

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2025

Public sitting

held on Tuesday, 14 October 2025, at 3 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,
President of the Special Chamber, Judge Albert J. Hoffmann, presiding

THE M/T “HEROIC IDUN” (No. 2) CASE

(Marshall Islands/Equatorial Guinea)

Verbatim Record

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

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

The Marshall Islands are represented by:

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

as Agent;

and

Mr Bernard J. Adiniwin, Attorney-General,

as Representative;

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

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

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

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

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 afternoon. The Special
2 Chamber will now continue its hearing in the “*Heroic Idun*” (No. 2) Case. We will hear
3 the second round of oral argument of Equatorial Guinea.

4
5 I therefore invite Mr Haeri to the podium to make his statement. You have the floor,
6 Sir.

7
8 **MR HAERI:** Thank you, and good afternoon, Mr President, distinguished Members
9 of the Special Chamber.

10
11 Mr President, Members of the Special Chamber, over the course of the last week,
12 we have heard the very many grievances of the Marshall Islands. Its frustration is
13 palpable and, to some extent at least, understandable – the owners and insurer of
14 the “*Heroic Idun*” have incurred many expenses.

15
16 In this context, the Marshall Islands has gone so far as to accuse Equatorial Guinea
17 of presenting “alternative truths”,¹ of making a “sham” defence,² a term that implies
18 fraud.

19
20 Mr President, Members of the Special Chamber, we know that the owners of the
21 “*Heroic Idun*”, separately from these proceedings, also brought an arbitration dispute
22 against the insurers. The outcome of that arbitration, which the owners lost, is
23 publicly reported. So what did the owners have to say about this issue in those
24 arbitration proceedings? We can see it here from a public source accessible to the
25 Special Chamber under Article 71(5) of the UNCLOS Rules:

26
27 The Owners relied on the following alleged facts: “*Heroic Idun*” was captured
28 and detained as part (or in the context of) West African States’ fight against
29 piracy and maritime crime; the capture, transfer and detention of “*Heroic Idun*”
30 was effected by two foreign states in cooperation....³

31
32 So, in the arbitration, the owners’ position was that Equatorial Guinea acted in
33 cooperation with Nigeria to interdict the “*Heroic Idun*” in the fight against piracy. By
34 contrast, in these proceedings, the suggestion that piracy was at issue is a sham, a
35 dissembling fiction that was cooked up. The clear contradiction may be expedient,
36 but that doesn’t make it right.

37
38 Nor is the so-called “sham” defence the only accusation the Marshall Islands unfairly
39 levels at Equatorial Guinea. The Marshall Islands claims that Equatorial Guinea
40 treated the crew in a manner that violated the prohibition on inhumane treatment in
41 international human rights law. It flits around the suggestion that torture, one of the
42 most serious crimes in international law, may be at issue here. If the Special
43 Chamber has some difficulty understanding how such suggestions could possibly be

¹ ITLOS/PV.25/C32/11, p. 1 (lines 42-43) (Bethlehem).

² ITLOS/PV.25/C32/5, p. 24 (line 5) (Bethlehem).

³ Thomessen, “The Heroic Idun case: No war risk cover for detention [sic] as part of law enforcement - perceived piracy is not a war peril”, 13 October 2025, available at:
<https://www.thommessen.no/en/news/the-heroic-idun-case-no-war-risk-cover-for-detention-as-part-of-law-enforcement-perceived-piracy-is-not-a-war-peril> (last accessed 14 October 2025).

1 made in light of the facts of this case, it is not alone. They bear no scrutiny and
2 deserve no credence.

3
4 Nonetheless, in presenting its case, the Marshall Islands simply goes too far. Its
5 overreach can be summarized in six key areas.

6
7 First, the inadmissibility objection of *Monetary Gold*.

8
9 Second, the inadmissibility objection of the exhaustion of local remedies and the
10 issue of notification.

11
12 Third, the gateway provisions.

13
14 Fourth, the reasonable suspicion of piracy.

15
16 Fifth, the treatment of the crew.

17
18 Sixth, causation and remedies.

19
20 I will be addressing you on the first point concerning *Monetary Gold*. Then,
21 Ms Lavaud will address you on the second point concerning exhaustion of local
22 remedies and the issue of notification. Professor Akande will thereafter take the floor
23 on the misuse of the Marshall Islands' gateway provisions before moving on to
24 address the issue of piracy under UNCLOS. I will then conclude our submissions
25 with reference to the fifth point on the treatment of the crew and the sixth, and final
26 point, on causation and the remedies sought.

27
28 Mr President, Members of the Special Chamber, I will start my submissions by
29 addressing the centrally important admissibility issue of the principle of *Monetary*
30 *Gold* or indispensable third party.

31
32 The principle of *Monetary Gold* cuts incisively and with terminal effect in this case on
33 claims of the Marshall Islands relating to the interdiction and return of the "*Heroic*
34 *Idun*" to Nigeria – namely, on freedom of navigation and exclusivity of flag State
35 jurisdiction.

36
37 If the Chamber is with us on this principle, what remains to be addressed separately
38 is only the fine and arguments of alleged mistreatment.

39
40 In the opening submissions of the Parties, the Parties agreed that the main point of
41 divergence between them on *Monetary Gold* was not the test for the principle, but its
42 application, particularly regarding what is the "very subject matter" or the "vital issue".
43 The Chamber will recall that I explained in opening submissions the respective
44 positions of the Parties on the subject-matter test. The Marshall Islands argued that
45 the very subject matter at issue is Article 110 of UNCLOS. Equatorial Guinea's
46 position is that this is artificially narrow and that the subject matter is, rather, the
47 interdiction and return of the "*Heroic Idun*" to Nigeria, corresponding with claims
48 concerning freedom of navigation and exclusivity of flag State jurisdiction.

1 The Marshall Islands didn't come back in its closing to try to defend Article 110 as
2 being the "very subject matter" or "vital issue", perhaps understandably. Indeed,
3 Equatorial Guinea's position is that such a stance, earlier taken, is undefendable. As
4 such, the disagreement on what is the "very subject matter" or "vital issue" appears
5 now to be undisputed: it is the interdiction and return of the "*Heroic Idun*" to Nigeria,
6 corresponding with claims concerning freedom of navigation and exclusivity of flag
7 State jurisdiction. This, of course, is what the Marshall Islands has repeatedly called
8 the "core" and the "heart" of its case,⁴ as Equatorial Guinea observed in opening
9 submissions, a point to which the Marshall Islands did not return.

10
11 So as the main issue of divergence between the Parties was reconciled, what
12 arguments did the Marshall Islands maintain in its closing submissions on this? The
13 Marshall Islands focused on two things, firstly that Equatorial Guinea could be
14 individually responsible without Nigeria necessarily being responsible. And secondly,
15 that the Marshall Islands didn't specifically claim Nigeria was responsible. But neither
16 of those arguments is of any assistance to the Marshall Islands, as we shall see.

17
18 Mr President, Members of the Special Chamber, the principle of indispensable third
19 party, as is well accepted, is not a question of State responsibility. That States can
20 have individual responsibility for actions that are taken jointly, is uncontroversial,
21 even elementary. However, that is not the point of this inadmissibility objection. The
22 principle of indispensable third party is not a point of State responsibility.

23
24 Let us consider the commentary to Article 16 of the International Law Commission's
25 Articles on State Responsibility, which very clearly explains this. This article, of
26 course, deals with the situation of "aid or assistance" in the commission of an
27 internationally wrongful act. That, as I explained in opening submissions and was
28 addressed in Equatorial Guinea's written pleadings, is the case at issue. Equatorial
29 Guinea was providing aid and assistance to Nigeria. That is why the hand doesn't
30 clap on its own here.

31
32 The hand that doesn't clap, nevertheless, points. And it points, in particular, to the
33 commentary to Article 16 of the ILC Articles on State Responsibility, which explains
34 the difference between State responsibility – the focus for the Marshall Islands – and
35 the indispensable third party principle – the issue here. These are, of course,
36 different things.

37
38 The Commentary to Article 16 could not be clearer on that, and I quote from it:

39
40 Article 16 does not address the question of the admissibility of judicial
41 proceedings to establish the responsibility of the aiding or assisting State in
42 the absence of or without the consent of the aided or assisted State. The
43 International Court of Justice has repeatedly affirmed that it cannot decide on
44 the international responsibility of a State if, in order to do so, "it would have to
45 rule, as a prerequisite, on the lawfulness" of the conduct of another State, in
46 the latter's absence and without its consent. This is the so-called *Monetary*
47 *Gold* principle. That principle may well apply to cases under Article 16, since
48 it is of the essence of the responsibility of the aiding or assisting State that the

⁴ ITLOS/PV.25/C32/3, p. 32 (line 8) (Busco); ITLOS/PV.25/C32/5, p. 23 (lines 39-41) (Bethlehem).

1 aided or assisted State itself committed an internationally wrongful act. The
2 wrongfulness of the aid or assistance given by the former is dependent,
3 *inter alia*, upon the wrongfulness of the conduct of the latter. This may present
4 practical difficulties in some cases in establishing the responsibility of the
5 aiding or assisting State, but it does not vitiate the purpose of Article 16. The
6 *Monetary Gold* principle is concerned with the admissibility of claims in
7 international judicial proceedings, not with questions of responsibility as such.⁵
8

9 Allow me, please, to repeat the last sentence: “The *Monetary Gold* principle is
10 concerned with the admissibility of claims in international judicial proceedings, not
11 with questions of responsibility as such.”
12

13 The Marshall Islands is well aware of what is said here, namely, the difference
14 between the principle of *Monetary Gold* and State responsibility. That is why they
15 have tried to avoid the characterization of Equatorial Guinea’s conduct as “aid” or
16 “assistance”, because they know its implication is that their claims on freedom of
17 navigation and exclusive flag State jurisdiction are inadmissible in this case. That
18 isn’t a point of State responsibility, it is a procedural principle of general international
19 law applicable in inter-State proceedings and to the present situation.
20

21 Let’s consider what the Marshall Islands said on this in their written pleadings.
22

23 In its Reply, the Marshall Islands stated that it “could have decided to seek the
24 determination of Equatorial Guinea’s responsibility in aiding and abetting a possible
25 wrongful act by Nigeria – which may have required the prior logical determination of
26 Nigeria’s rights and obligations”.⁶ As I noted in opening submissions, the Marshall
27 Islands has thus acknowledged that if Equatorial Guinea was aiding and assisting
28 Nigeria, there would be a requirement of the prior logical determination of Nigeria’s
29 rights and obligations which would make their claims inadmissible,⁷ but “aid” and
30 “assistance” is exactly happened here.
31

32 The Marshall Islands denies that “aid” and “assistance” is relevant because of the
33 way that it has “calibrated its submissions”.⁸ But that submission goes too far. There
34 are limits to the elevation of form over substance and there is a firm limit here. The
35 Marshall Islands has notably failed to explain at any point, including in its opening or
36 closing submissions, why the relationship is not one of aid and assistance. As the
37 Tribunal held in “*Norstar*”, the relevant fact-based test is whether the circumstance
38 actually “fits into a situation of aid or assistance”.⁹ On the clear relevance of “*Norstar*”
39 to this important issue, the Marshall Islands has and offers no response.
40

41 Mr President, Members of the Special Chamber, the Marshall Islands tries to dismiss
42 the evident relevance of “*Norstar*” on inadmissibility by calling its explanation a
43 “counter-counter” hypothesis.¹⁰ But again, labelling is no substitute for analysis. The

⁵ Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, in *Yearbook of the International Law Commission*, 2001, vol. II, Part Two, p. 67.

⁶ Reply of the Marshall Islands, p 24, footnote 121.

⁷ ITLOS/PV.25/C32/7, p. 31 (lines 17-23, 31-38) (Haeri).

⁸ Reply of the Marshall Islands, p. 24, footnote 121.

⁹ *M/V “Norstar” (Panama v. Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 44, 4 November 2016, para 166.

¹⁰ ITLOS/PV.25/C32/11, p. 8 (line 39) (Bethlehem).

1 nomenclature of the Marshall Islands fails to do what it hopes, namely, to throw off
2 the scent.

3
4 Simply put, the Marshall Islands fails to explain why Equatorial Guinea should not be
5 considered in a similar position to Spain in “*Norstar*”.

6
7 Equatorial Guinea provided assistance to Nigeria in accordance with the Yaoundé
8 Code, containing similar obligations to the Strasbourg Convention.¹¹

9
10 Similar to Italy’s Decree of Seizure in “*Norstar*”, Nigeria’s request was the only
11 reason for the interception of the “*Heroic Idun*”. Like Spain in “*Norstar*”, Equatorial
12 Guinea’s position in relation to the “*Heroic Idun*” was secondary, and facilitative of
13 that State – here, Nigeria – which ordered the interdiction and return of the vessel.
14 As it was for Spain in “*Norstar*”, the correct characterization of Equatorial Guinea’s
15 assistance to Nigeria was that it was just that – assistance.¹²

16
17 The Tribunal noted in “*Norstar*” that: “The present case, which involves the action of
18 more than one State, fits into a situation of aid or assistance of a State in the alleged
19 commission of an internationally wrongful act by another State”.¹³ This points to the
20 critical issue of relevance from “*Norstar*”: like Spain, Equatorial Guinea’s interdiction
21 of a vessel was done only to assist another State, whose request is necessarily
22 implicated and forms the subject matter of the claim.

23
24 Nor has the Marshall Islands responded to the point made by Equatorial Guinea in
25 written submissions, and again last week in its opening, that Nigeria’s legal rights
26 and interests fall for prior temporal and logical assessment regarding the Marshall
27 Islands’ claims on the interdiction and return of the “*Heroic Idun*” to Nigeria. That is
28 because it has no good answer.

29
30 Temporally, Nigeria’s request for aid and assistance preceded Equatorial Guinea’s
31 subsequent giving of that aid and assistance. So, too, as a matter of logic, the
32 subject matter of claims by the Marshall Islands concerning the principles of freedom
33 of navigation and exclusive flag State jurisdiction directly concern Nigeria’s rights
34 and interests. To find that Equatorial Guinea had contravened the Convention by
35 responding to Nigeria’s request to apprehend the vessel would necessarily require
36 assessment – as a matter of prior logical and legal necessity – of Nigeria’s rights and
37 interests, including its right to have made such a request. That is, for Equatorial
38 Guinea’s action to be unlawful, the preceding request by Nigeria must also have
39 been unlawful.

40
41 As the International Court of Justice held in *East Timor*, in terms that were echoed
42 and affirmed in the arbitration of *Larsen v. Hawaiian Kingdom*, it “could not rule on
43 the lawfulness of the conduct of a State when its judgment would imply an evaluation

¹¹ Code of Conduct concerning the Repression of Piracy, Armed Robbery against Ships, and Illicit Maritime Activity in West and Central Africa, 25 June 2013, REG-001, Article 2.

¹² *M/V “Norstar” (Panama v. Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 44, 4 November 2016, para. 167.

¹³ *M/V “Norstar” (Panama v. Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 44, 4 November 2016, para. 166.

1 of the lawfulness of the conduct of another State which is not a party to the case”.¹⁴
2 A finding that Equatorial Guinea breached obligations relating to freedom of
3 navigation and exclusivity of flag State jurisdiction would, to use the language of the
4 Court, “imply an evaluation” of the lawfulness of Nigeria’s conduct on that very same
5 subject matter and conduct which it – Nigeria – had requested. That is so whether
6 Nigeria is mentioned in this regard or not.

7
8 The Marshall Islands says they are unclear on what rights and obligations of Nigeria
9 are at issue. But that has already been explained by Equatorial Guinea. For
10 example, in its Rejoinder, Equatorial Guinea set out at paragraph 116 the rights and
11 obligations of Nigeria that would be implicated by any finding on the interdiction and
12 return to Nigeria of the “*Heroic Idun*”, however directed to Equatorial Guinea and
13 without any reference to Nigeria.

14
15 That includes Nigeria’s rights and, indeed, duty under Article 100 of UNCLOS to
16 cooperate in the repression of piracy by requesting assistance from Equatorial
17 Guinea for the interdiction and return to Nigeria of the “*Heroic Idun*”. It also includes
18 Nigeria’s obligations not to unlawfully exercise jurisdiction by requesting the
19 interdiction and return of a vessel on the high seas without a lawful basis to do so
20 under UNCLOS.

21
22 Mr President, distinguished Members of the Special Chamber, it’s respectfully
23 submitted that these points are compelling on the inadmissibility of the Marshall
24 Islands’ claims relating to freedom of navigation and exclusivity of flag State
25 jurisdiction. There is no good answer to them in this case, nor has one been offered
26 up in response.

27
28 The Marshall Islands’ communications with Nigeria leave beyond any possible doubt
29 that the “very subject matter” for which it impugns Equatorial Guinea applies equally
30 to Nigeria and would, if determined against Equatorial Guinea, “imply an evaluation
31 of the lawfulness” of Nigeria’s conduct. That is impermissible.

32
33 I have addressed a number of communications between the Marshall Islands and
34 Nigeria on this point in the opening submissions. Tellingly, the Marshall Islands
35 offers no response at all on this correspondence. No orchestra. Not even a tuning
36 fork.

37
38 In the interests of time, let us look at one of these letters – the Note Verbale from the
39 Marshall Islands to Nigeria dated 11 November 2022, which couldn’t be any clearer
40 for its implied evaluation of the lawfulness of Nigeria’s conduct.

41
42 Now, the first thing to note about this letter is that the Marshall Islands has
43 misnamed it. They call it, and this has been renamed here to be accurate, but it was
44 called, when it was submitted, on the first page, Note Verbale from the Marshall
45 Islands to Equatorial Guinea, whereas, in fact, it is to Nigeria, as correctly stated
46 there. In a way, this mistake may be considered understandable. After all, as we
47 shall see, the Marshall Islands puts the same case to Nigeria in the letter that it now
48 puts to Equatorial Guinea in these proceedings.

¹⁴ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 90, 30 June 1995, para. 29.

1
2 The letter states in clear terms that: “The Nigerian Navy has confirmed that the arrest
3 and detention of *M/T HEROIC IDUN* occurred at the behest of the Nigerian
4 authorities and that they intend to unlawfully bring the *M/T HEROIC IDUN* and her
5 crew into the custody and control of Nigerian authorities, including for purposes of
6 prosecution”.¹⁵
7

8 The Marshall Islands’ letter then asserts that: “The Republic of the Marshall Islands
9 considers the conduct of the Nigerian authorities in respect of the *M/T HEROIC*
10 *IDUN* and its crew in blatant breach of fundamental provisions of UNCLOS, and
11 other applicable rules of international law, including, but not limited to, the principles
12 of freedom of navigation and exclusive flag State jurisdiction in accordance with
13 Articles 58(1), 87, 92 and 97 of UNCLOS and customary international law”.¹⁶
14

15 Mr President, Members of the Special Chamber, for Nigeria in that letter just
16 substitute Equatorial Guinea, as the Marshall Islands itself did, and the rest is the
17 same as in this case. The signal note is the same.
18

19 There is, therefore, we respectfully submit, no remaining question of whether a
20 finding on the very same subject matter would “imply an evaluation” of Nigeria’s
21 conduct: it necessarily would in this case. The Marshall Islands has already put its
22 case against Nigeria in the very same terms as the one it advances here in these
23 proceedings against Equatorial Guinea. For this reason, there could be no clearer or
24 more compelling case on the engagement of the critically important principle of
25 *Monetary Gold*. The principle renders inadmissible the Marshall Islands’ claims in
26 these proceedings on freedom of navigation and exclusivity of flag State jurisdiction.
27

28 Mr President, Members of the Special Chamber, yesterday, the Marshall Islands
29 asserted, in final submission 5(b), that Equatorial Guinea is in breach of its obligation
30 to cooperate with the Marshall Islands under Article 100 of UNCLOS. By claiming
31 that Equatorial Guinea has breached that obligation to the Marshall Islands, the
32 Marshall Islands leaves no doubt that the *Monetary Gold* doctrine is squarely
33 engaged.
34

35 The Marshall Islands makes a request to this Chamber to hold that Nigeria did not
36 have a right to receive the cooperation that Equatorial Guinea gave it, under
37 Article 100 of UNCLOS, because, in the Marshall Islands’ view, that would be
38 inconsistent with the Marshall Islands’ own rights under that provision.
39

40 Thus, there can be no doubt that the principle of *Monetary Gold* is engaged,
41 rendering inadmissible the Marshall Islands’ claims in these proceedings on freedom
42 of navigation and exclusivity of flag State jurisdiction.
43

44 Mr President, Members of the Special Chamber, this concludes my submissions on
45 the indispensable third party. I would respectfully request the Special Chamber to
46 invite Ms Lavaud to make her submissions on the inadmissibility objection, on the
47 exhaustion of local remedies, and the issue of notification.

¹⁵ Note verbale with covering letter from the Marshall Islands to Equatorial Guinea, SA 27.

¹⁶ Note verbale with covering letter from the Marshall Islands to Equatorial Guinea, SA 27 (emphasis added).

1 Thank you.

2
3 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Haeri. I now call
4 upon Ms Lavaud to make her statement. You have the floor, Madam.

5
6 **MS LAVAUD:** Mr President, distinguished Members of the Special Chamber, good
7 afternoon.

8
9 Today, I will address the second admissibility objection raised by Equatorial Guinea
10 and the obligation of notification.

11
12 Starting with admissibility, it is striking how little attention the Marshall Islands has
13 given to the exhaustion of local remedies throughout these proceedings. Yesterday
14 was no exception.

15
16 Instead of engaging with this objection, it has chosen to shift its case – once again
17 by amending its submissions. However, as I will demonstrate, this shift does not
18 change the conclusion that the claims related to the crew are inadmissible.

19
20 I will make two points in this regard, but, before doing so, let me briefly respond to
21 what we heard yesterday from Counsel for the Marshall Islands regarding the futility
22 exception. We were that their remarks on this point reflected “diplomatic restraint”.¹⁷
23 With respect, we disagree.

24
25 What we heard does not come close to establishing futility: a passing comment and
26 a single report simply are not enough. Indeed, Mr Moro Nve Obono laid out very
27 clearly the remedies that the crew could, but decided not to, pursue in Equatorial
28 Guinea.¹⁸ And the Marshall Islands has not shown that pursuing these remedies
29 would have been futile.

30
31 As we have said before, the rule of exhaustion does not require pursuing every
32 possible step, but it does require taking reasonable steps.¹⁹ Here, no steps at all
33 were taken. Likewise, despite what was suggested yesterday, Equatorial Guinea did
34 address the jurisdictional link last week. On this point, I will just say that we stand by
35 our submissions.²⁰

36
37 Mr President, distinguished Members of the Special Chamber, I now turn to my first
38 point.

39
40 To support our position that the claims concerning the crew are separate from those
41 advanced concerning injury to the flag State, I invite the Chamber to refer to the
42 Marshall Islands’ final submissions.

43

17 ITLOS/PV.25/C32/11, p. 9 (line 12) (Bethlehem).

18 ITLOS/PV.25/C32/8, pp. 8-11 (lines 10-42).

19 James Crawford and Thomas D Grant, “Local Remedies, Exhaustion of” (January 2007) *Max Planck Encyclopaedia of Public International Law* para. 20, citing Restatement (Second) of Foreign Relations Law of the United States § 207 comment. b (*Am. Law Inst. 1965*). See also ILC Draft Articles on Diplomatic Protection, Commentary to Article 15, para. 4.

20 ITLOS/PV.25/C32/8, p. 13 (lines 6-33) (Lavaud).

1 Despite having amended those submissions – not once, but twice – the Marshall
2 Islands still presents its claim related to the crew separately from those relating to
3 injury to the flag State. Indeed, as you can see in your Judges’ folder, at tab 16,
4 paragraph 6(d) makes that clear. It states: “Having regard to the detention and
5 treatment of the crew of the ‘*Heroic Idun*’ in the period 12 August 2022 to
6 11 November 2022, the Republic of Equatorial Guinea acted in breach of
7 considerations of humanity and UNCLOS, including Articles 2(3) and 87(1).”
8

9 Now, yes – the Marshall Islands has removed the reference to human rights treaties.
10 But it has been replaced with “considerations of humanity” under general
11 international law. These are cosmetic changes. The substance has not changed.
12 This is still a standalone claim, which is essentially a repackaged version of its
13 previous submission set out in paragraph 333(f) of its Reply.²¹
14

15 What makes these claims independent from those related to injury to the flag State is
16 as follows: if this Chamber were to find that the Marshall Islands’ claims as flag State
17 concerning freedom of navigation and exclusive flag State jurisdiction are
18 inadmissible under the *Monetary Gold* principle, or, alternatively, if it were to find that
19 Equatorial Guinea did not violate flag State’s rights under UNCLOS, the only claims
20 that would remain are private claims. And without exhaustion of local remedies,
21 those are inadmissible. This is consistent with the position taken by President
22 Hoffmann in “*Virginia G*”.²²
23

24 So, Equatorial Guinea respectfully asks that this Chamber apply to this independent
25 set of claims the relevant tests under international law, including the preponderance
26 test, to determine whether the members of the crew were, indeed, required to
27 exhaust local remedies.
28

29 This leads me to my second point, which is that, despite how the Marshall Islands
30 has framed its case, these claims are not about the rights of the flag State – they are
31 about the crew. That is clear from the nearly \$5 million now being claimed in non-
32 material damages – almost a third of the Marshall Islands’ total damages claim.
33

34 Now, Equatorial Guinea accepts that, in limited circumstances, this Tribunal has
35 allowed flag States to seek compensation for harm to crew members. But those were
36 exceptions – narrow exceptions – to the rule of exhaustion of local remedies. And for
37 good reason, this Tribunal has departed from that rule only sparingly.
38

39 Here, the Marshall Islands’ claims do not fit within that jurisprudence. In fact, its
40 Counsel admitted as much in the first round of submissions when she said, “to [our]
41 knowledge, an UNCLOS tribunal has not yet faced claims of the kind made today”.²³
42 On this point, we agree.
43

²¹ ITLOS/PV.25/C32/1, p. 34, lines 19-26 (Bethlehem); ITLOS/PV.25/C32/1, p. 34, lines 33-35 (Bethlehem).

²² ITLOS, *M/V “Virginia G” (Panama/Guinea-Bissau)*, Judgment, Joint Dissenting Opinion of Vice-President Hoffmann and Judges Marotta Rangel, Chandrasekhara Rao, Kateka, Gao and Bouguetaia, ITLOS Reports 2014, p. 4, 14 April 2014, para. 6.

²³ ITLOS/PV.25/C32/4, p. 21 (lines 22-23) (Grafton).

1 Unlike in prior cases, the Marshall Islands is not asking this Chamber to award
2 non-material damages on behalf of the crew on the basis that these damages – and
3 I quote from “*Saiga*” (No. 2) – “arise from direct violations of the rights” of the flag
4 State.²⁴ Instead, the Marshall Islands argues that the detention and the alleged
5 mistreatment of the crew independently breached Articles 2(3) and 87(1) of
6 UNCLOS. This, we submit, is a very different proposition.

7
8 The unprecedented nature of the Marshall Islands’ claims doesn’t only relate to the
9 legal framing – it also relates to its scale. In “*Saiga*” (No. 2), non-material damages
10 made up less than five per cent of the total claim. In “*Virginia G*”, just 1.6 per cent.
11 And in “*Norstar*”, less than one per cent. Here? Nearly 30 per cent. This is a major
12 departure.

13
14 As we said in the first round, if there is a threshold below which individual claims can
15 be assessed as part of a broader inter-State case, the Marshall Islands has gone
16 way beyond that threshold. Even after amending its submissions, as it did yesterday,
17 the Marshall Islands still goes too far.

18
19 In sum, Equatorial Guinea is not asking this Chamber to “go back to the past”, as
20 was suggested yesterday by our friends on the other side.²⁵ Instead, we are asking
21 this Chamber to apply the law as it stands; to stay true to the Tribunal’s
22 jurisprudence and to give full effect and meaning to Article 295 of UNCLOS.

23
24 This is an opportunity for this Chamber to ensure that this provision does not
25 become “meaningless”, as Judge Wolfrum warned,²⁶ but to apply the rule of
26 exhaustion of local remedies, consistent with the intent of the drafters of UNCLOS.

27
28 For all these reasons, Equatorial Guinea submits that the Marshall Islands’ claims
29 concerning the crew are independent from its flag State’s claims. Because they
30 relate preponderantly to the crew, they are subject to the rule of exhaustion and are
31 therefore inadmissible before this Chamber.

32
33 Mr President, distinguished Members of the Special Chamber, I now turn to the
34 obligation of notification. I will be brief on this point, not because this claim is not
35 important, but because, once again, the Marshall Islands has failed to demonstrate
36 the existence, let alone the breach, of any obligation of notification in this case.

37
38 Indeed, we have already explained why the Marshall Islands has not established the
39 existence of any general obligation to notify – whether under UNCLOS, customary
40 international law, or general principles.²⁷ And the same goes for its claim relating to a
41 general obligation of prompt release, which, notably, was withdrawn yesterday.

24 *M/V “Saiga” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, 1 July 1999, para. 99.

25 ITLOS/PV.25/C32/11, p. 10 (line 14) (Bethlehem).

26 *M/V “Saiga” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Separate Opinion of Vice-President Wolfrum, 1 July 1999, para. 51.

27 Counter-Memorial, paras. 257-270; Rejoinder, paras. 295-309; ITLOS/PV.25/C32/9, pp. 14-18 (lines 17-14) (Lavaud).

1 It is worth pausing here. Both claims – the obligation to notify and the obligation for
2 prompt release – were based on the same reasoning, the same elements, applied as
3 we heard from Counsel for the Marshall Islands last week “*mutatis mutandis*”.²⁸ Yet,
4 only one of those two claims was withdrawn. That is surprising, given that they both
5 suffer from the same defect. On this point, Equatorial Guinea rests on its
6 submissions.²⁹

7
8 Now, from a factual standpoint, the Marshall Islands also presents an incomplete
9 picture. It points to unanswered correspondence,³⁰ but conveniently omits several
10 meetings of its representatives that took place on the ground with the authorities in
11 Equatorial Guinea.³¹ As such, when the Marshall Islands suggests that there was no
12 effort to notify or cooperate, it is a selective presentation of the facts. Professor
13 Akande will come back on this point.

14
15 Yesterday, Counsel for the Marshall Islands also raised a concern: that if the
16 Chamber finds no obligation to notify, States acting unlawfully under UNCLOS would
17 somehow be subject to less restraint.³² For one, this is a mischaracterization of our
18 position. Second, this concern is, of course, unwarranted: if the Tribunal has
19 jurisdiction, a State will be held accountable for its unlawful conduct. The question is
20 entirely separate from whether a notification obligation exists.

21
22 Equatorial Guinea’s point is very simple: the Marshall Islands cannot rewrite the
23 Convention. UNCLOS provides for notification obligations in specific provisions,
24 under specific circumstances. None of those apply here. And the fact that, perhaps,
25 other rules may apply elsewhere does not warrant rewriting the Convention.

26
27 Mr President, distinguished Members of the Special Chamber, this concludes my
28 submission. I thank you for your kind attention, and I would request that you kindly
29 call Professor Akande to the podium to continue our submissions on the gateway
30 provisions and the reasonable suspicion of piracy.

31
32 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Ms Lavaud, and I now call
33 upon Mr Akande for his statement. You have the floor, sir.

34
35 **MR AKANDE:** Mr President, Members of the Special Chamber, good afternoon.

36
37 My first task this afternoon is to respond to some of the arguments that you heard
38 yesterday with regard to your jurisdiction and in relation to the law that is applicable
39 to this case. In this regard, I will mainly address the issues that relate to the human
40 rights claims of the Marshall Islands, and its claims under the IMO treaties. After that
41 discussion, I will address arguments that were made with respect to the key issues
42 that divide the Parties in relation to the merits of the claimed breaches. However, in

²⁸ ITLOS/PV.25/C32/4, p. 35 (line 22) (Nevill).

²⁹ Counter-Memorial, paras. 257-270; Rejoinder, paras. 295-309; ITLOS/PV.25/C32/9, pp. 14-18 (lines 17-14) (Lavaud).

³⁰ ITLOS/PV.25/C32/11, p. 3 (lines 25-28) (Bethlehem).

³¹ See e.g., First Witness Statement of William Gallagher, 17 December 2023 (“Gallagher-1”), para. 31 (Annex RMI/-30). First Witness Statement of Stephen Askins, 14 December 2023, para. 21 (“Askins-1”), para. 21 (Annex RMI/-3).

³² ITLOS/PV.25/C32/11, p. 25 (lines 1-4) (Nevill).

1 the time available, it will not be possible to address all the claims made by the
2 Marshall Islands. I will focus on the central point that, since Equatorial Guinea was
3 acting in accordance with its obligation to repress piracy, this means that it could not
4 be in breach of most of the provisions that the Marshall Islands accuses it of
5 violating. I wish to underline that a failure to deal, this afternoon, with all the points
6 that have been raised by the other side, is not because we resile from the arguments
7 that we made. On those issues, the ones we do not mention this afternoon, we rest
8 on the arguments we made last week and in our written pleadings.

9
10 Before I turn to the specific issues, I would like to start by making the point that, while
11 this is a relatively straightforward case about interception and seizure of a vessel, the
12 approach of the Marshall Islands has been very expansive, and this in two respects.
13 First, the Marshall Islands has thrown at you, perhaps at us, a whole host of treaty
14 provisions and legal rules in the hope that at least some of them will stick. Second,
15 with respect to these provisions, they adopt interpretations which are often at odds,
16 and sometimes by its own admission at odds, with what the provisions say. The
17 impression that one is left with is that, when the Marshall Islands does not like what
18 the Convention says, it comes up with a different rule that it would prefer. The
19 approach the Marshall Islands adopts is one which unpicks the care with which
20 UNCLOS is drafted. It ignores specific considerations that underpin particular
21 provisions with a real risk of unravelling careful compromises that are embodied in
22 the Convention.

23
24 For example, although the Convention indicates specific instances when notification
25 must be made to the flag State, as my colleague, Ms Lavaud, has just been
26 addressing you on, you were told that you can ignore this and, instead, what you
27 ought to do is to construct a rule of customary international law or a general principle
28 of law, the effect of which is to make certain provisions of the Convention redundant.
29 Similarly, though it is not denied that Articles 94 and 217 relate only to the flag State,
30 the Marshall Islands claims that they are context for the interpretation of Article 225,
31 and so, should be regarded as imposing obligations on port States too. And, as for
32 the IMO instruments, Counsel stated that the Marshall Islands does not accept that
33 these treaties are incapable, on a proper interpretation, of addressing the situation
34 where it is the port or coastal State Party which is responsible for the unsafe
35 manning of the vessel.³³ The Marshall Islands may not like this, it may not wish to
36 accept it, but the drafters of these very detailed instruments took care to distinguish
37 between the obligations of the flag State and those of the port State.

38
39 Members of the Chamber, let me now turn to some of the specific points made in
40 relation to your jurisdiction and the law applicable to this case. The Marshall Islands
41 has adjusted its final submissions in significant ways. Some of those amendments,
42 which I will turn to shortly, are to be welcomed. However, the Marshall Islands still
43 improperly seeks to expand the jurisdiction of the Chamber to any question of
44 international law, and you will see this in paragraph 4 of its revised submissions,
45 which you have in the Judges' folder.

46
47 With regard to its human rights claims (if I can even still call them that), the Marshall
48 Islands has adjusted its final submissions and deleted all references to the human

³³ ITLOS/PV.25/C32/11, p. 22 (lines 19-22).

1 rights treaties which it had asked you to find violations of. That's welcome. It now
2 reframes its human rights more clearly as breaches of UNCLOS.

3
4 However, in the submissions of yesterday, you heard nothing which responds to our
5 argument that, if these claims relate to the breaches of the UNCLOS provisions that
6 were cited, the interference with human rights must relate to matters at sea. There is
7 still the reference in the submissions to the detention of the crew being in breach of
8 Article 87 relating to freedom of navigation on the high seas and of Article 2(3) in
9 relation to the territorial sea. It is important to stress that this part of the Marshall
10 Islands' submissions – paragraph 6(d) – relates to the conditions of detention and
11 treatment of the crew. Their argument, and here I repeat what my colleague,
12 Ms Lavaud, said, is that, quite apart from any claim in relation to the interception of
13 the vessel, the manner in which the crew were treated is a breach of those
14 provisions. In other words, the argument implies that, even if we, Equatorial Guinea,
15 are right that there is a valid basis for the interception and the seizure of the vessel,
16 the subsequent treatment of the crew on land is a breach of Article 87 obligations in
17 relation to freedom of navigation. It is hard to see that that is a claim about freedom
18 of navigation on the high seas.

19
20 Article 87 relates to interference on the high seas, and if that interference is lawful,
21 then the subsequent action on land cannot make the actions on the high seas
22 unlawful.

23
24 With regard to the claim, which remains, once one disposes of Article 87, the claim
25 that the conditions of detention are in breach of Article 2(3), we have three points.

26
27 First, you heard no response to our argument that Article 2(3) does not allow you to
28 import all of international law into this provision.

29
30 Second, this claim clearly excludes all claims relating to detention on land.

31
32 And, third, the Marshall Islands has still not explicitly argued or shown that any
33 conduct, in fact, took place in the territorial sea of Equatorial Guinea, rather than in
34 the internal waters of Luba Bay.

35
36 Members of the Chamber, let me say a few words, or a few more words, about the
37 IMO instruments. I have pointed to how the Marshall Islands seeks to render
38 irrelevant the careful distinctions made in these treaties regarding obligations of port
39 States and flag States. I also mentioned last week how the Marshall Islands'
40 approach to the general obligations would render the entire rest of the treaty
41 irrelevant.

42
43 The Marshall Islands now seems to suggest that you have jurisdiction over these
44 treaties because there is a dispute regarding the interpretation and application of
45 UNCLOS. What provisions of UNCLOS do they point to? Again, Articles 87 and
46 2(3).³⁴ But these are not "get out of jail free" cards. It is imperative to see whether
47 they actually apply. The Marshall Islands' claims regarding the IMO instruments
48 relate to matters that occurred while the vessel was in Luba Bay, or the Bay of

³⁴ ITLOS/PV.25/C32/11, p. 22 (lines 40-47).

1 San Carlos, as it's also known. This was neither the high seas nor does the Marshall
2 Islands explain how it was territorial sea rather than the internal waters of the Bay.
3 Without the conduct taking place within those zones or interfering with activity that
4 takes place in those zones, Articles 87 and 2(3) simply do not apply. The claim is
5 that Equatorial Guinea did not have due regard to the rights of the Marshall Islands.
6 But Article 87(2) is not a generalized reference to other rules of international law. It is
7 an obligation to have due regard for "the interests of other States in their exercise of
8 freedom of the high seas". Moreover, Article 2(3) is not a due regard provision.

9
10 Members of the Chamber, this is not treaty interpretation, this is treaty invention. Our
11 friends opposite have accused us of making up a piracy defence as we go along,
12 while they have been rewriting the law where the actual positive law just happens to
13 be inconvenient or unhelpful to their case.

14
15 Mr President, Members of the Chamber, the core of the claim that the Marshall
16 Islands makes is that, by intercepting and seizing the vessel, Equatorial Guinea
17 acted in breach of the principle of freedom of navigation and the principle of
18 exclusive flag State jurisdiction. In what you heard yesterday, there was no dispute
19 that, if the interception was justified on grounds of piracy, there will not be a breach
20 of those principles. What you heard instead was an unseemly attempt to impugn the
21 credibility of those who were at the centre of the actions, and you heard legal
22 arguments, which, as I will explain, do not stand up to scrutiny. Worse, if those legal
23 arguments actually were to be accepted, they would have, without putting too fine a
24 point on it, devastating policy implications for maritime security. If anything smells
25 here, it's the smell of desperation.

26
27 What are the issues that divide the Parties with respect to Equatorial Guinea's
28 argument that it acted in accordance with its obligations under UNCLOS to
29 cooperate in the repression of piracy? There are five points that divide the Parties:

30
31 First, was there in fact a suspicion of piracy?

32
33 Second, was that suspicion reasonable and was it reasonable for Equatorial Guinea
34 to respond to Nigeria's request?

35
36 Third, in responding to Nigeria's request, was there an obligation for Equatorial
37 Guinea to first exercise the right to visit provided for in Article 110 before proceeding
38 to seizure of the vessel under Article 105?

39
40 Fourth, if there was a suspicion of piracy, is there nonetheless an obligation to
41 compensate the flag State under Article 106?

42
43 Fifth, and this is new, only divides the Parties as of yesterday, introduced in the final
44 submissions you heard, was Equatorial Guinea in breach, towards the Marshall
45 Islands, of its obligations to cooperate to repress piracy? And what effect, if anything,
46 would this have on the Marshall Islands' claims regarding freedom of navigation and
47 exclusive flag State jurisdiction?

48
49 I propose to take these points one by one.
50

1 So was there suspicion of piracy?
2

3 Was there a suspicion of piracy at the time when Equatorial Guinea took the actions
4 that it did in August 2022? You heard the clear testimony of the witness – Captain
5 Juan Esono Nchama. He is a man experienced in naval operations and in the fight
6 against piracy in the Gulf of Guinea. We leave it to you to judge whether our friends'
7 attempt to cast doubt on his credibility should be given any credence. We say that it
8 was obvious that this was a man who knows what he was talking about.
9

10 Can I take you back to one part of his testimony which our friends focused on. It was
11 said yesterday that “Captain Esono believed that allegations of committing a
12 crime – any crime – is sufficient basis for interdicting a vessel on the high seas and
13 bringing her ashore for investigations.”³⁵ And you were provided in your Judges’
14 folder with an extract of his testimony, which was said to confirm this. Members of
15 the Chamber, he suggested no such thing. The small extract that was provided to
16 you does not give an accurate impression of that part of his testimony. I would
17 encourage you to look at the full quote of the question that was put to him and the
18 full quote of the answer that he gave. It is not on screen, but it is in your folders. You
19 will see that he does not say that committing any crime on the high seas is a basis
20 for interdicting a vessel. He was speaking very specifically of investigation of crimes
21 committed on the high seas and his point was that any such crimes – committed on
22 the high seas – can only be investigated on land. You see him making that point in
23 the second paragraph of his answer. You will also see that he is responding to the
24 question that was put to him about investigations. You will also see in the later
25 extract that he makes clear that when he was speaking earlier of the crimes at issue,
26 he was referring to the link between fuel theft and piracy, and how this raised a
27 suspicion of piracy.
28

29 This takes me to the next point, which is still on whether he had a suspicion of
30 piracy. It was suggested that he could not have had a suspicion of piracy because
31 Nigeria did not mention piracy. The Marshall Islands seems to be suggesting that,
32 unless the word “piracy” was used, or perhaps a message which includes the picture
33 of a man with a wooden leg, a patch over one eye, and a parrot on his shoulder, that
34 there can’t be a reference to piracy.
35

36 However, what is required is not the word, nor the pictures with skulls and bones, but
37 suspicion of acts which, in fact, constitute piracy. Unlike our friends on the other side,
38 Captain Juan was alive to the fact that piracy is not just constituted by illegal acts of
39 violence, but that piracy also consists of acts of facilitation, and he was conscious of
40 acts of piracy and the practice of piracy in the Gulf of Guinea, including bunkering,
41 illegal fuel supply, including to pirates, and of use of mother ships.
42

43 Members of the Chamber, the second issue that divides the Parties is whether the
44 suspicion of piracy was reasonable. And here, I can be brief. I have already
45 mentioned the factual context of how piracy is conducted in the Gulf of Guinea,
46 which Captain Juan also testified to, but which is well known. It is not just about
47 small pirate skiffs, but also about the use of large vessels to extend the operation of
48 pirates.

³⁵ ITLOS/PV.25/C32/11, p. 17 (lines 23-25).

1
2 On Friday I put up news reports of VLCCs being used as mother ships, and that was
3 in response to the suggestion on the other side that they couldn't possibly be used
4 as mother ships. Yesterday, you were told that there is a difference between those
5 cases and our case, because in those cases the vessels had been hijacked and
6 were not being used as pirate vessels by the crew. I must confess to being
7 somewhat at a loss as to how that fact would make any difference on the 12 August
8 2022, would make any difference to the reasonableness of the suspicion that this
9 was a vessel involved in piracy. It is not as if, when those vessels were hijacked,
10 they then raised the Jolly Roger – the flag of pirate vessels – and then continued
11 along on their journey so that any approaching vessel would be clear that these were
12 vessels being operated by pirates. We were told that in those cases, the vessels had
13 raised an alarm of piracy. And what did the "*Heroic Idun*" do? It also raised an alarm
14 of piracy.
15

16 I move to the third point that divides the Parties: the legal argument of the Marshall
17 Islands that, under the Convention, Equatorial Guinea could not proceed to seizing
18 the vessel under Article 105 of the Convention until it had first concluded
19 investigations on board the vessel under Article 110.
20

21 Our friends on the other side have not been able to point to anything in the
22 Convention that suggests that such a progression is a requirement. Article 110
23 specifies a right of visit, not a requirement to do so. And as I mentioned previously,
24 such a requirement of boarding would be unworkable. With respect to the other side,
25 paragraph 5(c)(ii) of their final submissions, which is in your Judges' folders, is
26 simply misguided when it speaks of the Republic of Equatorial Guinea having failed
27 to undertake the verifications, checks and examination on board the "*Heroic Idun*"
28 with all possible consideration, "in breach of Article 110 of UNCLOS". It cannot be a
29 breach of a provision not to exercise a right that the Article provides for.
30

31 The fourth point, and this is perhaps the most stunning of the arguments of the
32 Marshall Islands on piracy. This is the claim that, even if there was a reasonable
33 suspicion of piracy, there would still be an obligation to compensate the flag State of
34 the vessel if it turned out in the end that, in actual fact, the vessel was not used for
35 piracy. This argument is both flawed as a matter of law and would have very
36 damaging policy implications were it to be correct.
37

38 I was taken to task, gently I'm sure, for not referring to Article 103 of the Convention.
39 I did, in fact, speak of what constitutes a pirate ship, but it is true that I did not refer to
40 Article 103. Let me now correct that error. Let's look at Article 103 and consider what
41 a pirate ship is. The provision states: "A ship or aircraft is considered a pirate ship if it
42 is intended by the persons in dominant control to be used for the purpose of
43 committing one of the acts referred to in Article 101. The same applies if the ship or
44 aircraft has been used to commit any such act, so long as it remains under the
45 control of persons guilty of that act."
46

47 The key is that a pirate ship must be intended to be used for, or must have been
48 used to, commit the acts referred to in Article 101. So let's go back to Article 101.
49 And here we see again paragraph (c) – the act of facilitating the other acts that are

1 described in subparagraphs (a) or (b). So a ship that is used for facilitating an act of
2 piracy is a pirate ship.

3
4 This then takes us to two questions. First, what degree of certainty is required before
5 seizure of a ship can take place? Our friends on the other side seem to suggest that,
6 because a pirate ship is defined as a ship that has been used, or is intended to be
7 used for committing acts of piracy, they seem to suggest that the warship must have
8 certainty that this is the case at the time of seizure. They seem to suggest that
9 reasonable suspicion does not suffice for seizure. But how could this be the case
10 that certainty is to be required? This is to require that those exercising enforcement
11 powers essentially undertake the judicial act of making final judgments. But we see
12 in Article 105, it's in your folder, that the judicial act comes after the seizure, as it
13 must.

14
15 Furthermore, Article 106 is clear that seizure is carried out on suspicion of piracy,
16 where the seizure of a ship or aircraft, on suspicion of piracy, has been effected
17 without adequate grounds. So seizure is carried out on suspicion of piracy; we
18 accept that it must be a reasonable one.

19
20 The formulation of Article 106 then leads to the second question. The question of the
21 grounds for compensation in case it turns out that a ship is not actually a pirate ship.
22 What Article 106 provides for is that compensation will be paid if there are not
23 adequate grounds. This itself confirms that the fact that the ship has turned out not to
24 be a pirate ship does not mean that compensation must be paid. Instead, what one
25 has to look for, or what one has to look at, is whether there were adequate grounds
26 for seizure or for that suspicion of piracy. Our argument is that, in the light of the duty
27 to cooperate in the repression of piracy, it was reasonable to respond to Nigeria's
28 request, and that constitutes adequate grounds for seizure. In the alternative, we
29 say, that where there is a reasonable suspicion of piracy and the ship has committed
30 acts which justify that suspicion, then again there are adequate grounds for seizure.
31 The suggestion that even if there is a reasonable suspicion and the ship has
32 committed acts which justify such suspicion there would nonetheless be an
33 obligation to pay compensation would have the most chilling effect on the repression
34 of piracy were it to be adopted by this Chamber.

35
36 The Agent of the Marshall Islands, in her gracious statement that she made
37 yesterday before reading the final submissions of the Marshall Islands, spoke of the
38 risk that the global shipping community becomes vastly more vulnerable.³⁶ We all
39 have a shared interest in making sure that that is not the case. This is why Equatorial
40 Guinea is committed to maritime security in the Gulf of Guinea. However, an
41 interpretation of Article 106 which tells those involved in such a fight for maritime
42 security, that if they get their assessment wrong and even if they acted reasonably in
43 getting it wrong, and even if they got it wrong because of what the vessel has done,
44 the State has to bear the cost and has to pay up, that would do a lot to making the
45 global shipping community vastly more vulnerable.

46

³⁶ ITLOS/PV.25/C32/11, p. 33 (line 28).

1 The policy implications of such a rule would be very far reaching and would put at
2 risk the advances that we have seen in the fight against piracy, both in the Gulf of
3 Guinea and globally.

4
5 The fifth point that now divides the Parties with regard to Equatorial Guinea's piracy
6 defence is that the Marshall Islands, in the second round of these oral proceedings,
7 asserts for the first time that Equatorial Guinea is in breach of its obligations to
8 cooperate with the Marshall Islands under Article 100. Now this is quite some shift
9 as, of course, this argument would only succeed because the Tribunal accepts that
10 Equatorial Guinea is acting to repress piracy.

11
12 But what the Marshall Islands is trying to do here is to pit the obligations that
13 Equatorial Guinea has towards Nigeria against duties that it says Equatorial Guinea
14 has towards the Marshall Islands. The obligation to notify the flag State has now
15 found a new home – it's embedded in the duty to cooperate in the repression of
16 piracy. However, this argument does not go anywhere. It relies on mere form since
17 the Marshall Islands was well aware of the detention of the vessel. The Marshall
18 Islands paints a picture as if there was no contact between it and Equatorial Guinea
19 on this matter, and my colleague Ms Lavaud mentioned this just a little while ago.
20 Yesterday you were told that there was a good deal on which you heard nothing.³⁷
21 You were told that you heard nothing on Equatorial Guinea's failures to engage with
22 the Marshall Islands. And then a slide was put up referring to unanswered
23 correspondence, so letters or Notes Verbales that the Marshall Islands had sent. In
24 reality, what you heard nothing about were the meetings which took place in
25 September 2022, in Equatorial Guinea, between the representative of the Marshall
26 Islands Maritime Administrator, a Captain Mustapha, and Equatorial Guinea's
27 Director-General of Ports and, also, Equatorial Guinea's Attorney General.³⁸

28
29 The idea that Equatorial Guinea, by engaging in further discussions with the Marshall
30 Islands in relation to the investigation would have aided that investigation, is wholly
31 unsubstantiated. Not a single suggestion was given of what the Marshall Islands
32 would have done, could have done or would have added to the ongoing
33 investigation.

34
35 We do not accept that Equatorial Guinea breached its obligations to the Marshall
36 Islands. But even if this were correct, the argument still does not go anywhere. As
37 long as Equatorial Guinea was acting on a reasonable suspicion of piracy and acting
38 reasonably in responding to Nigeria's request, then it could not have been in
39 violation of the principles of freedom of navigation or exclusive flag State jurisdiction,
40 nor could it have breached the obligation to have due regard because this is a
41 situation where there is an exception to these principles and Equatorial Guinea was
42 acting in fulfilment of that exception, at least in relation to its obligations to Nigeria.

43
44 Now, in asserting that Equatorial Guinea, by breaching its obligations to the Marshall
45 Islands, could not have been acting – or this seems to have been the suggestion –
46 that Equatorial Guinea by breaching its obligations to the Marshall Islands could not
47 have been acting in accordance with its obligations to Nigeria. If that's the assertion,

³⁷ ITLOS/PV.25/C32/11, p. 3 (lines 24-28).

³⁸ Memorial of the Marshall Islands, paras. 55 & 114.

1 then the Marshall Islands simply demonstrates that the *Monetary Gold* doctrine is
2 squarely at issue. The Marshall Islands is in effect making a request to this Tribunal
3 to hold that Nigeria did not have the right to receive the cooperation that Equatorial
4 Guinea gave it because in the Marshall Islands' view that would be inconsistent with
5 the Marshall Islands' own rights.

6
7 Mr President, Members of the Chamber, for all of these reasons we urge you to find
8 that Equatorial Guinea was acting in accordance with its duty to repress piracy and
9 that in so doing acted lawfully in intercepting and arresting the "*Heroic Idun*".

10
11 That concludes my submissions, and I am grateful to you for your kind attention.

12
13 Mr President, Professor Haeri will be up next but perhaps this would be a good time
14 to take a break.

15
16 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Mr Akande for his
17 statement. Indeed, I think this is time for a coffee break, so the Special Chamber will
18 now withdraw for 30 minutes. The hearing will resume at 5 p.m.

19
20 *(Adjourned at 4.28 p.m. to 5.00 p.m.)*

21
22 **THE PRESIDENT OF THE SPECIAL CHAMBER:** We will now continue the hearing,
23 and I give the floor to Mr Haeri again, please.

24
25 **MR HAERI:** Thank you, Mr President, Members of the Special Chamber. I will now
26 address you on the fifth point in our closing submissions concerning the treatment of
27 the crew.

28
29 The Chamber will recall that the Marshall Islands has filed 28 witness statements
30 from 26 crew members. Though the Marshall Islands chose to call only the Master
31 and the Chief Officer to give evidence at the hearing, it seems to place great weight
32 on the quantity of its witnesses. But to judge the quality of witness evidence, the
33 credibility of witnesses must be carefully considered.

34
35 In its written pleadings, Equatorial Guinea noted that the rate of \$2,000 per day, per
36 crew member, for the 10-month time period is \$578,000 for each crew member.³⁹
37 The Marshall Islands has not denied this.

38
39 On the contrary, during the opening submissions at this hearing, Counsel for the
40 Marshall Islands confirmed that the crew "stand to gain from any award for
41 non-material damage".⁴⁰

42
43 Mr Hernández Martín and Captain Esono Nchama gave clear and honest evidence
44 to the Special Chamber which goes to the credibility of their witness evidence.

45
46 A striking point on credibility was raised by the evidence of the Master that he did not
47 know he needed a naval clearance or a clearance from the Nigerian National

³⁹ Rejoinder of Equatorial Guinea, para. 414.

⁴⁰ ITLOS/PV.25/C32/5, p. 18 (line 34) (Casas).

1 Petroleum Company to load oil, as he led a vessel the size of the Empire State
2 Building into Nigerian waters.⁴¹ If that were true, and it would be surprising, it still
3 goes to credibility.

4
5 On credibility, Counsel for the Marshall Islands suggested yesterday that the Master
6 stating that the next port of call was Ceiba, Equatorial Guinea, simply misunderstood
7 my question, and that it was not put to him that this was untrue. My question was
8 simple: whether the next port of call was in Equatorial Guinea and not in Nigeria. His
9 answer was equally simple: correct. Counsel for the Marshall Islands chose not to
10 conduct a redirect examination on the point, so it can hardly contend the witness was
11 not given a chance to correct himself if he had misspoken.⁴² We know, based on the
12 Master's witness evidence, that, in fact, the next port of call was not Ceiba in
13 Equatorial Guinea, but was, rather, Akpo Terminal in Nigeria.

14
15 So Counsel for the Marshall Islands has offered an alternative explanation for the
16 exchange between the Master and the Nigerian Navy. When the Nigerian Navy
17 asked the Master where the vessel was going, his answer was not the common
18 sense one of, where are you going now, from drifting here outside the area of the
19 Akpo Terminal, but rather about the vessel's future plans in the next iteration of its oil
20 loading itinerary. In other words, the Master thought he was being asked about his
21 prospective schedule some days in the future, rather than about where the vessel
22 was actually heading at the moment of questioning. It is an elaborate, and I would
23 suggest, implausible explanation offered by Counsel. On any analysis, it wouldn't
24 help the credibility of the Master, as it would be a very unusual way to respond to the
25 question put to him by the Nigerian Navy.

26
27 Credibility of witness evidence is particularly important in this case because there are
28 clear areas of contradiction between the evidence of witnesses, such as between the
29 Master and Mr Hernández Martín. In its closing, the Marshall Islands made a number
30 of references and quoted freely, albeit on occasion quite misleadingly, from the
31 witness testimony of this hearing. So let's see some of the differences in evidence.

32
33 Mr President, Members of the Special Chamber, a number of the slides that I am
34 going to address on the screen at least are redacted, but you do have at tab 16 of
35 your Judges' folder the unredacted versions, and if I might respectfully suggest, it
36 might be more helpful to follow, if you wish, what I am about to address in your
37 Judges' folder. So it is available, if that's useful to you. It is at tab 16 in your folder.
38 And, in particular, from tab 16, it's actually at slide 9. So it's just after Article 106 of
39 UNCLOS addressed by Professor Akande. So it's tab 16, but it's the ninth slide in
40 that tab.

41
42 I apologize, I am corrected, it is 14 I am told now. Thank you. Thank you for that.

43
44 So it is tab 14 in the folder and it is the ninth slide where I am going to start, after
45 Article 106 of UNCLOS addressed by Professor Akande, and it's an exchange that
46 I had with Mr Hernández Martín, where I began asking about did he ever witness

⁴¹ ITLOS/PV.25/C32/3 (confidential), p. 18 (lines 43-50), p. 19 (lines 1-9) (Master);
ITLOS/PV.25/C32/1, p. 17 (lines 33-34) (Bethlehem).

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

1 and hear of any threats or intimidation. So if you are there, I will go through from
2 there on a series of points relating to evidence.

3
4 Unlike the suggestion of mistreatment from the Marshall Islands' witness,
5 Mr Hernández Martín says that the Equatoguinean authorities always treated the
6 crew right, that they were very polite. He also confirmed that they never threatened
7 or intimidated.⁴³ And we can see that on this slide, from the transcript.

8
9 You can turn, if you wish, to the next page, the next slide as it were, and here again,
10 contrary to what was suggested by the Marshall Islands' witness, the interviews
11 conducted by Equatoguinean authorities were handled with care and transparency.
12 And as Mr Hernández Martín testified, he assisted the crew with translation from
13 Spanish to English. He read each declaration to the crew members being
14 interviewed, and he conducted a line-by-line translation.

15
16 At this point, the crew members could change what was written, and they did so. He
17 also confirmed the crew members signed these statements willingly.⁴⁴ Again, we
18 accept that there is a difference between the evidence presented by the respective
19 parties, and so we do say that the issue of credibility is important in understanding
20 what actually happened.

21
22 And I move on to the next slide, which is that, unlike the suggestion of appalling
23 conditions from the Marshall Islands' witness, Mr Hernández Martín described the
24 accommodation facility as brand new, with air conditioning, bathrooms, showers, and
25 tap water available.⁴⁵ It was good, he said. Again, we accept there is a conflict, if you
26 like, of evidence on this issue. Was Mr Hernández Martín's description correct, or
27 was it not? Credibility is important on such matters, where witness evidence is
28 contradictory.

29
30 Unlike the portrayal of the facility as lacking, from the Marshall Islands' witness,
31 Mr Hernández Martín listed all the items – and this is the next slide – all the items
32 that Besora provided at the crew's request. He also made clear he checked in with
33 them regularly to make sure they had everything they required for a comfortable
34 stay. This included material to play cricket, for example.⁴⁶ Is that correct? It's for the
35 Special Chamber to decide. Do they believe the veracity of Mr Hernández Martín's
36 evidence or not? Was he a credible, honest witness telling you the truth of things to
37 which he was integrally involved and of which he had first-hand knowledge? Of
38 course, he was the main contact point at Besora for the crew, and, with the
39 Equatoguinean authorities, he was the primary contact.

40
41 And we come on to the next slide in your folder regarding food arrangements.
42 Mr Hernández Martín referred to a request from an identified crew member who said
43 that they were "getting fat", so Besora was thereafter able to provide tailored meals
44 in the Indian style from a chef of a good restaurant in Malabo.⁴⁷

45 ITLOS/PV.25/C32/6, p. 47 (lines 21-27) (Hernández Martín).

46 ITLOS/PV.25/C32/6, p. 50 (lines 1-15) (Hernández Martín).

47 ITLOS/PV.25/C32/6, p. 47 (lines 35-39) (Hernández Martín).

48 ITLOS/PV.25/C32/6, p. 63 (lines 38-44) (Hernández Martín).

49 ITLOS/PV.25/C32/6, p. 48 (lines 7-24) (Hernández Martín).

1 Does the Special Chamber accept Mr Hernández Martín's evidence on this, or does
2 it think that this was made up, inaccurate or something else? That is a point of
3 credibility. Now, that same individual – Mr Hernández Martín had identified him as
4 having said that – gave evidence he was barely able to eat, didn't visit the second
5 restaurant at Hotel Anda. In fact, expensed receipts for that individual showed that
6 he visited the restaurant as many as six times in a single day, including both
7 restaurants.⁴⁸ You have the reference there before you, REG-16.

8
9 Again, there is a contradiction of evidence. It is for the Special Chamber to decide
10 what it thinks actually happened. It can't be both.

11
12 Mr President, Members of the Special Chamber, the Master's evidence that he didn't
13 care about the comfort or facilities of the Hotel Anda, he just wanted to go home, is
14 quite understandable. However, it is important to note that it essentially proves
15 Equatorial Guinea's point. There was no mistreatment of the crew. However
16 comfortable the conditions were was irrelevant for the Master, it wasn't the issue.
17 The issue was he wanted to go home and not to Nigeria. However, there was a
18 process between the governments of Nigeria and Equatorial Guinea for the return of
19 the vessel to Nigeria which culminated in an agreement referred to by Captain Esono
20 Nchama the day of the return of the vessel.⁴⁹

21
22 Unlike the suggestion the crew were confined, isolated, deprived of basic amenities,
23 Mr Hernández Martín left no doubt that Besora was able to assist them at all times.
24 Any crew member could be reached by phone and request any amenities they
25 wished. He could not remember a single instance in which Besora was unable to
26 provide what the crew requested.⁵⁰ And we can see that on this slide.

27
28 The evidence of Mr Hernández Martín on the treatment and conditions of the crew is
29 about as different as you can get from the report of Dr Perman-Kerr, who hasn't
30 been called by the Marshall Islands to give oral evidence, who never went to
31 Equatorial Guinea, and who appears to have relied largely on discussions that took
32 place with crew members at the end of the 10 months, following their release from
33 Nigeria. A focus in her report are the few days prior to the return of the vessel and
34 crew to Nigeria in which crew members were clearly anxious of what was to come in
35 Nigeria. As the Chief Officer said, he thought there would be repercussions of what
36 had happened in Nigerian waters, and there were.⁵¹ Captain Esono Nchama equally
37 explained that crew members were crying and saying they wanted to stay in
38 Equatorial Guinea, the first part of which was mentioned yesterday by Counsel for
39 the Marshall Islands, who then omitted to mention the latter relevant part.⁵² It is
40 possible to be understanding of this situation, even sympathetic. But it simply does
41 not follow to conclude from it and accuse Equatorial Guinea, quite wrongly, of
42 "no-touch torture".

43

48 Invoice, Hotel Anda China, 8 November 2022, REG-016, p 19.

49 ITLOS/PV.25/C32/6, p. 32 (lines 14-17), p. 40 (lines 22-46) and p. 44 (lines 6-18) (Captain Esono Nchama).

50 ITLOS/PV.25/C32/6, pp. 47-48 (lines 41-8), p. 49 (10-14) (Hernández Martín).

51 ITLOS/PV.25/C32/2, p. 37 (lines 16-38); RMI-5, para. 39.

52 ITLOS/PV.25/C32/6, p. 32 (lines 19-25) (Captain Esono Nchama).

1 The Marshall Islands has suggested that the crew were misled into believing they
2 would be released upon payment of the fine. Again, we have a slide on this, where
3 Mr Hernández Martín clarified that this appears to have been a misunderstanding.
4 He understood that the crew were going to be released from Equatorial Guinea.⁵³
5 One can perhaps understand the frustration of the owners, but a misunderstanding
6 in communication does not mean that Equatorial Guinea committed an
7 internationally wrongful act.

8
9 Now, there was an insinuation that Mr Hernández Martín only provided testimony
10 because he has to live and work in Equatorial Guinea. When the point was put to
11 him, his answer was crystal clear: this was absolutely not the case.⁵⁴

12
13 Again, Mr President, Members of the Special Chamber, it is for you to determine the
14 credibility, the veracity of Mr Hernández Martín's evidence.

15
16 It was also put to Mr Hernández Martín that he had prepared the daily reports of his
17 interactions with the crew at REG-036. He made clear that this document was
18 contemporaneously prepared before the present case was brought. Reference was
19 made to a date in the cover page of this document, but a cursory glance at this page
20 clearly shows it is the date of the translation, not the date the document was
21 produced.

22
23 To conclude, the evidence from Mr Hernández Martín differs in notable respects
24 from that of witnesses who, to quote from the Marshall Islands, "stands to gain from
25 any award for non-material damage".⁵⁵ Mr Hernández Martín's evidence is credible,
26 though, it is consistent with the contemporaneous documents in the record, including
27 those introduced by the Marshall Islands, and it shows beyond any reasonable doubt
28 that the crew were treated in accordance with the principle of humanity at all times.

29
30 Mr President, Members of the Special Chamber, I finally move on to causation and
31 to quantum where, again, the Marshall Islands goes too far. It is asking this Chamber
32 to award damages for claims which do not have a direct, clear and unbroken causal
33 link to any internationally wrongful act of Equatorial Guinea. There is not a single
34 reference to a single provision of UNCLOS in either the Marshall Islands' written
35 pleadings on damages or its submissions last week for any of the heads of losses
36 claimed. The Marshall Islands asks the Chamber to award it damages in a void, with
37 no link to Equatorial Guinea's specific acts allegedly violating specific obligations
38 under UNCLOS.

39
40 As Equatorial Guinea demonstrated, the causal chain in the present case starts with,
41 and flows from, the interaction between the "*Heroic Idun*" and the *NNS "Gongola"* on
42 8 August 2022. Any losses said to be suffered thereafter in Equatorial Guinea and
43 subsequently in Nigeria are therefore consequences of the events starting in Nigeria.
44 That is why the Marshall Islands' latest revision yesterday to its damages claim to
45 remove various events occurring later in Nigeria doesn't assist it and simply
46 reinforces that the causation chain started in Nigeria with the events of 8 August

⁵³ ITLOS/PV.25/C32/6, p. 62 (lines 3-10) (Hernández Martín).

⁵⁴ ITLOS/PV.25/C32/6, p. 51 (line 45) (Hernández Martín).

⁵⁵ ITLOS/PV.25/C32/5, p. 18 (line 34) (Casas).

1 2022. The only way to respect that causation chain is to pull the claim out at the
2 roots in Nigeria, not just for events that occurred later in Nigeria.

3
4 I would like to take the Chamber back to the counter-factual scenario, where the
5 vessel would have returned to Nigeria, in any case, to load oil later in August 2022.
6 This is what the Marshall Islands says should have happened; the orange bar at the
7 bottom, the counterfactual; the green bar at the top, the factual, being what actually
8 happened. And as you can see, they end in the same place, in Nigeria. What
9 difference does it make to the return to Nigeria that Equatorial Guinea aided and
10 assisted Nigeria as compared to the voluntary return of the vessel as it says was its
11 intention?

12
13 The vessel would have faced the same criminal proceedings, paid the same fine,
14 and been prevented from operating. Plainly, this counterfactual scenario makes clear
15 that the various losses suffered, or said to be suffered in Nigeria, were a
16 consequence of the vessel's own actions, vis-à-vis the Nigerian authorities, not a
17 causal consequence of any actions of Equatorial Guinea. Now, the Marshall Islands
18 posited what it referred to as a "counter-counter" hypothesis, that "who knows" what
19 things might have happened regarding Nigeria.⁵⁶ But the difficulty with conjecture on
20 this point is that we do know exactly what happened when the vessel returned to
21 Nigeria, because that's what happened.

22
23 Turning now to quantum. Yesterday, we heard the fifth iteration of the Marshall
24 Islands' quantum case, resulting in a reduction on the last day of the Marshall
25 Islands' submissions in these proceedings of 70 per cent. It was hoped by Counsel
26 for the Marshall Islands that this might help to crystallize the issues and hone the
27 debate.

28
29 Even in the 24 hours Equatorial Guinea has had to review and respond to this
30 shifting claim, irremediable flaws remain in the Marshall Islands' claims and
31 documentation, which renders them unsafe.

32
33 We heard the admission of Counsel for the Marshall Islands that the Chamber was
34 provided with "raw, unprocessed data" and that many of the 3,000 pages filed in
35 these proceedings are what was repeatedly called "surplus".⁵⁷ This is a problem that
36 Equatorial Guinea raised squarely, starting from its written pleadings: yet nowhere
37 does the Marshall Islands attempt to reconcile the "raw data" it veritably dumped into
38 the record with its claims.⁵⁸ How was the Special Chamber or Equatorial Guinea
39 reasonably expected to guess which items were being claimed for in the absence of
40 a reconciliation? And why were documents that the Marshall Islands now claims to
41 be irrelevant to its damages claim submitted as evidence to support its damages
42 claim in these proceedings? That rather puzzling question remains left unanswered.

43
44 Despite repeated complaints that Equatorial Guinea was requiring too "granular" an
45 approach,⁵⁹ it is only because of the insistence that we have seen that the claims put

⁵⁶ ITLOS/PV.25/C32/11, p. 8 (lines 44-49) (Bethlehem).

⁵⁷ ITLOS/PV.25/C32/11, p. 25 (lines 45-47) (Casas).

⁵⁸ ITLOS/PV.25/C32/11, p. 2 (lines 27-30) (Casas).

⁵⁹ ITLOS/PV.25/C32/11, p. 26 (lines 17-20) (Casas).

1 forward by the Marshall Islands are riddled with mistakes, double-counting and
2 inappropriate expenses.

3
4 The Marshall Islands, yesterday, sought to address examples of inappropriate
5 expenses Equatorial Guinea had presented in the first round of proceedings. While it
6 is right to acknowledge and seek to correct mistakes, I am afraid the issue is simply
7 endemic. Even the 30 per cent of the damages case the Marshall Islands has
8 retained remains plagued with irremediable issues, both evidential and otherwise.

9
10 The Marshall Islands has apparently come around to this realization of its own
11 accord, albeit very belatedly. On 14 February 2025, Equatorial Guinea proposed to
12 address the issue of compensation in a separate phase of proceedings following the
13 judgment of the Special Chamber on liability, if required. The Marshall Islands replied
14 on the 25 February 2025, stating: "This request is simply made far too late in these
15 proceedings and is not justified in circumstances where the Marshall Islands has
16 already submitted its written case". And yet, yesterday, in its final closing oral
17 submissions, we heard the Marshall Islands propose bifurcation of proceedings on
18 the very same matter, as a final effort to salvage what remains of its damages case.
19 That is a complete reversal, considering its previous position. The Marshall Islands
20 has had ample time to present its position on its own claim and should not be
21 rewarded for its ever-shifting position. It is simply too late.

22
23 Even now, the Marshall Islands contends that it should recover amounts spent on
24 "beverages",⁶⁰ quite the euphemism, and suggests that this Chamber apply a
25 discount if it disagrees with the inclusion of various alcoholic drinks that are being
26 claimed for from this Chamber. The Marshall Islands has not even bothered to
27 suggest what this discount would be.

28
29 We saw the Marshall Islands maintaining this, yesterday, in addressing the "who"
30 question. What it failed, it would seem, to have observed is that the expense
31 highlighted was for liquor. What the Marshall Islands referred to as a "dot"⁶¹ is, in
32 fact, a point, and a rather serious one at that. What is it doing asking this Special
33 Chamber to award it damages for beverages? Again, the Marshall Islands simply
34 goes too far.

35
36 As a preliminary point, before I turn to the detail, the Marshall Islands claimed in its
37 closing statement that "[t]hrough [its] time, [it has] never increased [its] claim".⁶² This
38 is incorrect. In its Memorial, the Marshall Islands claimed a total of almost \$40 million
39 for material damages.⁶³ In its Reply, the total figure was increased to \$43 million.⁶⁴
40 That is an increase for material damages of approximately \$3.2 million. But, in any
41 event, whether sands are building up in different iterations or receding, the main
42 point is that they are shifting.

43
44 Turning now to address some of the detail of the fifth quantum case put forward by
45 the Marshall Islands yesterday. It now advances a claim for \$7.6 million based on

⁶⁰ ITLOS/PV.25/C32/11, p. 29 (line 6) (Casas).

⁶¹ ITLOS/PV.25/C32/11, p. 25 (lines 29) (Casas).

⁶² ITLOS/PV.25/C32/11, p. 28 (line 17) (Casas).

⁶³ Memorial, para. 439(a)(i)(1).

⁶⁴ Reply, paras. 284, 334(a).

1 loss, damage or injury from 12 August to 11 November 2022. The Marshall Islands
2 now claims about \$5.3 million for loss of hire. As set out during the first round of
3 arguments, this amount is based on the charter party, which was novated. Mr Horne
4 did not see the novated document, because he was not provided it, as he says in his
5 report, and it has not been filed in these proceedings.⁶⁵ As such, we can place no
6 weight on this calculation. The Marshall Islands suggests that the amounts
7 calculated for this time period can be corroborated by reference to three invoices on
8 the record. However, Mr Horne himself explains in his report, at paragraph 56, that
9 some of these invoices were paid. For example, for the period between 1 August and
10 1 September, he calculates the amount of loss to be zero. You can see that on this
11 slide and reference from his report. And, yet, the Marshall Islands claims \$734,000
12 for this period. Again, we respectfully submit, it goes too far.

13
14 The Marshall Islands also claims for additional wages. Even if it was legally entitled
15 to recover such additional wages, which it is not, as made clear in paragraph 439 of
16 “*Virginia*”,⁶⁶ pages 71 and 72 of RMI-60 show that the amount claimed includes all of
17 November. We can see for the period 2022, 11. So this is November 2022, and the
18 number of days is 30 days. So the amount claimed is all of November, not just
19 11 days of it in Equatorial Guinea, and also all of December 2022.

20
21 Consider the Marshall Islands’ case on the war risk premium. It is a curious one. It
22 disappeared from its submissions last week, but a fraction of it was resurrected
23 yesterday, or purportedly so. However, the first invoice listed in the table presented
24 yesterday, at page 85 of RMI-65, shows that it relates to 7 and 8 August 2022. And
25 as we set out last week, the Marshall Islands cannot possibly claim for losses
26 allegedly incurred before Equatorial Guinea even knew about the existence of the
27 “*Heroic Idun*”. You can see the date there, the period from 7 August 2022 onwards.

28
29 The Marshall Islands still claims roughly \$1 million for bunkers consumed during
30 August and December (rather than November), yet another consistency. As
31 supporting evidence, the Marshall Islands has provided 437 pages of logs,⁶⁷ or, as
32 Counsel for the Marshall Islands called it, “raw unprocessed data”.⁶⁸ The issue with
33 expecting this Chamber and Equatorial Guinea to do the job of the Marshall Islands
34 is that it is impossible to determine how the Marshall Islands has reached this
35 number. The logs provided have a row, to be filled daily, dedicated to “fuel oil
36 consumption”. For the relevant time period, these rows are blank. How the Marshall
37 Islands has calculated a million dollars based on these logs remains an incognita.

38
39 Finally the Marshall Islands claims \$461,000 on wasted costs from the prompt
40 release applications. The Marshall Islands has maintained this expense, despite the
41 fact that it is no longer asking this Chamber, in its revised prayer for relief yesterday,
42 to make a determination on the prompt release proceedings. The Marshall Islands
43 has not even tried to explain which alleged breach of UNCLOS it is now relying upon
44 in an effort to recover these costs. That it is the Marshall Islands claiming wasted
45 costs is rather ironic in the circumstances of this case.

⁶⁵ First Expert Report of Tim Horne including annexes, RMI 39, para. 8.

⁶⁶ *M/V “Virginia G” (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, para. 439 with reference to Reply of Panama, paras. 448, 450-453.

⁶⁷ Volume V, Additional documents submitted by the Marshall Islands, 11 September 2025, pp. 4-440

⁶⁸ ITLOS/PV.25/C32/11, p. 25 (line 46) (Casas).

1
2 The Marshall Islands also presents a second claim for material damages, in this
3 case allegedly incurred between 27 May and 24 July 2023. As set out already in
4 causation, any such damages would not flow from the interdiction of the "*Heroic*
5 *Idun*", but rather from Nigeria's request for cooperation. However, in any event, and
6 under any analysis, the plea bargain agreed by the owners of the vessel would break
7 the chain of causation, as already explained, and as already implied by the Marshall
8 Islands' removing of periods in Nigeria from its revised damages claim submitted
9 yesterday. Moreover, examining the claims retained by the Marshall Islands under
10 this head of claim, it shows that they are not recoverable for a number of further
11 reasons.

12
13 For example:

14
15 The Marshall Islands claims roughly \$2.4 million in loss of hire. However, other than
16 the inscrutable calculations of Mr Horne to determine a daily rate, such calculations
17 do not account for costs that the "*Heroic Idun*" would have also incurred, even if it
18 had not been detained. For instance, the Marshall Islands wants payment for the
19 11 days it took to change the crew in its voyage from Nigeria to South Africa. Such a
20 crew change would have been done anyway. It also claims for 20 days of travel to
21 the UAE and nine days for time spent in repairs⁶⁹. And yet, the Marshall Islands fails
22 to show that the "*Heroic Idun*" was damaged in any way during its stay in Equatorial
23 Guinea that, therefore, required repairs in the UAE compensable by Equatorial
24 Guinea.

25
26 The Marshall Islands also claims the costs of these repairs, \$438,000 for painting
27 and for repairing Scanjet machines. There has not been a single allegation that
28 Equatorial Guinea's actions somehow damaged the paint of the vessel or its Scanjet
29 machines. In fact, the mentions to paint and pumps in the condition survey report
30 filed by the Marshall Islands at EK-78, and we see it here on this slide, show that
31 they were in "good condition".⁷⁰ The Marshall Islands cannot renovate the "*Heroic*
32 *Idun*" and pass on the costs to Equatorial Guinea.

33
34 Similarly, the Marshall Islands claims for repatriation costs. Presumably, these would
35 also have been incurred in the but-for world. This would include the almost \$60,000
36 claimed as travel wages for the new crew, and another \$60,000 for costs incurred in
37 Cape Town. To the extent the Marshall Islands is claiming that some of these costs
38 were a result of the detention, it has failed to show how. For example, the security
39 escort was required as a result of which internationally wrongful act of Equatorial
40 Guinea?

41
42 The third claim advanced is for \$4.7 million in non-material damages. The Marshall
43 Islands' claim is based on the factual circumstances of the alleged mistreatment of
44 the crew. As I have demonstrated, the evidence from impartial witnesses, and there
45 are two witnesses in this case who have no financial interest in it, the evidence from
46 impartial witnesses firmly controverts these claims. It would be completely

⁶⁹ Table on "Loss of Hire following Detention", Presentation of the Marshall Islands, 13 October 2025, p. 384.

⁷⁰ Condition Survey Report, EK 78, p. 295.

1 inappropriate in the circumstances of this case for any payment of non-material
2 damages.

3
4 Alternatively, the Marshall Islands argues that this claim is justified, as the crew
5 members are said to have suffered “severe reputational harm”.⁷¹ Yet, we heard from
6 a witness last week that he continued his maritime career and was promoted to the
7 rank of Master immediately following his departure from Nigeria on another vessel.⁷²
8 And you have the slide relating to that exchange in your folder.

9
10 As Mr Hernández Martín explained, honestly, and in detail to the Chamber, in terms
11 that accord with the actual documentary record in evidence, there was no
12 mistreatment of the crew and there can be no claim for non-material damages in the
13 present case.

14
15 I come on, Mr President, distinguished Members of the Special Chamber, to the
16 concluding remarks that I have to make.

17
18 We have heard from Counsel for the Marshall Islands that Equatorial Guinea’s
19 position is a “sham” and that it acted in a “wanton, baseless and perhaps malicious”
20 way.⁷³ Enough is enough. The Marshall Islands’ frustrations may be understandable,
21 but its accusations are quite misplaced.

22
23 We have seen in the evidence that, in January 2023, the Marshall Islands’ action
24 against Nigeria was “nearly ready”.⁷⁴ Then, in April 2023, the owners instead
25 decided to enter into the plea bargain agreement in Nigeria, under which they paid
26 \$15 million.⁷⁵ The Marshall Islands then decided, perhaps unsurprisingly, not to bring
27 that case against Nigeria under UNCLOS. However, it cannot be right for the
28 Marshall Islands, instead, to purport to recover its costs from Equatorial Guinea as a
29 backup. International law does not allow it.

30
31 In order to hopefully assist the Chamber, and as a conclusion, I would like to take
32 you to some decision trees. In the first one, here on the slide, we have set out our
33 position on jurisdiction and admissibility.

34
35 Concerning jurisdiction, this Chamber has jurisdiction over disputes related to the
36 interpretation and application of UNCLOS, but such jurisdiction does not extend to
37 instruments external to UNCLOS. This means that the claims concerning human
38 rights and the IMO instruments fall outside of this Chamber’s jurisdiction.

39
40 Turning to admissibility, the applicability of the *Monetary Gold* principle and Nigeria’s
41 absence in these proceedings means that the claims concerning the interception and
42 detention of the vessel are inadmissible.

43

⁷¹ ITLOS/PV.25/C32/5, p. 18 (line 2) (Casas).

⁷² ITLOS/PV.25/C32/2 (confidential), p. 17 (lines 4-7), p. 18 (lines 8-13) (Chief Officer).

⁷³ (ITLOS/PV.25/C32/5, p. 24 (lines 5-7) (Bethlehem); (ITLOS/PV.25/C32/5, p. 17 (lines 25-26) (Casas).

⁷⁴ Email, 15 January 2023, 10:06, EK-69.

⁷⁵ Plea Bargain, SA 38.

1 Finally, the failure of the Marshall Islands to exhaust local remedies renders its
2 claims relating to the treatment of individuals inadmissible.

3
4 Should, in the alternative, the Chamber wish to determine issues on the merits, it can
5 then turn to our second decision tree. This tree has four branches.

6
7 First, concerning the interception and detention of the vessel, this was done under
8 the obligation to repress piracy, as a reasonable response to a request for
9 cooperation and in light of a reasonable suspicion of piracy. If successful, this would
10 be fatal to the claims concerning breaches of the principle of freedom of navigation,
11 of exclusive flag State jurisdiction, of due regard, and of Article 225 of UNCLOS.

12
13 Second, turning to the human rights claims, insofar as they relate to UNCLOS, they
14 must be restricted to acts at sea. Therefore, this only encompasses 12 and
15 13 August 2022, when no breach of human rights is alleged.

16
17 Third, turning to the IMO instruments, such claims relate to UNCLOS' provisions that
18 are not relevant. They also improperly extend the general obligations under the IMO
19 instruments, and relate to inapplicable obligations of flag States. As such, there can
20 be no breach based on the IMO instruments.

21
22 Fourth, the Marshall Islands artificially generalizes specific obligations, such as
23 reasonableness, notification, prompt release, and non-aggravation. In reality, these
24 claims border on bad faith and it has been demonstrated that there can be no such
25 breach.

26
27 Finally, and again, in the alternative – again, in the alternative, if the Chamber was to
28 advance to matters of causation, the case of the Marshall Islands must equally fail at
29 that stage. As shown on the slide, and this is the same slide we saw earlier when
30 I addressed causation, the factual and counterfactual scenarios start from the same
31 place. We see that in the red bar on the left-hand side. 10 August 2022, Nigeria
32 requests that Equatorial Guinea interdict the “*Heroic Idun*”, after it flees the *NNS*
33 “*Gongola*” on 8 August 2022. That is where causation directly starts. That is the start
34 of the chain of causation and the reason why events were not directly caused by
35 Equatorial Guinea later.

36
37 Moreover, the factual and counterfactual scenarios also lead back to Nigeria. That is
38 a second, separate point on causation; my first point being, causation starts with
39 Nigeria. It is the start of the causation chain, not Equatorial Guinea. My second point
40 here on causation is, in any event, on the Marshall Islands' case, the vessel would
41 have returned to Nigeria and, therefore, Equatorial Guinea's interdiction did not
42 change the consequences that occurred thereafter in Nigeria. So there are two
43 separate causation points here. And as we have seen previously, the only material
44 difference in the counterfactual is whether the investigations occurred firstly in
45 Equatorial Guinea or in Nigeria. But, ultimately, you have Nigeria conducting its own
46 investigations and the consequences that follow. This, again, we respectfully submit,
47 shows that Equatorial Guinea cannot be said to have caused events in Nigeria that
48 would have happened anyway, and did happen.

1 Mr President, distinguished Members of the Special Chamber, this brings me to the
2 end of Equatorial Guinea's legal submissions. I thank you sincerely for your kind
3 attention, and I respectfully request, Mr President, that you invite His Excellency,
4 Mr Carmelo Nvono-Ncá, to take the floor in the concluding remarks of the Republic
5 of Equatorial Guinea. Thank you.
6

7 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Mr Haeri for his statement.
8 And this brings us to the last stage of the oral argument of Equatorial Guinea.
9

10 I wish to recall that Article 75(2) of the Rules of the Tribunal, provides that, at the
11 conclusion of the last statement made by a party at the hearing, its Agent, without
12 recapitulation of the arguments, shall read the party's final submissions. A copy of
13 the written text of these signed by the Agent shall be communicated to the Special
14 Chamber and transmitted to the other party.
15

16 I now invite the Agent of Equatorial Guinea, His Excellency, Mr Carmelo Nvono-Ncá,
17 to the podium to make some closing remarks and also present the final submissions
18 of Equatorial Guinea. You have the floor, sir.
19

20 **MR NVONO-NCÁ:** Thank you very much. Thank you very much, Mr President.
21

22 Mr President, Honourable Members of the Special Chamber, Madam Registrar,
23 members of the delegation of the Marshall Islands, good afternoon.
24

25 With this statement, I will be concluding the oral submissions of Equatorial Guinea
26 for these proceedings. The Republic of Equatorial Guinea is a sovereign State,
27 whose independence is based on full respect for the treaties that it has signed, as
28 well as on strict compliance with the commitments and obligations it has undertaken
29 under international law.
30

31 No State – and let me repeat this – no State acting unilaterally can – or ever will be
32 able to – guarantee, on its own, maritime security or respect for international law of
33 the sea. It is only through cooperation, regional coordination and collective support of
34 international legal instruments, that it will be possible to preserve a just and safe
35 maritime order.
36

37 Equatorial Guinea hereby reaffirms its strong commitment to continue cooperating
38 actively with all regional and international actors, with the purpose of ensuring that
39 the waters of the Gulf of Guinea remain a safe and stable area for all ships sailing
40 those waters in accordance with international law and multilateral agreements in
41 force.
42

43 I would like to take advantage of this occasion, on behalf of my Government and on
44 behalf of the people of Equatorial Guinea, to thank you, Mr President, and the
45 Members of this Special Chamber, for having afforded Equatorial Guinea the
46 opportunity to present its case and to respond to the allegations put forward by our
47 colleagues from the Marshall Islands during these proceedings, and I would also like
48 to thank you for your diligence and kind attention throughout the entire proceedings.
49

1 I would also like to thank the International Tribunal for the Law of the Sea for its
2 continued support to the Parties in addressing the present dispute. We have full trust
3 in this Special Chamber, and we are pleased to have been able to submit this
4 dispute for settlement, along with the Marshall Islands, via a Special Agreement. We
5 hope that this will encourage all State Parties to call upon the Tribunal in light of the
6 dispute settlement procedures provided for by the United Nations Convention of the
7 Law of the Sea.

8
9 Thirdly, we would like to thank the Registry, the Registrar, and the staff for their
10 assistance and their cooperation during these proceedings, and we'd also like to
11 thank the interpreters for their translations throughout our submissions during this
12 hearing, and we would like to thank all of those who have contributed to making this
13 possible.

14
15 And, last of all, pursuant to Article 75(2) of the Rules of the Tribunal, I would now like
16 to read to you the final submissions of Equatorial Guinea. A copy of the written text
17 will be provided to the Registrar and transmitted to the Agent for the Marshall
18 Islands.

19
20 Having regard to its written and oral submissions, Equatorial Guinea requests the
21 Special Chamber to adjudge and declare as follows:

22
23 1. This Chamber does not have jurisdiction to make determinations regarding
24 alleged breaches of treaties or rules of international law outside of the United
25 Nations Convention on the Law of the Sea ("UNCLOS").

26
27 2. The Marshall Islands' claims alleging breaches of freedom of navigation and
28 exclusive flag State jurisdiction are inadmissible, due to the *Monetary Gold* /
29 indispensable third party principle.

30
31 3. The Marshall Islands has failed to exhaust local remedies as required by
32 international law, rendering inadmissible those claims related to the treatment of
33 individuals.

34
35 4. Equatorial Guinea's seizure of the *Heroic Idun* was lawful because it was carried
36 out in accordance with Equatorial Guinea's obligation to co-operate to repress piracy
37 under UNCLOS, and accordingly:

38
39 a) Equatorial Guinea did not breach its obligations to respect freedom of navigation
40 on the high seas or in the exclusive economic zone, nor the principle of exclusive
41 flag State jurisdiction on the high seas, including as set out in Articles 87(1), 90 and
42 92(1) of UNCLOS;

43
44 b) Equatorial Guinea did not breach its obligation to have due regard to the rights of
45 other States, in particular of the Marshall Islands, under Articles 56(2), 58(3) and
46 87(2) of UNCLOS;

47
48 c) Equatorial Guinea did not breach any obligations owed to the Marshall Islands
49 under Article 100 of UNCLOS;

1 d) Equatorial Guinea did not breach Article 300 of UNCLOS; and
2
3 e) to the extent that the Chamber finds, contrary to paragraph 1 above, that such
4 matters fall within the jurisdiction of the Chamber, all measures adopted by
5 Equatorial Guinea subsequent to the interception of the *Heroic Idun* are not in
6 breach of other rules of international law.
7
8 5. Through the interception and seizure of the *Heroic Idun*, Equatorial Guinea did not
9 violate Article 225 of UNCLOS or the principle of reasonableness.
10
11 6. In levying the Fine on the Master of the *Heroic Idun*, Equatorial Guinea acted
12 pursuant to lawful prescriptive jurisdiction.
13
14 7. There is no general obligation to notify the flag State of enforcement measures,
15 and in the alternative, Equatorial Guinea did not fail to comply with any obligation to
16 notify the Marshall Islands of enforcement measures.
17
18 8. In addition, or in the alternative to paragraphs (1) and (3),
19
20 a) the Marshall Islands' human rights claims fall outside the Chamber's jurisdiction
21 and the so-called "gateway provisions" do not allow for determination of human
22 rights treaties or customary international human rights law; and
23
24 b) in any event, Equatorial Guinea acted in accordance with considerations of
25 humanity toward the crew members of the *Heroic Idun*.
26
27 9. In addition, or in the alternative to paragraph (1), the obligations invoked by the
28 Marshall Islands under the Convention for the Safety of Life at Sea ("SOLAS"), the
29 International Convention on Standards of Training, Certification and Watchkeeping
30 for Seafarers at Sea ("STCW"), or the Convention the International Regulations for
31 Preventing Collisions at Sea ("COLREGS")
32
33 a) are either not applicable as pleaded;
34
35 b) cannot have been breached in isolation; or
36
37 c) were not breached by Equatorial Guinea.
38
39 10. Equatorial Guinea did not breach any obligations of the Marshall Islands as flag
40 State of the *Heroic Idun* under Articles 94 and 212 of UNCLOS, under Articles 2(3)
41 or 87(2) of UNCLOS.
42
43 11. Equatorial Guinea did not breach its obligation to preserve the rights of the
44 Marshall Islands, nor any obligation, in so far as it exists, not to aggravate the
45 dispute pending proceedings.
46
47 12. Having regard to this, Equatorial Guinea further requests the Chamber to:
48
49 a) dismiss all of the Marshall Islands' requests for payment of compensation for
50 material and/or non-material damages;

1
2 b) dismiss the Marshall Islands' request for satisfaction;

3
4 c) dismiss all of the Marshall Islands' requests for payment of interest; and

5
6 d) direct that each party should bear its own costs.
7

8 Mr President, allow me with all due respect to take advantage of this opportunity to
9 thank you and the whole team of Equatorial Guinea, to thank all those present in this
10 room and to thank all those who were not able to be here today, for their
11 professionalism.
12

13 I would also like to express my gratitude to the delegation of the Marshall Islands
14 and, in particular, to the Agent of the Marshall Islands – thank you, Madam – for their
15 very kind treatment over these past days.
16

17 Mr President, Members of the Special Chamber, thank you very much for your
18 attention.
19

20 This concludes the submissions of the Republic of Equatorial Guinea in these
21 proceedings. Thank you very much.
22

23 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank the Agent of Equatorial
24 Guinea for his closing remarks and also for presenting the final submissions of
25 Equatorial Guinea.
26

27 We have now reached the end of the hearing. On behalf of the Special Chamber
28 I would like to take this opportunity to express our appreciation for the high quality of
29 the presentations of the representatives of both the Marshall Islands and the
30 representatives of Equatorial Guinea.
31

32 I would also like to take this opportunity to thank both the Agent of the Marshall
33 Islands and the Agent of Equatorial Guinea for their exemplary spirit of cooperation.
34

35 I would now like to give the floor to the Registrar to address questions relating to
36 documentation.
37

38 **REGISTRAR:** Thank you, Mr President.
39

40 Pursuant to Article 86, paragraph 4 of the Rules of the Tribunal, the Parties may
41 under the supervision of the Tribunal correct the transcripts of speeches and
42 statements made on their behalf, but in no case may such corrections affect the
43 meaning and scope thereof. These corrections relate to the transcripts in the official
44 language used by the party in question. In the case of statements made in the
45 Spanish language by a witness, a correction could be marked in the English or
46 French version of the transcript.
47

48 The Parties are requested to use for this purpose the verified versions of the
49 transcripts and not those marked as unchecked. The correction should be submitted

1 to the Registry as soon as possible and by Friday 24 October 2025 at 3 p.m.
2 Hamburg time at the latest.

3
4 Mr President.

5
6 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Madam Registrar.

7
8 The Special Chamber will now withdraw for its deliberations on this case. The
9 judgment will be read on a date to be notified to the Agents of the Parties. The
10 Agents will be informed with sufficient notice of the precise date of the reading of the
11 judgment.

12
13 In accordance with the usual practice, I request the Agents to kindly remain at the
14 disposal of the Special Chamber in order to provide any further assistance and
15 information that may be needed in its deliberations prior to the delivery of the
16 judgment. The hearing is now closed.

17
18 *(Concluded at 6.07 p.m.)*