to Nigeria in July
43 2022.³⁵ We can see that date on that slide, if we come back to it: 18/07, July, 2022,
44 "*Hunter Idun*", Colgate toothbrush and so on, cigarettes and various other things.

³¹ Costs and expenses to assist the crew during detention, RMI 60, pp. 149, 153, 614, 618.

³² Costs and expenses to assist the crew during detention, RMI 60, pp. 160, 209, 952–953.

³³ See also Costs and expenses to assist the crew during detention, RMI 60, pp. 26–27 (9 August 2022), p. 67 (9 August).

³⁴ Costs and expenses to assist the crew during detention, RMI 60, pp. 952–953.

³⁵ Additional Documents, Volume VII, pp. 257–260.

1 We even have expenses claimed from a non-crew member, from April, June, March
2 and July 2022 – predating the “*Heroic Idun*”’s stay in Equatorial Guinea.³⁶ That’s part
3 of the additional documents at Volume VII, page 30.

4
5 On the other hand, several of the expenses were incurred well after the vessel
6 departed Equatorial Guinea and even Nigeria.³⁷ For instance, the Marshall Islands
7 has sought reimbursement for expenses incurred between July and September 2023
8 relating to the “*Sea Lion*” (which is the new name given to the “*Heroic Idun*” after it
9 left Nigeria). These items include: visa stamping for the crew³⁸ and payment of
10 advance wages.³⁹ One can see that in RMI 60, pages 839 to 844, as well as RMI 63
11 at page 150.

12
13 None of these items, which clearly relate to the future operation of the vessel, can
14 reasonably be said to have been incurred as a result of an internationally wrongful
15 act of Equatorial Guinea. In the “but for” world, these normal operational costs would
16 have been incurred regardless.

17
18 These examples demonstrate only some of the numerous flaws and deficiencies in
19 the Marshall Islands’ compensation case advanced here, which have been
20 addressed in further detail in Equatorial Guinea’s Rejoinder.

21
22 What they mean is that the compensation case put forward by the Marshall Islands
23 does not bear scrutiny, and that point does not turn on the precise amounts reflected
24 in the respective invoices at issue.

25
26 I come on now to the second area on this part of my submissions, namely, the
27 remedy claim for non-material damages.

28
29 I will now address the claim concerning non-material damages. Under this head of
30 claim, the Marshall Islands claims around \$15 million.⁴⁰ Comparison with other cases
31 is instructive.

32
33 Consider firstly the “*Arctic Sunrise*”. As I mentioned earlier, the crew were “confined
34 to cold and unsanitary cells for 23 hours per day, the remaining hour consisting of
35 solitary exercise in a small concrete box”.⁴¹ The difference in treatment provided by
36 Equatorial Guinea could not be greater. Yet, in that case, the tribunal decided to
37 grant non-material damages at a much lower level than is claimed here by the
38 Marshall Islands.

39
40 Second, in *M/V “Saiga”*, Guinean patrol boats fired ammunition at the “*Saiga*”,
41 injuring crew members, before boarding and seizing the tanker. The indiscriminate
42 use of gunfire caused severe injuries to two of the people on board.⁴² The Master

³⁶ Additional Documents, Volume VII, p. 30.

³⁷ Reply, para. 298(c).

³⁸ Costs and expenses to repatriate the crew, RMI 63, p. 150.

³⁹ Costs and expenses to assist the crew during detention, RMI 60, pp. 839-844.

⁴⁰ Memorial, para. 423; Reply, para. 318.

⁴¹ *Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on Compensation, 10 July 2017, para. 76.

⁴² *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999, p. 10, 1 July 1999, para. 158.

1 faced criminal prosecution and was convicted, sentenced and fined. In that case, the
2 Tribunal also granted non-material damages at a much lower level than is claimed by
3 the Marshall Islands.⁴³

4
5 The Marshall Islands alleges that the crew suffered mental harm while in Equatorial
6 Guinea.⁴⁴ It alleges that the reason for a lack of evidence of psychiatric harm in
7 respect of the period that the crew spent in Equatorial Guinea is because “it was not
8 possible to carry out more in-depth psychological assessments ... because the
9 governmental authorities refused to grant the necessary permits”.⁴⁵ That’s what is
10 said. This is unconvincing.

11
12 As the evidence shows, mental healthcare could have been provided by
13 Dr Perman-Kerr at any time for any crew member through voice or video calls, the
14 possibility for which was considered at the time and is reflected in the
15 contemporaneous evidence.⁴⁶ And we can see that, for example, in RMI 63 at
16 page 16, line 7, where there was discussion of the possibility to “deploy the
17 counsellor/psychiatrist, phone calls sessions with the crew”.

18
19 The fact that no crew member appears to have even requested such treatment,
20 despite having spoken to Dr Perman-Kerr while in Equatorial Guinea, a fact that
21 Dr Perman-Kerr admits in her report, is further proof that the crew was well-treated
22 and required no such support at the time.

23
24 As these cases and the circumstances show, a finding on non-material damage is
25 not appropriate in this case where the crew was treated in accordance with the
26 principle of humanity at all times, as already addressed earlier today.

27
28 To conclude my remarks on the remedies claimed by the Marshall Islands, I would
29 like to draw the Chamber’s attention to the fact that the Marshall Islands is asking
30 this Chamber to do multiple things for the first time. For example: the Marshall
31 Islands wants this Chamber to award the cost it claims to have incurred in the
32 prompt release proceedings. The Marshall Islands also wants this Chamber to award
33 it the costs of the entire proceedings.

34
35 It is not in dispute that ITLOS has never awarded costs of prompt release,
36 provisional measures or merits proceedings to a party. There is no reason in the
37 present case to depart from this general rule, and the Marshall Islands does not
38 provide a credible one.⁴⁷ As such, these two claims should also, in our respectful
39 submission, be dismissed.

43 *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999, p. 10, 1 July 1999, para. 175.

44 Reply, para. 322.

45 Reply, para. 322.

46 See, for example, this possibility being mentioned in Costs and expenses to repatriate the crew, RMI 63, p. 16, line 7: “Deploy the counsellor/psychiatrist, phone calls sessions with the crew”.

47 *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999, p. 10, 1 July 1999, para. 182.

1 Mr President, Members of the Chamber, with this I conclude my remarks on
2 causation and the quantification claims presented by the Marshall Islands and this
3 also concludes the first round of submissions of Equatorial Guinea.

4
5 Thank you.

6
7 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Haeri. As you
8 have indicated, this concludes the first round of oral arguments.

9
10 The hearing will resume on Monday 13 October at 10 a.m. to hear the second round
11 of oral argument of the Marshall Islands. The sitting is now closed.

12
13 *(The sitting closed at 3.45 p.m.)*