

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2025

Public sitting

held on Monday, 13 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:

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

as Agent;

and

Mr Bernard J. Adiniwin, Attorney-General,

as Representative;

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

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

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

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

Ms Courtney Grafton, Barrister, Twenty Essex, London, United Kingdom; Member of the Bar of England and Wales,

as Counsel and Advocates;

Mr Richard M. Gunn, Partner, Reed Smith LLP, London, United Kingdom,

Mr Jiahui Huang, Barrister, Twenty Essex, London, United Kingdom; Member of the Bar of England and Wales,

Ms Julia Z. Cyron, Associate, Reed Smith LLP, London, United Kingdom,

as Counsel;

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

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

Mr 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,

as Agent;

and

Mr Hussein Haeri KC, Partner, Withers LLP, London, United Kingdom; Solicitor-Advocate of England and Wales, SOAS, University of London, London, United Kingdom,

Ms Floriane Lavaud, Partner, Withers LLP, New York, United States of America; Member of the Bars of New York and Paris; Solicitor of England and Wales,

Mr Dapo Akande, Barrister at Essex Court Chambers; Chichele Professor of Public International Law, University of Oxford, Oxford, United Kingdom; Member of the Bar of England and Wales; Member of the International Law Commission,

Mr Francisco Moro Nve Obono, State Lawyer Office of the Republic of Equatorial Guinea,

Ms Clàudia Baró Huelmo, Senior Associate, Withers LLP, Geneva, Switzerland; Solicitor-Advocate of England and Wales; *Abogada* of the Bar of Barcelona,

as Counsel and Advocates;

Mr Juan Olo Mba Nseng, Vice-President of the Legal Commission of State Lawyers, Government of Equatorial Guinea,

Mr Antonios Tzanakopoulos, Professor of Public International Law, University of Oxford, Oxford, United Kingdom,

Ms Maanya Tandon, Associate, Withers LLP, London, United Kingdom; Barrister and Solicitor of the High Court of New Zealand,

Ms Sudipta Purkayastha, Associate, Withers LLP, London, United Kingdom; Solicitor of England and Wales, Advocate of the Bar Council of India,

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

Mr Niccolò Dell'Alba, Paralegal, Withers LLP, London, United Kingdom,

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

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

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

as Counsel;

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

as Adviser.

1 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Good morning. Today the Special
2 Chamber will continue its hearing in the “*Heroic Idun*” (No. 2) Case. This morning we
3 will hear the second round of oral argument of the Marshall Islands.

4
5 I now invite Sir Daniel Bethlehem to the podium to make his statement. You have the
6 floor, Sir.

7
8 **SIR DANIEL BETHLEHEM:** Thank you very much, Mr President, Members of the
9 Special Chamber.

10
11 I trust you had a restful adjournment. Less so for us, but we are pleased to be before
12 you this morning to right the wrongs that you heard in the latter part of last week.
13 I will be followed this morning by each of my colleagues in turn. Ms Grafton will
14 address issues of fact and the witness evidence that you heard, as well as
15 considerations of humanity. Dr Busco will address freedom of navigation, flag State
16 jurisdiction and the claim by our friends that this was all about piracy. He will also
17 address the fine levied by Equatorial Guinea, which we have now heard from our
18 friends opposite was for the expenses incurred in taking good care of the “*Heroic*
19 *Idun*” at Luba anchorage. This will take us to the morning break.

20
21 After the break, Ms Nevill will address Equatorial Guinea’s obligations to notify, its
22 obligations of due regard, and jurisdiction in respect of the application of the IMO
23 instruments. Dr Casas will then address our reparations claim, and he will be
24 followed by our Agent, Ms Kirby, who will make some brief closing remarks and then
25 formally read the Marshall Islands’ Final Submissions.

26
27 Mr President, Members of the Special Chamber, in this regard, I note that we have
28 revisited our Final Submissions in the light both of Equatorial Guinea’s Rejoinder and
29 the oral arguments that we had last week, and we have both added to and
30 subtracted from, and refined, our request for relief to the Special Chamber. We hope
31 that this will crystallize more clearly some of the points in dispute between the
32 Parties.

33
34 I turn to my submissions. Mr President, Members of the Chamber, the task of good
35 advocacy is to convey a compelling narrative on behalf of the party in question. And
36 we heard some good advocacy, nicely delivered, from our friends on the other side.
37 With this said, and genuinely meant, I am compelled also to say, though, that we
38 also heard some contentions from our friends opposite that sailed pretty close to the
39 wind of untruths, and at times played on that boundary. I do not here talk about the
40 framing of the Equatoguinean case as one of piracy, when this was only a much
41 belated construct superimposed on facts that saw no reference to piracy at the time.
42 That is advocacy, even if it grasps for alternative truths and takes liberties with the
43 evidential record. And we will come to this. What I am talking about is the veracity of
44 submissions of fact made under cover of careful caveats. And I give you one
45 example to highlight the point, to which each of us will return in our submissions.

46
47 We heard from Counsel in his submissions on damages about his “what, who, when”
48 test. He gave examples of what he contended were manifestly egregious damages
49 claims by the Marshall Islands. Compelling stuff. We left the hearing wondering what
50 we had overlooked; could we have credibly made such claims?

1 We looked at our case and the record that we put before you. It took us five minutes.
2 For each item that Counsel had flashed on the screen, there was a compelling
3 response. One example from this will illustrate the point – to which Dr Casas will
4 return in his submissions later.

5
6 Counsel for Equatorial Guinea highlighted a \$20,000 item in an invoice for the cash
7 payment to the Master. What he omitted to point out is that on the exhibit that
8 Dr Casas presented on Wednesday, it is said explicitly in respect of this item
9 “excl[uding] 20k cash to Master”. This is clear also from the underlying composite
10 invoice that is in evidence on which Dr Casas’s table drew. This deducted, together
11 with another amount, the \$20,000 payment to the Master from the invoice in
12 question. This item is not included as part of the Marshall Islands’ damages claim.
13 Dr Casas will address these issues more fully.

14
15 Mr President, Members of the Chamber, I make these points in opening for three
16 reasons. First, you need to know from the outset that the Marshall Islands has been
17 fully attentive to its professional responsibilities, including as regards evidence. If
18 there is a fault, it is that we have provided to Equatorial Guinea, and to this
19 Chamber, the raw invoices, as opposed only to the headline amounts that are
20 claimed. But we have not advanced claims in respect of every line item in those
21 invoices, as Dr Casas has made clear. And I note that any assessment of the
22 invoices against our heads of damages that might have been undertaken by a
23 Marine Average Adjuster¹ – that is a specialist, an expert in assessing marine
24 insurance claims – would have had little difficulty in identifying with a high degree of
25 accuracy where there is documentary evidence for what we are claiming.

26
27 Second, you need to suspend belief in the veracity of the arguments advanced by
28 our friends until you have carefully assessed them. Equatorial Guinea has had our
29 heads of damages, alongside the raw data from which they were drawn, since
30 November last year, with the exception of some additional data put in more recently.
31 Had they undertaken the kind of assessment that Dr Casas put before you on
32 Wednesday in his composite tables on the screen – which they would have been
33 able to do – Equatorial Guinea would have been able to replicate the exercise that
34 we undertook.

35
36 Third, in closing my submissions last Wednesday, I said that the Marshall Islands
37 acknowledged, and I said this formally and on the record, and I quote what I said
38 then. I said that the Marshall Islands acknowledges that “loss, damage and injury
39 caused by Nigeria cannot be the subject of reparations in these proceedings”.² I also
40 addressed, in that same segment, what we consider can properly be the subject of a
41 reparations claim, and the footnote references to my arguments last Wednesday are
42 in the speaking note.³ We heard nothing from Equatorial Guinea on that last
43 week – no doubt for reasons that it did not suit their *Monetary Gold* hypothesis that
44 the Marshall Islands is claiming for recompense for loss and damage caused by
45 Nigeria. We are not. In reflection of this, and that we had previously, before this
46 hearing, indicated that we would be withdrawing some elements of our damages

¹ <https://www.average-adjusters.com/>

² ITLOS/PV.25/C32/5/Rev.1, page 25, lines 26-28.

³ ITLOS/PV.25/C32/5/Rev.1, page 24, line 47 to page 25, line 33.

1 claim, we will set out our revised damages claim in our final submissions at the close
2 of our case this morning.

3
4 Mr President, Members of the Chamber, I move on to some other points that warrant
5 comment. As I do so, let me make the further observation that there are many issues
6 of contention of law and of contention of fact that we will not have an opportunity to
7 get to in the brief 150 minutes that we have this morning. That should not be taken
8 as an indication that we accept the submissions of our friends on the other side.

9
10 I note in passing, just to illustrate the point, one aspect of those contentions, which
11 was the contention advanced by Counsel for the other side, that the non-aggravation
12 claim could only arise in the context of a request for interim remedies. That, of
13 course, cannot be the case. In any proceedings, there will be an implicit obligation of
14 non-aggravation, whether it is with respect to the intimidation of witness, the
15 production of documents, and so on. This is not limited to provisional relief.

16
17 You heard a simple narrative from our friends last week. They said this case is all
18 about cooperation in respect of the suppression of piracy and all about Equatorial
19 Guinea aiding and assisting, within the framework of Article 100 of UNCLOS, of
20 which the Yaoundé Code simply sets out operational modalities. Again, this is
21 compelling stuff in the simplicity of the message that is purporting to be conveyed,
22 but this is divorced from the facts and from the law.

23
24 There was a good deal on which you heard nothing from Equatorial Guinea last
25 week. You heard nothing from them on Equatorial Guinea's failures to engage with
26 the Marshall Islands. You see on the slide in front of you reference to seven letters
27 and Notes Verbales from the Marshall Islands to Equatorial Guinea between
28 16 August and 14 November 2022. No response. No response to any of them.

29
30 You heard nothing from Equatorial Guinea on their failure to cooperate with the
31 Marshall Islands, as flag State, in the repression of piracy under Article 100 of
32 UNCLOS. Yes, Equatorial Guinea had an obligation to cooperate with us as well in
33 the repression of piracy. We are the flag State. The much-vaunted obligation under
34 Article 100, on which Equatorial Guinea very belatedly says it relies – in evidence
35 that is completely unmoored from the facts – is prayed in aid of what is said to be an
36 unquestioning obligation to assist Nigeria. But, as between the receipt of the
37 WhatsApp message from Nigeria on 10 August and the interception of the "*Heroic*
38 *Idun*" on 12 August, there was a period of 60 hours. Where was Equatorial Guinea's
39 duty to cooperate with the flag State during that period? We are met by silence.

40
41 You heard virtually nothing from our friends opposite on the length of the detention of
42 the vessel and the crew, the 92 days. You heard virtually nothing from them on the
43 harrowing days prior to the rendition of the vessel and the crew to Nigeria. You heard
44 nothing on the fine, other than that it was levied in respect of the costs incurred as a
45 result of the detention of the vessel. With the greatest respect to our friends
46 opposite, that is bordering on the offensive. All the evidence on the record confirms
47 that the fine was a shakedown, it was an extortion from those detained to secure
48 their release – although sadly to no good outcome.

1 You also heard virtually nothing on the evidence of non-material harm to the
2 26 members of the crew – evidence that is found in more than 28 witness statements
3 from the crew, from other witnesses of fact, and in the expert report of
4 Dr Perman-Kerr. On this, all you heard is that Dr Perman-Kerr should have
5 conducted therapy sessions on Zoom.
6

7 You were given no explanation about the evidence missing from the heart of the
8 Equatoguinean case, such as the statement that the Master felt compelled to sign
9 while in detention in Malabo. We do not have that. Equatorial Guinea has that.
10 Where is it in the record? You were given no explanation about the refusal to permit
11 the crew to be accompanied by lawyers during the lengthy interviews conducted in
12 police custody, in police cells. In substitution for this missing evidence, what did you
13 get, Mr President, Members of the Special Chamber? What you got were references
14 to Indian food prepared by the best chefs in Malabo and state-of-the-art medical
15 facilities, although not about the highly troubling medical treatment that was actually
16 administered to members of the crew.
17

18 We come then to the evidence and argument with which you were presented by
19 Equatorial Guinea.
20

21 There was the WhatsApp message from Nigeria on 10 August. Dr Busco will take
22 you back to this. Let me observe simply that the act on which Equatorial Guinea
23 rests its entire case – its jurisdiction case, its admissibility case, its merits case – the
24 act on which Equatorial Guinea rests its entire case is a short WhatsApp message
25 on the basis of which it has then constructed an elaborate obligation to cooperate in
26 the suppression of piracy. A VLCC with 26 crew was seized and detained for
27 92 days by Equatorial Guinea on the basis of a WhatsApp message, which we are
28 told could properly simply be taken at face value, with no need for further inquiry.
29 This WhatsApp message, we are told, was enough, without more, we heard from the
30 Captain, for Equatorial Guinea to trigger Article 100 and to seize the vessel pursuant
31 to Article 105 of the Convention. I will come to the law in just a moment. As a matter
32 of credible appreciation, this simply beggars belief.
33

34 Mr President, Members of the Chamber, as you move forward to your deliberations
35 beyond the issue of jurisdiction, you will be faced with two lines of inquiry in the light
36 of Equatorial Guinea's defence in this Chamber last week, both of which turn on the
37 pivot of Equatorial Guinea's piracy defence.
38

39 The fundamental pivot for both lines of inquiry is whether Equatorial Guinea had, or
40 could have, brought itself within a piracy exception of UNCLOS to justify its
41 subsequent conduct. If it could not bring itself within that piracy exception but for its
42 jurisdiction and admissibility defences, Equatorial Guinea's case collapses
43 completely. It has put all of its merits defence eggs in the piracy basket. If the piracy
44 basket falls, it has no other defence on the merits.
45

46 The second line of inquiry for you in your deliberations will arise if, on your pivotal
47 assessment of the piracy claim, you conclude that Equatorial Guinea had and could
48 have brought itself within the piracy exception of UNCLOS. If so, you will then need
49 to address whether, in the face of this sufficiently robust apprehension of piracy,
50 Equatorial Guinea conducted itself lawfully, having regard to that apprehension of

1 piracy. We say that it did not. Equatorial Guinea did not undertake any steps
2 whatever to cooperate with the Marshall Islands, as Article 100 obliged it to do, in the
3 60 hours between receipt of that WhatsApp message and the interception and the
4 “*Heroic Idun*.” This was not a hot pursuit operation. This was not a time-sensitive,
5 logistically fraught or security-sensitive maritime interdiction. The vessel was not
6 trying to flee. Its location was known from multiple sources, as was the
7 much-vaunted counterfactual return to Akpo Terminal scheduled for 17 August.
8 Where was the operational impediment in engaging and cooperating with the flag
9 State, as Equatorial Guinea was legally obliged to do, on its own case, under
10 Article 100?

11
12 Beyond Article 100, we heard from our friends opposite contorting themselves in an
13 effort to avoid Article 110. But, if they cry piracy, they must bring themselves within
14 the scope of the piracy provisions of UNCLOS. As Dr Busco will address, they
15 cannot bring themselves within the scope of Article 110 – a point that Counsel
16 opposite candidly accepts. Dr Busco will take you through Article 110.

17
18 Equatorial Guinea, accordingly, relied on Article 105, which provides a legal basis for
19 the seizure of a pirate ship. You see the text on the screen.

20
21 Significantly, Counsel opposite, in his careful review of the provisions, parsing up the
22 definition of piracy in Article 101, and taking you to sub-paragraph (c) of that
23 provision, you will recall, in which he rooted his case, he failed entirely – entirely – to
24 take you to Article 103, which is a rather remarkable and egregious oversight, as this
25 contains the definition of the term “pirate ship” and is thus the predicate enquiry to
26 the application of Article 105 and the entitlement to seize. If you do a search of the
27 transcript record, you will see a number of references to Article 103; they are all by
28 Counsel to the Marshall Islands.

29
30 Article 103 defines a pirate ship as a ship which “is intended by the persons in
31 dominant control to be used for the purpose of committing one of the acts referred to
32 in Article 101”. The same applies if the ship has been used to commit any such acts,
33 “so long as it remains under the control of the persons guilty of that act”.

34
35 So, before Equatorial Guinea could lawfully seize the “*Heroic Idun*” in the exercise of
36 its *ex post facto* conceived piracy operation, cooperating with Nigeria alone, not with
37 us, it would have had to have concluded that the “*Heroic Idun*” was in fact a pirate
38 ship. This is not a “reasonable suspicions” clause: was, in fact, a pirate ship. This is
39 not a “reasonable grounds for suspecting” test, as in Article 110 – it is a much higher
40 test as it forms the legal basis for seizing a ship. We heard nothing from Captain
41 Esono Nchama on this last week.

42
43 It would have been straightforward as anything for the old-school Colonel to have
44 reached out to the Marshall Islands’ Registry, indeed by simply picking up the
45 telephone – the Registry maintains a 24-hour hotline – in the 60 hours or so before
46 he acted, to seek the cooperation of the flag State. This would have enabled
47 Equatorial Guinea to reach an informed assessment of whether the “*Heroic Idun*”
48 was indeed a pirate ship that could be seized. Captain Esono could have requested
49 the cooperation of the flag State under Article 100 in enabling appropriate enquiries
50 or investigations to be undertaken, whether in Equatorial Guinea or Nigeria or

1 elsewhere. He, though, did none of this. Rather, Equatorial Guinea simply seized
2 the ship and its crew, and held them for 92 days, and, in response to the seven
3 letters and Notes Verbales from the Marshall Islands, increasingly desperate at the
4 plight of the crew and the holding of the vessel, Equatorial Guinea gave no reply.

5
6 Mr President, Members of the Chamber, as I observed in my closing submissions
7 last week, Equatorial Guinea is simply making things up as it goes along.⁴ This is the
8 problem with *ex post facto* justifications. It is challenging to squeeze them into the
9 facts. Our friends opposite are leaving ragged edges to their case in the wake of
10 arguments which don't quite fit. As I said on Wednesday, and put as a blinking light
11 on your deliberations radar screen, Equatorial Guinea's piracy defence was and is a
12 sham, a dissembling fiction, aimed at diverting attention away from proper scrutiny of
13 its conduct. Dr Busco will make some further submissions on this shortly, including
14 by reference to the evidence at some remove from the period of the interception and
15 the detention that underline the absence of any contemporaneous appreciation that
16 the seizure of the "*Heroic Idun*" and its crew had a suppression of piracy rationale in
17 mind.

18
19 Mr President, Members of the Chamber, I come now, and regrettably only briefly,
20 given the tight time constraints, to Equatorial Guinea's objections to jurisdiction and
21 admissibility and its contentions on applicable law. As I do so, let me make an
22 observation about what I have said so far about Equatorial Guinea's case.

23
24 With a genuinely meant compliment, our friends opposite have constructed an
25 appealing narrative. They have attempted to recast the facts. They have polished a
26 pristine legal defence. They have painted themselves as virtuous defenders of
27 cooperation in the field of suppression of piracy. They have donned the garb of a
28 good neighbour to Nigeria. They have vaunted their assistance to the Marshall
29 Islands with respect to the "*Sea Phantom*". They have burnished their rule of law
30 credentials in the field of human rights, saying that the crew could have brought a
31 case for *habeas corpus* or some other remedies under domestic procedures. From
32 afar, without further enquiry, we would look at this newly polished case and wonder,
33 what was the Marshall Islands thinking when it decided, after careful and responsible
34 reflection, to bring the case?

35
36 The only problem is that, once one gets close to this newly polished case, it begins
37 to smell. At first, it is not so clear where the smell comes from, but it smells. And as
38 one gets closer, it becomes evident that the smell is everywhere. It is in the corners
39 and under the seats. It is in the furnishings. It is in the burnishing of local remedies
40 and the attempts to hide behind the skirts of Nigeria. It is in the evidence of the
41 Colonel and the claim that the crew were treated well – they were given Indian food.
42 It is in the failure even to address the unaddressed points that I identified at the start
43 of my submissions.

44
45 Mr President, Members of the Chamber, I do not make this case lightly. When the
46 dust of these proceedings settles, when we walk out of this Chamber tomorrow
47 evening, the Marshall Islands and Equatorial Guinea will go back to a wider world in
48 which constructive and good faith engagement going into the future will be both

⁴ ITLOS/PV.25/C32/5/Rev.1, page 24, lines 4-7.

1 necessary and of looming importance for both of us. This said, there is an elephant
2 in the room that needs to be called out if the interpretation of UNCLOS and the
3 jurisdiction of ITLOS is not to get squashed against the walls.

4
5 On *Monetary Gold*, the exhaustion of local remedies, and applicable law, there would
6 be a good deal to say in response to our friends' arguments, had there been time.
7 I do not have time and, therefore, will limit myself to only a few observations.

8
9 On *Monetary Gold*, Equatorial Guinea's case is that the principle is applicable to the
10 Marshall Islands' claims regarding freedom of navigation and exclusivity of flag State
11 jurisdiction because "it was Nigeria that made the request".⁵ We are back to the
12 WhatsApp message, the seizure of the ship on the basis of a WhatsApp message.
13 The Marshall Islands does not dispute that Nigeria made a request, but we are still
14 waiting to hear what rights and responsibilities of Nigeria must be determined in
15 these proceedings. The reality is that there is nothing in this case that requires you to
16 address and assess the lawfulness or otherwise of Nigeria's conduct.

17
18 Mr President, Members of the Chamber, the Marshall Islands makes no submission
19 in this case that Nigeria was not entitled to request the cooperation of Equatorial
20 Guinea to assist in its enquiries. We make no submissions in this case on whether
21 the concerns that led to that request for assistance were well founded. We make no
22 submissions in this case on whether the events from the 11 November 2022 to the
23 27 May 2023, when the "*Heroic Idun*" and the crew were in Nigeria's jurisdiction and
24 under its control, had a lawful basis. We make no submissions on this. We make no
25 claim in these proceedings for any loss, damage or injury that might have been
26 caused by Nigeria. Indeed, the Marshall Islands makes no claim whatever in these
27 proceedings about the lawfulness or otherwise of Nigeria's conduct in the period
28 7 August 2022 to 27 May 2023.

29
30 The focus of this case is Equatorial Guinea's conduct in giving effect to Nigeria's
31 request and in undertaking its own sovereign conduct in the period 12 August to
32 11 November 2022. Nothing more.

33
34 If one State requests the assistance of another in the apprehension of a suspect and
35 the extradition of that suspect upon apprehension to stand trial, that request is a
36 matter of fact. The responsibility of the State whose assistance is requested is not
37 engaged by the mere receipt of the request – whether it is received by WhatsApp or
38 through Interpol. If, however, the State whose assistance is requested thereafter
39 proceeds to apprehend the suspect, without addressing its own mind to the issues,
40 to haul him into custody, in violation of the most basic due process safeguards, to
41 take away his passport, to deprive him of his liberty, to refuse him a lawyer in the
42 course of an interview on a compelled signature of a statement, to mistreat him, to
43 detain him for 92 days, and then to render him through an extrajudicial process to
44 the requesting State, that State cannot say, when called to account for its conduct,
45 that it was simply following orders. Equatorial Guinea, from the moment it received
46 the WhatsApp request, had a choice to make in the exercise of its own sovereign
47 conduct, both in the manner in which it responded to Nigeria's request and in its

⁵ ITLOS/PV.25/C32/7, page 21, line 40.

1 choice of whether to inform and engage with the Marshall Islands. Equatorial Guinea
2 chose to act as it did.

3
4 An assessment of the lawfulness and the responsibility of Equatorial Guinea from
5 10 August to 11 November does not in any shape or form require adjudication of any
6 rights or responsibilities of Nigeria. Counsel for Equatorial Guinea, using a
7 much-recited metaphor deployed by a departed giant of international law, said that
8 these proceedings without Nigeria would be like the sound of one hand clapping. Not
9 so. Not all callings to account require an orchestra, or even an ensemble, or even a
10 duo. When the bell tolls, they can quite properly toll for Equatorial Guinea alone. It is
11 Equatorial Guinea's conduct that is in issue in these proceedings, not Nigeria's.

12
13 Mr President, Members of the Chamber, had Equatorial Guinea, on receipt of that
14 WhatsApp message on 10 August, reached out to the Marshall Islands, as flag
15 State, in fulfilment of its duty to cooperate – assuming its piracy case *quod non* – had
16 they reached out in those 60 hours that were available for calm reflection, we would
17 not be here. The Marshall Islands is a responsible maritime State with a highly
18 professional and skilled Registry. It would have bent over backwards to address and
19 resolve any issues of concern with Equatorial Guinea.

20
21 Had Equatorial Guinea, in exercise of reasonable grounds for suspecting piracy –
22 *quod non*, again – had they taken the steps that would have been available to it
23 under UNCLOS to visit and investigate, we would not be here. Had Equatorial
24 Guinea disembarked the crew under caution, or even under arrest, respecting their
25 due process rights, and pursued enquiries with lawyers present, we would not be
26 here. Had Equatorial Guinea required that the other interviews of the crew been
27 conducted with proper regard for their due process rights, we would not be here. Had
28 Equatorial Guinea completed its inquiries in due time, without prolonged detention of
29 the crew, and then released the vessel and the crew, we would not be here. Had
30 Equatorial Guinea not rendered the vessel and the crew to Nigeria through an
31 extrajudicial process and in the face of Prompt Release proceedings, we would not
32 be here. Equatorial Guinea is in this courtroom, before this Special Chamber, to
33 account for its conduct and for its conduct alone.

34
35 Mr President, Members of the Chamber, I make one further point on the *Monetary*
36 *Gold* argument, addressed to Equatorial Guinea's invocation of the "*Norstar*"
37 judgment to support its case. Equatorial Guinea is much attracted to counterfactuals.
38 The problem, though, with counterfactuals is that they are speculation and they are
39 open to counter-counter hypotheses – such as in the case of the mooted return of
40 the "*Heroic Idun*" to the Akpo Terminal on 17 August to load its nominated cargo.
41 Absent the 92 days, on the counter-counterfactual of engagement with the Marshall
42 Islands, who knows how things might have played out.

43
44 So too with "*Norstar*". The Tribunal rejected the *Monetary Gold* argument raised by
45 Italy. Had, however, Spain detained the "*Norstar*" egregiously and in breach of the
46 law, and Panama proceeded against Spain, Spain would not have been able to play
47 a get-out-of-jail-free card by reference to Italy's request. With sovereign
48 decision-making comes sovereign responsibility. Equatorial Guinea must be held to
49 account for its own sovereign conduct.

1 I have time for only the briefest of observations on Equatorial Guinea's arguments on
2 the exhaustion of local remedies, with no disrespect to my friends for their
3 submissions on this point.

4
5 Mindful of the importance of the wider relationship between the Marshall Islands and
6 Equatorial Guinea that goes beyond this case, the Marshall Islands, with careful
7 thought and consideration, refrained from making a full-throated futility argument –
8 conscious also of the hesitation expressed in the “*Virginia G*” joint dissenting opinion
9 about the challenges of passing comment on a State's very system of legal
10 protection. We hold back, even now, in the face of the submissions made last week,
11 from making a full-throated case on futility. But, Mr President, Members of the
12 Chamber, this diplomatic restraint in holding back on making this argument should
13 not be mistaken for an implicit acceptance that, in the circumstances of this case,
14 there were available local remedies to exhaust. The erudite submissions of Counsel
15 for Equatorial Guinea notwithstanding, there were none. Indeed, as a footnoted
16 reference in my submissions to the contemporaneous Human Rights Practices
17 report by the U.S. Department of State makes plain, there were (and remain)
18 elevated highly elevated concerns about prolonged detention without charges, about
19 mistreatment in detention, about the denial of fair trials, and more, in Equatorial
20 Guinea.⁶

21
22 Mr President, Members of the Chamber, there are three points that we do rest on in
23 these proceedings. The first is that there was no requirement to exhaust local
24 remedies in this case – relying on the preponderant test that has been much
25 addressed. In the interests of time, I say nothing more on this element.

26
27 The second point is to recall the facts of this case – denial of the right to legal
28 representation during prolonged interviews conducted in the police station;
29 prolonged detention; Equatorial Guinea's facilitation of interviews by third parties
30 without due process rights; the splitting up of the crew and concerns about
31 provocation in the face of vulnerability; and more. Playing basketball with the guards,
32 just like prisoner-of-war internment, does not suggest a benign environment,
33 conducive to a *habeas corpus* application that is free from very serious risk of
34 retribution.

35
36 My third point is simply to observe that we heard nothing from Counsel opposite in
37 response to the “*Saiga*” (No. 2) judgment, and that from Judge Wolfrum in his
38 separate opinion, which I referenced in my submissions on Monday,⁷ for exhaustion
39 of local remedies even to be in issue, there must be a valid and a lawful jurisdictional
40 nexus between the natural and juridical persons and the State whose local remedies
41 are said to require exhaustion. There is none. There is no case to be made on this.

42
43 Mr President, Members of the Chamber, with the slide still on the screen from the
44 Tribunal's “*Saiga*” (No. 2) judgment, we've got paragraph 100, and I think there are
45 two further pages which address both the exhaustion of local remedies and the
46 nationality elements of the “*Saiga*” judgment, but go to the very *raison d'être* of
47 ITLOS dispute settlement and the notion of the unit of the ship.

⁶ <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/equatorial-guinea/>

⁷ ITLOS/PV.25/C32/2, page 6, line 46 to page 7, line 17.

1 With the slide still on the screen from the “*Saiga*” judgment, the very first case that
2 came to ITLOS, I make an observation that goes both to jurisdiction and applicable
3 law, as well as to the interpretation and application of the substantive provisions of
4 UNCLOS. It is no part of the Marshall Islands’ case to seek to prise open jurisdiction
5 or to enlarge the applicable law, no matter what our friends opposite say. We do not
6 come before you with either litigious fervour or an inclination to use legal
7 proceedings as a substitute for legislative consent. But we also come before you with
8 a sense that Equatorial Guinea’s case wishes to take you backwards, before “*Saiga*”,
9 to a place that would limit jurisdiction and applicable law at every turn, would
10 construe a State’s right to unchecked conduct as widely as possible, and would limit
11 the reach and application of constraints on conduct found in UNCLOS as extensively
12 as possible. I concluded our first-round submissions with the observation that this is
13 a portentous case – it has the potential to look to the future, but it also has the
14 potential to go back to the past. Your wise judgment will be required.
15

16 Mr President, Members of the Chamber, before I conclude, I would like to briefly put
17 on the screen and anticipate our revised Final Submissions that our Agent will read
18 out at the end of the case this morning; the slide is there. It will, in large measure, be
19 familiar to you. We have reformulated some of the language, but all of the key claims
20 are there. We have, though, made some material changes, to narrow our claims on
21 some issues, to enlarge them on others, and to refine them and crystallize the points
22 of dispute where this is warranted. This is the purpose of the requirement in
23 Article 75(2) of your Rules, that the Agent read the Final Submissions at the close of
24 the hearing, to enable the request for relief to be sharpened as the arguments
25 between the Parties hone the debate.
26

27 On the revisions, I highlight for your attention at this point just three. No doubt, we
28 will hear much of this tomorrow from our colleagues.
29

30 As you will see at paragraph 5, which is now on the screen, we have added a
31 number of requests for relief that go directly to Equatorial Guinea’s contentions on
32 piracy. We consider its case to be both disingenuous and unsustainable in fact and in
33 law. And let me say that this can be no surprise. There can be no ambush here.
34 These are the very arguments that Equatorial Guinea advanced. We are simply
35 calling them out on them and asking for a request for a relief for you to adjudge and
36 declare.
37

38 We then, at paragraph 6, we have crystallized our claims in respect of considerations
39 of humanity and the IMO conventions more clearly, in the light of what we have
40 heard from our friends, in both their Rejoinder and over the past days.
41

42 And then in paragraph 7, which Dr Casas will address more fully, we have materially
43 revised our quantum claim to reflect the assessment of principle that I addressed in
44 my closing submissions on Wednesday regarding the basis of which we consider we
45 can properly claim in these proceedings and what should be removed. We have also
46 broken down the quantum claim into its different phases, its different temporal
47 phases, to make this more accessible and to facilitate your assessment of the
48 various elements of the quantum claim. Dr Casas will address this more fully in his
49 submissions shortly, and I do not anticipate those.
50

1 Mr President, Members of the Chamber, as I conclude and ask you to invite
2 Ms Grafton to the podium, I note two procedural points. The first is that, as you
3 deliberate, if there are issues of law or of evidence on which you consider that further
4 submissions of the Parties would be appropriate, there is scope in your Rules to
5 request such further submissions. The Marshall Islands would welcome any such
6 inquiries.

7
8 Second, if, on remedies, you consider that it would be sensible to bifurcate this
9 aspect of your assessment into a separate phase, because the quantification and the
10 detailed review of invoices may be too difficult at this stage, or for any other reason,
11 again, we would be entirely open to this.

12
13 Mr President, Members of the Chamber, with that said, that brings to a close my
14 submissions in these proceedings over these eight days or so. I would like to thank
15 you for your kind attention and I would like to invite you, Mr President, to call
16 Ms Grafton to the podium to continue our submissions.

17
18 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Sir Daniel for his
19 statement, and I now give the floor to Ms Grafton to make her statement. You have
20 the floor.

21
22 **MS GRAFTON:** Mr President, Members of the Chamber, I will make my submissions
23 in two parts: first, I will discuss the evidence before you; second, I will very briefly
24 touch on considerations of humanity and human rights.

25
26 First, as to the evidence before you, I would like to discuss the documentary record
27 and the witness evidence.

28
29 So, first, the documentary record. You have an undated WhatsApp on which the
30 piracy defence rests and you have Note Verbales from Nigeria to Equatorial Guinea.
31 My colleagues will discuss this evidence shortly.

32
33 But what documents do you have on the record for the 92 days in question from the
34 Equatoguinean Government? You have five. You have five documents on the
35 record: you have the fine⁸ – but it was, in fact, the Marshall Islands who first annexed
36 this document; you have two innocuous Note Verbales that Equatorial Guinea sent
37 to Nigeria;⁹ you have the customs report that was prepared when the vessel arrived
38 at Luba Bay, which says that there were no customs violations;¹⁰ and you have a
39 document which is said to hand over the vessel to Nigeria on 11 November.¹¹ That is
40 it: five documents.

41
42 You do not have any document to show the basis on which Equatorial Guinea
43 detained the crew and the “*Heroic Idun*”. You do not have any of the alleged
44 “security protocols”.¹² You do not have any document from the crew interviews –
45 none of the Spanish statements the crew had to sign, none of the contemporaneous

⁸ REG-039.

⁹ REG-047, REG-050.

¹⁰ REG-037.

¹¹ REG-050, addendum at REG-011.

¹² Nchama-1, para. 22 (REG-WS-001); Nchama-2, para. 14 (REG-WS-007).

1 notes of the officials. You do not have any government correspondence discussing
2 the release (or not) of the vessel. You do not have any correspondence between
3 Besora and the Equatoguinean Government. What you have is five documents.
4

5 What is even more stark is that the lack of documentary evidence regarding the
6 “*Heroic Idun*” sits at odds with other evidence provided by Equatorial Guinea in this
7 case. In particular, Equatorial Guinea annexed two letters that Colonel Esono sent in
8 2021 to the Ministry of Defence regarding the “*Sea Phantom*” incident.¹³ But there
9 are no letters from Captain Esono or anyone else regarding the “*Heroic Idun*”
10 incident. No note, no emails, no messages – nothing.
11

12 We say that you can and should draw adverse inferences regarding this lack of
13 evidence.
14

15 This brings me to the second issue of evidence: the credibility of witnesses.
16

17 On Monday and Tuesday, we heard from the Chief Officer and the Master. They
18 were open and honest. They described in a balanced manner the interception of the
19 vessel and the conditions of their detention in Equatorial Guinea, and they explained
20 clearly and coherently the impacts of Equatorial Guinea’s conduct.
21

22 I need to emphasize that at no point during the *in camera* cross-examination of either
23 witness was it put to them that they had lied in any of their dealings with the
24 authorities. But at the public hearing last week, after the Master was back in India
25 and watching these proceedings from home, you were told by Counsel for Equatorial
26 Guinea that Mr Mehta had “told ... something that was untrue” on 8 August 2022.
27 This is wrong. And although the substance of the point is not relevant, it is important
28 to correct the point now because the Captain was not afforded the opportunity to do
29 so.
30

31 In short, Counsel for Equatorial Guinea told you:
32

33 “[T]he Master admitted twice that he told the Nigerian Navy that the next port of call
34 was Ceiba, Equatorial Guinea. Yet, he confirmed that, in fact, the real destination
35 was still Nigeria. The Master, therefore, told the Nigerian Navy something that was
36 untrue. Why would he do that?”
37

38 The answer to Counsel’s question is that he did not do that. The exchange referred
39 to is on the screen on the right. You will see at the top, the Navy asked the Master,
40 “confirm your next port of call from this place” – that is, from Akpo. To which the
41 Master replied, “After finishing, the next port of call is Ceiba, Equatorial Guinea”. And
42 the Master’s response of course corresponds with the voyage orders of the vessel,
43 which you can find at Annex MT/-10. I hope that the record is now clear.
44

45 Then, on Thursday, we heard from Colonel Esono and Mr Hernández. As to Colonel
46 Esono, I highlight four points.
47

¹³ REG-005, REG-006.

1 First, in examination, Counsel for Equatorial Guinea asked Colonel Esono why he
2 was “immediately concerned that the *“Heroic Idun”* could be involved in piracy”. He
3 gave two reasons: first, the WhatsApp message received from Nigeria – and my
4 colleague, Mr Busco, will address this – and, second, the way that the *“Heroic Idun”*
5 reacted when it was first contacted by the *“Capitan David”*.¹⁴ I will not read what
6 Colonel Esono said into the record to respect the *in camera* proceedings, but I have
7 included it in a hard copy on your slides.

8
9 On the slide, below his explanation which we all have on the screen, you will see a
10 copy of the VDR transcript which sets out what, in fact, occurred. It is entirely at odd
11 with Captain Esono’s narrative.

12
13 Second, you will also recall that, in cross-examination, Colonel Esono was shown his
14 signatures on various documents. He then, to borrow a phrase used this week, tied
15 himself into a pretzel. Again, I will not read out the exchanges, to respect the *in*
16 *camera* proceedings, but, to put it lightly, his answers and his logic are difficult to
17 follow.¹⁵

18
19 Third, despite referring to the millions of tricks and strategies of pirates, Captain
20 Esono refused to accept – less than 10 seconds later – that pirates could pretend to
21 be naval forces, no doubt because he knew it might harm Equatorial Guinea’s
22 case.¹⁶

23
24 Fourth, Colonel Esono could not recall that he had said in his statements that a team
25 of lawyers from Equatorial Guinea had assisted him nor could he recall who those
26 lawyers were.¹⁷

27
28 In our submissions, such shifting, partisan answers should give you pause.

29
30 Turning then to Mr Hernández, his undated report to an unnamed and unknown
31 person provided at an unknown time says it all. Ms Nevill displayed for the Chamber,
32 and I display again, the discrepancies between the contemporaneous reports that
33 Mr Hernández sent to the owners through BUDD, and the edited report that
34 Mr Hernández sent to the Equatoguinean authorities. The changes – which seek to
35 absolve Equatorial Guinea of any wrongdoing – are obvious to anyone reading the
36 documents. Mr Hernández’s evidence in these proceedings must be considered in
37 light of this conduct.

38
39 For these reasons, we say that the evidence of Equatorial Guinea, both documentary
40 and witness, must be approached with extreme caution.

41
42 This brings me to the second part of my submissions on considerations of humanity
43 and human rights. In light of the time, I will take this swiftly.

44
45 As regards considerations of humanity, Equatorial Guinea continues to try and paint
46 the picture of the detention in a positive light. This narrative is divorced from reality.

¹⁴ ITLOS/PV.25/C32/6, p. 12, lines 20-29.

¹⁵ ITLOS/PV.25/C32/6, pp. 13-15.

¹⁶ ITLOS/PV.25/C32/6, pp. 19-20.

¹⁷ ITLOS/PV.25/C32/6, p. 14, line 31 to p. 15, line 5.

1 I encourage you to do two things when evaluating the evidence. First, look at what
2 the Marshall Islands and its witnesses actually say about the conditions of detention,
3 not what Equatorial Guinea says we say: the two often bear no resemblance.

4
5 Second, pay attention to what Equatorial Guinea doesn't say. For example, in his
6 lengthy submissions on considerations of humanity, Counsel for Equatorial Guinea
7 did not mention – not once – the undisputed fact that the crew were denied access to
8 lawyers in interviews, nor do the events of 4 to 11 November feature in Equatorial
9 Guinea's narrative. Instead, we hear a lot about the Hotel Anda. To assist in this
10 exercise, in this respect and more generally, we have put together in your slides, and
11 we'll briefly put them on the screen, a list of demonstrably incorrect facts asserted by
12 Equatorial Guinea in the oral proceedings. They are on the slides and in your hard
13 copy.

14
15 As regards human rights, we addressed in our oral submissions whether the law is
16 applicable *ratione loci* and the territorial scope of the human rights claims in our oral
17 submissions on Tuesday, and this is what Equatorial Guinea subsequently
18 addressed. For that reason, I don't propose to repeat them again today, but I instead
19 refer you to our submissions and you have the transcript references.¹⁸

20
21 Mr President, the Chamber, that concludes my submissions on behalf of the
22 Marshall Islands, and I thank you for your kind attention.

23
24 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Ms Grafton and I now
25 invite Dr Busco to make his statement. You have the floor, Sir.

26
27 **MR BUSCO:** Mr President, Members of the Special Chamber, I will address two
28 issues: first, Equatorial Guinea's reliance on piracy to seek to justify the
29 apprehension of the "*Heroic Idun*"; and, second, Equatorial Guinea's unlawful
30 exercise of prescriptive jurisdiction, resulting, *inter alia*, in criminal charges and the
31 imposition of a fine in excess of €2 million.

32
33 This conduct by Equatorial Guinea gives rise to two independent breaches of
34 UNCLOS. I will turn to this point later. For now, I note that the conclusion in respect
35 of both conducts is the same: Equatorial Guinea violated freedom of navigation and
36 exclusive flag State jurisdiction of the Marshall Islands.

37
38 Before I start, I would like to make a preliminary observation. Counsel for Equatorial
39 Guinea has said that the Marshall Islands is trying to change the "subject matter" of
40 this case,¹⁹ turning it into one concerning the right of visitation under Article 110.

41
42 Not at all. This is a case about the interdiction of the "*Heroic Idun*" in breach of
43 freedom of navigation and exclusive flag State jurisdiction. Equatorial Guinea owes
44 these obligations to the Marshall Islands and it does not owe them any less because
45 Nigeria requested the apprehension of the vessel. As a matter of your jurisdiction
46 under *Monetary Gold*, it is these obligations, owed by Equatorial Guinea to the
47 Marshall Islands, that the Chamber is called upon to adjudicate. As a matter of

¹⁸ ITLOS/PV.25/C32/4, p. 20, lines 8-43; p. 19, lines 26-34.

¹⁹ ITLOS/PV.25/C32/7, page 24.

merits, Equatorial Guinea's piracy defence provides no exception to these obligations.

Let me start with piracy.

In "*A Scandal in Bohemia*", Sherlock Holmes warns that "twist[ing] facts to suit theories, instead of theories to suit facts" is complicated, and it is very apt to quote this sentence in these proceedings.

We have heard many theories from Counsel for Equatorial Guinea, attempting to retrofit into the contemporaneous record a suspicion of piracy concerning the "*Heroic Idun*" that simply never existed. But constructing a narrative *ex post facto* is a dangerous exercise – the contemporaneous truth always seeps through the cracks of such experiments.

Let me start with just a few examples of Equatorial Guinea's twisting of facts to suit its piracy theories.

Captain Esono said in his oral submissions that he received (...) messages in which the Nigerian authorities were requesting the detaining of the "*Heroic Idun*" under suspicion of involvement of piracy. I refer you to the transcripts for his exact words.²⁰ But I would like to take the Chamber again through the WhatsApp messages here on your screen. Nowhere – nowhere – in these messages does Nigeria request to detain the vessel, or alleges that the "*Heroic Idun*" was involved in piracy.

Captain Esono also claimed that, when approached by the "*Capitan David*" on 12 August 2022, the "*Heroic Idun*" increased her speed and attempted to flee. He emphasized that this conduct corroborated the suspicion of piracy and is what justified the apprehension of the vessel.²¹ Counsel for Equatorial Guinea, on his part, stressed that the "*Capitan David*" had to request not once, not twice, three times that the "*Heroic Idun*" stop her engines,²² attempting, evidently, to corroborate this grand escape theory.

Now, let's look again at the evidence. The first request to stop the engines came at 12:37:09, the second at 12:37:27, and the third at 12:37:59. Three requests, all within 50 seconds. "*Capitan David*" was not reacting to any sudden acceleration or attempt to flee; it would have been impossible to meaningfully, and especially visibly, increase the speed in 50 seconds. "*Capitan David*" was simply repeating the same instruction three times.

But what is even more remarkable, Captain Esono's attempt to retrofit piracy into this neutral repetition of instructions collapses in the face of the truth, and the truth is that the "*Heroic Idun*"'s speed was in fact decreasing, not increasing, through these exchanges.

Let's look at this video recording from the deck.²³

²⁰ ITLOS/PV.25/C32/6, page 12.

²¹ ITLOS/PV.25/C32/6, page 12.

²² ITLOS/PV.25/C32/7, page 4.

²³ MT – 35.

1 (Audio recording played)

2
3 If you look in the bottom left-hand corner, you can see RPM – these are revolutions
4 per minute – and that is the engine coming down: 8.9 knots, 8.8 knots.

5
6 We can continue the video.

7
8 (Audio recording continued to be played)

9
10 Mr President, Members of the Special Chamber, you will have an opportunity to, of
11 course, review this video carefully during your deliberation. The point is that a ship
12 does not escape by decreasing its speed.

13
14 Let's continue. Counsel for Equatorial Guinea told us that large tankers comparable
15 in size to the "*Heroic Idun*" have been used as mother ships in the past. Equatorial
16 Guinea was therefore justified in suspecting the same for the "*Heroic Idun*".²⁴ Except
17 that those large, very large, crude carriers were not tankers used by their crews as
18 mother ships to facilitate pirates. They were, instead, tankers hijacked by
19 pirates – vessels that had sent distress calls and had to be ransomed from those
20 who seized them. And I note that Equatorial Guinea has never suggested that the
21 "*Heroic Idun*" was hijacked by pirates.

22
23 Mr President, Members of the Special Chamber, Counsel for Equatorial Guinea has
24 theorized a lot, but has engaged remarkably little with the contemporaneous record.
25 The only contemporaneous evidence addressed by Equatorial Guinea is the first
26 WhatsApp message at 14:48 p.m. on 10 August referring to an "illegal fuel supply
27 operation". Counsel suggested that such an operation could be linked to piracy,
28 citing the purported connection between oil theft and bunkering and piracy, and
29 saying that Article 101(c) of UNCLOS includes acts of intentionally assisting
30 pirates.²⁵

31
32 The "illegal fuel supply operation" mentioned in the WhatsApp message is the
33 alleged illegal loading of crude oil by the "*Heroic Idun*" itself – it is not the bunkering
34 of some other ship. And, indeed, there is no reference to any distinct illegal oil supply
35 operation in Nigeria's Note Verbale of 10 August 2022, and this is the only formal
36 communication from Nigeria prior to the apprehension. In any case, the point is that
37 illegal oil bunkering is not piracy. It is precisely that – illegal oil bunkering. The
38 Yaoundé Code itself draws this distinction, and Ms Nevill has shown you the other
39 day.

40
41 Now, again, let's look more at the evidence that Equatorial Guinea has not engaged
42 with.

43
44 We have on record, and you can see it on screen, a Note Verbale of 12 September
45 2022 from Nigeria to Equatorial Guinea.²⁶ This is a three-page document. It sets out,
46 with granularity, the grounds on which Nigeria was allegedly pursuing the "*Heroic*
47 *Idun*." It quotes in this regard Articles 56 and 60 of UNCLOS. Nowhere does it allege

²⁴ ITLOS/PV.25/C32/8, page 19.

²⁵ ITLOS/PV.25/C32/8, page 21.

²⁶ REG – 021.

1 that the “*Heroic Idun*” was suspected of piracy. And one would expect allegations of
2 piracy, including in the form of a reference to Article 100, or perhaps 101 of
3 UNCLOS, to appear in a Note Verbale of this detail if piracy were truly the issue.

4
5 Mr President, Members of the Special Chamber, as you have heard from Sir Daniel
6 and Ms Grafton, this case is also about the evidence that does not exist. Our
7 questions the other day that go to the concrete, contemporaneous data on which you
8 need to decide this case, have remained unanswered.

9
10 If this were truly a piracy case, why was the first mention of allegations of piracy
11 made three months after the “*Heroic Idun*”’s arrest, and in a tweet by the Vice-
12 President of Equatorial Guinea, on the very same day the Marshall Islands initiated
13 prompt release proceedings? And why is there not a single contemporaneous
14 exchange between Nigeria and Equatorial Guinea mentioning piracy allegations or
15 anti-piracy cooperation?

16
17 Let’s dispel this piracy smokescreen once and for all. Equatorial Guinea
18 apprehended the “*Heroic Idun*” on a precise understanding of what the WhatsApp
19 messages and the Note Verbale of 10 August 2022 said – namely, that the vessel
20 was suspected of having committed a crime in Nigeria. Not the crime of piracy. Just
21 a crime.

22
23 Captain Esono believed that allegations of committing a crime – any crime – is
24 sufficient basis for interdicting a vessel on the high seas and bringing her ashore for
25 investigations. We told you during our first round of oral submission that the “*Heroic*
26 *Idun*” was interdicted for an alleged crime “other than piracy”;²⁷ and now the oral
27 testimony of Captain Esono confirms this. I will not project his exact words on the
28 screen, to respect the *in camera* nature of his examination, but you have what he
29 said on the hard copy version of your slide and I would like that you take a few
30 seconds to read it because this is really important.

31
32 Mr President, Members of the Special Chamber, you have read his words. It is
33 disquieting if this is Equatorial Guinea’s understanding of UNCLOS – that it can
34 interdict a vessel on the high seas based on a suspicion of any crime, and then think
35 that it was right to do so if that crime, not piracy, is purportedly established.

36
37 Mr President, Members of the Special Chamber, if, after hearing such statements
38 from Captain Esono, you were to uphold a piracy defence from which there is not a
39 shred of concrete contemporaneous evidence, any country subscribing to Equatorial
40 Guinea’s distorted interpretation of UNCLOS would have *carte blanche* to interdict
41 vessels at will. All it would need to do is concoct a piracy narrative afterwards.

42
43 This is easy. Let me have a go at it. Any fishing vessels could be interdicted on the
44 high seas upon request of another State because, I mean, after all, there is an
45 evident connection between fishing and piracy. Pirates often use fishing vessels as
46 mother ships, this is a fact, and sometimes they even disguise themselves as
47 fishermen.

48

27 ITLOS/PV.25/C32/3, page 43.

1 Mr President, Members of the Special Chamber, Equatorial Guinea also claims that
2 it could rely entirely on Nigeria's intelligence and had no duty to conduct its own
3 assessment. Not even *prima facie*. That is wrong, especially when the supposed
4 intelligence was a WhatsApp message, and what stood on the other side of that
5 WhatsApp message was a 336-metre foreign-flagged vessel with a crew of
6 26 people, exercising cardinal UNCLOS rights on the high seas. In any event, as we
7 have seen, Nigeria's WhatsApp contained no suggestion that the "*Heroic Idun*" was
8 engaged in piracy.

9
10 But even if someone in Equatorial Guinea read Nigeria's record as implying
11 somehow piracy, any such suspicion, based on an objective interpretation, was not a
12 suspicion on "reasonable grounds". The standard is not what Captain Esono thought.
13 This is not how reasonableness is assessed in law. And even if the Chamber were to
14 conclude that the suspicion was actually reasonable, this would still not have justified
15 the seizure of the "*Heroic Idun*".

16
17 Counsel for Equatorial Guinea is wrong claiming that "all that the Convention
18 requires under Article 105 are reasonable grounds to suspect piracy for interception
19 to take place".²⁸ The reasonable-grounds-to-suspect test engages Article 110, not
20 Article 105.

21
22 This brings me to the second part of my submissions on piracy: namely, what
23 Equatorial Guinea should have done – but did not do – during the 60 hours between
24 receiving the WhatsApp messages and approaching the "*Heroic Idun*". I emphasize:
25 this is not just a matter of what was reasonable to do, but of what UNCLOS required
26 to be done in the circumstances if there was a suspicion of piracy.

27
28 Now, first, Equatorial Guinea should have boarded the "*Heroic Idun*," as we have
29 said, and investigated any piracy suspicion under Article 110.

30
31 Counsel for Equatorial Guinea said that deciding whether to board a vessel is
32 "contextual".²⁹ He accepts that prior boarding of vessel is natural in many cases, but
33 that it would be unreasonable in certain cases, such as when "pirates on board a
34 ship have significant weapons".³⁰ What contextual necessity prevented Equatorial
35 Guinea from boarding the vessel in this case? The claim that "*Heroic Idun*" was
36 attempting to flee is, as we have seen, false.

37
38 It was then suggested that boarding was "impractical"³¹ or "difficult". This, too is an
39 *ex post facto* theory. At 13:47, "*Capitan David*" told "*Heroic Idun*," "[n]ow we have
40 orders to escort the ship to Malabo". Any discussion of potentially boarding the
41 vessel took place only after the order to proceed to Malabo, at 14:34. You see here
42 the various references to a boat potentially being used for boarding. So the decision
43 to apprehend had nothing to do with difficulty or impracticality in boarding. Quite
44 simply, the orders from Malabo were to apprehend, not to board.

45

²⁸ ITLOS/PV.25/C32/8, page 20.

²⁹ ITLOS/PV.25/C32/8, page 24.

³⁰ ITLOS/PV.25/C32/8, page 24.

³¹ ITLOS/PV.25/C32/7, page 4.

1 Second, Equatorial Guinea should have engaged with the Marshall Islands on any
2 piracy suspicion in respect of the "*Heroic Idun*." You have heard this from Sir Daniel.
3 This was owed to the Marshall Islands under Article 100 of the Convention.

4
5 Anti-piracy cooperation applies to all parties of UNCLOS, not just between Equatorial
6 Guinea and Nigeria. This duty was also owed to the Marshall Islands under
7 Article 103 and 105 of UNCLOS. This is because Article 105 limits seizure to pirate
8 vessels, not vessels vaguely suspected of piracy on the basis of some strained
9 interpretation.

10
11 Article 103 describes pirate vessels as vessels "intended by the persons in dominant
12 control to be used for the purpose of committing one of the acts referred to in
13 Article 101".

14
15 Equatorial Guinea did not, in the 60 hours that they had available to do so, seek to
16 establish with the Marshall Islands, as the flag State, if the persons in dominant
17 control of the "*Heroic Idun*" were somehow engaged in piracy.

18
19 To conclude on this aspect, I give you the summary of our position on piracy: (a) on
20 the evidence, there was nothing warranting an anti-piracy operation; (b) if there was
21 a reasonable suspicion of piracy, in the circumstances of this case, the vessel should
22 not have been seized; and (c), in any case, under Article 106, Equatorial Guinea has
23 to compensate the Marshall Islands because the seizure was ultimately without
24 adequate grounds.

25
26 Mr President, Members of the Special Chamber, I now turn to Equatorial Guinea's
27 unlawful exercise of prescriptive jurisdiction.

28
29 Just as in its Rejoinder, Equatorial Guinea did not say anything at all to address the
30 arguments of the Marshall Islands. All that we have heard from Counsel for
31 Equatorial Guinea is that the CEMAC Code is important.³²

32
33 I will therefore confine myself to one preliminary observation and then draw your
34 attention to two points concerning where prescriptive jurisdiction fits within the
35 structure of our submissions and of your deliberations.

36
37 The preliminary consideration is as follows. Equatorial Guinea claims that it
38 interdicted the "*Heroic Idun*" upon Nigeria's request.³³ But it does not dispute that it
39 then conducted its own investigations for alleged breaches of its own laws, detained
40 the vessel and crew during those investigations, and ultimately fined the "*Heroic*
41 *Idun*" and the Master for breaches of its own laws.

42
43 Now, I turn to my two points.

44
45 The first point is that tribunals constituted under UNCLOS have the authority to
46 determine "whether, in enacting or implementing its laws, a State Party has acted in

³² ITLOS/PV.25/C32/9, pages 13-14.

³³ ITLOS/PV.25/C32/9, page 13.

1 conformity with the Convention”.³⁴ Accordingly, you may either declare that the laws
2 invoked by Equatorial Guinea are themselves contrary to UNCLOS – making all the
3 measures adopted under them, including the fine, the investigations, the detention,
4 the charges – unlawful; or you can find that those laws were implemented by
5 Equatorial Guinea in a manner contrary to UNCLOS. In that case, your ruling would
6 concern only the measures, not the laws themselves. The Marshall Islands would be
7 content with this latter approach, which is precisely what ITLOS did in “*Saiga*” (No. 2)
8 and in “*Norstar*”.

9
10 My second point is that the breach concerning prescriptive jurisdiction is an
11 additional, separate ground on which the Marshall Islands contends that Equatorial
12 Guinea violated freedom of navigation and exclusive flag State jurisdiction. This is a
13 ground that is independent of, and entirely unaffected by, the answer that you give to
14 the question of whether the interdiction of the “*Heroic Idun*” was lawful. Even if you
15 were to find that the “*Heroic Idun*” was lawfully brought into Luba, Equatorial Guinea
16 still exercised prescriptive jurisdiction unlawfully.

17
18 “*Norstar*” is authority for this. In that case, Italy neither arrested the vessel on the
19 high seas nor requested Spain to do so. The vessel was, in fact, lawfully in the port
20 of Palma de Mallorca, having entered the port voluntarily. Yet, Italy was found to
21 have breached Article 87 by targeting, through its domestic laws, activities of the
22 “*Norstar*” on the high seas, and then by detaining and sanctioning the vessel and its
23 crew on the basis of those laws. The activity in question in “*Norstar*” was bunkering.

24
25 Here, the activity targeted by Equatorial Guinea is navigation of the “*Heroic Idun*”,
26 the quintessential law of the sea freedom. So, by investigating, detaining, criminally
27 charging, and fining the Master for alleged breaches of Equatoguinean legislation
28 that targeted the navigation of the “*Heroic Idun*” in Equatorial Guinea’s EEZ,
29 Equatorial Guinea breached independently Articles 87, 89 and 92 of UNCLOS. It did
30 so for the entire period during which it exercised jurisdiction over the vessel – the
31 92 days you have heard about. To the point that even the handover document to
32 Nigeria refers to violations in the EEZ of Equatorial Guinea committed, allegedly, by
33 the “*Heroic Idun*”.³⁵ The Marshall Islands is entitled to damages accordingly.

34
35 These include not only recovery of the fine, but all consequential damages that
36 stemmed from the unlawful detention, investigations and charging.

37
38 Thank you, Mr President and Members of the Chamber, this concludes my
39 presentation.

40
41 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Dr Busco for his
42 statement. I believe this is an appropriate time for the Special Chamber to withdraw
43 for 30 minutes, a 30-minute break. So the hearing will resume at 11:50. That is 10
44 minutes to 12:00. The hearing will resume. Thank you.

45
46 (Adjourned at 11.18 a.m. to 11.50 a.m.)
47

³⁴ *M/V “Virginia G” (Panama v. Guinea-Bissau)*, Judgment of 14 April 2014, ITLOS Reports 2014 at para. 227

³⁵ REG – 050.

1 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I now invite Ms Nevill to make a
2 statement.

3
4 **MS NEVILL:** Mr President, Members of the Special Chamber, I will address you on
5 the Marshall Islands' claim concerning Article 225, the IMO treaties and notification
6 of the flag State, including on the jurisdictional and applicable law aspects of these
7 claims.

8
9 What underpins all of these claims is safety of life at sea, preservation of the marine
10 environment, and safeguards.

11
12 Two central and related facts underpin both the Article 225 and IMO treaties claims:
13 Equatorial Guinea detained the vessel for over three months in an unsuitable
14 location for a VLCC of its dimensions and caused the vessel to be unsafely manned.

15
16 Article 225 is in section 7 of Part XII of the Convention, under the heading
17 "Safeguards".

18
19 If you underman a large VLCC carrying bunkers so that it cannot avoid collisions or
20 accidents and detain it in a busy anchorage unsuitable for the vessel, you endanger
21 the safety of navigation and expose the marine environment to a serious threat. That
22 is obvious.

23
24 Equatorial Guinea tries to avoid this by saying that this is a tricky legal argument.³⁶
25 To the contrary, it is quite simple. How do we assess whether unsafe manning goes
26 to a breach of Article 225? Principles of treaty interpretation take us to two points of
27 reference. The context of the provision, which the VCLT tells us is other provisions of
28 the treaty, that is, Article 94 and Article 217, and any relevant rules of international
29 law applicable in the relations between the parties. Both take us to the safe manning
30 regime under the IMO treaties. For the purposes of Article 225, we don't need to say
31 whether the IMO treaties impose obligations on the port State (although we say they
32 do): we simply need to know what their safe manning requirements are, and the safe
33 manning requirements of this vessel. Instead of plucking this out of thin air, we go to
34 the law where this is set out.

35
36 Equatorial Guinea also says that no concerns were raised with the Equatoguinean
37 authorities regarding the safety of the vessel during its stay in Luba Bay.³⁷ This is not
38 true. The evidence references are on the slides, displayed by Ms Grafton earlier.

39
40 In this, as in many of its other arguments, Equatorial Guinea seeks to simply wash its
41 hands of responsibility for its actions.

42
43 Turning now to the IMO treaties claim. I will first address Equatorial Guinea's central
44 contention that the safe manning provisions of SOLAS, the STCW and COLREGS,
45 together with the first article of each of these treaties, "cannot form the basis of
46 claims against coastal or port States" because they impose obligations only on flag
47 States.³⁸

³⁶ Rejoinder, paras. 231, 237.

³⁷ ITLOS/PV.25/C32/9, p. 2, lines 2-4.

³⁸ ITLOS/PV.25/C32/9, p. 24, lines 36-37.

1 Essentially, Equatorial Guinea is saying that, as a party to SOLAS, the STCW and
2 the COLREGS, as a party, it has no obligations to ensure that a vessel detained by it
3 for over three months is safely manned, because, it says, these obligations fall on
4 the flag State, and this is even though it was undermanned because of Equatorial
5 Guinea's actions.

6
7 This is yet another instance of Equatorial Guinea attempting to wash its hands of
8 responsibility.

9
10 Turning to the detail of its submissions, Equatorial Guinea says that the Marshall
11 Islands' submission is "that the general obligation" in Articles 1 of SOLAS, the STCW
12 and the COLREGS "may be violated without reference to the specific provisions" of
13 those treaties and that this is not a correct interpretation.³⁹

14
15 The Marshall Islands' submissions are, and always have been, tethered to the safe
16 manning obligations. True, those provisions impose obligations on the flag State.
17 The Marshall Islands has never said otherwise.

18
19 But the Marshall Islands does not accept that these treaties, properly interpreted in
20 accordance with the rules of treaty law, are incapable of addressing the situation
21 where it is the port or coastal State party which is responsible for the unsafe
22 manning. Article 1(b) of SOLAS, Article I(2) of the STCW, and Article 1 of the
23 COLREGS mean what they say: State Parties are required to take all necessary
24 steps to give effect to the provisions of these treaties. Removing crew from the
25 vessel below its safe manning requirements and refusing repeated safe manning
26 requests is the opposite of that: it is actively preventing implementation.

27
28 The scenario where a State party to a treaty is prevented from meeting its
29 obligations under that treaty by another State party to that treaty is not unknown.
30 Other international courts and tribunals have had to grapple with it. For example, in
31 *Ilaşcu v Moldova*, the European Court of Human Rights had to address the situation
32 where Moldova was unable to meet its obligations under the Convention because
33 Russia had control over its territory, and it held that both parties had obligations.⁴⁰
34 The Court there was addressing the concept of "jurisdiction" under the Article 1 of
35 the European Convention, but the underlying reasoning resonates here. When a
36 State Party has detained a vessel under its custody and control, the prevention of
37 the flag State's compliance with its safe manning obligations engages the former
38 State Party's liability under SOLAS, the STCW and the COLREGS.

39
40 If you are not with us that State Parties' obligations under those treaties include an
41 obligation not to actively prevent the safe manning of a vessel, the Marshall Islands
42 refers to Equatorial Guinea's obligation under Article 87(2) to have due regard for the
43 interests of the Marshall Islands as flag State in meeting its safe manning obligations
44 under Articles 94 and 217 of the Convention, and its interest in maintaining
45 implementation of the safe manning regime. Equatorial Guinea is also obliged by
46 Article 2(3) to exercise sovereignty in the territorial sea subject to the Convention
47 and other rules of international law.

³⁹ ITLOS/PV.25/C32/9, p. 25, lines 13-14, 21-24.

⁴⁰ *Ilaşcu and others v Moldova and Russia* (GC), Application no. 48787/99, judgment, 8 July 2004, paras. 314-315, 317.

1 I turn now to Equatorial Guinea's oral submissions on Article 297(1)(c) as the basis
2 of the Chamber's jurisdiction over the IMO treaties,⁴¹ and the gateway provisions in
3 Articles 2, 56, 58 and 87 of the Convention.

4
5 Before doing so, I want to make one general observation. Equatorial Guinea does
6 not address the careful arguments on applicable law and jurisdiction made by the
7 Marshall Islands in its written pleadings in respect of each of the alleged breaches,
8 but instead addresses each separate treaty article reference as if the Marshall
9 Islands had argued it was a standalone basis of jurisdiction, applicable law or
10 claim.⁴² The Marshall Islands invites the Chamber to have careful regard to the
11 Marshall Islands' written pleadings, where the bases on which it is invoking or relying
12 on a specific treaty provision are set out.

13
14 On Article 297(1)(c), Equatorial Guinea "accepts that what the text of the Article
15 allows for are determinations in relation to breaches of the external rules but in cases
16 of disputes under UNCLOS."⁴³ There is here a dispute under UNCLOS over which
17 the Chamber has jurisdiction under Article 288(1); therefore, Article 297(1)(c) allows
18 determinations of breach by this Chamber by reference to external rules. This is
19 what has been established in jurisprudence under the Convention, and Equatorial
20 Guinea has not invited you to depart from it.

21
22 As to the gateway provisions, which are also referred to as the rules of reference and
23 jurisprudence of the Tribunal, Equatorial Guinea last week raised the spectre that the
24 Marshall Islands' approach would bring in "any question of international law". That is
25 not the case.

26
27 The Marshall Islands' approach lies squarely within the approach established by
28 Part XV jurisprudence. Principles of humanity, seafarers' human rights and safe
29 manning obligations are as quintessential to the territorial sea, EEZ and the high
30 seas, as the fishing rights applied under Article 2(3) in the *South China Sea* and the
31 *Chagos Marine Protected Area* arbitrations.⁴⁴ It may be a question of fact and
32 degree in each case as to whether a particular rule of international law is an
33 applicable rule for the purpose of a particular gateway provision, but in this case,
34 based on the Part XV jurisprudence, we squarely fall within the scope of the
35 provisions. Just as the claimants' fishing rights imposed limitations on the
36 respondents' sovereignty in the territorial sea in *South China Sea* and the *Chagos*
37 *Marine Protected Area* arbitration, the rights of the flag State, seafarers' human
38 rights, considerations of humanity, and the IMO treaties impose limitations on the
39 exercise of enforcement powers against vessels in the high seas, EEZ and territorial
40 sea.

41
42 They are also rights and interests of the flag State to which the other parties must
43 have due regard under Articles 56(2) and 87(2).
44

⁴¹ ITLOS/PV.25/C32/7, p. 15, lines 18-37.

⁴² ITLOS/PV.25/C32/7, p. 19, line 33 to p. 20, line 41.

⁴³ ITLOS/PV.25/C32/7, p. 15, lines 35-37; ITLOS/PV.25/C32/9, p. 24, lines 20-24.

⁴⁴ ITLOS/PV.25/C32/7, p. 1, lines 4-7.

1 As to Equatorial Guinea's attempt to dismiss the Marshall Islands' reliance on the
2 gateway provisions by reference to "*Norstar*",⁴⁵ the Marshall Islands addressed this
3 in its Memorial.⁴⁶ The basic point is that the rules of reference which are relevant in a
4 particular instance – high seas rights, EEZ or the territorial sea – will turn on the legal
5 basis relied on for the exercise or assertion of jurisdiction in issue.

6
7 I turn now to Equatorial Guinea's response to the Marshall Islands' notification claim.

8
9 Equatorial Guinea did not address the substance of our arguments concerning the
10 existence of a customary obligation to notify the flag State of enforcement measures
11 in several respects, and I say the same in respect of our argument general
12 principles.

13
14 In terms of what it did say on Saturday, Equatorial Guinea said, referring to the list of
15 25+ treaties and instruments containing notification provisions that we listed as
16 evidencing the existence of the rule or principle, that these "are limited to
17 notifications and provisions for notifications found in sectoral instruments",⁴⁷ and that
18 "the Marshall Islands cannot extrapolate them to claim the existence of a rule ...
19 which would apply across the board to all enforcement measures adopted by every
20 State in all circumstances."⁴⁸

21
22 We listed treaties and instruments regulating shipping, fisheries, maritime security
23 instruments, consular obligations involving shipping, marine pollution and the
24 exercise of jurisdiction in the territorial sea and maritime labour law.⁴⁹ It is difficult to
25 understand what sectors Equatorial Guinea might have in mind that are not – and, it
26 would follow from their assumptions, ought not to be – covered by an obligation to
27 notify the flag State of enforcement measures, given the purpose and function of a
28 notification obligation.

29
30 Equatorial Guinea then argues that "if States Parties to the Convention had intended
31 to include a general obligation to notify flag States ... one might reasonably expect to
32 have been expressly included" in its text.⁵⁰

33
34 Judge Kittichaisaree grappled with this head-on in his declaration in "*Norstar*,"
35 referenced by the Marshall Islands in its pleadings. He raised the question as to
36 whether "besides the obligations specifically imposed by Articles 27 and 73,
37 paragraph 4, the State taking enforcement measures against a foreign vessel has a
38 general obligation to promptly notify the flag State of the vessel" and he expressly
39 and explicitly hoped that the Tribunal would have an opportunity to directly address
40 this important issue "so that the balance between the rights and obligations of State
41 parties" to UNCLOS "can be duly safeguarded".⁵¹

45 ITLOS/PV.25/C32/7, p. 19, lines 16-21.

46 Memorial, paras. 172-178.

47 ITLOS/PV.25/C32/9, p. 15, lines 32-36.

48 ITLOS/PV.25/C32/9, p. 15, lines 40-42.

49 Maritime Labour Convention, Standard A 5.2.1.6.

50 ITLOS/PV.25/C32/9, p. 16, lines 36-39.

51 At paras. 20-24.

1 We are not here inviting the Chamber to use Article 293 to create new obligations
2 where none exist, as Equatorial Guinea alleges, but to apply a rule of international
3 law not incompatible with the Convention which we say exists applying the rules for
4 identification of an international rule or principle.

1 Equatorial Guinea's arguments, in essence, amount to a rogue's charter:⁵² if
2 I behave unlawfully without a legal basis of the Convention, I am subject to less
3 restraints than if I act lawfully, because the drafters did not address when States act
4 outside the law without a legal basis. This cannot be right.

6 We accept that the Convention may not impose an obligation to notify the flag State
7 of the vessel of certain actions taken under Part VII to seize a pirate vessel.
8 However, in the circumstances of this case, we say that there was an obligation to
9 notify, as was explained by Dr Busco. We also say that the general obligation
10 applied in respect of enforcement measures taken after the seizure.

12 If it were otherwise, that would mean that flag States have the right to be notified,
13 and that vessels and crews are safeguarded, when vessels are detained for alleged
14 fisheries or marine pollution violations, but not where the allegation is piracy. That is
15 simply unprincipled.

17 Mr President, Members of the Special Chamber, that concludes my submissions
18 before you. I now invite you to call on Dr Casas.

20 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Ms Nevill for her
21 statement, and I give the floor to Dr Casas. You have the floor, sir.

23 **DR CASAS:** Mr President, Members of the Special Chamber, my presentation will
24 be divided in three parts: the first two will deal with material damages; the third with
25 non-material damages. For reasons of time, on the other issues I refer the Special
26 Chamber to our written and oral submissions.

28 Last week you heard from Counsel to Equatorial Guinea that data without context is
29 a dot. Last Saturday, you got a dot. So I would like to start by inviting the Chamber to
30 step back and look, in context, at what's happened in these proceedings on this
31 particular issue.

33 Step 1: The Marshall Islands made a claim in its Memorial for material damages.

35 Step 2: In its Counter-Memorial, Equatorial Guinea criticized the Marshall Islands for
36 not providing supporting documents for its claim. Pausing there, for context, that
37 criticism related to the smaller claims, the 14 per cent of the claims that I mentioned
38 last week. It did not relate to the big ticket items: loss of hire, fine, and the plea
39 bargain.

41 Step 3: In its Reply, the Marshall Islands provided documentary evidence to support
42 those remaining claims. To clarify two points:

44 First, as we said on Wednesday, we have been thorough. Perhaps we have been
45 too thorough. We have presented entire suites of the underlying documents. These
46 include raw, unprocessed data that supports the Marshall Islands' claims. There are,
47 in this raw batch, what we could call surplus documents. For instance, in some
48 cases, because of how an invoice has been issued, it will cover many topics. We

⁵² ITLOS/PV.25/C32/9, p. 16, lines 38-39.

1 are, of those topics, perhaps only claiming for one or two, but the entire invoice is
2 there. In other cases, an invoice is presented as part of a string of invoices. We are
3 only relying on one, but we have presented the string because that was how they
4 were stored in the vessel's manager's systems. These surplus documents are there
5 because we kept the original version.⁵³

6
7 Yet, the existence of surplus documents does not mean that we are claiming for all
8 the invoices included in the documents we presented. That is not – and has never
9 been – the case. Our position is that we are claiming for the specific heads of
10 damages, as set out in our Reply in detail.⁵⁴ The documents in the annexes support,
11 we say, those claims. That is very different from saying that we are claiming for all
12 the invoices in the annex. We are not. And doing so, assuming so, is letting the
13 annex tail wag the Reply heads of claim dog. And you can test the point this way: If
14 you add up all the invoices we have attached, the total number there considerably
15 exceeds the Marshall Islands' claims.

16
17 Step 4: In its Rejoinder, Equatorial Guinea challenged the Marshall Islands'
18 entitlement to damages. There, it also criticized the Marshall Islands for not providing
19 a detailed granular breakdown of how its claim was supported by the individual
20 documents.

21
22 Step 5: We responded to that criticism during the first round of oral argument. With
23 provided a detailed series of tables that included a granular breakdown, by
24 sub-issue, and provided annex and page references to the specific documents that
25 we are relying on. That information, in our submission, that level of detail, goes
26 beyond what is normally expected in these types of proceedings; specifically, it
27 answers the who, the when, and the what, and on the what basis of our claim. With
28 that, Equatorial Guinea and, importantly, the Chamber can see what documents we
29 are relying on – and, importantly, which ones we are not.

30
31 Step 6: Despite having received that information, Equatorial Guinea argued before
32 the Chamber on Saturday that the Marshall Islands was claiming for things that we
33 are not claiming. In doing so, they cast aspersions on our credibility. We must say,
34 with great respect, that we consider that to have been disingenuous. Had Equatorial
35 Guinea taken some time to check the tables, Equatorial Guinea would have realized
36 that we are not pursuing many of the claims it says we are pursuing.

37
38 Now, between Wednesday morning and Saturday, Equatorial Guinea had over
39 60 hours with the tables. We know by this point that 60 hours is enough time to
40 interdict a vessel in the high seas. We also know that we say it is enough time to
41 cooperate with a flag State.

42
43 Two points of clarification are necessary.

44
45 First, there has been no serious criticism of the Marshall Islands' largest claim for
46 material damages: the claim for loss of hire. You have heard earlier today from Sir
47 Daniel, the problem with the counterfactual scenario posited by our friends across.

⁵³ ITLOS/PV25/C32/6, Transcript, page 14, lines 21-22.

⁵⁴ Reply, paragraphs, 285, 293, 295, 298, 301, 308, 314 and 316.

1 Leaving that aside, Equatorial Guinea only runs one argument, that the Charter was
2 novated. Despite having had Mr Horne's report since December 2023, Saturday was
3 the first time this point has ever been raised. In fact, it is the only argument made on
4 this point, but it is not a good one. There was no change in the hire provisions. This
5 is easily verified from the contemporaneous invoices. I already took the Tribunal to
6 them.⁵⁵ You have them on the screen. And those invoices apply the calculations of
7 the hire rate, as I explained when I took the Tribunal through what I would call the
8 nuanced calculation methodology in the charter.

9
10 But, in any event, the Marshall Islands has the novated charter. It changes the name
11 of the owner of the vessel. We would be more than happy to produce this document,
12 if the Chamber so requested.

13
14 Equatorial Guinea also made a passing remark as to how the calculations we
15 presented on Wednesday for loss of hire after the vessel finished being detained
16 was not aligned with the calculations of our expert.⁵⁶ That is incorrect. We are
17 applying the daily rate that Mr Horne calculated for that period. That is marked
18 Period C in his report. And, as we expressly said, we are applying that rate to a
19 conservative estimate of how long the vessel would have required to change crew, to
20 go to drydock,⁵⁷ and to then restart operations. And all that that requires is applying
21 the daily rate and multiplying it by a number of days; it's quite basic arithmetic.

22
23 Second, there is a fundamental, inherent difference between having presented
24 surplus documents and the serious allegation that we are making claims that we are
25 not entitled to make. The Chamber should not be led astray by the existence in the
26 record of surplus invoices for which we are not claiming.

27
28 The Marshall Islands has put forward claims for material damages that we believe
29 we are entitled to recover. Insofar as the Chamber disagrees, we invite you to decide
30 accordingly.

31
32 With that in mind, and as Sir Daniel anticipated last Wednesday,⁵⁸ and also earlier
33 today, as part of our revised final submission, we will be setting out a revised – and
34 easily comprehensible – damages claim. A reason we are doing so is to avoid any
35 argument – any argument – that we are seeking to recover loss, damage and injury
36 caused by Nigeria.

37
38 You have on screen the new temporal limitation that we are pursuing. You also have
39 on screen what we say is the loss, damage and injury caused by Equatorial Guinea
40 that was – and I invite the Chamber to pay attention to this formulation – visible and
41 quantifiable during the the 92 days of detention. We then also have on screen the
42 loss, damage and injury that was a direct consequence of Equatorial Guinea's
43 conduct, but that only crystallized or became quantifiable after this period, and that is
44 our claim, we say, for the period between 27 May to 24 July 2023. On those slides,
45 the Chamber has the specific line items that we are claiming; it has the documents
46 that we are relying on to do so.

⁵⁵ Memorial, Vol. II, Annex TH/-4, pages 645, 648, 652 and 655.

⁵⁶ ITLOS/PV25/C32/10, Transcript, page 3, lines 43-44.

⁵⁷ ITLOS/PV25/C32/5, Transcript, page 11, lines 6-8.

⁵⁸ ITLOS/PV25/C32/5, page 25, lines 10-33.

1 We also have, since Saturday afternoon, reviewed again in detail all the documents
2 we relied on and that were referred to in our table. There are two points, neither of
3 which our friends across have picked up, but which we want to address, in line with
4 our objective of being entirely forthright.

5
6 The first one is a mistake. It is a mistake which we admit and for which we apologize.
7 It regards the smallest of the two claims for sick wages of \$29,000. That should not
8 have been included. In in any event, it is now moot.

9
10 The second one is our claim for \$190,000 in agency costs during the the vessel's call
11 to Cape Town. Now, we are entitled to claim for this; however, unlike the supporting
12 documents for our other claims, which are generally straightforward, the invoices for
13 this are a matter of some complexity. Given the challenges of assessing this claim,
14 we have concluded that we would simply withdraw it.

15
16 Now, our friends across will surely pounce on this. They will say our case is shifting.
17 That would be somewhat odd. Through our time, we have never increased our claim.
18 Respondents tend to appreciate when the claims made against them are reduced.
19 And, again, this is a complex case and we are just trying to be as careful and as
20 responsible as possible.

21
22 Moving on to the second part of my submissions. Having made those clarifications,
23 Mr President, Members of the Chamber, our friends across mentioned on
24 Saturday 12 examples aimed at sowing doubt on our credibility on the basis that we
25 are making improper claims. Again, this is based on the implied allegation that we
26 are claiming for every invoice that was included in the annexes, and we are simply
27 not. I will need to take the Chamber to each to explain why that criticism is
28 unjustified. You have on the screen a summary showing why each of those
29 12 criticisms is unfounded.

30
31 First, you were taken to invoices showing cash disbursements made to the Master.⁵⁹
32 This was characterized as unexplained, as mysterious.

33
34 The first one is at Annex VII, page 77. That is an invoice from Wilhemsen. They are
35 shipping agents. That claim is based on a string of invoices from Wilhemsen. If you
36 look at the table, you will see that we are relying on the document at Annex VII,
37 page 55, and that the total amount that we are claiming for is \$8,700. We are relying
38 on one invoice in the string of invoices. We are not relying on that invoice claiming
39 cash to the Master.

40
41 The second one is Annex VIII, page 120, and that shows a \$20,000 cash
42 disbursement to the Master. Now, that is a supporting document for the head invoice
43 from Sharaff Shipping Agency at Dubai. We have that at Annex VIII, page 27, up on
44 the slide. You will see there, in the zoomed-in part, highlighted, that there is, in fact,
45 \$20,000 in cash advanced to the Master. There is also a \$400 handling charge for
46 that. Below, you will see, third line from the bottom, the grand total of \$46,000. You
47 will then see a deduction for the cash and the handling fee, and the balance due of
48 \$26,600.

⁵⁹ ITLOS/PV25/C32/10, Transcript, page 7, lines 38-41.

1 If we go to the table, and this is what we showed you last week, and what Sir Daniel
2 referred to, you will see, on the last line on the left, that when we refer to that
3 document, we describe it, the Sharaff Shipping Agency invoice, and we say, in
4 brackets, (“excl. 20k cash to Master”).

5
6 Second, claims for beverages.⁶⁰ Under OSM policy, the Manager’s policy, those
7 claims were a valid expense. The Chamber may legitimately take issue with that.
8 You would not contest that point. If the Chamber is inclined to exclude them, it could
9 do so, for example, by applying a percentual discount to each line item for travel. In
10 any event, our streamlined claim excludes many of those.

11
12 Third, a claim for the air conditioning and TV and pressure cooker on the “*Heroic*
13 *Idun*”.⁶¹ Pausing there, those items were, in fact, damaged during detention.
14 However, out of an abundance of caution, one month before this hearing we dropped
15 some of our claims, and that included the claim for miscellaneous repair expenses,⁶²
16 as you see in paragraph 3(b) of our letter. Our slide for repairs of the vessel
17 presented last week does not include claims for those items.

18
19 I will then group together some of the examples which we have never claimed – we
20 have not claimed then, we are not claiming now. For example, a lot of these concern
21 alleged claims for medical expenses. Whether we were indeed making those claims
22 could be verified by checking the claims based on medical issues and the
23 documents that we rely on for doing so. We have that on the table.⁶³ It is, we are
24 relying on at that point, on 20 documents. Now, it is perhaps not exhilarating to
25 check whether those documents are the ones that we were referring to, but it is
26 something that could be checked quite quickly, in a matter of minutes.

27
28 Now, grouping these claims together, we have claim number 4, for prescription
29 glasses.⁶⁴ We are not claiming that.

30
31 Number 6, a mention, without a reference, to claims of medical costs of children and
32 people not on the vessel.⁶⁵ We are not claiming that. Pausing there, the Chamber
33 did hear last week the impact that the detention had on the crew and the family,
34 including children.

35
36 Number 7, an invoice from Gard for 9 August.⁶⁶ Alleged evidence of claim for
37 pre-detention conduct. We are not claiming that then, we are not claiming that now.

38
39 Number 8, an invoice for medical services in India dated 11 August 2022.⁶⁷ Same
40 point. Not claiming then, not claiming now.

41

⁶⁰ ITLOS/PV25/C32/10, Transcript, page 7, line 43 to page 8, lines 1-2.

⁶¹ ITLOS/PV25/C32/10, Transcript, page 8, lines 4-7.

⁶² RMI, Letter to the Registry dated 10 September 2025, p. 2.

⁶³ Annex IV, pages: 76, 183, 188, 193, 217, 343, 357, 386-388, 390-391, 407-408, 443-445, 446-448, 449-451, 452-454, 455-474, and 476-478.

⁶⁴ ITLOS/PV25/C32/10, Transcript, page 8, lines 9-11.

⁶⁵ ITLOS/PV25/C32/10, Transcript, page 9, lines 14-16.

⁶⁶ ITLOS/PV25/C32/10, Transcript, page 9, lines 27-30.

⁶⁷ ITLOS/PV25/C32/10, Transcript, page 9, lines 32-34.

1 Number 9, claims for medical tests conducted before the interdiction for people who
2 were not on board the vessel.⁶⁸ And this includes claims from Seabird Medical
3 Centre and Balaji Medical Centre, in India. We are not claiming for those. For good
4 order, we were claiming some invoices from those hospitals. Those are the claims at
5 Annex IV, pages 343, 386 and 387. Those were listed in our table presented last
6 week. And those specific invoices are for the treatment post-release of the crew, for
7 injuries suffered during detention.

8
9 Number 10, claims for provisions and cigarettes before going to Nigeria.⁶⁹ Again, not
10 claiming then, not claiming now.

11
12 Number 11, Annex VII-A, page 323⁷⁰ regarding payments to people not on the
13 vessel. Not claiming then, not claiming now.

14
15 As to the rest. Number 5, the alleged claim for unidentified and unknown people in
16 Colombo.⁷¹ This goes to the “who”. Volume IV, and the Chamber was referred to
17 pages 149, 153, 614 and 618. They say we are claiming for the mysterious Captain
18 Harsha Perera, whose name is highlighted on the invoice on the left. We were
19 relying on this invoice as part of our claim for the costs that the Owners incurred to
20 travel to Sri Lanka for discussions and support of the crew’s family. You have heard
21 the impact of the detention, and Owners took several trips to discuss with them in
22 person.

23
24 Now, if we go three pages up, we go to page 146;⁷² that is right before the reference
25 you were given, and you have it on the right hand of the screen. It is an invoice for
26 hotel and accommodation. It is charged to Ceyline Shipping, addressed to Captain
27 Harsha Perera of OSM, the vessel’s managers. If you then look below, you see that
28 the invoice is for the hotel costs of Messrs Ramaswamy, Sverre Jacob and
29 Sekkesater, all the Owner’s representatives who went to meet the family of the crew.

30
31 Finally, number 12, you were taken to two documents: Annex IV, pages 839
32 and 844, and then you were also taken to Annex VII, page 150.⁷³

33
34 You see there the reference in our table from last week to IV/839. We are claiming
35 for two items in total worth approximately \$8,000. Moving forward, we have the
36 invoice from OSM. We see that it is a compound invoice, with many things. We see
37 that there is a \$24,000 entry for travel expenses, of which we are only claiming a
38 part. We are not claiming for the other elements in that invoice.

39
40 Turning to Annex VII, page 150, this is an invoice from Sharaf, the agency in Dubai,
41 and this includes costs for the visa stamps for \$300 for the crew involved in taking
42 the vessel to drydock. We are claiming for that, and we say fairly so.

43

⁶⁸ ITLOS/PV25/C32/10, Transcript, page 9, lines 36-39.

⁶⁹ ITLOS/PV25/C32/10, Transcript, page 9, lines 41-44.

⁷⁰ ITLOS/PV25/C32/10, Transcript, page 10, lines 1-3.

⁷¹ ITLOS/PV25/C32/10, Transcript, page 9, lines 8-11.

⁷² Annex IV, page. 146.

⁷³ ITLOS/PV25/C32/10, Transcript, page 10, lines 5-11.

1 Mr President, Members of the Chamber, I am sorry to have had to spend some time
2 taking you through clerical documents. I hope that having done so, dispels the
3 criticism we were subject to.

4
5 Third part. Non-material damages. Last week, I argued that three of the four criteria
6 that the ICJ had relied on in *Diallo* were applicable here.⁷⁴ The fourth and last criteria
7 that was not present was the expulsion of Mr Diallo from the country. Much was
8 made of that. But, on reflection, and reasoning by analogy, or by parity of reasoning,
9 that factor has also been satisfied here. The Chamber has heard and read about the
10 impact of the detention and how that affected the crew's employment. These were
11 men of the sea, and, for all practical purposes, they have been expelled from life at
12 sea,⁷⁵ being forced, many of them, to taking lower paying jobs ashore.

13
14 Our friends across have made much about a paragraph about the conditions of
15 detention in the *Arctic Sunrise* case.⁷⁶ Some of those conditions, admittedly, were
16 worse than the conditions here. What our friends across don't mention, however, are
17 the differences between those cases, and there are many factors where our facts are
18 worse. I will briefly mention five.

19
20 First, the underlying facts are significantly different. The crew of the "*Arctic Sunrise*"
21 were deliberately engaging in high-risk protest activities.⁷⁷ They were trying to board,
22 without permission, an oil platform in the Arctic. They had been warned several
23 times – in fact, a surprising number of times – not to do that.

24
25 Second, the "*Arctic Sunrise*" crew was charged with specific offences two working
26 days after they had been detained.⁷⁸ After some weeks of detention, they were
27 released on bail,⁷⁹ despite the public prosecutor trying to contest that release.

28
29 Third, the "*Arctic Sunrise*" crew had access to lawyers.⁸⁰ They had access to lawyers
30 when investigations on the vessel and other interactions with the authorities were
31 taking place. Here, in contrast, the Chamber has heard how the Master was
32 interrogated, at one point for 11 hours, without any access to lawyers. The Chamber,
33 on Tuesday of last week, also heard the Master's evidence on how he felt after
34 this.⁸¹ I will not give details as to respect the *in camera* proceedings.

35
36 Fourth, the "*Arctic Sunrise*" crew were given an amnesty; the criminal prosecution
37 was dropped.⁸²

38
39 Fifth, and most importantly, after two months of detention, the crew of the "*Arctic*
40 *Sunrise*" went home.⁸³

⁷⁴ ITLOS/PV25/C32/5, Transcript, page 17, lines 6-7.

⁷⁵ ITLOS/PV25/C32/2, Transcript, page 18, lines 1-13; ITLOS/PV25/C32/3, Transcript, page 17, lines 16-18.

⁷⁶ *Arctic Sunrise*, Award on Compensation, para. 76.

⁷⁷ *Arctic Sunrise*, Merits Award, paras. 81-99.

⁷⁸ *Arctic Sunrise*, Merits Award, paras. 104-106 and 109.

⁷⁹ *Arctic Sunrise*, Merits Award, para. 126.

⁸⁰ *Arctic Sunrise*, Merits Award, paras. 110.

⁸¹ ITLOS/PV25/C32/3, Transcript, page 13, lines 31-34.

⁸² *Arctic Sunrise*, Merits Award, paras. 130-132.

⁸³ *Arctic Sunrise*, Merits Award, para. 126.

1 Here, as we all well know by now, the crew did not go home. After three months of
2 being detained, the crew, despite having been told that they would be released and
3 that they would be allowed to go home, were renditioned to a third State. This
4 profound stress cannot be underestimated. We have heard much about impressive
5 hotels. We have heard less about the crippling uncertainty they endured during the
6 final days of their detention in Equatorial Guinea. The Chamber has seen, on
7 Thursday and earlier today, that all contemporaneous communications between
8 Owners, Managers, insurers, lawyers and crew, and including, critically, from
9 Equatorial Guinea's own witness, the agent, and those contemporaneous
10 communications show that they were all led, or perhaps it would be better to say
11 misled, to believe that the vessel and the crew would be released to go home on the
12 payment of the fine.⁸⁴ Of course, all of those contemporaneous documentations are
13 now simply, we are told, the basis of a misunderstanding.

14
15 Also, the Chamber heard from Equatorial Guinea's witness⁸⁵ and how he suggested
16 that the crew were happy to stay in Equatorial Guinea. Out of respect for the
17 *in camera* proceedings, I will only quote for the Tribunal's attention, three words:
18 crying, tourism and scandal. The references to the *in camera* transcript are in my
19 footnotes.⁸⁶

20
21 In reality, the evidence the Tribunal has heard from the witnesses of both sides is
22 that the crew were absolutely terrified at the prospect of being unlawfully transferred
23 to Nigeria, *manu militari*. Dr Permann-Kerr explained in her report "the levels of fear
24 and uncertainty when EG decided to hand over the vessel to Nigeria" was one of the
25 factors that "compounded the initial traumatic experience".⁸⁷

26
27 Ultimately, it is for the Chamber to appreciate those circumstances, appreciate the
28 equities, and their impact.

29
30 Mr President, Members of the Chamber, I thank you for your kind attention. I invite
31 you to call the agent, Ms Kirby, to the podium.

32
33 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Dr Casas for his
34 statement. I understand that the Agent of Marshall Islands, Her Excellency Ms Kirby,
35 will make some closing remarks and present the final submissions of the Marshall
36 Islands.

37
38 In this regard, I wish to recall that pursuant to Article 75(2) of the Rules of the
39 Tribunal, at the conclusion of the last statement made by a Party at the hearing, its
40 Agent, without recapitulation of the arguments, shall read that Party's Final
41 Submissions. A copy of the written text of the submissions, signed by the Agent,
42 shall be communicated to the Special Chamber and transmitted to the other Party.

43
44 I now invite the Agent, Ms Kirby, to take the floor for her closing statement.
45

⁸⁴ ITLOS/PV25/C32/6, Transcript, page 32, lines 30-34.

⁸⁵ ITLOS/PV25/C32/6, Transcript, page 32, lines 30-34.

⁸⁶ ITLOS/PV25/C32/9, Transcript, page 11, lines 37-39.

⁸⁷ Annex RMI/-38, para. 37.

1 **MS KIRBY:** Thank you. Mr President, Members of the Special Chamber, before
2 I read the Republic of the Marshall Islands' Final Submissions, with your indulgence
3 I would like to make some very brief closing submissions.
4

5 As the official who had the handling of this matter from the very outset for the
6 Marshall Islands Registry, who, with my colleagues, sought to reach out time and
7 again to those in Equatorial Guinea to express our flag State interests, on each
8 occasion drawing no response. I can attest to the careful and considered attention
9 that the Marshall Islands gave to these issues before bringing this case.
10

11 This is the first contentious case before ITLOS in which we have been involved, and
12 we did not bring it lightly. As the Attorney General and I both said in our opening
13 remarks last Monday, the Marshall Islands brought this case because of the
14 fundamental importance of the rules and principles of law that are at stake.
15

16 As the third largest open Registry in the world, and the largest in terms of energy,
17 with a fleet of almost 6,000 ships, we are acutely aware of the importance of
18 safeguarding freedom of navigation rights and exclusive flag State jurisdiction.
19

20 We are also exercised to ensure and contribute to robust anti-piracy cooperation and
21 measures, as well as minimum safe manning commitments, seafarers' rights,
22 considerations of humanity, and other rules and principles that stand at the heart of
23 UNCLOS.
24

25 We brought these proceedings – no small thing to do – because we were, and are,
26 deeply concerned that the acts of Equatorial Guinea on 12 August 2022, and for the
27 three months that follows, had scant regard for the rules. In such circumstances, the
28 global shipping community becomes vastly more vulnerable. Equatorial Guinea
29 failed in its most basic and fundamental obligations to the Marshall Islands, as flag
30 State, to the vessel and to the crew and their families. The task which you are
31 entrusted in these proceedings will require your solemn deliberation and wise
32 judgment. We wish you courage as well as wisdom. We look forward to your
33 judgment in due course.
34

35 Mr President, Members of the Special Chamber, may I take the opportunity at these
36 closing remarks to thank the Registry and all those at the Tribunal who have
37 extended to us their welcome, their courtesy and their assistance. We are very
38 grateful. We are grateful also to the interpreters and to the court reporters.
39

40 I would also like to extend our appreciation to our colleagues opposite, the esteemed
41 Agent of Equatorial Guinea and his diplomatic team and his counsel team. We have
42 appreciated their professional and courteous demeanour and the positive spirit with
43 which they engaged in these proceedings.
44

45 I would like also to thank those who are with me and alongside me, even if not here
46 in Hamburg. We have been fortunate in the support that we have been given in this
47 endeavour from the crew of the "*Heroic Idun*" and from its Owners, as well from
48 others, foremost amongst whom have been Gard, the P&I insurers.
49

1 I would also like to thank our counsel, both for the advice that they have given to us
2 and for their arguments over the past week.

3
4 Lastly, Mr President, Members of the Special Chamber, but certainly not least,
5 I would like to thank you, Members of the Special Chamber, and the Registrar, for
6 your courtesy and attention, and for all the work still to come.

7
8 With that, Mr President, having regard to Article 75(2) of the Tribunal's Rules, I will
9 now read the Marshall Islands' Final Submissions.

10
11 Pursuant to Article 75(2) of the Rules of the Tribunal, having regard to its written and
12 oral submissions, the Republic of the Marshall Islands requests the Special Chamber
13 to adjudge and declare as follows:

14
15 1. The Special Chamber has jurisdiction in respect of each of the claims of the
16 Republic of the Marshall Islands and the claims are admissible.

17
18 2. By its conduct in intercepting the "*Heroic Idun*" on 12 August 2022 in the exclusive
19 economic zone of São Tomé and Príncipe, by forcing it to divert course to Luba
20 anchorage, and by detaining the "*Heroic Idun*" at Luba anchorage, the Republic of
21 Equatorial Guinea acted in breach of the Republic of the Marshall Islands' Flag State
22 freedom of navigation rights and/or exclusive flag State jurisdiction with respect to
23 the "*Heroic Idun*", contrary, *inter alia*, to Articles 87(1), 90, 92(1) of UNCLOS, having
24 regard to Articles 58(2) of UNCLOS.

25
26 3. By detaining the "*Heroic Idun*" and her crew, by criminally charging the Master,
27 and by levying a fine of €2,000,132.00 on the Master, without any basis in and
28 contrary to UNCLOS, the Republic of Equatorial Guinea acted in breach of Articles
29 56(1), 58(2), 87(1), 89 and 92(1) of the Convention and/or Article 300 read with
30 Part V of UNCLOS.

31
32 4. All measures adopted by the Republic of Equatorial Guinea subsequent to its
33 detention of the "*Heroic Idun*" in Luba anchorage, including but not limited to its
34 extra-judicial hand-over of the "*Heroic Idun*" and her crew to the Federal Republic of
35 Nigeria on 11 November 2022, were without basis in international law and,
36 accordingly, in breach of general principles of legality in international law.

37
38 5. Insofar as the Republic of Equatorial Guinea is alleging that it was undertaking an
39 anti-piracy operation vis-à-vis the "*Heroic Idun*":

40
41 (a) There was no credible basis for the contention that the Republic of Equatorial
42 Guinea was undertaking an anti-piracy operation vis-à-vis the "*Heroic Idun*".

43
44 (b) In addition or in the alternative to 5(a) above, by its conduct in intercepting the
45 "*Heroic Idun*" on 12 August 2022 in the exclusive economic zone of São Tomé and
46 Príncipe, by forcing it to divert course to Luba anchorage and by detaining the
47 "*Heroic Idun*" at Luba anchorage, the Republic of Equatorial Guinea failed to
48 cooperate with the Republic of the Marshall Islands in its capacity as Flag State of
49 the "*Heroic Idun*" contrary, *inter alia*, to Article 100 of UNCLOS, having regard, on

1 the facts of this case, to the ample opportunity to do so before the Republic of
2 Equatorial Guinea took steps to seize the "*Heroic Idun*", including:

3
4 i. by failing to inform the Republic of the Marshall Islands of allegations
5 regarding the conduct of the "*Heroic Idun*", and/or

6
7 ii. by failing to seek the cooperation of the Republic of the Marshall Islands in
8 its capacity as Flag State with regard to the investigation of the "*Heroic Idun*" and her
9 crew.

10
11 c. Having regard to the right of visit pursuant to Article 110 of UNCLOS:

12
13 i. the Republic of Equatorial Guinea had no reasonable ground for suspecting
14 that the "*Heroic Idun*" was engaged in piracy;

15
16 ii. in the alternative, insofar as the Republic of Equatorial Guinea can establish
17 that it had reasonable grounds to suspect the "*Heroic Idun*" was engaged in piracy,
18 the Republic of Equatorial Guinea failed to undertake the verifications, checks and
19 examinations on board the "*Heroic Idun*" with all possible consideration in breach of
20 Article 110 of UNCLOS.

21
22 d. In addition or in the alternative to 5(c) above, by its conduct in seizing the "*Heroic*
23 *Idun*", the Republic of Equatorial Guinea acted in breach of Article 105 of UNCLOS,
24 having regard to Article 103 of UNCLOS and having failed to establish that the
25 person in dominant control of the "*Heroic Idun*" intended to use the vessel for the
26 purposes of committing any act of piracy, including for the reason that, on the facts
27 of this case, the Republic of Equatorial Guinea did not seek to assess, including with
28 the Republic of the Marshall Islands as Flag State, whether the persons in dominant
29 control of the Vessel intended to use the Vessel for the purposes of committing any
30 act of piracy.

31
32 6. In addition or in the alternative to the preceding:

33
34 a. By failing to notify the Marshall Islands, *inter alia*, of the interception, diversion and
35 detention of the "*Heroic Idun*" and her crew, of the imposition of a criminal charge
36 and fine on the Master of the Vessel, and of the transfer of the Vessel to the Federal
37 Republic of Nigeria, the Republic of Equatorial Guinea breached its duty to notify the
38 Republic of the Marshall Islands as the Flag State of enforcement measures adopted
39 in respect of its Vessel.

40
41 b. Having regard, *inter alia*, to the Convention on Safety at Life at Sea and its
42 protocols, the International Convention on Standards of Training, Certification and
43 Watchkeeping for Seafarers at Sea, and the Convention on the International
44 Regulations for Preventing Collisions at Sea, the Republic of Equatorial Guinea:

45
46 i. failed to have due regard for and frustrated the exercise of the rights, duties
47 and responsibilities of the Republic of the Marshall Islands as Flag State of the
48 "*Heroic Idun*" under, *inter alia*, Articles 94 and 217, in breach of Article 2(3) and 87(2)
49 of UNCLOS.

1 ii. breached its obligations under Article 1(b) of the Convention on Safety of
2 Life at Sea, Article I(2) of the International Convention on the Standards of Training,
3 Certification and Watchkeeping for Seafarers at Sea, and Article 1 of the Convention
4 on the International Regulations for Preventing Collisions at Sea, by failing to take
5 necessary steps to enable the conventions to be given full and complete effect,
6 thereby preventing the Republic of the Marshall Islands from exercising its rights,
7 duties and responsibilities thereunder.

8
9 c. Having regard to the matters in paragraph 6(b) and by, *inter alia*, requiring the
10 “*Heroic Idun*” to be anchored in an unsuitable location where it was at significant risk
11 of collision and by the unsafe manoeuvring of its naval vessel “*Wele Nzas*” on
12 26 September 2022, Equatorial Guinea breached Article 225 of UNCLOS.

13
14 d. Having regard to the detention and treatment of the crew of the “*Heroic Idun*” in
15 the period 12 August 2022 to 11 November 2022, the Republic of Equatorial Guinea
16 acted in breach of considerations of humanity and UNCLOS, including, *inter alia*,
17 Articles 2(3) and 87(1).

18
19 e. By failing to engage with the Republic of the Marshall Islands in respect of the
20 “*Heroic Idun*” and her crew, and by handing over the vessel and her crew to the
21 Federal Republic of Nigeria on 11 November 2022, the Republic of Equatorial
22 Guinea acted in breach of the general obligation not to aggravate the dispute with
23 the Republic of the Marshall Islands.

24
25 7. Having regard to the preceding alleged breaches, as well as, *inter alia*, to Article
26 106 and 110(3) of UNCLOS, the Republic of the Marshall Islands requests the
27 Special Chamber to order the payment of reparations by the Republic of Equatorial
28 Guinea to the Republic of the Marshall Islands in the following amounts:

29
30 a. Loss, damage and injury caused by the Republic of Equatorial Guinea that was
31 visible and quantifiable within the period of 12 August 2022 to 11 November 2022
32 including: i. EUR 2,000,132, being the amount of the fine improperly levied by the
33 Republic of Equatorial Guinea to release the “*Heroic Idun*” and her crew; ii. USD
34 7.628 million for material loss, damage or injury sustained by the “*Heroic Idun*” in the
35 period 12 August 2022 to 11 November 2022; iii. USD 4.784 million for non-material
36 loss, damage or injury sustained by the crew of “*Heroic Idun*” in the period 12 August
37 2022 to 11 November 2022.

38
39 b. Loss, damage or injury that was a direct consequence of Equatorial Guinea’s
40 conduct within the period 12 August 2022 to 11 November 2022 but only crystallized
41 after this period or only became quantifiable after this period, specifically: USD 3.339
42 million for material loss and damage to the “*Heroic Idun*” that was a direct
43 consequence of Equatorial Guinea’s conduct within the period 12 August 2022 to
44 11 November 2022 but was only quantifiable in the period 27 May 2023 to 24 July
45 2023, namely, loss of hire, cost and expenses to repatriate the crew, and costs and
46 expenses to repair the Vessel.

47
48 c. Loss, damage or injury to the “*Heroic Idun*” and her crew in the period
49 11 November 2022 to 27 May 2023 in consequence of the Republic of Equatorial
50 Guinea’s extra-judicial rendition of the “*Heroic Idun*” and her crew to the Federal

1 Republic of Nigeria that is sufficiently proximate to that rendition and is properly
2 traceable to Equatorial Guinea, in an amount to be determined by the Special
3 Chamber.

4
5 d. An award of interest on the sums specified above, as appropriate.

6
7 e. An award of such other sums as the Special Chamber may consider appropriate.

8
9 f. Order the Republic of Equatorial Guinea to acknowledge its wrongful conduct in
10 respect of the Republic of the Marshall Islands and provide an assurance and
11 guarantee of non-repetition.

12
13 Finally, an award of the costs of the Republic of the Marshall Islands in these
14 proceedings, subject to assessment in the case of dispute.

15
16 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Her Excellency, Ms Kirby,
17 for her statement, her closing statement, and for reading the Republic of the Marshall
18 Islands' final submissions.

19
20 This concludes the second round of oral argument of the Marshall Islands as well as
21 this morning's sitting. The hearing will be resumed tomorrow, 14 October 2025 at
22 3 p.m., to hear the second round of oral arguments of Equatorial Guinea.

23
24 This sitting is now closed.

25
26 *(The sitting closed at 12.51 p.m.)*