

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

THE M/T "*HEROIC IDUN*" (NO 2) CASE

**REPUBLIC OF THE MARSHALL ISLANDS / REPUBLIC OF EQUATORIAL
GUINEA**

REJOINDER OF THE REPUBLIC OF
EQUATORIAL GUINEA

VOLUME I

24 MARCH 2025

PART I - REJOINDER
OF THE REPUBLIC OF EQUATORIAL GUINEA

REJOINDER OF THE REPUBLIC OF EQUATORIAL GUINEA

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LIST OF DEFINED TERMS

Defined term	Description
1958 Geneva Convention	1958 Geneva Convention on the High Seas
Accommodation Facility	New accommodation facility in Malabo where the crew of the <i>Heroic Idun</i> who were brought onshore were based
African Charter	African Charter on Human and Peoples' Rights
AIS	Automatic Identification System
ARSIWA	Articles on State Responsibility for Internationally Wrongful Acts
Besora	Maritime agency Besora Marítima which acted on behalf of the owners and managers of the <i>Heroic Idun</i>
BWMC	International Convention for the Control and Management of Ships' Ballast Water and Sediments
<i>Capitán David</i>	Equatoguinean naval vessel <i>CC David Eyama Angüe Osa</i>
CEMAC	<i>Communauté Économique et Monétaire de l'Afrique Centrale</i>
CEMAC Code	CEMAC implemented Regulation No. 03/01-UDEAC 088-CM-06
Chamber	Special Chamber of ITLOS
COLREGS	1972 Convention on the International Regulations for Preventing Collisions at Sea
CRESMAC	Regional Maritime Security Centre for Central Africa
CRESMAO	Regional Maritime Security Centre for West Africa
EEZ	Exclusive Economic Zone
Equatorial Guinea	Republic of Equatorial Guinea
Fine	Fine based on infractions committed by the <i>Heroic Idun</i> and falling under the CEMAC Code as well as the expenses of the Equatoguinean authorities involved in the investigation of the <i>Heroic Idun</i>
<i>Heroic Idun</i> or the Vessel	<i>M/T "Heroic Idun"</i> (IMO registration number 9858058)
Hotel Anda	Hotel Anda China
ICAO Council	Council of the International Civil Aviation Organisation
ICCPR	International Covenant on Civil and Political Rights
ICJ or the Court	International Court of Justice

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Defined term	Description
ILC	International Law Commission
ILC Special Rapporteur	International Law Commission Special Rapporteur on prevention and repression of piracy and armed robbery at sea
IMB	International Maritime Bureau
IMO	International Maritime Organisation
La Paz	La Paz Hospital
MARPOL	1978 International Convention for the Prevention of Pollution from Ships
Marshall Islands	Republic of the Marshall Islands
Nigeria	Federal Republic of Nigeria
OSM	OSM Ship Management AS
Parties	The Republic of the Marshall Islands and the Republic of Equatorial Guinea
PCIJ	Permanent Court of International Justice
SOLAS	1974 Convention for the Safety of Life at Sea and its 1978 and 1988 Protocols
STCW	1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers at Sea
Terminal	Akpo offshore oil terminal in Nigeria
Tribunal or ITLOS	International Tribunal for the Law of the Sea
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
VLCC	Very large crude carrier
Yaoundé Code	Code of Conduct concerning the Repression of Piracy, Armed Robbery Against Ships, and Illicit Maritime Activity in West and Central Africa

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CHAPTER 1

INTRODUCTION

1. Pursuant to the Order of the President of the Chamber dated 25 July 2024, Equatorial Guinea has the honour to submit to the Chamber of ITLOS its Rejoinder to the Reply of the Marshall Islands, filed in the Registry on 24 November 2024.¹
2. Following this introduction, this Rejoinder is structured as follows:
 - a) **Chapter 2** provides an executive summary;
 - b) **Chapter 3** sets out facts relating to the dispute which the Marshall Islands has not adequately addressed or rebutted;
 - c) **Chapter 4** explains why the *Monetary Gold* doctrine applies, the result of which is that the Chamber does not have jurisdiction over several claims advanced by the Marshall Islands in this dispute, namely Nigeria's request that Equatorial Guinea apprehend the *Heroic Idun*, or alternatively that these claims are inadmissible;
 - d) **Chapter 5** addresses the arguments on the merits of the Marshall Islands' claims;
 - e) **Chapter 6** addresses the arguments made by the Marshall Islands' Reply on compensation and satisfaction; and
 - f) **Chapter 7** contains the submissions of Equatorial Guinea.
3. Equatorial Guinea does not repeat in full its account of facts or legal submissions made in its Counter-Memorial of 15 July 2024. Instead, it directs this Rejoinder to those issues raised by the Marshall Island in its Reply, including where further clarification is needed to address the mischaracterisations and arguments made by the Marshall Islands.
4. Equatorial Guinea maintains the submissions that it has already made in its Counter-Memorial, including on issues that it does not address in this Rejoinder. Equatorial Guinea should not be treated as having accepted the correctness or relevance of any of the Marshall Islands' submissions or documents unless expressly stated.

¹ Unless otherwise stated, the Rejoinder incorporates all the defined terms from the Counter-Memorial.

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CHAPTER 2

EXECUTIVE SUMMARY

5. The central issue in this case is the Marshall Islands' contention that there was no right for the *Heroic Idun* (which was apprehended in the EEZ of São Tomé and Príncipe by Equatorial Guinea) to be apprehended by Nigeria's request following its activities in Nigeria's EEZ.
6. The Marshall Islands does not credibly deny that the *Heroic Idun* failed to comply with Nigerian laws in its EEZ. Nor does the Marshall Islands deny that the owners of the *Heroic Idun* pleaded guilty to contravening anti-piracy legislation in Nigeria (although they do suggest that this was done for purposes of expediency). The Marshall Islands does not and cannot deny that the events of which it seeks to complain started in Nigeria, had by far their greatest duration in Nigeria, and ended in Nigeria with a plea bargain under Nigerian legislation. Nor can the Marshall Islands escape the fact that it has chosen to bring proceedings against Equatorial Guinea largely to claim back the statutory fine that the *Heroic Idun* agreed to pay to Nigeria and various other costs relating to Nigeria.
7. The Marshall Islands' Reply paints a selective and incomplete picture in this regard, and fails to acknowledge the central role of Nigeria in the apprehension, investigation and eventual return of the Vessel to Nigeria. The *Heroic Idun* was intercepted and arrested by Equatorial Guinea on reasonable suspicion of piracy as communicated by Nigeria. Once the arrest occurred, the Vessel remained subject to Nigerian investigations and a request for its return was made so that it could be subject to law enforcement in Nigeria.
8. Whether Equatorial Guinea had a reasonable basis to make this arrest necessarily requires – as a predicate matter of logical priority – examination of the *Heroic Idun*'s activities, their lawfulness and the factual and legal assessments made by Nigeria at the time. These assessments were made entirely, and exclusively, by Nigeria. For the Chamber to adjudge the reasonableness of such assessments would require assessments of Nigeria's legal rights and interests, when it is not a party to the current proceeding. For this reason, several of the claims made by the Marshall Islands, fall outside the jurisdiction of this Chamber or are otherwise inadmissible.
9. Notwithstanding these facts, the Marshall Islands seeks unconvincingly to suggest that the subject-matter of the dispute does not relate to Nigeria. Indeed, the Marshall Islands seeks artificially to construe the rights and interests of Nigeria as being irrelevant to this dispute. In this way, the Marshall Islands attempts to exclude from the scope of the dispute the underlying facts of what happened in Nigeria and its EEZ, and which gave rise to the apprehension of the *Heroic Idun* following its request. This is notwithstanding that these crucial underlying facts are not known to Equatorial Guinea as it was not a party to these events.
10. Such a claim, however, is impermissible as a matter of international law under the *Monetary Gold* principle. The subject-matter of this dispute undoubtedly relates to Nigeria's request for the apprehension of the *Heroic Idun*. No amount of purported narrowing of focus or ignoring of the factual nexus of what happened by the Marshall Islands can change that fact. If Equatorial Guinea's answer to Nigeria's request for assistance was wrong under UNCLOS, then Nigeria's request for that action must also

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have been wrong. Nigeria is, however, not a party to this proceeding because the Marshall Islands has instead chosen to claim damages against Equatorial Guinea. The Marshall Islands could have advanced the claim against Nigeria but preferred to target Equatorial Guinea. It is for this reason that the Chamber does not have jurisdiction, or this claim is otherwise inadmissible, under the *Monetary Gold* principle.

11. Also absent from the Marshall Islands' claim is the proper appreciation that must be given to States in cross-border cooperation to combat piracy and the maintenance of the international rule of law in areas outside the territorial sea. Piracy remains a major threat to global maritime security, particularly in the Gulf of Guinea. In this region, modern piracy remains closely connected to other illicit maritime activity and related criminal networks, and necessitates close, effective and efficient inter-State cooperation in response, such as through the Yaoundé Code. The core principles that the Marshall Islands relies upon – including freedom of navigation – presume and rely upon safe and secure maritime passage, which are gravely threatened by piracy. UNCLOS recognises and mandates States' cooperation in response to suspected piracy, such as that which occurred between Nigeria and Equatorial Guinea in this case.
12. While acknowledging that piracy remains an exception to the principles of exclusive flag State jurisdiction and freedom of navigation, the Marshall Islands sets out an artificially restrictive approach to UNCLOS anti-piracy provisions to claim that Equatorial Guinea acted unlawfully. This is unfounded. Even if the Chamber were to find that it has jurisdiction over the Marshall Islands claims regarding the arrest and seizure of the Vessel and that they are admissible (*quod non*), such acts would only have required a reasonable suspicion of piracy, which clearly existed in this case.
13. Furthermore, throughout the Vessel and crew's stay in Equatorial Guinea, Equatorial Guinea ensured that the Vessel remained safe and that the crew were at all times treated in accordance with the principle of humanity. At all times, Equatorial Guinea acted in compliance with UNCLOS and applicable rules of international law.

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CHAPTER 3

CLARIFICATION OF RELEVANT FACTS

I. Introduction

14. Some notable facts are undisputed by the Parties. Specifically, the Marshall Islands does not dispute that:
- a) the *Heroic Idun* fled from the Nigerian Navy on 8 August 2022, prompting Nigeria to request the apprehension of the *Heroic Idun*;
 - b) Nigeria conducted an investigation into the Vessel while it was stationed in Equatorial Guinea, which included Nigerian officials directly interviewing crew members;
 - c) Nigeria requested and supervised the return of the *Heroic Idun* to Nigeria;
 - d) Nigeria exercised jurisdiction over the *Heroic Idun*, which accepted liability while in Nigeria via a plea agreement under its domestic anti-piracy legislation; and
 - e) the Marshall Islands sent various official communications directly to the Nigerian government concerning the *Heroic Idun* and its crew, including during the period of apprehension in Equatorial Guinea.
15. What is particularly striking given the absence of disagreement on these central issues is the claim by the Marshall Islands that "*the proceedings in Nigeria and their circumstances are beyond the scope of the present dispute*".² On the contrary, the circumstances giving rise to the dispute are necessarily inherent to the dispute. The Marshall Islands' stance on this reinforces that the present dispute falls outside of the Chamber's jurisdiction or is inadmissible.
16. The parties disagree on certain facts, namely:
- a) the unusual and suspicious conduct of the *Heroic Idun* in Nigeria's EEZ, which gave rise to Nigeria's request to apprehend the Vessel;
 - b) the reasonableness of Equatorial Guinea responding to Nigeria's request for assistance in the interception and detention of the *Heroic Idun*;
 - c) the conditions of the crew's stay in Equatorial Guinea, including Nigeria's leading role in the investigations of the *Heroic Idun* while in Equatorial Guinea; and
 - d) the return of the *Heroic Idun* and its crew to Nigeria as part of the regional framework for security and cooperation.
17. Each of these topics is addressed below in turn.

² Reply, ¶ 48.

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II. The *Heroic Idun* behaved in a suspicious manner, including by fleeing from the Nigerian Navy and issuing a false alarm of piracy

18. Equatorial Guinea's understanding of what transpired in Nigeria's EEZ is necessarily limited, as it was not present at the time and was not a party to these events. The facts that can be presented by Equatorial Guinea, as opposed to Nigeria, are therefore qualified by this important proviso.
19. The events giving rise to the present dispute are understood to have started on 8 August 2022, when the *Heroic Idun* allegedly was meant to load oil at the Terminal.³ The *Heroic Idun*'s conduct in Nigerian waters prompted an interaction with the Nigerian Navy that is at issue in the present case. The Marshall Islands does not deny Nigeria's role in requesting the apprehension of the *Heroic Idun*. Instead, it seeks to dismiss these facts as "*not relevant*"⁴ in an effort to sidestep the legal consequence that flows from their relevance, namely that the Chamber does not have jurisdiction or the claim is inadmissible.
20. In its Reply, the Marshall Islands contends that the *Heroic Idun* "*never attempted to load oil*"⁵ and that the *Heroic Idun* "*did not cho[o]se to continue fleeing*"⁶ in a suspicious manner after the Nigerian naval vessel *NNS Gongola* approached.
21. According to the Marshall Islands, the *Heroic Idun* entered the EEZ of Nigeria intending to load at the Terminal on 7 August 2022, but it did not have proper legal authorisation to do so at that time.⁷ As a result of its lack of authorisation, on 8 August 2022, the *Heroic Idun* is said to have moved 10 nautical miles away from the Terminal security zone to await further instructions.⁸
22. On 8 August 2022, the Nigerian Navy vessel *NNS Gongola* approached the *Heroic Idun*. The Marshall Islands admits in its Reply that it did not have the appropriate clearances to proceed with the loading of oil until two days later, on 10 August 2022.⁹ When the *NNS Gongola* contacted the *Heroic Idun*, the Vessel admitted to its lack of clearance at the time.¹⁰ Upon receiving this information, the Marshall Islands contends that the *NNS Gongola* ordered the *Heroic Idun* to proceed to Bonny Fairway Buoy to enable further enquiries by the Nigerian authorities.¹¹ Instead of complying with Nigeria's orders, the *Heroic Idun* evaded the *NNS Gongola*, raised a false alarm of

³ Memorial, ¶ 27.

⁴ Reply, ¶ 23.

⁵ Reply, ¶ 24.

⁶ Reply, ¶ 26.

⁷ See Note No. 138/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 10 August 2022, **REG-019**; Note No. 142/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 24 August 2022, **REG-020**; Note No. 150/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 12 September 2022, **REG-021**.

⁸ See, for example, Memorial, ¶ 28; Witness statement of Master, 15 December 2023, **RMI 1**, ¶¶ 38 – 41.

⁹ Reply, ¶ 24.

¹⁰ Memorial, ¶ 30; Transcript of audio from the bridge on the Voyage data recorder on the evening of 8 August 2022, **MT 26**, p. 271: "*Yes sir, that is correct we do not have the clearance yet*".

¹¹ Memorial, ¶ 30.

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piracy (with the Chief Officer now admitting as much)¹² and fled southwards.¹³ The Marshall Islands does not refute these facts, despite the crew recognising that "*there would be repercussions for not following the orders of the Nigerian Navy*".¹⁴

23. Instead, the Marshall Islands now seeks to justify the conduct by claiming that the Chief Officer "*could not identify the [Nigerian] naval Vessel*".¹⁵ This is however wholly inconsistent with the Marshall Islands' own evidence which makes clear that the Chief Officer recognised the *NNS Gongola* as "*A Nigerian boat is coming our way, man. Nigerian Navy*".¹⁶ The Marshall Islands contends that he was merely repeating the words of the Terminal.¹⁷ Indeed, the Terminal had warned the *Heroic Idun* that: "*very soon, she's just 4 nm from you, the [Nigerian] navy ship, the vessel navy ship is coming to investigate your ship so this is just for your information, you are free to do anything you want with it. Over*".¹⁸ This clearly confirms that the *Heroic Idun* was aware that the *NNS Gongola* was a Nigerian Navy ship coming to investigate.
24. Once the *NNS Gongola* made contact, the Chief Officer states he purportedly failed to identify it as a Nigerian Navy ship because its AIS was off. Again, Equatorial Guinea is not in a position to address this claim. However, it would appear that the Terminal had informed the *Heroic Idun* that this "[...] *is their modus of operation when they go for investigation. When they go covert, they switch off their AIS*".¹⁹ This again confirms that the *Heroic Idun* was aware that the *NNS Gongola* was a Nigerian Navy ship.
25. The Marshall Islands also admits that the following day, the *Heroic Idun* received confirmation that *NNS Gongola* was a Nigerian Navy vessel. However, the *Heroic Idun* chose not to go back and resolve matters with the Nigerian authorities. According to the Marshall Islands, this was due to the "*risk of piracy incidents in that area*".²⁰ It fails to explain how the *Heroic Idun* planned to then load oil from Nigeria without explaining itself to the authorities. In fact, it admits that it did not go back to Nigeria even after receiving the clearance documents on 11 August 2022, preferring instead to drift "*because it was safer to do so*".²¹ The Marshall Islands provides no indication as to how long the *Heroic Idun* was planning to drift for and whether the *Heroic Idun* meant to continue its operations at all.
26. The *Heroic Idun's* conduct caused Nigeria to request Equatorial Guinea to assist with the *Heroic Idun's* apprehension. The Marshall Islands does not refute that Nigeria officially requested for Equatorial Guinea to apprehend the *Heroic Idun* as a direct consequence of the Vessel's unusual and suspicious conduct in Nigeria's EEZ. However, Equatorial Guinea was not a party to these events so cannot comment on the

¹² Second Witness Statement of the Chief Officer, 23 November 2024, **RMI 51**, ¶ 4.

¹³ **Memorial**, ¶ 33; Note No. 138/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 10 August 2022, **REG-019**.

¹⁴ Witness statement of Chief Officer, 9 June 2023, **RMI 5**, ¶ 39.

¹⁵ **Reply**, ¶ 25.

¹⁶ Transcript of audio from the bridge on the Voyage data recorder on the evening of 8 August 2022, **MT 26**, p. 270 (emphasis added).

¹⁷ **Reply**, ¶ 25.

¹⁸ Transcript of audio from the bridge on the Voyage data recorder on the evening of 8 August 2022, **MT 26**, p. 270.

¹⁹ Transcript of audio from the bridge on the Voyage data recorder on the evening of 8 August 2022, **MT 26**, p. 272.

²⁰ **Reply**, ¶ 26.

²¹ **Reply**, ¶ 26.

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accuracy of the events as told by the Marshall Islands and has no means of verifying the reliability of the accounts of the crew of the *Heroic Idun*.

27. While aware that the *Heroic Idun*'s conduct and Nigeria's request for assistance which gave rise to the present dispute are the legal and factual predicates for its case, the Marshall Islands tries to argue that "*events prior to the interception, diversion and detention of the 'Heroic Idun' and her crew are part of the context and background, but are not relevant for the purpose of determining the Marshall Islands' claims*".²² This is categorically wrong. Such a characterisation seeks to artificially sever Nigeria's role in the events and from which Equatorial Guinea's actions rightfully flowed. These events demonstrate that Nigeria's role is inextricably woven into the facts at the centre of this dispute.

III. The Equatoguinean Navy apprehended the *Heroic Idun* at Nigeria's request in the context of regional maritime security and anti-piracy cooperation

28. In its Reply, the Marshall Islands attempts to dismiss as an "*ex post facto construct*"²³ the relevance of the architecture of regional maritime security and anti-piracy cooperation in which Nigeria's request for Equatorial Guinea to apprehend the *Heroic Idun* was made. It also fails to address the clear relationship between oil bunkering and piracy in the Gulf of Guinea. That is an extraordinary suggestion. There was no other motive or reason for Equatorial Guinea to apprehend the *Heroic Idun* other than the request of the Nigerian authorities to do so for reasons relating to regional maritime security and anti-piracy cooperation. The Marshall Islands' argument fails to address the well understood relationship between oil bunkering and piracy in the Gulf of Guinea and the context for Nigeria's request that Equatorial Guinea apprehend the *Heroic Idun*.²⁴

A. Nigeria requested the apprehension of the *Heroic Idun* as part of the inter-State cooperation effort to counter piracy in the Gulf of Guinea

29. The Marshall Islands does not dispute that Nigeria's request to Equatorial Guinea to intercept the *Heroic Idun* was the only reason that Equatorial Guinea did so. Nor does the Marshall Islands refute the importance of regional maritime security in the "*world's piracy hotspot*".²⁵ However, the Marshall Islands seeks unpersuasively to sever this context from what happened.
30. The Nigerian Embassy in Malabo sent a note verbale to the Ministry of External Affairs and Cooperation of Equatorial Guinea on 10 August 2022 requesting that it "*track and arrest the vessel and hand them (both vessel and crew) over to the Nigerian Government for proper investigation*".²⁶ This was because the *Heroic Idun* "*was involved in the illegal entry into Nigerian's [sic] territorial waters to load crude oil*

²² See Reply, ¶ 23.

²³ Reply, ¶ 130.

²⁴ This is discussed below in Chapter V, Section I.

²⁵ See, for example, Geneva Center for Security Policy (GCSP), "*Maritime Security: Piracy in the Gulf of Guinea*", 5 December 2022, **REG-064**; ICC, "*Gulf of Guinea remains world's piracy hotspot in 2021, according to IMB's latest figures*", 14 April 2021, **REG-026**.

²⁶ Note No. 138/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 10 August 2022, **REG-019**.

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without proper approval"²⁷ and had "*escaped into Equatoguinean maritime domain by raising a false piracy attack alarm*".²⁸ For the Marshall Islands to seek to deny this context of inter-State cooperation for maritime security and to counter piracy is to simply ignore the evidence.

31. The Nigerian Navy provided more information to the general public on 20 August 2022, explaining how "*the suspected rogue vessel, MT Heroic Idun, which veered into Nigerian waters with the intention to load oil illegally could not do so before it was accosted by Nigerian Navy Ship, Gongola at the Akpo Oilfield Terminal*".²⁹ It also made clear that:

'[...] the Captain [of the Heroic Idun] after contacting the master/shipping agent refused to cooperate with NNS Gongola and stated that she had been told not to take directives from the Nigerian Navy Ship,' the Naval Chief said.

*He noted that the defiance to constituted authority by the Captain of the vessel necessitated the Navy to invoke the collaboration of neighbouring Equatorial Guinea through the Yaoundé architecture to arrest the vessel.*³⁰

32. A communication from Equatorial Guinea's Vice-President also clearly and publicly frames the apprehension of the *Heroic Idun* within the context of the country's "*zero tolerance for any act of piracy*" and "*collaboration with Nigeria*" under "*anti-piracy agreements*".³¹
33. Not only was Equatorial Guinea entitled to act as it did, it had an obligation to do so and in real-time. Inter-State requests within the Gulf of Guinea to cooperate with maritime security and anti-piracy operations are a requirement of cooperation within the framework of the Yaoundé Code. The Yaoundé Code, which both Equatorial Guinea and Nigeria signed in 2013, is the flagship regional counter-piracy framework within the Gulf of Guinea, widely referred to as "*the world's hotspot for piracy*".³² Failing to act in response to urgent requests for cooperation under this framework would pose risks of maritime crime and piracy going unaddressed, and therefore undeterred.

- a) Article 1(5) of the Code stipulates that "*transnational organized crime in the maritime domain*" includes "*illegal oil bunkering*" and "*crude oil theft*",³³

²⁷ Note No. 138/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 10 August 2022, **REG-019**.

²⁸ Note No. 138/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 10 August 2022, **REG-019**.

²⁹ Nigerian Navy press release, 20 August 2022, **SA 5**, p. 81.

³⁰ Nigerian Navy press release, 20 August 2022, **SA 5**, p. 82.

³¹ Tweet by Vice-President of Equatorial Guinea, 10 November 2022, **SA 25**.

³² See, for example, ICC, "*Gulf of Guinea remains world's piracy hotspot in 2021, according to IMB's latest figures*", 14 April 2021, **REG-026**. Piracy also represents a critical maritime security risk in Equatorial Guinea's own waters. For example, on 9 May 2020, for example, pirates boarded and kidnapped two crew members from the *Rio Mitong* vessel, just two nautical miles from the capital city Malabo while the vessel was anchored in Malabo port. On the very same day, pirates also kidnapped crew members from the *Djibloho* vessel in Luba. See The Maritime Executive, "*Two kidnapped off Equatorial Guinea*", 9 May 2020, **REG-065**; Lloyd's List, "*Seafarers kidnapped in Gulf of Guinea attacks*", 11 May 2020, **REG-066**.

³³ 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 1(5).

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situating Nigeria's request to Equatorial Guinea to intercept the *Heroic Idun* within the Yaoundé framework and its obligations on State signatories. Moreover, Article 2 of the Code requires States to "*cooperate to the fullest possible extent in the repression of transnational organised crime in the maritime domain [...]*".³⁴

- b) Larger States such as Nigeria (which has the largest navy in the Gulf of Guinea)³⁵ have access to wider maritime intelligence on piracy in the Gulf of Guinea than their smaller neighbours, necessitating the exchange of information to be effective in real time against the threat of piracy.³⁶ This is exactly what happened in the case of the *Heroic Idun*.
34. Had Equatorial Guinea not acceded responsibly as it did to Nigeria's request, it would have contravened its obligations to Nigeria under UNCLOS and its commitments under the Yaoundé Code. This would furthermore have marked an unprecedented rupture to extensive multilateral efforts – supported in the strongest terms by the UNSC – for such cooperation to enhance maritime security and anti-piracy operations in the Gulf of Guinea.³⁷ The implications of this would have been far-reaching and of the most serious nature. A lack of effective maritime cooperation to address the transnational scourge of piracy would only encourage piracy operations in the Gulf of Guinea, with pirates taking comfort that States were able only to act unilaterally and cross-border cooperation had broken down.
35. It is also important to recognise that such cross-border cooperation was requested by Nigeria and responded to by Equatorial Guinea in real time. This was not an academic exercise carried out with the benefit of hindsight. An urgent request for assistance was issued by Nigeria based on events that took place in Nigeria's EEZ and over which only Nigeria had – and has – complete information. It is completely unrealistic for the Marshall Islands to imply that Equatorial Guinea should have made more detailed enquiries of Nigeria regarding proof of piracy before apprehending the *Heroic Idun* further to Nigeria's request to do so. A reasonable margin of discretion must be allocated to a State such as Nigeria requesting cross-border assistance in the context of maritime security. Yet this is the implication of the Marshall Islands' complaint – that Equatorial Guinea should have received from Nigeria clear proof that the *Heroic Idun* had carried out piracy related operations before Equatorial Guinea could have lawfully acceded to Nigeria's request. That is a fanciful suggestion and one that ignores the very real context and consequences that Equatorial Guinea faced from Nigeria's request.
36. Nor is the Marshall Islands' indignation that the *Heroic Idun* was not carrying out piracy the relevant point, if that is the case. Nigeria is understood to have had a reasonable

³⁴ 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(1).

³⁵ US Naval Forces Europe and Africa / US Sixth Fleet Public Affairs, "*Gulf of Guinea Partners Complete Maritime Security Exercise*", 11 August 2021, **REG-067**.

³⁶ Africa Center for Strategic Studies, "*Yaoundé Code of Conduct Maritime Zones A & D Workshop*", 10-13 December 2024, **REG-068**, p. 9: "*capabilities [of Maritime Operations Centers under the Yaoundé Code of Conduct] vary significantly. Some countries possess the necessary platforms, while others do not [...] the extent to which these centers are fully operational and interconnected differs [...] For many Gulf of Guinea states, developing effective maritime security capabilities is still a work in progress*".

³⁷ See ¶¶ 171-172 below, including reference to United Nations Security Council, Resolution 2634, S/RES/2634 (2022), 31 May 2022, **REG-031**.

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suspicion that the *Heroic Idun* was involved in unlawful activities related to piracy – hence why the *Heroic Idun* was charged with offences under anti-piracy legislation and admitted liability under them. Equatorial Guinea similarly understood this to be the case from Nigeria's request.

37. Notably, the Marshall Islands has reaped the rewards of Equatorial Guinea's diligence in countering piracy. For example, on 6 February 2021, the Equatoguinean Navy was asked to help the tanker *Sea Phantom* when pirates sought to attack it.³⁸ This was also recognised by the managers of the *Heroic Idun* in September 2022, where they admitted to the Fiscal General of Equatorial Guinea that:

*Maritime security in the region is critical and owners support the initiatives and success brought about by the Memorandum of Understanding that exists between the various countries. All owners that trade in the area are grateful for the efforts of all in the success of reducing piracy [...].*³⁹

38. Indeed, fears of piracy are stated by the Marshall Islands to have informed the *Heroic Idun's* conduct in fleeing from the Nigerian Navy, ostensibly due to a concern that the Nigerian Navy ship, the *NNS Gongola*, was a pirate ship.⁴⁰ In such a context, the Marshall Islands cannot fairly deny that the dramatic conduct of the *Heroic Idun* – including a false alarm of piracy directed against the Nigerian Navy – resulted in very serious concerns about the *Heroic Idun's* status and conduct and consequently the request that Equatorial Guinea apprehend the Vessel.

B. The Marshall Islands fails to address the direct relationship between oil bunkering and piracy in the Gulf of Guinea

39. Despite the Marshall Islands' theoretical acknowledgement of "*the importance of anti-piracy cooperation both at the regional and international level*",⁴¹ it fails to recognise the well-documented and direct relationship between oil bunkering and piracy in the Gulf of Guinea, in particular via the phenomenon of motherships – whereby pirates use larger vessels "*as 'motherships' to extend the range of their operations*".⁴² These motherships, which may include VLCCs, are "*needed for pirates to operate in waters that are well out to sea and away from the shore*".⁴³ Often, pirates will first attack and take control of these larger vessels, before using them as a base from which to refuel and launch attacks on other vessels.⁴⁴
40. By way of an example of mothership tactics in the Gulf of Guinea, in February 2021, pirates hijacked a Gabonese-flagged large vessel and used it as a mothership from which to launch pirate attacks on three other vessels,⁴⁵ including the oil tanker *Maria*

³⁸ See **Counter-Memorial**, ¶ 37; Witness statement of Captain Juan Nsue Esono Nchama, 10 July 2024, **REG-WS-001**, ¶ 14.

³⁹ Letter from OSM to the Equatoguinean Attorney General, 16 September 2022, **EK 36**.

⁴⁰ **Memorial**, ¶ 29.

⁴¹ **Reply**, ¶ 7.

⁴² US Department of Transportation Maritime Administration, "*Gulf of Guinea: Piracy, Armed Robbery, Kidnapping for Ransom*", MSCI Advisory No. 2022-001, 1 April 2022, **REG-069**.

⁴³ Lloyd's List, "*Mothership identified for Gulf of Guinea pirates*", 30 December 2019, **REG-070**.

⁴⁴ See Second Witness Statement of Captain Juan Nsue Esono Nchama, 20 March 2025, **REG-WS-007**, ¶ 7.

⁴⁵ The Maritime Executive, "*Pirate Group Conducts Multiple Attacks in Gulf of Guinea Over 4 Days*", 9 February 2021, **REG-071**.

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E. The Maria E was then rescued by the Equatoguinean Navy.⁴⁶ These large vessels' conduct had been erratic and suspicious.⁴⁷

41. There is also precedent for VLCCs of a similar size to the *Heroic Idun* being targeted by pirates in the Gulf of Guinea. In December 2019, the *Nave Constellation* was attacked by a group of pirates 105 nautical miles from Equatorial Guinea, with 19 crew members taken hostage.⁴⁸ The *Nave Constellation*'s deadweight tonnage of 296,988⁴⁹ is similar to that of the *Heroic Idun*, reported to be approximately 300,000.⁵⁰ In light of this context, it is not credible for the Marshall Islands to suggest that there could have been no reasonable suspicion of piracy in the case of the *Heroic Idun* because of its size.⁵¹
42. As further explained by Captain Nsue Esono Nchama in his second witness statement, many ships at sea are engaged in fuel theft and then they supply fuel to small pirate vessels on the high seas so they can continue conducting their illegal activities.⁵² Based on the information provided by Nigeria, the *Heroic Idun* could have clearly been a mothership (which come in all shapes and sizes) attempting to steal fuel to resupply pirate ships in the area. Accordingly, Equatorial Guinea had reasonable grounds to suspect piracy in light of the irregular conduct of the *Heroic Idun* as reported by Nigeria, and therefore was justified in deploying enforcement powers, as discussed further in **Chapter 5** below.

C. The Equatoguinean Navy apprehended the *Heroic Idun* without any force or damage, despite the Master's admission that it considered fleeing when approached by the *Capitán David*

43. Following Nigeria's request, Equatorial Guinea apprehended the *Heroic Idun* on 12 August 2022. In its Reply, the Marshall Islands speculates that, had the *Capitán David* fired upon the *Heroic Idun*, it could have caused damage.⁵³ However, no force was used at any stage of the apprehension and the subsequent journey to Equatorial Guinea proceeded without incident.
44. The Marshall Islands implies that the *Heroic Idun* did not consider fleeing when approached by the Equatoguinean naval vessel, the *Capitán David*.⁵⁴ This contradicts the admission of the Master that he considered fleeing as an option, as the Vessel had previously done in Nigeria.⁵⁵ The Master's consideration to flee is also unexplained in circumstances where the *Heroic Idun* was fully aware of the "security apparatus in the Gulf of Guinea" and knew that the *Capitán David* "was coming to check on them".⁵⁶

⁴⁶ Video on the rescue of *Maria E*. by the Equatoguinean Navy, **REG-072**.

⁴⁷ The Maritime Executive. "Nine Pirates Convicted in a First of its Kind Trial in West Africa", 7 July 2021, **REG-073**.

⁴⁸ The Maritime Executive, "Pirates Kidnap 19 Crewmembers from Navios VLCC", 4 December 2019, **REG-074**.

⁴⁹ The Maritime Executive, "Pirates Kidnap 19 Crewmembers from Navios VLCC", 4 December 2019, **REG-074**.

⁵⁰ The Maritime Executive, "International Court Convenes as Heroic Idun Crew Awaits Release", 5 May 2023, **REG-075**.

⁵¹ **Reply**, ¶ 126(d).

⁵² Second Witness Statement of Captain Juan Nsue Esono Nchama, 20 March 2025, **REG-WS-007**, ¶ 7.

⁵³ **Reply**, ¶ 29.

⁵⁴ Second Witness Statement of the Chief Officer, 23 November 2024, **RMI 51**, ¶ 7.

⁵⁵ Witness statement of Master, 15 December 2023, **RMI 1**, ¶ 95.

⁵⁶ **Memorial**, ¶ 38.

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D. Luba Bay was the safest and most appropriate site for the *Heroic Idun* to anchor

45. The *Capitán David* instructed the *Heroic Idun* to go to Luba Bay, a port which is particularly suitable and widely used for oil vessels in Equatorial Guinea.⁵⁷ The *Heroic Idun* arrived at Luba Bay on the night of 13 August 2022.⁵⁸ A security perimeter of half a mile was set up around the *Heroic Idun*, which was in place for the duration of its stay in Luba Bay.⁵⁹
46. The Marshall Islands contends that conditions at Luba Bay were not suitable for a VLCC like the *Heroic Idun* and states that "*no VLCCs visited Luba in January 2020 to September 2024*".⁶⁰ This is far from unusual. Indeed, VLCCs are "*rarely moored directly to the shore wharf but moored to offshore facilities far from land*".⁶¹ This is because not every port or canal can accommodate VLCCs due to the enormous size of these vessels.⁶² In Nigeria, for instance, there is only one seaport "*where VLCC can berth*".⁶³ Similarly, in the United States, very few ports are capable of offloading VLCCs (with some sources listing a single one),⁶⁴ further demonstrating that many ports may not be suitable for berthing VLCCs.
47. While there are no ports equipped to berth VLCCs in Equatorial Guinea, Luba Bay was the best option for the *Heroic Idun* for two reasons.
- a) First, Mr Howard McDowall of Luba Freeport explains that "*Luba Bay is a large, geographically well-protected bay*"⁶⁵ which offers more protection to vessels from adverse weather conditions compared to unsheltered anchorage. In any case, the Marshall Islands presents no alternative as to where the *Heroic Idun* would have been, in its opinion, in more suitable conditions.
 - b) Second, "*Luba Bay regularly hosts large vessels comparable in size or length to the Heroic Idun*".⁶⁶ As explained by Mr McDowall, "*Luba Bay was suitable for stationing the Heroic Idun [...] because vessels involved in the oil industry and of roughly the same size are stationed there on a regular basis*".⁶⁷ In response to the Master's assertion that the *Zafiro Producer*, another vessel anchored at Luba Bay for some time, was not comparable given it was merely a floating production unit,⁶⁸ Mr McDowall underscores that "[i]t is, of course, not the same type of

⁵⁷ See Website of Luba Freeport Ltd, Home section, **REG-017**; Website of Luba Freeport Ltd, Facilities section, **REG-018**.

⁵⁸ Log, **EK 4**, 13 August 2022, p. 17, entry at 23h54: "*Vessel safely anchored off Puerto De Luba*".

⁵⁹ Witness statement of Howard James McDowall, 2 July 2024, **REG-WS-006**, ¶ 8.

⁶⁰ **Reply**, ¶ 38.

⁶¹ MOL Solutions Blog, "*How large is the Very Large Crude Carrier*", 13 April 2021, **REG-076**.

⁶² See, for example, a comparison with Tokyo Tower: MOL Solutions Blog, "*How large is the Very Large Crude Carrier*", 13 April 2021, **REG-076**.

⁶³ AllAfrica, "*Nigeria_ X-Raying Nigerian Ports' Quest for Hub Status Via Investment in Facilities*", 16 June 2023, **REG-077**.

⁶⁴ See, for example, Mansfield, "*What's That Very Large Crude Carriers – VLCC*", 21 August 2024, **REG-078**; Argus, "*Enbridge, Oiltanking withdraw VLCC port plan*", 6 January 2020, **REG-079**; Greater Lafourche Port Commission, "*Port Facts*", **REG-080**.

⁶⁵ Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶ 5.

⁶⁶ Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶ 6; Images of operations at anchor in Luba Bay, **REG-059**.

⁶⁷ Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶ 6.

⁶⁸ Second Witness Statement of the Master, 23 November 2024, **RMI 50**, ¶ 23.

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vessel as the Heroic Idun but it was roughly the same length".⁶⁹ Moreover, he explains that "*the Boka Vanguard [...] which the Master refers to, was also of a roughly similar length to the Heroic Idun*".⁷⁰ Accordingly, it is clear that large vessels, such as those of the size of a VLCC, are regularly moored in Luba Bay.

48. While safely anchored in Luba Bay, the Marshall Islands complains about a series of events of which the *Heroic Idun* did not complain about at the time.⁷¹ It argues that:
- a) On 26 September 2022, the *Wele Nzas* dragged its anchor in the direction of the *Heroic Idun*, coming close to the Vessel and performing an allegedly dangerous manoeuvre. In response, Mr McDowall confirms that his staff was aware of this situation and explains that "[n]o one considered that this posed any danger to the *Heroic Idun* because there was sufficient distance at all times between the two vessels and because the *Wele Nzas* regained control of her anchor quickly".⁷² Had the *Heroic Idun* had any concerns at the time, it could have contacted Luba Freeport on the emergency radio channel, VHF 16, to request help or inform them of any danger.⁷³ However, it did not to do so. In any case, it is undisputed that there was no collision between the *Heroic Idun* and the *Wele Nzas*.
 - b) On 9 October 2022, a small vessel delivering provisions to the *Heroic Idun* caught fire. This boat had been hired by Besora. Mr McDowall explains that, yet again, his "*team did not receive any alert or distress calls on VHF 16. If we did, we would have responded immediately. I understand that the fire was quickly put out*".⁷⁴
 - c) On 27 October 2022, the *UAL Bodewes* passed approximately 2 cables (roughly 370 meters) from the stern of the *Heroic Idun*. Mr McDowall was not made aware of any such incident, and he explains that "[t]he *UAL Bodewes* stays at Luba Bay regularly and is run by a reputable company which has never caused any incidents in the past".⁷⁵ Again, Luba Freeport did not receive any alert or distress calls on VHF 16. Had they done so, Mr McDowall confirms they "*would have responded*".⁷⁶
49. Accordingly, there was no damage that came upon the *Heroic Idun* while in anchorage at Luba Bay.
- E. The division of the crew was done in agreement with the Master and the Chief Officer
50. Upon arrival at Luba, Captain Nsue Esono Nchama explains that "*in situations like these, [their] security protocol requires that [they] divide a vessel's crew*".⁷⁷ The Marshall Islands complains that the division of the crew was not agreed with the

⁶⁹ Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶ 6.

⁷⁰ Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶ 6.

⁷¹ **Reply**, ¶ 38.

⁷² Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶ 10(a).

⁷³ See Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶ 10(a).

⁷⁴ Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶ 10(b).

⁷⁵ Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶ 10(c).

⁷⁶ Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶ 10(c).

⁷⁷ Second Witness Statement of Captain Juan Nsue Esono Nchama, 20 March 2025, **REG-WS-007**, ¶ 14.

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Master.⁷⁸ This is not true. As Captain Nsue Esono Nchama explains, "*the Master was told the number of crew who would need to disembark, but he made the decision on the individual crew members that would do so*".⁷⁹ The Master had decide which individuals were to leave the Vessel as he is "*is well placed to know who amongst the crew is necessary for the manning, maintenance and security of the vessel*".⁸⁰

IV. The crew of the *Heroic Idun* were well-treated at all times while in Equatorial Guinea

51. The crew of the *Heroic Idun* were well-treated at all times while in Equatorial Guinea – with unimpeded access to provisions, amenities, communications and medical care as often as requested. The crew were also provided with safe and sanitary accommodation in newly constructed facilities and a luxury four-star hotel.
52. Despite clear evidence that the crew was well-treated while in Equatorial Guinea, the Marshall Islands makes five complaints in its Reply:
 - a) The Marshall Islands contends that crew members signed statements under duress that they did not understand when questioned by Nigerian officials.
 - b) The Marshall Islands complains that Besora provided the requested provisions to the crew (with Equatorial Guinea's approval), rather than Equatorial Guinea providing the provisions itself.
 - c) The Marshall Islands disputes the quality of health care provided to crew members, although it was Besora that arranged medical appointments.
 - d) The Marshall Islands disputes the quality of the Accommodation Facility provided to crew members.
 - e) The Marshall Islands contends that the conduct of the Equatoguinean authorities while the crew members were in their care was inappropriate.
53. None of these complaints have any factual basis and each is examined below in turn.
 - A. The investigations by Equatorial Guinea were proper and conducted professionally
54. The Marshall Islands does not dispute that, upon arrival to Luba Bay on 13 August 2022, Besora was present at port as it had been contracted by the owner of the Vessel. From this point onwards, Besora also acted as a liaison between the crew and the Equatoguinean authorities.⁸¹
55. Once the *Heroic Idun* arrived at Luba Bay, Equatoguinean authorities commenced investigations on its activities.⁸² Over the course of the following days, Equatoguinean authorities conducted a series of investigations, including fact-finding discussions with some crew members.

⁷⁸ Reply, ¶ 30.

⁷⁹ Second Witness Statement of Captain Juan Nsue Esono Nchama, 20 March 2025, **REG-WS-007**, ¶ 15.

⁸⁰ Second Witness Statement of Captain Juan Nsue Esono Nchama, 20 March 2025, **REG-WS-007**, ¶ 14.

⁸¹ Witness statement of Captain Juan Nsue Esono Nchama, 10 July 2024, **REG-WS-001**, ¶ 21.

⁸² Technical report of the *Heroic Idun* conducted by Equatoguinean customs agents Mr Nve Edu and Mr Nguema Nkisogo, 15-16 August 2022, **REG-037**.

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56. As undisputed by the Marshall Islands, Equatoguinean authorities ensured that Besora representatives were present during the interviews Equatorial Guinea conducted with the Master, the Chief Engineer and the Second Officer. Besora then facilitated translation into English for crew members of all communication from the Equatoguinean authorities.⁸³ The Marshall Islands does not dispute that the questions the Equatoguinean authorities asked were simple factual questions about the Vessel and its journey.⁸⁴
57. Instead, the Marshall Islands makes the following arguments: (1) that the Master was not provided with an official written English translation of his statement; (2) that the crew was denied access to legal counsel in the interviews conducted by Nigerian officials; and (3) that Equatoguinean authorities committed to release the Vessel after payment of the Fine.
58. Turning to the first argument, the Marshall Islands complains that the Master did not receive an official written English translation of his statement following discussions with the Equatoguinean authorities. The Master, however, admits that Mr Hernández Martín translated the statement for him.⁸⁵ Therefore, the Master was aware of the contents of his statement. Mr Hernández Martín also confirms that the crew "*could make amendments to the statements, and I recall that they did so a few times*".⁸⁶ In fact, the Marshall Islands fails to point out any inaccuracies or corrections that the Master wanted to make but was allegedly not allowed to, which further supports Mr Hernández Martín's evidence. In any event, considering the statement was simply a record of the Master's description of events, the focus of the Marshall Islands on this document is unclear.
59. The second argument raised by the Marshall Islands concerning the investigations in Equatorial Guinea is the role played by Nigeria. In this regard, the Marshall Islands has not disputed that:
- a) Nigeria had a direct and extensive role investigating the *Heroic Idun* and crew while stationed in Equatorial Guinea.
 - b) The Marshall Islands wrote to Equatorial Guinea and Nigeria separately confirming that the *Heroic Idun* evading Nigerian authorities and its subsequent apprehension "*may be directly linked*".⁸⁷
 - c) Nigeria began its own parallel investigations at this time in the context of the Yaoundé Code, nor that most interviews were "*solely conducted by the Nigerian officials*",⁸⁸ not Equatoguinean authorities.

⁸³ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶ 12; **Counter-Memorial**, ¶ 52.

⁸⁴ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶ 12. Cf Witness statement of Eivind Kulblik, 13 December 2023, **RMI 2**, ¶ 18.

⁸⁵ **Reply**, ¶ 39.

⁸⁶ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶ 13.

⁸⁷ Letters from the Marshall Islands' Maritime Administrator to Nigeria, **WG 6**, p. 370; Letter from the Marshall Islands' Maritime Administrator to Governor of Luba, 16 August 2022, **SA 6**, p. 85; Witness statement of William Gallagher, 17 December 2023, **RMI 30**, ¶ 29.

⁸⁸ Witness statement of Stephen Askins, 14 December 2023, **RMI 3**, ¶ 23.

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- d) On 30 August 2022, the Marshall Islands wrote to Nigeria (not to Equatorial Guinea) about the present dispute.⁸⁹
 - e) On 12 September 2022, Nigeria via note verbale set out various infractions that the *Heroic Idun* was understood to have committed in the Nigerian maritime space.⁹⁰ Nigeria also recalled the Yaoundé Code, to which both States were parties, requesting that Equatorial Guinea accordingly transfer the Vessel and its crew to Nigeria.⁹¹
 - f) In a letter dated 13 September 2022, the Marshall Islands expressed its concern about Nigeria's (not Equatorial Guinea's) questioning of the *Heroic Idun*'s Master.⁹²
60. The Marshall Islands instead seeks to mischaracterise the nature of the Equatoguinean authorities' interviews of crew members and contends that "[o]n each occasion, a request for attendance of a lawyer during questioning was made but refused by Equatorial Guinea".⁹³ In support, the Marshall Islands relies on witness evidence, none of which shows that Equatorial Guinea refused access to legal counsel.⁹⁴ In fact, counsel for the Vessel's owners and managers relied on the services of a law firm named Miranda & Asociados, a Portuguese law firm, to assist with legal counsel in Equatorial Guinea.⁹⁵
61. In any event, the interviews conducted by Equatorial Guinea were a purely administrative process which does not require legal representation. The Marshall Islands cannot point to any harm or prejudice that occurred to the crew after these interviews due to a lack of legal counsel during a routine fact-finding discussion with Equatoguinean authorities.

⁸⁹ Letters from the Marshall Islands' Maritime Administrator to Nigeria, **WG 6**, p. 372.

⁹⁰ Note No. 150/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 12 September 2022, **REG-021**, p. 1.

⁹¹ Note No. 150/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 12 September 2022, **REG-021**, p. 3.

⁹² Letter from the Marshall Islands' Maritime Administrator to the Attorney General of Equatorial Guinea, 13 September 2022, **SA 11**, p. 122.

⁹³ **Reply**, ¶ 40.

⁹⁴ Mr Kulblik alleges that "*the Nigerian and EG authorities did not allow any external parties, including the Crew's lawyers, to be present at this interview*" (Witness statement of Eivind Kulblik, 13 December 2023, **RMI 2**, ¶ 23). Mr Kulblik was not present at the time, so it is unclear on what basis he makes this assertion. The Master states that "lawyers were not allowed to be present during any of the questioning [by Nigeria]" (Witness statement of Master, 15 December 2023, **RMI 1**, ¶ 129). No mention is made of Equatoguinean authorities, as opposed to Nigeria, denying such access. The Chief Officer describes how "*there was a lawyer present for [Nigeria's investigation], but he could only speak Spanish. I was not able to meet with any other lawyer and I was not asked if I wanted legal support*" (Witness statement of Chief Officer, 9 June 2023, **RMI 5**, ¶ 52). His evidence supports the fact that he did not request legal assistance, meaning Equatorial Guinea could not have denied a request that had not been made. The Third Officer states that he was "*questioned two times by EG and Nigerian officials but lawyers were not allowed inside the interrogation room [...]. The EG authorities did not provide me with a lawyer. We had some but restricted access to lawyers provided by the Owners*" (Witness statement of Third Officer, 9 June 2023, **RMI 10**, ¶ 14). Again, there is no mention of a legal counsel request unduly denied by Equatoguinean authorities. The Marshall Islands' assertion that a request for lawyers to attend interviews was refused by Equatorial Guinea is not supported by its evidence.

⁹⁵ See, for example, English translations of the provisions of Equatoguinean Law, **RMI 42**, p.1; Costs and expenses to assist the crew during detention, **RMI 60**, pp. 49 – 50.

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62. The final argument raised by the Marshall Islands concerns the imposition of the Fine on 23 September 2022. It makes two points in this regard: (1) that Equatorial Guinea gave assurances that the *Heroic Idun* and its crew would be released upon payment of the Fine;⁹⁶ and (2) that the payment of the Fine does not amount to an admission of any wrongdoing.⁹⁷
63. On the first point, the Marshall Islands has not produced any official communication from Equatoguinean authorities providing assurances that the Vessel would be released upon payment of the Fine. The "*clear evidence*"⁹⁸ that the Marshall Islands refers to in its Reply is an internal communication within OSM and a letter from the Marshall Islands to the Equatoguinean Attorney General. Captain Nsue Esono Nchama is clear that payment of the Fine did not mean "*that the vessel would be free from the Nigerian investigation or its eventual return to Nigerian authorities*".⁹⁹ The (mistaken) understanding of the local agents that the Vessel would be free to depart Equatorial Guinea was not based on any official communications from the Equatoguinean authorities.¹⁰⁰ Indeed, no such assurances could possibly be given when Nigeria requested the return of the *Heroic Idun* from the very first note verbale on 10 August 2022.
64. On the second point, the Marshall Islands argues that concern for the Vessel and crew was the reason the owners decided to pay the Fine with the intention to "*contest it later*".¹⁰¹ However, they never did so. The Marshall Islands contends that it was impossible to do so because the Fine fell under "*military jurisdiction*" and, therefore, it could not be appealed.¹⁰² The only source it cites is a 20-year-old academic article commenting on a law that was no longer in force in Equatorial Guinea at the time.¹⁰³ Tellingly, the Marshall Islands does not claim to have obtained Equatoguinean legal advice at the time to see if the Fine could be contested. Had it done so, the fact it could be appealed would have been plain to the owners.¹⁰⁴ For reasons undisclosed, the owners chose not to do so.

B. The crew received all the provisions and amenities that they requested

65. As explained by Mr Hernández Martín of Besora, since the arrival of the Vessel at Luba Freeport on 13 August 2022, Besora took care of all matters related to the treatment and care of the crew. Then, permission to bring amenities was requested from the relevant Equatoguinean authorities, in this case, Captain Nsue Esono Nchama. As explained by Mr Hernández Martín and as undisputed by the Marshall Islands: "*We*

⁹⁶ Reply, ¶ 41; Witness statement of Master, 15 December 2023, **RMI 1**, ¶ 133; Witness statement of Stephen Askins, 14 December 2023, **RMI 3**, ¶ 24; Witness statement of Eivind Kulblik, 13 December 2023, **RMI 2**, ¶ 42; Second Witness Statement of the Master, 23 November 2024, **RMI 50**, ¶ 16; Second Witness Statement of the Chief Officer, 23 November 2024, **RMI 51**, ¶ 19.

⁹⁷ Reply, ¶ 42.

⁹⁸ Reply, ¶ 41.

⁹⁹ Second Witness Statement of Captain Juan Nsue Esono Nchama, 20 March 2025, **REG-WS-007**, ¶ 22.

¹⁰⁰ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶ 18.

¹⁰¹ Reply, ¶ 42.

¹⁰² Reply, ¶ 41.

¹⁰³ Federico Andrea-Guzmán, "Military jurisdiction and international law: Military courts and gross human rights violations" (International Commission of Jurists, 2004), vol. 1, **SA 49**.

¹⁰⁴ Law No. 5/2.009, dated May 18, 2009, which amends Organic Law No. 10/1.984, Regulating the Judiciary, Articles 11, 36 and 37.

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would make requests to deliver whatever provisions the crew required and [Captain Nsue Esono Nchama] would always grant them".¹⁰⁵

66. The Marshall Islands does not dispute that staff from Besora were involved from the moment that the *Heroic Idun* arrived at Luba Bay and interacted with the crew on a daily basis. The Marshall Islands also does not challenge that the Equatoguinean authorities granted all requests from Besora to deliver whatever provisions and medical care that the crew requested. Mr Hernández Martín further confirms that Besora was able to meet the crew as many times as necessary.¹⁰⁶ The evidence submitted by the Marshall Islands confirms the crew's wellbeing. For example:
- a) On 15 August 2022, BUDD, the local representative of Gard (the Vessel's protection and indemnity insurer) in Equatorial Guinea,¹⁰⁷ reported that "[a]ll 15x crew members [on land] are currently resting and safe. We have been continuously taking care of them to bring in the comfort zone maximum possible [...]".¹⁰⁸
 - b) On 16 September 2022, the managers of the Vessel wrote to Equatorial Guinea recognising that they were "*grateful that the crew have been allowed food and water and have been treated well by those tasked to guard them*".¹⁰⁹
 - c) In late October 2022, the Indian Ambassador visited the Indian crew members at the four-star Hotel Anda for *Diwali*, an Indian national holiday. The Indian Ambassador brought Indian food and presents for the crew members.¹¹⁰
67. The receipts for provisions also show that the crew received all types of supplies.¹¹¹ For example, Besora "*provided the crew with different menus from restaurants, so they were able to choose what they wanted*".¹¹² Besora also provided a varied range of foods and beverages upon request, including luxury and recreational items such as:
- a) Whisky;¹¹³
 - b) Vodka;¹¹⁴

¹⁰⁵ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶ 20. Cf Witness statement of Captain Ireneo Nazareth Nicul, 10 July 2024, **REG-WS-002**, ¶ 19; Witness statement of Captain Juan Nsue Esono Nchama, 10 July 2024, **REG-WS-001**, ¶ 21.

¹⁰⁶ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶ 11.

¹⁰⁷ See, for example, Witness statement of Master, 15 December 2023, **RMI 1**, ¶ 111; Witness statement of Eivind Kulblik, 13 December 2023, **RMI 2**, ¶ 4; and Witness statement of Stephen Askins, 14 December 2023, **RMI 3**, ¶ 3.

¹⁰⁸ Email, 15 August 2022, **EK 8**, p. 41. See also Log, **EK 4**, 14 August 2022, entry at 15h18: "*Requesting update on the incident – 15 people ashore, no mistreatment reported*", p. 21.

¹⁰⁹ Letter from OSM to the Equatoguinean Attorney General, 16 September 2022, **EK 36**.

¹¹⁰ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶ 23. This contradicts the Master's evidence: Witness statement of Master, 15 December 2023, **RMI 1**, ¶ 148. See also Witness statement of Howard James McDowall, 2 July 2024, **REG-WS-006**, ¶ 12; Daily reports of the *Heroic Idun* provided by Besora, 13 August 2022 - 10 November 2022, **REG-036**, p. 5.

¹¹¹ Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-012**; Receipts showing provision of food, provisions and cleaning items to crew, 23 August 2022, **REG-042**; Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-013**.

¹¹² Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶ 16.

¹¹³ Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-012**, pp. 28, 43.

¹¹⁴ Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-013**, p. 27.

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- c) Beer;¹¹⁵
 - d) Cigarettes;¹¹⁶
 - e) Cake;¹¹⁷
 - f) Nike sports clothing;¹¹⁸
 - g) Ice cream;¹¹⁹
 - h) Energy drinks;¹²⁰
 - i) Nutella;¹²¹ and
 - j) Candy.¹²²
68. The Marshall Islands also does not deny that crew members received access to local SIM cards and had unimpeded access to communicate with their families while in Equatorial Guinea. Although it is alleged by the Marshall Islands this was not the case in Nigeria,¹²³ as Nigeria is not a party to these proceedings, these factual circumstances cannot be verified.
69. Instead, the Marshall Islands complains that Equatorial Guinea itself did not directly provide provisions to the crew.¹²⁴ Indeed, it is undisputed that the provisions were provided by Besora. What the Marshall Islands omits is what purported relevance it seeks to draw from this fact. Equatorial Guinea approved Besora to provide the crew with their requirements. If the Marshall Islands' argument is that by ensuring the crew had the amenities they sought in this way, Equatorial Guinea somehow contravened an obligation under UNCLOS to issue the provisions to the crew itself, the Marshall Islands fails to substantiate this claim
70. To the extent that the crew were appropriately provisioned throughout – which the Marshall Islands does not dispute – there can be no case of ill-treatment against Equatorial Guinea for allowing Besora to provide the crew with all the provisions and amenities it requested.

¹¹⁵ Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-012**, pp. 22-23, 28; Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-013**, pp. 14, 18.

¹¹⁶ Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-012**, pp. 28, 50; Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-013**, p. 17.

¹¹⁷ Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-012**, p. 14; Receipts showing provision of food, provisions and cleaning items to crew, 23 August 2022, **REG-042**, pp. 1, 7.

¹¹⁸ Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-012**, p. 15.

¹¹⁹ Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-012**, p. 36; Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-013**, p. 19.

¹²⁰ Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-012**, pp. 36, 38, 42, 43; Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-013**, pp. 16, 26.

¹²¹ Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-012**, p. 43; Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-013**, p. 27.

¹²² Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-013**, p. 24.

¹²³ **Memorial**, ¶ 89; Witness statement of Master, 15 December 2023, **RMI 1**, ¶ 165; Witness statement of Chief Officer, 9 June 2023, **RMI 5**, ¶ 64; Witness statement of Eivind Kulblik, 13 December 2023, **RMI 2**, ¶ 85(c).

¹²⁴ **Reply**, ¶ 36.

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C. The crew had access to high-quality medical care at all times

71. Whether on land or aboard the *Heroic Idun*, Besora was allowed day-to-day carriage to meet the crew members' requests.¹²⁵ The Marshall Islands does not dispute that this included medical care. As confirmed by Mr Hernández Martín, Besora selected and arranged the crew's medical visits with doctors and hospitals.¹²⁶
72. The Marshall Islands does not dispute that, throughout the crew members' stay in Equatorial Guinea, Equatoguinean authorities allowed Besora to take any crew member to a hospital for appropriate treatment. However, the Marshall Islands contends that "*it was only after a few weeks in Equatorial Guinea*"¹²⁷ that the crew obtained appointments at the private La Paz Hospital, the "*premier medical facility in Equatorial Guinea*".¹²⁸
73. As confirmed by Mr Hernández Martín and as undisputed by the Marshall Islands, Besora arranged the crew's medical visits with doctors and hospitals.¹²⁹ For less serious ailments such as stomach aches or headaches, Besora chose to take crew members to the Loeri Comba Hospital, which was closer to the Accommodation Facility.¹³⁰ On multiple occasions, Besora decided to take the crew members for treatment to La Paz Hospital.¹³¹ The Marshall Islands does not dispute that La Paz is considered the best hospital in Malabo, where high-level political figures and celebrities have visited for treatment.¹³² La Paz employs doctors and staff from all over the world, who are able to facilitate and provide treatment in English.¹³³
74. The Marshall Islands does not comment on the quality of care provided to the crew either at the local hospital or at La Paz. Instead, it focuses on the early days of the crew's stay in Equatorial Guinea and finds fault with an unnamed military doctor.¹³⁴ As Mr Hernández Martín explains, the crew only received care from the military doctor sent by the Equatoguinean authorities the first few times medical care was needed.¹³⁵
75. Concerning physical care, Dr Irvin Simbarashe of La Paz Hospital has confirmed that all illnesses contracted by crew members while in Equatorial Guinea were "*very common and easily treatable. I confirm that, for each of these conditions, the crew members received the appropriate course of treatment*".¹³⁶ In response, the Marshall Islands tries to brush aside his evidence on the basis that he did not treat the crew

¹²⁵ Witness statement of Captain Juan Nsue Esono Nchama, 10 July 2024, **REG-WS-001**, ¶ 21.

¹²⁶ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶¶ 25-28.

¹²⁷ **Reply**, ¶ 37.

¹²⁸ Witness statement of Dr Irvin Simbarashe, 10 July 2024, **REG-WS-004**, ¶ 4.

¹²⁹ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶¶ 25-28.

¹³⁰ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶ 27.

¹³¹ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶ 27.

¹³² See Witness statement of Dr Irvin Simbarashe, 10 July 2024, **REG-WS-004**, ¶¶ 5, 8; Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶ 27. See also Images of La Paz Hospital, **REG-015**.

¹³³ Witness statement of Dr Irvin Simbarashe, 10 July 2024, **REG-WS-004**, ¶¶ 6-7.

¹³⁴ See, for example, **Reply**, ¶¶ 37, 219(a)(ii), 320(d); Second Witness Statement of the Master, 23 November 2024, **RMI 50**, ¶ 8; Witness statement of Eivind Kulblik, 13 December 2023, **RMI 2**, ¶ 26; Email, 9 September 2022, **EK 30**.

¹³⁵ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶ 20.

¹³⁶ Witness statement of Dr Irvin Simbarashe, 10 July 2024, **REG-WS-004**, ¶ 12.

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himself and that the fact that malaria and typhoid are common sailor's illnesses is unsupported.¹³⁷

- a) Malaria, as a mosquito-borne disease, is unable to be entirely prevented. The evidence filed by the Marshall Islands shows that the crew requested preventative malaria medicine on 18 August 2022,¹³⁸ and it was provided on 23 August 2022.¹³⁹
- b) On typhoid fever, the Marshall Islands' allegation that only the crew in the Accommodation Facility contracted typhoid¹⁴⁰ is contradicted by its own evidence. The third ordinary seaman who remained on the Vessel during the crew's stay in Equatorial Guinea and presumably had access to private bathrooms and drank from a different water tank than the crew staying at the Accommodation Facility, also contracted typhoid while in Equatorial Guinea.¹⁴¹

76. The Marshall Islands has also put forward a number of allegations regarding mental health care. However, it has chosen not to comment on the fact that a request was made for a chaplain to visit the crew, which Equatoguinean authorities approved by 29 August 2022.¹⁴² It also admits that Dr Perman-Kerr was able to conduct sessions with crew members over the phone.¹⁴³ Any such mental health treatment could have been conducted had the crew wanted to do so, since they had unrestricted access to their phones, both aboard the Vessel and on land. Mr Hernández Martín also explains that *"in early October 2022, we were contacted about a psychiatrist potentially coming to visit the crew, through this didn't happen before the crew left [...] I do not recall the crew ever making a request for mental healthcare "*.¹⁴⁴
77. Accordingly, the Marshall Islands' suggestion that the crew received *"poor medical assistance"*¹⁴⁵ is wrong and unsupported.

D. The crew on land stayed in a 4-star hotel and in a new and comfortable Accommodation Facility

78. The Marshall Islands contends that the Accommodation Facility was unsuitable to host the crew.¹⁴⁶ However, the Marshall Islands accepts that the Accommodation Facility was new and air-conditioned. The Marshall Islands also accepts the fact that the crew members were able to move freely around the Accommodation Facility.¹⁴⁷ The

¹³⁷ Reply, ¶ 37.

¹³⁸ Log, **EK 4**, p.26.

¹³⁹ Daily reports of the *Heroic Idun* provided by Besora, 13 August 2022 - 10 November 2022, **REG-036**, Costs and expenses to assist the crew during detention, **RMI 60**, p.27.

¹⁴⁰ Reply, ¶ 37.

¹⁴¹ See, for example, Email, 27 September 2022, **EK 45**; Daily reports of the *Heroic Idun* provided by Besora, 13 August 2022 - 10 November 2022, **REG-036**; Witness statement of Eivind Kulblik, 13 December 2023, **RMI 2**, ¶ 40.

¹⁴² Email, 29 August 2022, **EK 18**: "As advised, our colleagues have now obtained authorities' approval for the chaplain visit to the crew". See also Email, 31 August 2022, **EK 19**: "We confirm the chaplain visited the crew individually and also discussed with our colleagues".

¹⁴³ First Psychological Report of Dr Lesley Perman Kerr, 20 November 2023, **RMI 38**, ¶¶ 8 – 9.

¹⁴⁴ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶ 22.

¹⁴⁵ Reply, ¶ 37.

¹⁴⁶ See, for example, Reply, ¶ 33; Second Witness Statement of the Master, 23 November 2024, **RMI 50**, ¶ 33.

¹⁴⁷ Reply, ¶ 34.

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Marshall Islands has chosen not to comment on, let alone rebut, the witness statement of Mr Jorge Gaona Reina, which confirms that the four-star hotel accommodation provided was of a luxury standard.¹⁴⁸

79. The Marshall Islands' assertion that crew members contracted typhoid due to conditions in the Accommodation Facility is based exclusively on speculation from the Master that "*they contracted typhoid because the water tank which supplied them with water was filthy*".¹⁴⁹ As seen above, this is contradicted by both the fact that a crew member stationed on the *Heroic Idun* also contracted typhoid and the opinion of Dr Simbarashe, a licensed medical professional with decades of experience.¹⁵⁰ In any event, no member of the crew ever communicated any concerns about the cleanliness of water tanks in the Accommodation Facility to either Equatoguinean authorities or Mr Hernández Martín. Mr Hernández Martín confirms that the Accommodation Facility "*had adequate bathrooms, running water and air conditioning*", the "*crew always had bottled drinking water*", and recalls no complaints were made about the water.¹⁵¹ Had any concern existed at the time, the crew chose not to communicate it, meaning Equatorial Guinea could not possibly have addressed it at the time.
80. The Marshall Islands also contends that the Accommodation Facility contained pests.¹⁵² Yet Mr Hernández Martín's evidence confirms that no complaints were made at the time about the conditions at the Facility – including about poor hygiene or about any pests.¹⁵³ He also confirmed that "[t]here was also cleaning personnel that cleaned the accommodation facility on a regular basis".¹⁵⁴ Moreover, Besora was also able to provide cleaning supplies, which the crew could request at any time if cleanliness was of concern.¹⁵⁵ Indeed, the receipts show that protection against mosquitoes was provided.¹⁵⁶ No requests were made to address any other type of alleged pests.

E. The conduct of Equatoguinean authorities was professional and appropriate at all times

81. In its Reply, the Marshall Islands attempts to paint the crew's interactions with Equatoguinean authorities in a negative light. This is plainly inconsistent with its own evidence. For example, video footage of Equatoguinean guards searching the crew's bags on the Vessel shows the search being conducted by unarmed guards in a calm and professional manner.¹⁵⁷
82. Other exhibits filed by the Marshall Islands demonstrate the good spirits of the crew as well as the calm and reasonable behaviour of the authorities. For example, log entries

¹⁴⁸ Witness statement of Jorge Gaona Reina, 1 July 2024, **REG-WS-005**, ¶¶ 5-8; See Hotel Anda China brochure, **REG-014**.

¹⁴⁹ **Reply**, ¶ 33.

¹⁵⁰ Witness statement of Dr Irvin Simbarashe, 10 July 2024, **REG-WS-004**, ¶ 12.

¹⁵¹ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶ 15.

¹⁵² **Reply**, ¶ 215.

¹⁵³ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶ 15.

¹⁵⁴ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶ 18.

¹⁵⁵ See, for example, Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-012**; Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-013**; Receipts showing provision of food, provisions and cleaning items to crew, 23 August 2022, **REG-042**.

¹⁵⁶ Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-013**, pp.19 and 45.

¹⁵⁷ Video of the Equatoguinean guards searching our bags, **PJ 3**.

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record the "*Chief Officer [reporting] that authorities have been very friendly*"¹⁵⁸ and describe a "*good atmosphere onboard, mixed team between guards and crew in daily basket game matches*".¹⁵⁹ The Marshall Islands' answer to these entries is merely that they ignore the "*overarching context*".¹⁶⁰ What these entries reveal is a good relationship between the crew on the Vessel and the guards, which discredits Marshall Islands' after-the-fact complaints. This is particularly true considering the crew on the Vessel "*appeared to have no issues*" with the guards or authorities on the Vessel.¹⁶¹

83. The Marshall Islands also relies on an interaction between the *Heroic Idun*'s Chief Officer and Captain Nazareth Nicul of the Equatoguinean Navy on 7 November 2022.¹⁶² In this instance, Captain Nazareth Nicul agreed to the Chief Officer's request to take a picture together, exchanged phone numbers, and accepted to speak to the Chief Officer's wife over a video call. The Chief Officer suggests that the call with his wife and Captain Nicul was intended to "*[reassure] her*" and tell her "*not to worry*".¹⁶³ Although the Chief Officer refuses to characterise Captain Nicul as trustworthy and helpful,¹⁶⁴ Captain Nazareth Nicul's actions are plainly inconsistent with any alleged bad faith on the Equatoguinean authorities' part.¹⁶⁵ It would also be completely incongruent for the Chief Officer to ask a member of the Equatoguinean authorities to reassure his wife if he felt unsafe or threatened by Equatoguinean authorities themselves, let alone take a smiling picture¹⁶⁶ or exchange phone numbers so he could stay in touch to ask him questions.¹⁶⁷
84. The Marshall Islands also contends that Equatoguinean guards on the Vessel consumed alcohol.¹⁶⁸ The Marshall Islands presents witness accounts and one photograph as evidence.¹⁶⁹ The photograph in question merely shows three bottles on deck with no possible way of determining the content of those bottles. The logbook also makes no reference whatsoever to any issues of any kind with the guards, with no references to inebriation or alcohol at any stage. Mr Hernández also confirms that he did not hear a single complaint from the crew about guards drinking alcohol.¹⁷⁰ Moreover, Captain Nsue Esono Nchama makes clear that consuming alcohol or mind-altering substances is forbidden,¹⁷¹ as is clear in the relevant military disciplinary code.¹⁷² In any event,

¹⁵⁸ Log, **EK 4**, p. 19.

¹⁵⁹ Log, **EK 4**, p. 27.

¹⁶⁰ **Reply**, ¶ 35.

¹⁶¹ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶ 13.

¹⁶² **Reply**, ¶ 45.

¹⁶³ Second Witness Statement of the Chief Officer, 23 November 2024, **RMI 51**, ¶ 22.

¹⁶⁴ Second Witness Statement of the Chief Officer, 23 November 2024, **RMI 51**, ¶ 22.

¹⁶⁵ Second Witness Statement of the Chief Officer, 23 November 2024, **RMI 51**, ¶ 22.

¹⁶⁶ Photograph of the Chief Officer and Captain Nazareth Nicul of the Equatoguinean Navy, 7 November 2022, **REG-081**; Second Witness Statement of the Chief Officer, 23 November 2024, **RMI 51**, ¶ 22. Here the Chief Officer alleges that the smiling picture [emphasis added] was to "[allow him] to have a record of who was taking [him]".

¹⁶⁷ **Reply**, ¶ 46; Second Witness Statement of the Chief Officer, 23 November 2024, **RMI 51**, ¶¶ 22-23.

¹⁶⁸ Witness statement of Master, 15 December 2023, **RMI 1**, ¶ 115.

¹⁶⁹ Photograph of the Equatoguinean guards drinking and smoking on the Vessel, **PJ 1**.

¹⁷⁰ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶ 13.

¹⁷¹ Second Witness Statement of Captain Juan Nsue Esono Nchama, 20 March 2025, **REG-WS-007**, ¶ 24.

¹⁷² *Disciplinary Code for the Armed Forces and State Security Corps of the Republic of Equatorial Guinea* (Excerpt), First Edition (2019), **REG-063**, Article 10(3)(c).

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even on the Marshall Islands' case, Equatorial Guinea could not solve issues it did not even know existed if the crew chose *not* to inform even Besora of its concerns.

85. In conclusion, as Mr Hernández Martín of Besora attests, "[t]hroughout their time in Equatorial Guinea, I confirm that the crew members of the *Heroic Idun* were always treated properly and in a considerate manner by the authorities".¹⁷³
86. The allegations made by the Marshall Islands concerning alleged ill-treatment of the crew find no contemporaneous support. To use the words of the Marshall Islands, these are indeed "*ex post facto construct[s]*".¹⁷⁴

V. Equatorial Guinea's involvement ended with the return of the *Heroic Idun* and its crew to Nigeria following Nigeria's formal request to that effect

87. In its Reply, the Marshall Islands has not disputed the role of Nigeria in officially requesting the return of the *Heroic Idun* and crew to Nigeria for investigation. It does, however, admit that the *Heroic Idun* "*eventually accepted liability*"¹⁷⁵ under Nigeria's anti-piracy legislation. The Marshall Islands also fails to mention its direct correspondence with Nigeria while the crew was in Equatorial Guinea, demonstrating its clear awareness that this case directly and inexorably involved Nigeria.
- A. Nigeria conducted its own investigation while in Equatorial Guinea and requested the return of the crew to Nigeria for further investigation
88. Nigeria started its own parallel investigation in Equatorial Guinea, as admitted by the witness evidence filed by the Marshall Islands.¹⁷⁶ At interviews where Equatoguinean authorities were present, the questions of the Nigerian authorities concerned the actions of *Heroic Idun* on arrival at the Terminal, the actions of the crew on leaving the Terminal, and whether they were aware that their naval clearance was not ready at the time.¹⁷⁷ As also admitted by the Marshall Islands, most of these interviews "*were solely conducted by the Nigerian officials*".¹⁷⁸
89. On 12 October 2022, the Nigerian Ministry of Defence communicated the results of the investigation conducted by its officials in Equatorial Guinea and concluded that the Vessel:

¹⁷³ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶ 24.

¹⁷⁴ See, for example, **Reply**, ¶¶ 7, 103, 130.

¹⁷⁵ **Reply**, ¶ 48.

¹⁷⁶ Witness statement of Master, 15 December 2023, **RMI 1**, ¶¶ 121, 129-131; Witness statement of Eivind Kulblik, 13 December 2023, **RMI 2**, ¶¶ 23, 28, 32, 38; Witness statement of Chief Officer, 9 June 2023, **RMI 5**, ¶ 52; Witness statement of Able Seaman No. 3, 8 June 2023, **RMI 19**, ¶ 25; Witness statement of Ordinary Seaman No. 1, 8 June 2023, **RMI 20**, ¶ 20; Witness statement of Chief Cook, 8 June 2023, **RMI 27**, ¶ 20.

¹⁷⁷ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶ 15: "*I accompanied the crew while they were interviewed by the Nigerian officials. Most of the conversations were about what the Heroic Idun did on arrival at Akpo, what happened when the crew left Akpo, when they received instructions, and if they were aware that their naval clearance was not ready at the time. This interview was about three hours long. I do not recall that the crew signed any document*".

¹⁷⁸ Witness statement of Stephen Askins, 14 December 2023, **RMI 3**, ¶ 23; **Reply**, ¶ 40.

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- a) had "*escaped from Nigerian waters after it attempted to illegally load crude oil from the Akpo Oil Field*";¹⁷⁹
 - b) had "*communicated false information about [a] piracy attack against her by a Nigerian Navy ship within the Nigerian maritime environment*";¹⁸⁰ and
 - c) was "*subsequently arrested by the Equatorial Guinea Navy on 10 August 2022 at the request of Nigeria*".¹⁸¹
90. Nigeria provided its own detailed assessment and conclusions that the Vessel had breached a number of international conventions and Nigeria's laws.¹⁸² The Equatoguinean authorities had finished their investigation by 23 August 2022.¹⁸³ The additional time the crew spent in Equatorial Guinea was due to Nigeria's continued investigation.¹⁸⁴ On 12 October 2022, Nigeria reiterated its initial demand for the return of the *Heroic Idun* so that Nigeria could undertake further investigation.¹⁸⁵
91. Nigeria actively followed up on its requests on 26 October 2022 and 31 October 2022.¹⁸⁶ In line with its international obligations and cooperation agreements with Nigeria,¹⁸⁷ Equatorial Guinea responded to this request via note verbale on 27 October 2022, approving the release of the *Heroic Idun* and its crew for their return to Nigeria.¹⁸⁸ Nigeria then followed up with a note verbale for mutual assistance on 1 November 2022, which requested Equatorial Guinea's collaboration in line with agreed frameworks between both States for mutual legal assistance.¹⁸⁹
- B. The Marshall Islands knew Nigeria was the key actor in this case, as reflected in contemporaneous bilateral correspondence
92. On 4 November 2022, the Marshall Islands sent letters to Nigeria and Equatorial Guinea threatening to commence proceedings under UNCLOS unless the Vessel and the crew were released, repeating its request "*that the vessel and crew are released immediately*

¹⁷⁹ Request from the Ministry of Defence of the Federal Republic of Nigeria to the Ministry of Foreign Affairs of the Republic of Equatorial Guinea, 12 October 2022, **REG-040**, p. 1.

¹⁸⁰ Request from the Ministry of Defence of the Federal Republic of Nigeria to the Ministry of Foreign Affairs of the Republic of Equatorial Guinea, 12 October 2022, **REG-040**, p. 1.

¹⁸¹ Request from the Ministry of Defence of the Federal Republic of Nigeria to the Ministry of Foreign Affairs of the Republic of Equatorial Guinea, 12 October 2022, **REG-040**, p. 1.

¹⁸² Request from the Ministry of Defence of the Federal Republic of Nigeria to the Ministry of Foreign Affairs of the Republic of Equatorial Guinea, 12 October 2022, **REG-040**, p. 2.

¹⁸³ Witness statement of Stephen Askins, 14 December 2023, **RMI 3**, ¶ 18.

¹⁸⁴ Witness statement of Stephen Askins, 14 December 2023, **RMI 3**, ¶ 19.

¹⁸⁵ Request from the Ministry of Defence of the Federal Republic of Nigeria to the Ministry of Foreign Affairs of the Republic of Equatorial Guinea, 12 October 2022, **REG-040**, p. 2.

¹⁸⁶ Note No. 167/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 26 October 2022, **REG-044**; Note No. 168/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 31 October 2022, **REG-045**.

¹⁸⁷ Bilateral agreement between the Government of Federal Republic of Nigeria and the Government of Equatorial Guinea on the establishment of the combined maritime policing and security patrol committee, 15 March 2016, **REG-007**.

¹⁸⁸ Note No. 10247/022 from the Ministry of Foreign Affairs and Cooperation of the Republic of Equatorial Guinea to the Embassy of the Federal Republic of Nigeria in Malabo, 27 October 2022, **REG-047**.

¹⁸⁹ Note No. 167A/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 1 November 2022, **REG-046**.

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*and demands that the Nigerian Navy refrain from unlawfully arresting, detaining, or moving the vessel".*¹⁹⁰ The letter was sent to Nigeria despite the Marshall Islands knowing that the crew were in Equatorial Guinea at the time, reflecting the Marshall Islands' awareness that the subject-matter nonetheless related to Nigeria. The Marshall Islands has chosen not to comment on this fact.

93. Before the crew's return to Nigeria, in an effort to secure the continued respect of their human rights, Equatorial Guinea requested that Nigeria sign an undertaking to treat the Vessel's crew "*in accordance with the provisions of the International Convention of Civil and Political Rights*" and "[t]o equally guarantee the safety of the vessel while under investigation in Nigeria".¹⁹¹ Nigeria provided the undertaking.¹⁹² Moreover, upon arrival of the crew to Nigeria, the Nigerian authorities re-affirmed its human rights undertaking:

*The Embassy wishes to once again, assure the Government of Equatorial Guinea of the safety of MT HEROIC IDUN, while upholding the human rights of the Crewmembers in line with the International Human Rights Instruments as domesticated in Nigerian laws during their stay in Nigeria.*¹⁹³

94. Therefore, Equatorial Guinea had no basis to doubt the commitment provided by Nigeria, despite the Marshall Islands' unsubstantiated allegations to this effect.
95. On 11 November 2022, Equatorial Guinea's involvement assisting Nigeria in the matter of the *Heroic Idun* ended.

C. The *Heroic Idun* accepted liability under Nigeria's Suppression of Piracy and Other Maritime Offences Act

96. Upon its return to Nigeria, the Marshall Islands admits that the Vessel was charged and accepted liability under anti-piracy legislation, specifically under Section 16(5) of Nigeria's Suppression of Piracy and Other Maritime Offences Act 2019.¹⁹⁴
97. The Marshall Islands does not deny that the purpose of the legislation is to counter piracy. Rather, it seeks to avoid this fact by noting that the specific section under which the Vessel accepted liability relates to "*incident reporting and evidence preservation*", and "*not commission of acts of piracy, which fall under section 10 of the Act*".¹⁹⁵
98. This was a matter for Nigeria to judge on the basis of its domestic law and Equatorial Guinea could not have had any say or involvement on charging the Vessel in Nigeria. Indeed, Equatorial Guinea was not privy to the specificities, circumstances or what provisions were applied and therefore can only comment on the fact that the plea agreement was made under the above-mentioned legislation.

¹⁹⁰ Letters from the Marshall Islands' Maritime Administrator to Nigeria, **WG 6**, p. 383.

¹⁹¹ Official handing over of the tanker *MT Heroic Idun* between the governments, Addendum, 10 November 2022, **REG-011**. Cf Witness statement of Captain Ireneo Nazareth Nicul, 10 July 2024, **REG-WS-002**, ¶ 11.

¹⁹² Official handing over of the tanker *MT Heroic Idun* between the governments, Addendum, 10 November 2022, **REG-011**.

¹⁹³ Note No. 172/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 15 November 2022, **REG-052**, p. 1.

¹⁹⁴ **Reply**, ¶ 48.

¹⁹⁵ **Reply**, ¶ 48.

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99. Despite the centrality of Nigeria's role in this dispute, the Marshall Islands seeks to move away from its previous submissions on the subject of the crew's treatment in Nigeria.¹⁹⁶ However, the Marshall Islands still purports to claim for damages allegedly suffered at Nigeria's hands after 11 November 2022, even though Equatorial Guinea had no knowledge of (let alone control) over any action concerning the crew after 11 November 2022.

¹⁹⁶ Memorial, ¶¶ 88 – 93.

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CHAPTER 4

JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

100. In its Reply, the Marshall Islands sets out four arguments concerning jurisdiction, admissibility and applicable law, each addressed below.
- a) Section I explains why the subject-matter of the dispute regarding the apprehension of the *Heroic Idun* falls outside the jurisdiction of the Chamber or is inadmissible;
 - b) Section II reiterates that the Marshall Islands was required, and failed, to exhaust local remedies for certain claims;
 - c) Section III responds to the Marshall Islands' improper characterisation of the "gateway" provisions of UNCLOS; and
 - d) Section IV sets out why the Marshall Islands has mischaracterised the applicable law in this dispute.

I. The subject-matter of the dispute falls outside the jurisdiction of the Chamber or is inadmissible under the *Monetary Gold* principle

101. As a preliminary point, in addressing admissibility and the *Monetary Gold* principle in its Reply,¹⁹⁷ the Marshall Islands has not rebutted or provided any evidence to counter Nigeria's central role in the events relating to the *Heroic Idun* as set out in Equatorial Guinea's Counter-Memorial.¹⁹⁸ That is, while the Marshall Islands contests the applicability of the *Monetary Gold* doctrine to the current case, it has not denied the centrality of Nigeria's role in this case.¹⁹⁹
102. The apprehension and investigation of the *Heroic Idun* and its crew occurred due to events that occurred under Nigerian jurisdiction, when the Vessel was first suspected and approached by Nigerian authorities around Akpo Terminal, in Nigeria's EEZ. The events that ensued between the Vessel and the Nigerian authorities led Nigeria to suspect the Vessel of criminal activity sufficiently serious to warrant a request for assistance under UNCLOS and the Yaoundé Code. Equatorial Guinea complied with that request, and the Vessel was stationed in Equatorial Guinea while the Nigerian authorities had regular access to the crew, pursued an active investigation into the Vessel and its activities, and requested the return of the Vessel and crew to Nigeria. The Vessel was ultimately escorted from Equatorial Guinea by Nigeria, before being subject to Nigerian enforcement jurisdiction, resulting in a plea agreement with Nigerian authorities in which the Vessel accepted liability to an offence under Nigeria's piracy-related legislation. The facts underlying the *Heroic Idun*'s plea agreement under Nigeria's anti-piracy legislation are unknown to Equatorial Guinea and necessarily were an exercise of Nigerian sovereignty. However, the existence of the plea agreement demonstrates facts and conduct which occurred within Nigeria's knowledge and jurisdiction.

¹⁹⁷ Reply, Chapter 3, section II.

¹⁹⁸ See Counter-Memorial, Chapter 4, Section I (B).

¹⁹⁹ See Counter-Memorial, Chapter 4, Section I (B).

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103. Various claims by the Marshall Islands require the Chamber to necessarily rule upon the legal rights and interests of Nigeria, which form the "subject-matter" of the Marshall Islands' claims pertaining to the apprehension of the *Heroic Idun*. At all times, Equatorial Guinea acted in furtherance of its obligations of cooperation with Nigeria. In doing so, it necessarily relied in good faith upon and acted pursuant to the legal, intelligence, and informational assessments made by Nigerian authorities. To examine Equatorial Guinea's conduct would be to rule upon the merits and nature of the assessments made by Nigeria, which would necessarily involve judging on Nigeria's international responsibility, in its absence.

A. The Marshall Islands mischaracterises the application of the *Monetary Gold* doctrine

104. In its Reply, the Marshall Islands accepts that the *Monetary Gold* doctrine is a "well-established procedural rule in international judicial proceedings", whereby a court or tribunal cannot exercise jurisdiction over a dispute where the legal interests of a third State would form "the very subject-matter" of the dispute, without the consent of that third State.²⁰⁰
105. The Marshall Islands' claims relating to the apprehension of the *Heroic Idun* require consideration of the rights and international responsibility of Nigeria.²⁰¹ As such, it should decline to exercise its jurisdiction over such claims.
106. First, the Marshall Islands states that the *Monetary Gold* principle has only been upheld "very rarely (in only three cases)"²⁰² and highlights that the ICJ in *Military and Paramilitary Activities in and against Nicaragua* observed that "[t]he circumstances of the *Monetary Gold* case probably represent the limit of the power of the Court to refuse to exercise its jurisdiction".²⁰³ This authority does not support the Marshall Islands' case. In making this finding, the Court did not state or imply that the *Monetary Gold*

²⁰⁰ Reply, ¶ 53.

²⁰¹ *Case of the monetary gold removed from Rome in 1943 (Preliminary Question)*, Judgment of June 15th, 1954, I.C.J. Reports 1954, p. 19, p. 18.

²⁰² Reply, ¶ 55.

²⁰³ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 392, 26 November 1984, ¶ 88, as cited in Reply ¶ 55. In that case, the US sought – unsuccessfully – to object to the ICJ's jurisdiction, arguing that Nicaragua had failed to bring before the Court parties whose presence and participation was necessary for the rights of those parties to be protected and for the adjudication of the issues raised by Nicaragua (see ¶ 86, where the US asserted that "adjudication of Nicaragua's claim would necessarily implicate the rights and obligations of other States, in particular those of Honduras, since it is alleged that Honduras has allowed its territory to be used as a staging ground for unlawful uses of force against Nicaragua, and the adjudication of Nicaragua's claims would necessarily involve the adjudication of the rights of third States with respect to measures taken to protect themselves, in accordance with Article 51 of the United Nations Charter, against unlawful uses of force employed, according to the United States, by Nicaragua. Secondly, it is claimed by the United States that it is fundamental to the jurisprudence of the Court that it cannot determine the rights and obligations of States without their express consent or participation in the proceedings before the Court. Nicaragua questions whether the practice of the Court supports the contention that a case cannot be allowed to go forward in the absence of 'indispensable parties', and emphasizes that in the present proceedings Nicaragua asserts claims against the United States only, and not against any absent State, so that the Court is not required to exercise jurisdiction over any such State". However – and specifically to the facts before it – the Court found that none of the States (and their respective legal interests) rose to the level that would preclude the admissibility of Nicaragua's claims, which were only against the US. The Court dismissed the US' objection, noting at ¶ 88 that "none of the States referred to can be regarded as in the same position as Albania in that case, so as to be truly indispensable to the pursuance of the proceedings".

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doctrine should be interpreted restrictively, but merely found it did not apply on the facts at issue in that case.

107. Second, the Marshall Islands suggests that the *Monetary Gold* doctrine does not apply owing to the findings in the *M/V "Norstar"* and the *South China Sea Arbitration* cases respectively.²⁰⁴ The Marshall Islands' reliance on these two cases is misplaced for the following reasons:

- a) In the *M/V "Norstar"* case, the Tribunal accepted the *Monetary Gold* principle and its potential application, before concluding that it didn't apply in those circumstances as it was Italy, rather than Spain, which had requested the seizure of the vessel and whose actions were relevant for assessing violations of UNCLOS.²⁰⁵ As detailed in Equatorial Guinea's Counter-Memorial,²⁰⁶ the position of Equatorial Guinea is comparable to that of Spain, as it was executing the request of Nigeria. This judgment therefore supports Equatorial Guinea's submissions on the *Monetary Gold* doctrine and confirms Nigeria as an indispensable party to the proceedings.²⁰⁷ As the Tribunal found:

*The involvement of Spain in this dispute is limited to the execution of Italy's request for the seizure of the M/V "Norstar" in accordance with the 1959 Strasbourg Convention. Accordingly, it is the legal interests of Italy, not those of Spain, that form the subject matter of the decision to be rendered by the Tribunal on the merits of Panama's Application.*²⁰⁸

- b) In the *South China Sea Arbitration*, the Annex VII Tribunal did not accept the applicability of the doctrine to Vietnam or other third States because "*none of the Philippines' claims entail[ed] allegations of unlawful conduct by Viet Nam or other third States*".²⁰⁹ Specifically, the Tribunal held that it did "*not require a decision on issues of territorial sovereignty*" (which Vietnam's purported rights related to), and "*matters of territorial sovereignty and maritime delimitation had deliberately been excluded from the Philippines' claim*".²¹⁰ The factual circumstances of this case are plainly not comparable to the present case, where the Marshall Islands' claims entail the rights and obligations of Nigeria.

108. Third, the Marshall Islands contends that Equatorial Guinea raises a defence on the merits in an attempt to oust the Chamber's jurisdiction over claims concerning its conduct.²¹¹ In making this argument, the Marshall Islands seeks to rely on two ICJ cases in a manner which is plainly inapposite to the current proceeding.

²⁰⁴ Reply, ¶ 62.

²⁰⁵ *M/V "Norstar" (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44, 4 November 2016, ¶ 173.

²⁰⁶ See Counter-Memorial, ¶¶ 115-126.

²⁰⁷ Counter-Memorial, ¶¶ 116-126.

²⁰⁸ *M/V "Norstar" (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44, 4 November 2016, ¶ 173.

²⁰⁹ *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, PCA Case No. 2013-09, Award on Jurisdiction and Admissibility, 29 October 2015, ¶ 181.

²¹⁰ *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, PCA Case No. 2013-09, Award on Jurisdiction and Admissibility, 29 October 2015, ¶¶ 180, 184.

²¹¹ Reply, ¶¶ 69-71.

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- a) In *Appeal Relating to the Jurisdiction of the ICAO Council (India v Pakistan)*, the ICJ rejected India's appeal to the ICJ against the decision of the ICAO Council assuming jurisdiction in that case.²¹² When considering the jurisdiction of the ICAO Council to entertain the merits of the case, the question before the Court was whether Pakistan's case disclosed a disagreement relating to the interpretation or application of the Chicago Convention or the Transit Agreement concluded between the parties.²¹³ If so, then *prima facie* the ICAO Council would be so competent. Further, as the Court held:

*[n]or could the Council be deprived of jurisdiction merely because considerations that are claimed to lie outside the Treaties may be involved if, irrespective of this, issues concerning the interpretation or application of these instruments are nevertheless in question. The fact that a defence on the merits is cast in a particular form, cannot affect the competence of the tribunal or other organ concerned, — otherwise parties would be in a position themselves to control that competence. which would be inadmissible.*²¹⁴

- b) This was affirmed later in *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v Qatar)*, where the ICJ rejected the argument that because the appellants characterised their aviation restrictions imposed on Qatar-registered aircraft as lawful countermeasures, the ICAO Council had no jurisdiction to hear the claims of Qatar, holding that:

*[c]ountermeasures are among the circumstances capable of precluding the wrongfulness of an otherwise unlawful act in international law and are sometimes invoked as defences [...]. The prospect that a respondent would raise a defence based on countermeasures in a proceeding on the merits before the ICAO Council does not, in and of itself, have any effect on the Council's jurisdiction [...].*²¹⁵

109. The Marshall Islands' reliance on these authorities is misplaced. Neither of these cases concerned the *Monetary Gold* principle or its application. In neither of these cases did the defences or countermeasures raised by those States contesting jurisdiction involve

²¹² India had sought to maintain that the dispute could be resolved without any reference to the International Civil Aviation Convention and the International Air Services Transit Agreement and therefore lay outside the competence of the Council. It had contended that these treaties had never been revived since 1965 and that India had in any case been entitled to terminate or suspend them as of 1971 by reason of a material breach of them for which Pakistan was responsible. India had further argued that the jurisdictional clauses of the treaties allowed the Council to entertain only disagreements relating to the interpretation and application of those instruments, whereas the present case concerned their termination or suspension. See *Appeal Relating to the Jurisdiction of the ICAO Council (India v Pakistan)*, Judgment, I.C.J. Reports 1972, p. 46, 18 August 1972, ¶¶ 29, 33.

²¹³ *Appeal Relating to the Jurisdiction of the ICAO Council (India v Pakistan)*, Judgment, I.C.J. Reports 1972, p. 46, 18 August 1972, ¶ 27.

²¹⁴ *Appeal Relating to the Jurisdiction of the ICAO Council (India v Pakistan)*, Judgment, I.C.J. Reports 1972, p. 46, 18 August 1972, ¶ 27.

²¹⁵ *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v Qatar)*, Judgment, I.C.J. Reports 2020, p. 81, 14 July 2020, ¶ 49.

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the legal rights and interests of third States, as is the case here. Instead, these States raised substantive defences to claims which – in their respective views – did not fall within the strict parameters of the ICAO Council's jurisdiction under the Chicago Convention. The principle of *Monetary Gold* therefore simply did not arise on the law or facts of the cases, and its scope and application was not (nor required to be) addressed by the ICJ.

110. Fourth, the *Monetary Gold* doctrine applies in this case because Nigeria's role does concern the "*very subject-matter of the dispute*" regardless of Equatorial Guinea's defence on the merits (concerning piracy). The Marshall Islands now claims that "[w]hether *Monetary Gold* applies depends on how the Marshall Islands has presented its claims".²¹⁶ The Marshall Islands' own claims – as set out in its pleadings – relate to alleged breaches of freedom of navigation on the high seas, and the exclusivity of its flag State jurisdiction.²¹⁷ In this case, it is Nigeria who made the relevant assessments concerning the *Heroic Idun*'s suspicious conduct and requested Equatorial Guinea's lawful assistance, which it provided. Nigeria's rights and interests therefore plainly arise "*on the issues raised*" by the Marshall Islands itself. As a result, the Chamber should not exercise jurisdiction where to do so would involve logical prior determination of the legal rights and interests of a third State – Nigeria – which is not a party to the current proceeding.

B. The rights and interests of Nigeria form the "*subject-matter*" of several claims in this dispute

111. According to the Marshall Islands, in order to decide whether prior determination of the rights and obligations of a third State is required, "*the focus is on the specific claims submitted to the court or tribunal for adjudication*", as articulated by the claimant's submissions.²¹⁸ While the Marshall Islands may formulate its claims as it sees fit, such characterisation cannot obfuscate the predicate facts and legal issues upon which the dispute is based, being Nigeria's interactions with the Vessel and its request for apprehension to Equatorial Guinea, which apprehension the Marshall Islands now seeks to challenge.
112. The Marshall Islands' submissions invite the Chamber to consider whether Equatorial Guinea was entitled to take lawful action against suspected piracy in response to a request from Nigeria made under UNCLOS and the Yaoundé Code. However, to find Equatorial Guinea to have contravened UNCLOS by responding to Nigeria's request to apprehend the Vessel would necessarily adjudicate on the international responsibility and rights of Nigeria, and its right to have made such a request. In other words, the Chamber cannot consider whether such assistance was legally provided by Equatorial Guinea without first examining whether Nigeria was entitled to invoke such assistance based on a reasonable suspicion of piracy. In this way, the determination of the legal position of a third State is a necessary prerequisite to the determination of this claim before the Chamber.
113. These relevant submissions are reproduced here (as found in the Marshall Islands' Reply):

²¹⁶ Reply, ¶ 71.

²¹⁷ See Memorial, ¶ 438(a) and Reply, ¶ 333(a) and (c).

²¹⁸ See Reply, ¶ 63.

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a. By intercepting the "Heroic Idun" and her crew in the EEZ of São Tomé and Príncipe, forcing them to divert course, including under the threat of the use of force, and placing them under military escort to Equatorial Guinea, Equatorial Guinea breached Articles 87(1), 90 and 92 of UNCLOS.

a. By the same conduct, Equatorial Guinea breached Article 87(2) of UNCLOS and/or Article 300, read alongside Articles 87(1) and 90, having failed to exercise its own freedom of navigation in the EEZ of São Tomé and Príncipe with due regard to the rights of the Marshall Islands to freedom of navigation and/or abused its right to freedom of navigation and right to sail in the EEZ of São Tomé and Príncipe.

b. All measures adopted by Equatorial Guinea subsequent to the unlawful interception and diversion of the "Heroic Idun" and her crew in the EEZ of São Tomé and Príncipe are without basis in UNCLOS and international law.²¹⁹

114. These submissions relate to alleged breaches of freedom of the high seas and exclusivity of flag State jurisdiction under Articles 87, 90 and 92 of UNCLOS.²²⁰ Lawful responses to threats of piracy (as Equatorial Guinea understood itself to be executing) are universally well-recognised exceptions to freedom of navigation on the high seas, and the exclusivity of its flag State jurisdiction.²²¹ In this case, it is Nigeria's assessments relating to the *Heroic Idun* which raised a reasonable suspicion of piracy. Nigeria then requested Equatorial Guinea's lawful assistance, which it was legally bound to provide.
115. In its Reply, the Marshall Islands takes issue with suspicions regarding the *Heroic Idun*'s activities, including in relation to piracy. However, as highlighted in Equatorial Guinea's Counter-Memorial, given that Equatorial Guinea was not present during the acts giving rise to the *Heroic Idun*'s alleged infractions and piracy offences in Nigerian waters, it was necessarily compelled to rely upon the assessments and request made by Nigeria in this regard, and act in accordance with its international commitments under UNCLOS and the Yaoundé Code. Informational and capability asymmetries exist throughout the Gulf of Guinea, and between Yaoundé Code signatories. Cooperation and assistance under the Yaoundé Architecture rely upon assessments and directives taken by one State, given to another. Plainly, given the urgency of the request, Equatorial Guinea had neither the time, nor the ability to undertake any independent, extensive evaluation of the risk posed by the *Heroic Idun*, but took the decision to act in response, rather than allow the presence of a serious maritime security threat go unaddressed.
116. The bases on which Nigeria made its factual and legal determinations in relation to the *Heroic Idun*'s conduct which prompted its request to Equatorial Guinea, and the lawfulness of such acts under international law, are issues that require prior logical

²¹⁹ Reply, ¶ 333(a), (a) [sic], and (b).

²²⁰ Reply, ¶ 333(a), (a) [sic], and (b).

²²¹ Counter-Memorial, Chapter 6, Section I(B).

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examination of Nigeria's sovereign rights and interests under international law. These rights and interests include:²²²

- a) Nigeria's rights as a coastal State under UNCLOS and customary international law to exercise certain rights and jurisdiction in its EEZ, including response to suspected oil theft and piracy;
 - b) Nigeria's rights as a State party to UNCLOS and signatory to the Yaoundé Code to request assistance from Equatorial Guinea for cooperation and the apprehension of the *Heroic Idun*;
 - c) Whether Nigeria had a reasonable basis on which to request the arrest and transfer of the *Heroic Idun* from Equatorial Guinea;
 - d) Nigeria's rights as a sovereign State to investigate and exercise elements of its jurisdiction over a vessel and crew on the territory of another State; and
 - e) Nigeria's rights and obligations when requesting the transfer of a vessel and crew to its territory to face investigations for infractions of its legislation.
117. It is clear that Equatorial Guinea undertook its actions perceiving them to be required, and authorised by both UNCLOS and customary international law, and consistent with its commitments under the Yaoundé Code. The Marshall Islands accepts that lawful measures under UNCLOS may be taken in response to suspected piracy.²²³ However, it disputes whether Equatorial Guinea had a reasonable basis on which to exercise such powers.²²⁴
118. Equatorial Guinea exercised these powers based solely upon an assessment and request made by Nigeria. Whether Equatorial Guinea therefore had a reasonable basis to do so necessarily invites – as a matter of logical priority – examination of the *Heroic Idun*'s activities, their lawfulness and the factual and legal assessments made of them by Nigeria. These assessments were made entirely, and exclusively, by Nigeria. For the Chamber to adjudicate the reasonableness of such assessments would require assessments of Nigeria's legal rights and interests, when it is not a party to the current proceeding.
119. That is, as noted in Equatorial Guinea's Counter-Memorial:

*At all times, Equatorial Guinea acted in furtherance of its obligations of cooperation with Nigeria and, in doing so, necessarily relied in good faith upon and acted pursuant to the legal, intelligence, and informational assessments made by Nigerian authorities. To examine Equatorial Guinea's conduct would be to rule upon the merits and nature of the assessments made by Nigeria, which would necessarily involve judging on Nigeria's exercise of its legal interests and rights under international law, in its absence.*²²⁵

²²² See also **Counter-Memorial**, ¶ 128.

²²³ **Reply**, Chapter 4, Section II.

²²⁴ **Reply**, Chapter 4, Sections III-VII.

²²⁵ **Counter-Memorial**, ¶ 142.

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120. These rights and interests of Nigeria would not be merely of a moral, political or reputational nature.²²⁶ The above issues "*form the very subject-matter of the decision*" and a "*vital issue to be settled*" in respect of the Marshall Islands' above claims.²²⁷ An essential predicate question regarding the apprehension of the *Heroic Idun* is the factual basis on which Nigeria made its assessment of the *Heroic Idun*'s allegedly unlawful or suspicious activity, and whether Nigeria was entitled to request the assistance of Equatorial Guinea under UNCLOS and the Yaoundé Code.

II. The Marshall Islands was required and failed to exhaust local remedies where required by international law

121. Article 295 of UNCLOS represents the well-established principle of international law regarding the exhaustion of local remedies. As affirmed in *M/V "Saiga"*, the question of whether local remedies must be exhausted is answered by general international law.²²⁸ To this end, the Tribunal relied on Article 22 of the ILC's (then draft) ARSIWA as a codification of custom,²²⁹ which established that the exhaustion rule is applicable when "*the conduct of a State has created a situation not in conformity with the result required of it by an international obligation concerning the treatment to be accorded to aliens*". It is clear that those claims of the Marshall Islands relating to the treatment of "*aliens*" (i.e., the crew of the *Heroic Idun*), including allegations that Equatorial Guinea breached the crew's human rights,²³⁰ must have first exhausted local remedies. Having failed to do so, those claims are inadmissible before this Chamber.
122. In its Reply, the Marshall Islands makes three arguments, concerning (i) the nature of the rights underpinning its claim and the rule on the exhaustion of remedies as set out in the Tribunal's jurisprudence, (ii) the jurisdictional connection required between the individuals concerned and the State, and (iii) its failure to exercise any domestic remedy in Equatorial Guinea.²³¹ These are addressed below.
123. First, the Marshall Islands takes the view that its case concerns at its core, quintessential State rights under UNCLOS (i.e., freedom of navigation and exclusive flag State jurisdiction), and that it was therefore not required to exhaust local remedies.²³²
124. As set out in Equatorial Guinea's Counter-Memorial,²³³ the authorities of *M/V "Saiga"*, *M/V "Virginia G"* and *M/V "Norstar"* confirm the applicability of this rule in disputes before the Chamber. The Marshall Islands maintains the similarity of its case to these, where the rule on exhaustion of local remedies was found not to be required on the

²²⁶ Reply, ¶ 57.

²²⁷ *Case of the monetary gold removed from Rome in 1943 (Preliminary Question)*, Judgment of June 15th, 1954, I.C.J. Reports 1954, p. 19, pp. 16-18.

²²⁸ *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999, p. 10, 1 July 1999, ¶ 96.

²²⁹ *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999, p. 10, 1 July 1999, ¶ 98. See *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), p. 1902, ¶ 5, noting that this article was subsequently moved to the Draft Articles on Diplomatic Protection, which states that the exhaustion rule is only applicable when a claim was "*preponderantly*" about injury to a national.

²³⁰ See Memorial, Chapter 7, Section IV.

²³¹ See Reply, ¶¶ 80-85.

²³² See Reply, ¶ 81.

²³³ Counter-Memorial, Chapter 4, Section II.

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grounds that the "*principal rights*" alleged to have been violated were those of the State concerned, rather than individuals.

125. However, the Marshall Islands fails to engage with Equatorial Guinea's argument that in none of these cases had the flag State alleged breaches of the principles of humanity, or breaches of human rights of individual crew members, in the way that the Marshall Islands presently does.²³⁴ Rather, in those authorities, the treatment of the respective vessel's crew members was not the subject of an independent alleged breach of UNCLOS but rather flowed from the treatment of the vessel itself.²³⁵
126. For example, in *M/V "Saiga"*,²³⁶ while Saint Vincent and the Grenadines highlighted the alleged injury and concerning treatment of the vessel's crew by Guinea, these acts again did not form the independent basis of any of its submissions concerning breaches of UNCLOS. Similarly, in *M/V "Virginia G"*,²³⁷ while Panama highlighted the allegedly "*arduous and inhumane*" situation on board the detained vessel, it made no submissions alleging violations of UNCLOS based exclusively on the (mis)treatment of the vessel's crew. Lastly, in *M/V "Norstar"*, while Panama presented claims regarding human rights violations by Italy in its written submissions,²³⁸ it did not, however, include those claims in its final submissions. The Tribunal, therefore, was not required to address those claims, nor admissibility of such, in its judgment.²³⁹ Therefore, in none of these prior cases did the claimant State make submissions alleging violations of UNCLOS based only, and entirely, upon the human rights and alleged mistreatment of the detained vessel's crew members.
127. The Marshall Islands' asserts that its case is "*no different*" to the above and at its core concerns freedom of navigation and exclusive flag State jurisdiction – i.e., the "*principal rights*" concerned are "*quintessential State rights under UNCLOS*", thereby excluding the rule on the exhaustion of local remedies.²⁴⁰ However, unlike the claims in *M/V "Saiga"*, *M/V "Virginia G"* or *M/V "Norstar"*, the Marshall Islands has chosen to make specific submissions concerning Equatorial Guinea's breach of UNCLOS based on the detailed treatment and human rights of crew members, such as its alleged failure "*to respect and violating the human rights of the crew, including as set out in the ICCPR and the African Charter and in customary international law, and failing to observe the United Nations Standard Minimum Rules for the Treatment of*

²³⁴ Counter-Memorial, ¶ 152.

²³⁵ Counter-Memorial, ¶ 152.

²³⁶ *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Memorial of St. Vincent and the Grenadines, 19 June 1998, ; *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Reply of St. Vincent and the Grenadines, 19 November 1998, .

²³⁷ *M/V "Virginia G" (Panama/Guinea-Bissau)*, Memorial of Panama, 23 January 2012, ¶ 234; *M/V "Virginia G" (Panama/Guinea-Bissau)*, Reply of Panama, 28 August 2012, ¶ 282.

²³⁸ *M/V "Norstar" (Panama v. Italy)*, Memorial of Panama, 11 April 2017, ¶¶ 129-149; *M/V "Norstar" (Panama v. Italy)*, Reply of Panama, 28 February 2018, ¶ 388-404.

²³⁹ *M/V "Norstar" (Panama v. Italy)*, Judgment, ITLOS Reports 2018–2019, p. 10, 10 April 2019, ¶ 146. In its earlier Judgment on Preliminary Objections, the Tribunal addressed the issue of exhaustion of local remedies but found no exhaustion needed as rights were that of Panama (see *M/V "Norstar" (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44, 4 November 2016, ¶¶ 264-272). However, the issue of human rights was not addressed in any detail. In that case, Italy's main argument was that Panama's claim related predominantly to the rights or monetary interests of the vessel's owner (see ¶¶ 233-249).

²⁴⁰ Reply, ¶ 81.

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Prisoners".²⁴¹ Plainly, such claims preponderantly relate to allegations concerning the treatment accorded by Equatorial Guinea to the foreign nationals of the *Heroic Idun* crew.

128. In the joint separate opinion of Judges Cot and Kelly in *M/V "Virginia"*, the Judges expressed concern at the Tribunal's uncritical acceptance in that case of Panama's claim that, as Guinea-Bissau had violated the rights of Panama as the flag State, no exhaustion of local remedies was required. The Judges held:

[i]t is not enough to say that Guinea-Bissau has violated the direct rights of the flag State and that there is no obligation to exhaust local remedies simply because there has been a direct injury to these rights. The Tribunal must assess the overall situation and legally qualify the dispute brought before it.

*To proceed differently, as the Tribunal did in the M/V "SAIGA" (No. 2) Case, would amount to striking article 295 out of the Convention by considering that, whenever there is a violation of a provision of the Convention, there is no necessity to exhaust local remedies. As Vice-President Wolfrum noted in 1999, "If... disputes concerning the interpretation or application are only disputes between States Parties arising from alleged violations of States' rights, article 295 of the Convention would be meaningless". [...] Such an interpretation would run contrary to the natural and ordinary meaning of article 295 and defeat the object and purpose of the provision.*²⁴²

129. Instead, the Judges emphasised that it was for the Tribunal, and not the parties, to decide upon the nature of the dispute submitted to it and whether exhaustion of local remedies was required.²⁴³ Equatorial Guinea submits that the Chamber should adopt such scrutiny when examining the claims made by the Marshall Islands.
130. As the Marshall Islands notes, in the *M/V Virginia*, the Tribunal found that the rights invoked by Panama as the claimant were "*rights that belong to Panama under [UNCLOS], and the alleged violations of them thus amount to direct injury to Panama*".²⁴⁴ Applying the same logic, it is clear that the Marshall Islands' claims that "[b]y failing to respect and violating the human rights of the crew, including as set out

²⁴¹ **Reply**, ¶ 333 (b). Here, the Marshall Islands asserts breaches of Articles 87(1), 87(2) 2(3) and 58(2) of UNCLOS based entirely on the alleged mistreatment and of the *Heroic Idun*'s crew including breaches of their human rights.

²⁴² *M/V "Virginia G" (Panama/Guinea-Bissau)*, Judgment, ITLOS Reports 2014, p. 4, Joint Separate Opinion of Judges Cot and Kelly, ¶¶ 13-14. See also *M/V "Norstar" (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44, Declaration of Judge Cot, ¶ 5, where the Judge held that "[t]he case law of this Tribunal in the past has clearly given preference to the direct injury to the State, in particular in the *M/V "SAIGA" (No. 2)* and *M/V "Virginia G"* cases. In my opinion, this past case law is not in conformity with practice and the general state of international law. Our case law should be changed in that respect. By excessive reliance on the concept of direct injury to the flag State, the Tribunal is ignoring the clear wording of article 295 of the Convention, rendering it devoid of any meaning. It is difficult to imagine a situation in which the Tribunal, in a given case, would not invoke direct injury to the claimant State".

²⁴³ *M/V "Virginia G" (Panama/Guinea-Bissau)*, Judgment, ITLOS Reports 2014, p. 4, Joint Separate Opinion of Judges Cot and Kelly, ¶ 15.

²⁴⁴ *M/V "Virginia G" (Panama/Guinea-Bissau)*, Judgment, ITLOS Reports 2014, p. 4, 14 April 2014, ¶ 157.

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in the ICCPR and the African Charter and in customary international law, and failing to observe the United Nations Standard Minimum Rules for the Treatment of Prisoners [...]" relate "preponderantly" to or concern human rights of the crew, not rights belonging to the Marshall Islands under UNCLOS.

131. Second, the Marshall Islands alleges that the rule on exhaustion of domestic remedies does not apply as no jurisdictional connection exists between Equatorial Guinea and those allegedly injured by its conduct.²⁴⁵ It does so on the basis that the rule on exhaustion of domestic remedies does not apply in cases where a State has taken measures "*outside the scope of its jurisdiction*".²⁴⁶ This is because, where a State had no jurisdiction concerning the measures taken, the requirement to exhaust local remedies would amount to a recognition of the jurisdiction of that State.²⁴⁷
132. However, in the present case, such a jurisdictional connection exists. As set out below in Chapter 5, Equatorial Guinea had a valid jurisdictional basis on which to exercise authority over the Vessel and crew (i.e., its lawful measures in response to a reasonable suspicion of piracy and under obligations of cooperation with Nigeria in this regard). As a consequence of such lawful exercise of its jurisdiction, the Vessel and crew were brought to Equatorial Guinea, and remained under its territorial jurisdiction for the remainder of their time there.
133. Third, the Marshall Islands again provides no substantiation for its assertion concerning "*the lack of effective domestic remedies*" in Equatorial Guinea. In fact, the Marshall Islands (or the Vessel's owners) could have, but chose not to, pursue claims regarding the alleged mistreatment of any of the *Heroic Idun's* crew members.
134. The Marshall Islands maintains that challenging actions in Equatorial Guinea's courts was "*futile*", but it apparently made no attempt to do so.²⁴⁸ For example, it asserts fear that bringing the matter to local courts would only extend the matter, and would risk prosecutors bringing unwarranted charges against the crew.²⁴⁹ However, this is pure speculation and wholly unsupported.²⁵⁰

²⁴⁵ Reply, ¶ 83.

²⁴⁶ See Reply, ¶¶ 83-84.

²⁴⁷ Reply, ¶ 83.

²⁴⁸ Second Witness Statement of Stephen Askins, 25 November 2024, **RMI 52**, ¶ 6.

²⁴⁹ Witness statement of Stephen Askins, 14 December 2023, **RMI 3**, ¶ 15.

²⁵⁰ Further, the Second Witness Statement of Stephen Askins asserts that "*the Fine was made under the 'military jurisdiction' of Equatorial Guinea. My understanding is that in Equatorial Guinea there are no standing military courts and military justice operates by means of courts martial made up of military officials with no legal qualifications and against whose verdicts there is no right of appeal*" (See Second Witness Statement of Stephen Askins, 25 November 2024, **RMI 52**, ¶ 6). However, this is incorrect. The Fine, despite being made under the authority of the Military of National Defense, was imposed under Equatorial Guinea's administrative jurisdiction. Additionally, the evidence cited in support of this statement is a 20-year-old academic article (Federico Andrea-Guzmán, "Military jurisdiction and international law: Military courts and gross human rights violations" (International Commission of Jurists, 2004), vol. 1, **SA 49**, p. 166, and pp. 99-101), rather than any Equatoguinean law or regulation. Moreover, this article pre-dates and is contradicted by current Equatoguinean legislation which confirms that a right of legal recourse is available for any action, including for those under Equatorial Guinea's military jurisdiction. Law No. 5/2009 regulating the Judiciary Law which amends Organic Law No. 10/1984 (Excerpt), 18 May 2009, **REG-082**, provides that "*Article 11. - The jurisdiction of the Military Jurisdiction shall be limited to the strictly military sphere, with respect to acts classified as crimes or misdemeanours by the Code of Military Justice. When military and civilian personnel are involved in the commission of the acts in question, the corresponding case shall be heard by the Ordinary Jurisdiction. [...]* Article 37.- *The Second Chamber of the*

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135. The right to legal recourse is also protected in the Equatoguinean constitution.²⁵¹ Equatoguinean legislation provides that such a right is available to citizens and foreigners residing in Equatorial Guinea alike.²⁵² It also confirms that petitions concerning human rights may also be presented to the country's Human Rights Commission,²⁵³ or taken before the country's Ombudsman.²⁵⁴
136. Therefore, the Marshall Islands could have challenged the treatment of the *Heroic Idun*'s crew in local courts – including after the crew had left Equatorial Guinea. The Marshall Islands even acknowledges that it had retained the services of local counsel.²⁵⁵ However, the Marshall Islands made no attempt to seek recourse for the alleged mistreatment of the crew members, even after the Vessel and crew had left Equatorial Guinea.
137. Accordingly, the Marshall Islands failed to exhaust local remedies as required by international law. Such failure renders its claims inadmissible.

III. The Marshall Islands mischaracterises the "gateway" provisions of UNCLOS

138. The Marshall Islands alleges that the Chamber has jurisdiction over external treaties, namely the ICCPR, the African Charter, SOLAS, STCW and COLREGS, under so-called "gateway" provisions of UNCLOS.²⁵⁶
139. Equatorial Guinea maintains that: (A) the Chamber must not apply the so-called "gateway" provisions under UNCLOS to extend its jurisdiction to external treaties and instruments; and (B) the "gateway" provisions relied upon by the Marshall Islands do not expand the Chamber's jurisdiction to treaties external to UNCLOS.
- A. The Chamber's jurisdiction is limited to claims of alleged breaches under UNCLOS as the Marshall Islands now concedes
140. The Marshall Islands claims in its Reply that "*Equatorial Guinea's primary argument in response to the claim that it violated the crew's human rights is that the Chamber does not have jurisdiction to assess a State's conduct against its human rights obligations*".²⁵⁷
141. On the contrary, Equatorial Guinea has maintained that the Chamber may have regard to international human rights standards so long as they are used to assist in the interpretation and application of provisions of UNCLOS,²⁵⁸ namely, as applicable law

Supreme Court of Justice shall hear: a) Investigation of cases brought against persons with a privileged status; b) Appeals in cassation in ordinary and military criminal matters".

²⁵¹ Law No. 1/2012 on the Fundamental Law of the Republic of Equatorial Guinea (Excerpt), 16 February 2012, **REG-083**.

²⁵² Law No. 5/1991 regulating the Right to Complaint and Petition (Excerpt), 10 June 1991, **REG-084**, Article 3(2).

²⁵³ See Law No. 5/1991 regulating the Right to Complaint and Petition (Excerpt), 10 June 1991, **REG-084**, Articles 2 and 17.

²⁵⁴ Organic Law No. 4/2.012 regulating the Ombudsman (Excerpt), 16 November 2012, **REG-085**, Articles 14, 17-18, and 22.

²⁵⁵ See Witness statement of Stephen Askins, 14 December 2023, **RMI 3**, ¶¶ 3, 14-15, 18, 21, 26-29, 31 and 51.

²⁵⁶ **Reply**, ¶¶ 86-90.

²⁵⁷ **Reply**, ¶ 10.

²⁵⁸ See **Counter-Memorial**, ¶¶ 160, 164.

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to interpret UNCLOS alone.²⁵⁹ The Chamber's jurisdiction, however, does not extend to assessing whether specific obligations under other human rights treaties such as the ICCPR or the African Charter have been breached, as the Marshall Islands purports.²⁶⁰ The same logic applies to the Marshall Islands' arguments in relation to the SOLAS, STCW and COLREGS.

142. Indeed, the Marshall Islands has changed its position and now agrees with Equatorial Guinea in this regard:

- a) In its Memorial, the Marshall Islands claimed that the Chamber enjoyed "*jurisdiction over disputes concerning breaches of SOLAS, the STCW, and the COLREGS directly*",²⁶¹ and claimed breaches of these legal instruments independent of any violation of UNCLOS.²⁶² In its Reply, the Marshall Islands now concedes that "*instruments other than UNCLOS are relied upon solely to inform the interpretation and application of UNCLOS*".²⁶³ The Marshall Islands then states that it "*is not requesting, by invoking gateway provisions, that the Chamber exercise jurisdiction over alleged breaches of treaties external to UNCLOS*"²⁶⁴ or "*seeking a finding of breach by Equatorial Guinea of any legal obligation by which it is bound other than in and pursuant to UNCLOS*".²⁶⁵
- b) In its Memorial, the Marshall Islands asked the Chamber to directly find that Equatorial Guinea had violated the human rights of the *Heroic Idun* crew members separately and as a precursor to finding any UNCLOS violations.²⁶⁶ In its Reply, the Marshall Islands has changed its position and now admits that it is "*not seeking a determination of breach of the ICCPR or the African Charter*" but rather a breach of the UNCLOS alone.²⁶⁷

B. The "gateway" provisions relied upon by the Marshall Islands do not expand the Chamber's jurisdiction to treaties external to UNCLOS

143. The Marshall Islands claims that Article 87 UNCLOS may be used as a "gateway" provision to apply external human rights treaties as well as the SOLAS, STCW and COLREGS.²⁶⁸ Its allegations in relation to these instruments relate to the treatment of

²⁵⁹ **Counter-Memorial**, ¶ 174.

²⁶⁰ **Reply**, ¶ 86. Further, at ¶ 11, the Marshall Islands cite Judge Infante Caffi's declaration in the *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* case to argue that human rights treaty obligations should "inform" the interpretation and application of UNCLOS. However Judge Infante Caffi's declaration made clear that "*other rules of international law not incompatible with this Convention*" under Article 293 UNCLOS must be applied "*within the scope of UNCLOS*". Judge Infante Caffi emphasised that her observations on human rights principles related specifically to Part XII UNCLOS, i.e. marine environment protection, and that the aim of his observations was "*not to alter the Tribunal's jurisdiction ratione materiae*". See *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Declaration of Judge Infante Caffi, 21 May 2024, ¶¶ 1, 4.

²⁶¹ **Memorial**, ¶ 293.

²⁶² **Memorial**, ¶ 312. See also ¶ 438(g).

²⁶³ **Reply**, ¶ 87.

²⁶⁴ **Reply**, ¶ 92.

²⁶⁵ **Reply**, ¶ 87.

²⁶⁶ See **Memorial**, ¶ 253: "*Equatorial Guinea's multiple violations of the human rights of the crew and consequent breaches of the Convention and applicable law*".

²⁶⁷ **Reply**, ¶ 88. See also ¶ 92.

²⁶⁸ **Reply**, ¶¶ 225-226, 246, 333(b), (e).

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the crew members during their stay in Equatorial Guinea, safe manning requirements while the *Heroic Idun* was at Luba Bay and alleged "*dangerous maneuver*" near the Vessel, while anchored at the port.²⁶⁹

144. As demonstrated in the Counter-Memorial, Article 87 relates to the freedom of the high seas, whereas none of the acts of Equatorial Guinea referenced by the Marshall Islands occurred on the high seas.²⁷⁰ The ITLOS in *M/V "Louisa"* pertinently noted that "*article 87 of the Convention deals with the freedom of the high seas, in particular the freedom of navigation, which applies to the high seas*", and could not apply to situations of detention in the port of a coastal State.²⁷¹ Contrary to the Marshall Islands assertion,²⁷² it is irrelevant that the *M/V "Louisa"* was voluntarily detained at Spain's port. The fact remains that the Tribunal refused to apply Article 87 to claims related to the vessel's detention.²⁷³
145. The logical consequence of the Marshall Islands' argument would be that, following prior enforcement action by a State in the high seas, any subsequent act of the State with respect to a vessel (including in its EEZ or territorial sea) would form a continuing breach of Article 87. This would conflict with the application of the separate rules of freedom of navigation in the EEZs under Article 58 or the right of innocent passage in territorial waters under Article 24. Plainly, different separate maritime zones (such as the high seas, the EEZ, and territorial waters) have different applicable rules under UNCLOS. While the Tribunal has recognised that the locus of the exercise of a State's enforcement powers is not the "*sole criterion*" in assessing claims under Article 87,²⁷⁴ here, Equatorial Guinea relies on those powers recognised under Part VII of UNCLOS, as the valid basis for the exercise of its jurisdiction. It follows that accordingly no breach of Article 87 could be engaged.
146. Similarly, Articles 2(3), 56(2) and 58(2) of UNCLOS cannot be characterised as "*gateway*" provisions that extend the Chamber's jurisdiction to breaches of external human rights treaties.²⁷⁵
- a) Article 2(3) UNCLOS provides that "*sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law*". This provision was included in Article 2 "*to confirm that the powers of the State over the territorial sea are no greater than those possessed over land domain*".²⁷⁶ The purpose of this provision is to recognise that the Convention does not expand or narrow a State's sovereign powers in its territorial sea *vis-à-vis* those exercised on its territory. However, it does not operate to import the text, or form the basis of

²⁶⁹ Reply, ¶¶ 231-245.

²⁷⁰ Counter-Memorial ¶¶ 299, 319, and fn 479.

²⁷¹ *M/V "Louisa" (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Judgment, ITLOS Reports 2013, p. 4, 28 May 2013, ¶ 109.

²⁷² Reply, ¶ 226.

²⁷³ *M/V "Louisa" (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Judgment, ITLOS Reports 2013, p. 4, 28 May 2013, ¶ 109.

²⁷⁴ *M/V "Norstar" (Panama v. Italy)*, Judgment, ITLOS Reports 2018–2019, p. 10, 10 April 2019, ¶ 226.

²⁷⁵ See Memorial, ¶¶ 281(a)-(c), 282.

²⁷⁶ *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), p. 34, ¶ 22.

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a claim alleging breaches of human rights instruments or the SOLAS, STCW and COLREGS.²⁷⁷

- b) Articles 56(2) and 58(2) UNCLOS regulate the acts of a coastal State in "*exercising its rights and performing its duties under this Convention in the exclusive economic zone*". Article 56(2), which is discussed in further detail in Chapter 5, Section V below does not provide for a "*gateway*" to external treaties. Instead, it is included as part of the Convention's acknowledgment of a procedural and mutual obligation between coastal States and third States to have due regard to the other's rights and duties in the EEZ.²⁷⁸ Article 58(2) provides that Articles 88 to 115 and other pertinent rules of international law apply to the EEZ insofar as they are not incompatible with Part V of UNCLOS.²⁷⁹ Neither Article 56(2) nor 58(2) therefore act as "*gateways*" to external treaties.

147. In conclusion, the various "*gateways*" under Articles 2(3), 56(2), 58(2), 87(1)-(2) of UNCLOS, namely the references to "*other rules of international law*", cannot be used to expand the scope of the Chamber's jurisdiction to external treaties.

IV. The Marshall Islands has mischaracterised the applicable law

148. As a preliminary point the Marshall Islands accepts that the Chamber's jurisdiction does not extend beyond UNCLOS, and that the external treaties and sources of law to which it refers are not "*self-standing sources of rights and obligations*".²⁸⁰
149. On applicable law, the Marshall Islands has replied on two points, namely: (i) the correct interpretation and application of Article 293 UNCLOS and (ii) the relevance and applicability of the Yaoundé Code to the current facts. However, on both counts, the Marshall Islands has misconstrued these instruments and provisions.
150. First, the Marshall Islands argues that the Yaoundé Code cannot be considered among the "*rules of international law not incompatible with [UNCLOS]*" under Article 293 UNCLOS.²⁸¹ It does so on the basis that the Marshall Islands is not a party to the Yaoundé Code and that the Code is not an "*agreement*", but only a "*non-binding code of conduct*".²⁸² The point made by the Marshall Islands is moot as, under Article 293, dispute resolution bodies under UNCLOS have applied both non-binding international instruments and treaties to which only one of the disputing States was party.²⁸³
151. For example, in *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, the Seabed Disputes Chamber referred explicitly to the Rio Declaration on Environment and Development (a similarly non-

²⁷⁷ Reply, ¶ 227.

²⁷⁸ *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), p. 431, ¶ 24.

²⁷⁹ Notably, these "*other rules of international law*" are particularly understood to refer to "*treaties concerning the repression of transnational organized crimes that further develop the rules and principles codified in Arts. 99-110*". See *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), p. 455, ¶ 22 (original emphasis).

²⁸⁰ Reply, ¶ 87.

²⁸¹ Reply, ¶ 93.

²⁸² Reply, ¶ 95.

²⁸³ Note, unlike Article 31(2) VCLT, Article 293 UNCLOS does not contain reference to rules "*between the parties*", but only those "*not incompatible with this Convention*".

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binding instrument) in determining what constituted a "*precautionary approach*".²⁸⁴ Similarly, the Tribunal in *Barbados v the Republic of Trinidad and Tobago* relied on other international treaties, including those between one party and a third State for determination of the limits of the respondent's entitlement to maritime areas.²⁸⁵

152. Second, the Marshall Islands claims more generally that the Yaoundé Code cannot be relevant as the Marshall Islands is not a party to the Code. However, this mischaracterises the relevance of the Code itself. The Code represents the commitments made by signatory States in Central and West Africa²⁸⁶ (almost all of which are UNCLOS parties) on the agreed modalities and methods by which they will operationalise and implement, *inter alia*, certain UNCLOS provisions within the context of the regional maritime security architecture. Accordingly, Marshall Islands-flagged vessels present in the maritime zones of Central and West African States who are parties to the Yaoundé Code may be subject to the Code, as was the case here.
153. The Marshall Islands further contests that the Yaoundé Code cannot be considered "*subsequent practice*" in the interpretation of UNCLOS under Article 31(3)(b) VCLT.²⁸⁷ However, it is unclear on precisely what basis the Marshall Islands makes this assertion. Practice by signatory States under the Code itself can, and does, form "*subsequent practice*" under this provision in its regional context.²⁸⁸
154. In any event, such practice qualifies as a supplementary means of interpretation according to Article 32 VCLT.²⁸⁹ This provision includes "*agreements and practice among a subgroup of parties to a treaty not falling within the ambit of authentic interpretation in Article [31(3)(b)]*".²⁹⁰ The extent to which such means will aid the process of interpretation depends on "[t]heir cogency, in particular on their accessibility, their direct relevance for the treaty terms at issue, the consistency among the means found, the number of parties involved in the evolution of the particular means, and the reactions of the other parties thereto".²⁹¹

²⁸⁴ *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10, ¶¶ 125-131. See also *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), p. 1895, ¶ 7.

²⁸⁵ In *PCA, Barbados v Trinidad and Tobago* - Award of the Arbitral Tribunal, 11 April 2006, ¶¶ 345-347, the Tribunal took into account the 1990 Trinidad-Venezuela Agreement, "*while not binding on Barbados*", to establish "*the southern limit of Trinidad and Tobago's entitlement to maritime areas*". While recognising that the said treaty did not affect the rights of third parties, the Tribunal recognised the agreement was "*res inter alios acta in respect of Barbados and every other country*", and that it was "*bound to take into account this treaty, not as opposed in any way to Barbados or any other third country, but in so far as it determines what the maritime claims of Trinidad and Tobago might be*". See also *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), p. 1895, ¶ 8.

²⁸⁶ Parties to the Yaoundé Code are: Angola, Benin, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Republic, Chad, Congo, Cote d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Gabon, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Sao Tome and Principe, Senegal, Sierra Leone and Togo. All are parties to UNCLOS, with the exception of Burundi and the Central African Republic, who are signatories only.

²⁸⁷ **Reply**, ¶ 95.

²⁸⁸ Paragraph 3(b) of Article 31 of the VCLT concerns "*any subsequent practice in the application of the treaty*", and requires some "*active practice of some parties to the treaty*", with a degree of consistency and frequency. *The subsequent practice must "establish the agreement of the parties regarding its interpretation"*. See Mark E Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, p. 432, ¶ 22.

²⁸⁹ Mark E Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, p. 432, ¶ 22.

²⁹⁰ Mark E Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, p. 446, ¶ 5.

²⁹¹ Mark E Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, p. 446, ¶ 6.

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155. Given the clear link between UNCLOS' anti-piracy provisions and the content of the Yaoundé Code, including the reference in the preamble of the Yaoundé Code, the practice of its signatory States in anti-piracy cooperation is "*subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation*" under Article 31(3)(b), or, in the alternative, is a supplementary means of interpretation under Article 32 of the VCLT. The consistent and growing body of practice by signatory States evidences a clear, consistent and growing practice of its signatory States in giving effect to UNCLOS' provisions, in their regional circumstances, including to counter piracy.

CHAPTER 5

STATEMENT OF LAW ON THE MERITS

I. Equatorial Guinea acted in accordance with its duty to cooperate to suppress piracy and did not breach freedom of navigation or exclusive flag State jurisdiction

156. As set out in Equatorial Guinea's Counter-Memorial, Equatorial Guinea did not breach the principles of freedom of navigation or exclusive flag State jurisdiction, as set out in Articles 87, 90 and 92 UNCLOS.²⁹² Lawful measures pursuant to UNCLOS' anti-piracy provisions (which are consistent with commitments of cooperation under regional arrangements such as the Yaoundé Code) are recognised exceptions to these two principles, and acting under them, where exercising reasonableness and due regard, cannot breach these principles. Therefore, Equatorial Guinea acted in accordance with its duty to cooperate to suppress piracy and consequently did not breach freedom of navigation or exclusivity of flag State jurisdiction.
157. The Marshall Islands makes arguments in its Reply that:
- a) Equatorial Guinea had no grounds to conclude, on the basis of information available at the time, that the *Heroic Idun* was a vessel suspected of piracy; and
 - b) Equatorial Guinea did not act consistently with UNCLOS and international law in seizing the *Heroic Idun*, diverting it into Equatorial Guinea, detaining it and its crew, and ultimately transferring them into the custody and control of Nigeria.²⁹³
158. However, in making its arguments on piracy and the exercise of powers under UNCLOS and the Yaoundé Code, the Marshall Islands fails to adequately address the contemporary factual and informational context in which Equatorial Guinea acted, and the right (and indeed, duty) that it had to rely upon the informational and factual assessments made by Nigeria in relation to the *Heroic Idun* and its activities.
159. In particular, the Marshall Islands fails to address the proper appreciation that must be given to States' cross-border cooperation to combat piracy and the maintenance of the international rule of law in areas outside the territorial sea, and the important deterrent effect of inter-State cooperation on piracy. In particular, it does not acknowledge the connection between piracy and illegal oil bunkering in the Gulf of Guinea, and why a suspicion of piracy reasonably arose for Equatorial Guinea when alerted about potential oil theft by a large vessel such as the *Heroic Idun*.²⁹⁴
160. Subsection A below explores the relevance and application of the Yaoundé Code and Article 100 UNCLOS. Subsection B sets out why the Marshall Islands' particular interpretation of UNCLOS' anti-piracy provisions is flawed and unrealistic. Subsection C outlines why, in the circumstances, Equatorial Guinea's conduct was justified under UNCLOS and in light of the Yaoundé Code, and that it accordingly did not breach either the principles of freedom of navigation or of exclusive flag State jurisdiction.

²⁹² Counter-Memorial, ¶ 231.

²⁹³ Reply, ¶ 101 (a)-(b).

²⁹⁴ Second Witness Statement of Captain Juan Nsue Esono Nchama, 20 March 2025, REG-WS-007, ¶¶ 6-9.

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A. Relevance and application of Article 100 UNCLOS and the Yaoundé Code

161. In its Counter-Memorial, Equatorial Guinea set out the obligation of all States to cooperate in the repression of piracy under Article 100 of UNCLOS. Article 100 UNCLOS cannot be conditional upon a State waiting on confirmation that an act of piracy has – in fact – already occurred. This would render redundant international legal obligations and commitments made by States in relation to piracy.²⁹⁵
162. In its Reply, the Marshall Islands asserts that "*Article 100 is simply not engaged on the facts*".²⁹⁶ This is incorrect. Article 100 is central to this case, for the four reasons set out below.
163. First, Article 100 forms the rightful foundation for inter-State cooperation to combat piracy in areas vulnerable to its effects, such as the Gulf of Guinea. The duty in Article 100 is one of cooperation, which international law recognises as providing States significant discretion in implementation. Depending on specific circumstances, cooperation may take many forms, and, as the Marshall Islands notes, offers significant latitude to States in implementation.²⁹⁷
164. Although Article 100 does not *require* pursuit and capture of suspected pirate vessels *per se*, such conduct is exactly the type of cooperation that Article 100 contemplates. In this regard, the ILC Special Rapporteur notes that:

*Article 100 of the United Nations Convention on the Law of the Sea seems to offer a solid legal basis for undertaking any physical pursuit of a pirate ship and any legal proceedings on the basis of universal jurisdiction, as established in customary international law and codified by article 105 of the Convention. While article 100 provides that all States shall cooperate to the fullest possible extent in the repression of piracy, it might be inferred that this provision merely consolidates the required legal basis for States to exercise universal jurisdiction in relation to the repression of piracy, which appears to be the only international crime to date for which such jurisdiction is recognized and "accepted in international law".*²⁹⁸

165. Second, Article 100 offers broad, fact-specific discretion to States to decide, and implement accordingly, *precisely how* to operationalise joint efforts to respond to and repress threats of piracy according to appropriate national, regional and global dynamics and in light of the circumstances in each instance. As the Marshall Islands

²⁹⁵ For example, as argued by Italy in "*Enrica Lexie*", such an interpretation would render the obligation "meaningless and inoperable". See *The "Enrica Lexie" Incident (Italy v. India)*, PCA Case No. 2015-28, Award, 21 May 2020, ¶ 712.

²⁹⁶ Reply, ¶ 146.

²⁹⁷ Reply, ¶¶ 154-156.

²⁹⁸ International Law Commission, *First report on prevention and repression of piracy and armed robbery at sea*, Yacouba Cisse, Special Rapporteur, A/CN.4/758, 22 March 2023, ¶ 54. The Special Rapporteur goes on to note "*However, the Security Council, addressing piracy off the coast of Somalia, in 2008 gave article 100 a much broader and more binding interpretation in the French version of its resolution, referring to "une coopération aussi totale que possible dans la répression de la piraterie". This wording suggests a legal obligation to cooperate with a view to pursuing a ship when there are reasonable grounds to believe that it is a pirate ship*".

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notes, Article 100 is an obligation of conduct.²⁹⁹ The ambit of Article 100 authorises a wide range of cooperation between States to counter piracy, which States may choose to implement and operationalise in the manner they deem to be suitable and effective in the circumstances, in line with their international obligations.³⁰⁰

166. In this regard, Equatorial Guinea respectfully requests the Chamber to consider the authority cited by the Marshall Islands. The ICJ held in *Bosnian Genocide* that:

*In this area the notion of "due diligence", which calls for an assessment in concreto, is of critical importance. [...] The State's capacity to influence [the action of persons likely to commit, or already committing, genocide] must also be assessed by legal criteria, since it is clear that every State may only act within the limits permitted by international law; seen thus, a State's capacity to influence may vary depending on its particular legal position vis-à-vis the situations and persons facing the danger, or the reality, of genocide.*³⁰¹

167. In addition to emphasising that a State's obligation to cooperate in the repression of a crime must be consistent with international law, the ICJ also recognised the importance to be accorded to the State's "capacity to influence", which may vary depending on its legal position. Here, Equatorial Guinea was a signatory party to the Yaoundé Code together with Nigeria, and due to its proximity and to the geographical area where the *Heroic Idun* was travelling, as well as its operational ability to respond rapidly to maritime security requests from Nigeria, it had a significant "capacity to influence" in the repression of suspected piracy, whether positively or negatively. Indeed, for Equatorial Guinea to refuse the request when it was likely the only State that could have taken such enforcement action against the *Heroic Idun* would have amounted to a breach of its commitments under the Code³⁰² and its obligations under Article 100 of UNCLOS, and risked the encouragement of piracy in the Gulf of Guinea.
168. Third, regional approaches to combatting piracy (such as that set out under the Yaoundé Code) are likely to be the most effective:

If piracy is considered to be a "geographical" crime or a "geographically localized" crime because it is committed in maritime zones or regions that are clearly defined by law, it could be inferred that regional maritime governance of the seas and oceans might be one of the most appropriate solutions. A regional approach to the search for appropriate solutions for the prevention and repression of crimes of piracy and armed robbery at sea, and other related forms of crime,

²⁹⁹ Reply, ¶¶ 149.

³⁰⁰ Equatorial Guinea does not suggest that Article 100 confers enforcement powers independent of a recognised legal source in international law, nor that it "exempts" States from the obligation to comply with UNCLOS and international law. Equatorial Guinea has maintained that it had a lawful basis to seize the *Heroic Idun*, and that the manner in which it did so was lawful.

³⁰¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, 26 February 2007, ¶ 430, as cited in Reply, ¶ 151(b).

³⁰² See, for example, Witness statement of Captain Juan Nsue Esono Nchama, 10 July 2024, REG-WS-001, ¶ 10.

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*seems to the Special Rapporteur to be the most effective and pragmatic way forward.*³⁰³

169. The importance of regional approaches to combatting piracy (such as the Yaoundé Code) have been well recognised internationally, including by UN bodies, the IMO and the ILC Special Rapporteur.
170. In 2022, the UN Secretary General confirmed the importance of regional cooperation, by noting that the reduction in piracy incidents in the Gulf of Guinea was underpinned by a series of factors, including "*increased naval patrols by the Nigerian Navy, coupled with improved cooperation with regional counterparts*".³⁰⁴ The UN Secretary General recognised the Yaoundé Architecture "*as the most appropriate regional framework to coordinate and strengthen counter-maritime crime efforts in the Gulf of Guinea*"³⁰⁵ and expressed his "*sincere gratitude to [...] the entities of the Yaoundé Architecture [...] for the contributions that they have made to countering piracy and armed robbery at sea in the Gulf of Guinea over the past decade*".³⁰⁶
171. The same year, the UNSC:
- a) welcomed "*the initiatives already taken by regional organizations, including ECCAS, ECOWAS and GGC, to enhance maritime safety and security in the Gulf of Guinea, in particular the [Yaoundé Code of Conduct]*";
 - b) recalled "*that the signatories to the Yaoundé Code of Conduct have expressed their commitment to arrest, investigate and prosecute persons who have committed acts of piracy, as well as seizing pirate ships, and rescuing ships, persons and property subject to piracy*";
 - c) encouraged "*the full and effective implementation of the [Yaoundé] Code of Conduct with a view to eradicating illegal activities off the coast of West and Central Africa*"; and
 - d) further encouraged "*regional organizations, including the AU, ECCAS, ECOWAS, GGC, the Maritime Organization for West and Central Africa, the Fisheries Committee for the West Central Gulf of Guinea, as well as the Maritime Domain Awareness for Trade – Gulf of Guinea mechanism, to enhance subregional, regional and international cooperation on maritime safety and*

³⁰³ International Law Commission, *First report on prevention and repression of piracy and armed robbery at sea*, Yacouba Cisse, Special Rapporteur, A/CN.4/758, 22 March 2023, pp. 24-25.

³⁰⁴ United Nations Security Council, "*Situation of piracy and armed robbery at sea in the Gulf of Guinea and its underlying causes, Report of the Secretary-General*", S/2022/818, 1 November 2022, **REG-003**, ¶ 7.

³⁰⁵ United Nations Security Council, "*Situation of piracy and armed robbery at sea in the Gulf of Guinea and its underlying causes, Report of the Secretary-General*", S/2022/818, 1 November 2022, **REG-003**, ¶ 54.

³⁰⁶ United Nations Security Council, "*Situation of piracy and armed robbery at sea in the Gulf of Guinea and its underlying causes, Report of the Secretary-General*", S/2022/818, 1 November 2022, **REG-003**, ¶ 65. See also United Nations Peacebuilding Commission, "*Chair's Summary of Ambassadorial-Level Meeting on Strengthening Peacebuilding and the Implementation of the Regional Maritime Security Framework in the Gulf of Guinea*", 19 May 2023, **REG-086**, p. 1, in which the Chair of the UN Peacebuilding Commission "*commended the Gulf of Guinea States for continued commitment to the full operationalization of the Yaoundé Architecture*" and "*noted the steady decrease in instances of piracy and armed robbery at sea since April 2021*".

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*security in the Gulf of Guinea and to further operationalize the Yaoundé architecture".*³⁰⁷

172. Similarly, in mid-2023, the UN Assistant Secretary-General for Africa in the Departments of Political and Peacebuilding Affairs and Peace Operations: recognised that "*instances of piracy and armed robbery at sea in the Gulf of Guinea have continued to steadily decline*" and that a "*key factor that has contributed to that positive trend is the ongoing operationalization of the interregional maritime security mechanism, the Yaoundé Architecture*".³⁰⁸
173. Likewise, the ILC's Special Rapporteur has also highlighted that a "*remarkable decline [in piracy] has also been seen in the Gulf of Guinea, a region particularly badly affected by piracy over the last decade. This improvement is attributable, in particular, to the various anti-piracy measures taken in the region*".³⁰⁹ However, constant vigilance and prompt reactivity is necessary to maintain this situation. As recognised by the Special Rapporteur, "[t]he very significant global reduction in incidents of maritime piracy and armed robbery at sea calls for vigilance, given that piracy has proven to be a cyclical crisis, liable to re-emerge at any moment under the right conditions for its commission".³¹⁰
174. Additionally, the IMO has also acknowledged "*the leadership role and responsibility of the States of the Gulf of Guinea to counter piracy, armed robbery against ships and illicit activity in their region*" and appealed to States in the region to "*take all measures possible within the provisions of international law, to ensure that [...] all acts or attempted acts of piracy, armed robbery against ships and other illicit maritime activities are terminated forthwith*".³¹¹ The implementation of the Yaoundé Code remains current in IMO Resolutions on this topic.³¹²
175. Fourth, the preamble to the Yaoundé Code makes clear that it is inspired by Article 100 of UNCLOS in the countering of piracy, armed robberies and illicit activities at sea. As noted above, any interpretation of Article 100 must consider regional context and "*subsequent practice in the application of the treaty*" under Article 31(3)(b) VCLT or, in the alternative, Article 32 VCLT.³¹³
176. As noted above, it does not matter that the Marshall Islands is not a party to the Yaoundé Code. Rather, the Code represents the commitments made by signatory States³¹⁴ in Central and West Africa on the agreed modalities and methods by which they will

³⁰⁷ United Nations Security Council, Resolution 2634, S/RES/2634 (2022), 31 May 2022, **REG-031**.

³⁰⁸ United Nations Security Council, 9355th meeting, S/PV.9355, 21 June 2023, **REG-032**, p. 2.

³⁰⁹ International Law Commission, *First report on prevention and repression of piracy and armed robbery at sea*, Yacouba Cisse, Special Rapporteur, A/CN.4/758, 22 March 2023, ¶ 15.

³¹⁰ International Law Commission, *First report on prevention and repression of piracy and armed robbery at sea*, Yacouba Cisse, Special Rapporteur, A/CN.4/758, 22 March 2023, ¶ 25.

³¹¹ International Maritime Organisation, "*Prevention and Suppression of Piracy, Armed Robbery Against Ships and Illicit Maritime Activity in the Gulf of Guinea*", Resolution No. A.1159(32), 28 January 2022, **REG-087**.

³¹² International Maritime Organization Legal Committee, "*Developments related to piracy and armed robbery against ships*", LEG 112/7, 13 January 2025, **REG-088**

³¹³ See above at ¶¶ 153-154.

³¹⁴ Parties to the Yaoundé Code are Angola, Benin, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Republic, Chad, Congo, Cote d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Gabon, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Sao Tome and Principe, Senegal, Sierra Leone and Togo. All are parties to UNCLOS, with the exception of Burundi and the Central African Republic, who are signatories only.

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operationalise and implement, *inter alia*, certain UNCLOS provisions within the context of the regional maritime security architecture.³¹⁵

177. While the Yaoundé Code does not purport to provide legal powers additional to those contained in UNCLOS, it establishes serious and significant undertakings between signatory States of the commitments to cooperate to the "*fullest possible extent in the repression of transnational organized crime in the maritime domain, maritime terrorism, IUU fishing and other illegal activities at sea with a view*" towards, *inter alia*, "*interdicting ships and/or aircraft suspected of engaging in in transnational organized crime in the maritime domain, maritime terrorism, IUU fishing and other illegal activities at sea*".³¹⁶ This is pursuant to and perfectly consistent with Articles 100, 105 and 110 UNCLOS.
178. The term "*transnational organized crime in the maritime domain*" under the Code is broad, and includes piracy, armed robbery at sea, illegal oil bunkering, crude oil theft, and vandalism of offshore oil infrastructure.³¹⁷ This aligns with the well-known connection between piracy and other criminal maritime activity at sea, as explained by Captain Nsue Esono Nchama.³¹⁸ Specifically regarding piracy, signatory States undertake to cooperate in "*seizing pirate ships and/or aircraft and the property on board such ships and/or aircraft*" and "*arresting, investigating, and prosecuting persons who have committed piracy or are reasonably suspected of committing piracy*".³¹⁹
179. Equatorial Guinea maintains that the Code remains opposable between Nigeria and Equatorial Guinea, and gives rise to understandings that signatory States may take to give effect to their obligations under UNCLOS, including those regarding cooperation in the repression of piracy under Article 100.
180. Accordingly, Marshall Islands-flagged vessels present in the maritime zones of Central and West African States who are parties to the Yaoundé Code may be dealt with pursuant to the Code, as was the case here. Indeed, prompt and responsive maritime cooperation between States in the region is essential to maintaining lawful and safe uses of the sea by all vessels, including those of the Marshall Islands.
181. Finally, the Yaoundé Code has catalysed a plethora of inter-State cooperation between signatory parties, including the tracking and intercepting of suspected vessels. Such requests can be made through the formal Yaoundé Architecture, or through agreements

³¹⁵ See, Chatham House, *Piracy and Legal Issues: Reconciling Public and Private Interests*, Africa Programme and International Law Conference Report, 1 October 2009, p. 44, which notes in relation to the (similar) Djibouti Code of Conduct, that "[o]bviously, given the Code's non-binding status and express intention not to alter existing law, it does not create any new powers of enforcement, but it does recognise the manner in which Participant States may cooperate to coordinate their existing legal authorities".

³¹⁶ 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(1)(b).

³¹⁷ See 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 1(5).

³¹⁸ Second Witness Statement of Captain Juan Nsue Esono Nchama, 20 March 2025, **REG-WS-007**, ¶ 6.

³¹⁹ See 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 6(1)(b) and (a).

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or ad hoc cooperation between signatory States.³²⁰ Publicly reported examples include the below.

- a) In December 2018, the Ghanaian Navy reported suspicious vessels it believed were bunkering oil in waters near its border with Côte d'Ivoire. This information was shared with the Multinational Maritime Coordination Centre Zone F in Accra and to the CRESMAO (a core part of the Yaoundé Code) in Abidjan. CRESMAO alerted the Côte d'Ivoire Navy, which intercepted the vessels.³²¹
- b) On 14 May 2020, pirates attacked and seized the Chinese fishing trawler *Hailufeng 11* in the Ivorian exclusive economic zone. Through "*rapid and engaged cooperation among a number of different African states and institutions*", including among the navies of Côte d'Ivoire, Ghana, Togo, Benin and Nigeria, the vessel was tracked, and the Nigerian Navy was able to interdict it only two days later on 16 May 2020.³²² Coordination was provided by the Yaoundé Code.
- c) In March 2023, pirates attacked the *Monjasa Remormer* off the coast of the Democratic Republic of Congo. The CRESMAC cooperated with its respective centres, and the MMCC Zone F under the Yaoundé Code acted in response to find and take control of the vessel, with the support of the international naval resources present.³²³
- d) In April 2023, the *Success 9* vessel was subject to a pirate attack off the coast of Côte d'Ivoire. Again, the MMCC Zone F acted in cooperation with the centres and with the support of the international naval resources present. The vessel and crew were ultimately located safely.³²⁴

B. UNCLOS' anti-piracy framework and powers are broad and accord States discretion in their implementation

- 182. International law has long recognised the scourge of piracy as a threat to freedom of navigation and maritime security and the prohibition on piracy is a well-recognised norm of international law. To this end, UNCLOS sets out both rights and duties of States in the suppression of piracy, including the recognition of universal and extraterritorial enforcement jurisdiction against piracy.
- 183. In its Reply, the Marshall Islands asserts that the relationship between the enforcement powers in Articles 110 and 105 is, exclusively, one of progression, i.e., that "[i]f *there is a suspicion on reasonable grounds that a ship may be engaged in piracy, it may be visited under Article 110. If the vessel is confirmed to be a pirate ship within the*

³²⁰ A visual diagram of the formal Yaoundé Architecture is shown in Yaoundé Architecture Regional Information System, "*Yaoundé architecture*", **REG-061** and Africa Center for Strategic Studies, "*Africa Center Alumni: A Key Force Behind the 2013 Yaoundé Code of Conduct*", **REG-062**.

³²¹ Dryad Global, "*Yaoundé Code of Conduct taking shape in the Gulf of Guinea*", 5 August 2020, **REG-089**.

³²² The Maritime Executive, "*Nigerian Navy Thwarts Hijacking of Chinese Fishing Vessel*", 17 May 2020, **REG-090**.

³²³ Yaoundé Architecture Regional Information System, "*Effective cooperation during pirate attacks, thanks to YARIS*", 25 April 2023, **REG-091**.

³²⁴ Yaoundé Architecture Regional Information System, "*Effective cooperation during pirate attacks, thanks to YARIS*", 25 April 2023, **REG-091**.

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*meaning of Article 103, only then do Article 105 powers of seizure become available".*³²⁵

184. According to this interpretation, the ability of a State to exercise the powers of seizure as set out in Article 105 is exclusively, and entirely, conditional upon the prior exercise of the right of visit in Article 110. On this approach, a State could not – under any circumstances – exercise the right of seizure on another basis, and without exhaustion of the rights and processes set out in Article 110, and confirmation that the vessel in question is a "*pirate ship*" within the meaning of Article 103. Such an interpretation is incorrect, for the four reasons set out below.
185. First, the Marshall Islands' interpretation of these Articles is not supported by the text of the Articles. Both Articles make no explicit connection to each other. Nowhere does Article 105 make any mention or reference to such powers of seizure only being exercisable once the process for visit provided for in Article 110 has been used and exhausted. Similarly, Article 110 itself makes no reference to Article 105, or the right to visit being necessary or required prior to any further action under UNCLOS. Indeed, Article 105 appears prior to Article 110 in UNCLOS, which does not naturally accord with a "progressive" reading of the Articles put forward by the Marshall Islands.
186. Under the VCLT, treaties must be interpreted "*in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose*".³²⁶ The terms of these Articles plainly do not provide for the express exercise of a right of visit and confirmation of a "*pirate ship*", prior to any exercise of the right of seizure in Article 105. Further, in light of their context, in which States are given broad discretion regarding the exercise of anti-piracy enforcement powers under UNCLOS, nor can such a condition be implied. The object and purpose of this part of UNCLOS is plainly to set out States' rights and obligations in relation to piracy, but leave significant discretion to States as to how such broadly phrased duties may be implemented or operationalised.
187. In particular, Article 105 is of central importance, as it is "*the only example of universal extra-territorial enforcement jurisdiction in international law*".³²⁷ This provision – unlike any other in UNCLOS – explicitly affords States the power to exercise enforcement jurisdiction over a crime subject to universal jurisdiction. Any absolute preconditions or prerequisites to the exercise of such a power would naturally be subject to *express*, rather than implicit, conditions. No such express conditions can be found in the text of Articles 105 or 110. In these circumstances, it would be wholly improper to read in strict conditions or prerequisites that are not, on the face of the text, required.
188. Equatorial Guinea's interpretation of Articles 100-110 of UNCLOS is also consistent with the predecessors of these provisions, contained in Articles 14 – 22 of the 1958 Geneva Convention.³²⁸ The terms of these provisions in the 1958 Geneva Convention similarly did not provide for exercise of the right of visit under its Article 22 before a State was able to exercise powers of seizure under Article 19. The 1958 Geneva Convention was, in turn, drafted based upon the work of the ILC in its Articles

³²⁵ **Reply**, ¶ 113 (emphasis added).

³²⁶ Vienna Convention on the Law of Treaties 1969, Article 31(1).

³²⁷ *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), p. 750, ¶ 1.

³²⁸ 1958 Geneva Convention on the High Seas, Articles 14-22.

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concerning the Law of the Sea.³²⁹ These Articles and commentaries,³³⁰ similarly, contain no explicit or implicit endorsement for the interpretation put forward by the Marshall Islands, or state in any way that the right of seizure must only follow the exercise of a right of visit and confirmation of the existence of a "*pirate ship*". While UNCLOS stands as its own treaty, it is telling that the prior articulation of its rules in the 1958 Geneva Convention and the work of the ILC are consistent in this regard.

189. Second, other sources of guidance on UNCLOS and its anti-piracy provisions provide no support for the interpretation advanced by the Marshall Islands. For example:

- a) No such interpretation is found in the two pre-eminent academic commentaries to UNCLOS,³³¹
- b) The Secretariat of UNCLOS, the UN Division for Ocean Affairs and the Law of the Sea, which has a mandate to, *inter alia*, "*provide information and advice on the uniform and consistent application of the provisions of UNCLOS, including those relevant to the repression of piracy*"³³² confirms that the right of visit under Article 110 is not a prior requirement to the exercise of enforcement powers under Article 105:

*UNCLOS provides that all States have an obligation to cooperate to the fullest possible extent in the repression of piracy (art. 100) and have universal jurisdiction on the high seas to seize pirate ships and aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board (art. 105). Article 110, inter alia, also allows States to exercise a right of visit vis-à-vis ships suspected of being engaged in piracy.*³³³

- c) A 2011 IMO circular concerning information and guidance on elements of international law relating to piracy prepared by the IMO Secretariat, the UN Division for Ocean Affairs and the Law of the Sea, the UN Office on Drugs and Crime and the Government of Ukraine was issued in order to assist "*States which were either developing national legislation on piracy, or reviewing existing legislation on piracy*".³³⁴ It concerns enforcement measures under Article 105 in conjunction with Articles 100 to 107 but, unsurprisingly, makes no mention of the right of visit under Article 110 – and confirmation that a vessel is a pirate ship

³²⁹ *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), p. 734, ¶ 1.

³³⁰ See International Law Commission, Articles concerning the Law of the Sea with Commentaries, 1956, Articles 38-45 on piracy, and Article 46 on the Right of Visit.

³³¹ *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), nor *United Nations Convention on the Law of the Sea 1982: A Commentary*, eds. Myron H Nordquist et al (Martinus Nijhoff, 2002),

³³² United Nations Division for Oceans Affairs and the Law of the Sea, "*Piracy Under International Law*", 21 June 2024, **REG-092**.

³³³ See United Nations Division for Oceans Affairs and the Law of the Sea, "*Legal Framework for the Repression of Piracy Under UNCLOS*", 21 June 2024, **REG-093** (emphasis added). The use of "*also*" implies that this power is additional to, rather than a prerequisite for, the exercise of enforcement powers under Article 105.

³³⁴ International Maritime Organization, "*Circular letter concerning information and guidance on elements of international law relating to piracy*", Circular Letter No. 3180, 17 May 2011, **REG-094**, p. 1.

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– as a prior requirement to the exercise of enforcement powers under Article 105.³³⁵

- d) The UN Office of Drugs and Crime Maritime Crime Manual similarly makes no express or implied reference to the right of visit under Article 110 – and confirmation that a vessel is a pirate ship – as a prior requirement to the exercise of enforcement powers under Article 105.³³⁶

- 190. Other expert authors note that the powers in Article 105 are "*additional to*", rather than contingent upon, those in Article 110.³³⁷
- 191. Third, the Marshall Islands' interpretation is neither realistic nor achievable in many circumstances. States have an obligation under Article 100 of UNCLOS to cooperate in the repression of piracy. To comply with this obligation, States must jointly operationalise their anti-piracy efforts by taking measures that allow them to effectively counter piracy, including initial intelligence-gathering, surveillance, pursuit, visit, investigation, interception, arrest, seizure, prosecution, and enforcement of criminal penalties. Indeed, most modern anti-piracy measures have been examples of effective inter-State cooperation.³³⁸
- 192. In many circumstances, it is neither realistic nor feasible for one State to unilaterally carry out all such activities – nor are small States particularly equipped or resourced to do so. Nor is it realistic – or well supported – to hold that a State must obtain absolute confirmation of the existence of a "*pirate ship*" before it may seize the vessel under Article 105.
- 193. In many cases – such as here – a State may exercise powers of arrest or seizure, acting upon another State's request, including its prior investigation or indeed visit to the vessel concerned. Often, the requested State will need to act quickly in order to maximise chances of effective seizure and law enforcement, and will certainly not allow sufficient time for the requested State to confirm with certainty the nature of the suspected activities leading to the request. Therefore, it would be unrealistic to hold that the right of seizure by a State must only follow the exercise of a right of visit and confirmation of the existence of a "*pirate ship*" by that same State.

³³⁵ International Maritime Organization, "*Circular letter concerning information and guidance on elements of international law relating to piracy*", Circular Letter No. 3180, 17 May 2011, **REG-094**, pp. 11-12. The document notes "*National legislation on piracy may incorporate the necessary provisions to authorize the enforcement measures set forth in article 105 of UNCLOS. In addition, in accordance with article 110 of UNCLOS, national legislation may authorize warships or military aircraft or other ships or aircraft "clearly marked and identifiable as being on government service" and duly authorized to that effect, to implement the right of visit where there are reasonable grounds for suspecting that a foreign ship is engaged in piracy*" (emphasis added).

³³⁶ See United Nations Office on Drugs and Crime, *Maritime Crime: a Manual for Criminal Justice Practitioners*, Second Edition (United Nations, 2019), Part III, Chapter 9.

³³⁷ Dr Waseem Ahmad Qureshi, "The Prosecution of Pirates and the Enforcement of Counter-Piracy Laws Are Virtually Incapacitated by Law Itself" San Diego Int'l L.J. 19 (2017), p. 95, p. 116. Similarly, former Judge Tullio Treves makes no mention that Article 105 is conditions upon the exercise of powers under Article 110 (see Tullio Treves, "Piracy and the international law of the sea", *Modern Piracy*, ed. Douglas Guilfoyle (Edward Edgar Publishing Limited, 2013), pp. 120-122).

³³⁸ For example, the UNSC resolutions targeting piracy in Somali waters, the Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, and the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia.

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194. Rather, the plain and logical interpretation under UNCLOS is that a State may exercise the powers in Article 105 when it holds a reasonable suspicion of piracy. This is supported by, for example, the first report by the ILC's Special Rapporteur on prevention and repression of piracy and armed robbery at sea. He notes that:

*States have a right and not an obligation to pursue the pirate ship. The **arrest and seizure of a ship on suspicion of piracy** may be effected [...] if the pursuing State **has reasonable grounds for suspecting that the ship is engaged in piracy**.*³³⁹

195. The UNODC Maritime Crime Manual also confirms that:

*[i]t is clear that if an authorized vessel encounters a suspected pirate vessel in international waters article 105 is still applicable. This means that the authorized vessel **may still seize that vessel as a suspected pirate vessel even though it has not actually observed or found any other evidence of that vessel committing an act of piracy under article 101(a)**.*³⁴⁰

C. Equatorial Guinea's conduct was justified under UNCLOS and in light of the Yaoundé Code

196. The Marshall Islands contends that Equatorial Guinea has failed to establish that apprehension of the *Heroic Idun* was done on grounds of piracy,³⁴¹ which is characterised as an "*ex post facto*" construct.³⁴² This subsection first details the evolution and nature of modern piracy in the Gulf of Guinea, before then establishing why Equatorial Guinea's response was justified in the circumstances.
197. First, it is against the unique regional context surrounding piracy (including the close connection and associations between oil theft, illegal oil bunkering and piracy in the Gulf of Guinea) that Equatorial Guinea submits that the Chamber consider Nigeria's request and Equatorial Guinea's response.
198. The initial request from Nigeria does not set out comprehensively all details about the *Heroic Idun*'s activities or Nigeria's assessments of such, but does make clear that the Vessel:
- a) Was suspected of being involved in an illegal fuel supply operation;
 - b) Was suspected of illegal entry into Nigerian waters;
 - c) Was suspected of loading crude oil without approval/theft of crude oil;
 - d) Raised a false alarm of piracy; and

³³⁹ International Law Commission, *First report on prevention and repression of piracy and armed robbery at sea*, Yacouba Cisse, Special Rapporteur, A/CN.4/758, 22 March 2023, ¶ 35 (emphasis added).

³⁴⁰ United Nations Office on Drugs and Crime, *Maritime Crime: a Manual for Criminal Justice Practitioners*, Second Edition (United Nations, 2019), pp. 117-118 (emphasis added). This interpretation is also, plainly, inconsistent with the notion that a vessel must be "confirmed to be" a pirate ship within the meaning of UNCLOS, Article 103, before the powers of seizure in Article 105 become available.

³⁴¹ Reply, ¶ 130.

³⁴² Reply, ¶¶ 130-134.

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e) Fled Nigerian authorities.³⁴³

199. While UNCLOS – and its current definition of piracy – was adopted in 1982, it is clear that piracy "*has adapted to modern technological, political, economic and social developments and still exists, albeit in new forms which require new means for suppression*".³⁴⁴ Modern pirates have chosen to operate in certain areas – as one author notes, they:

*have abandoned the Caribbean as their favoured area of operation and now prefer other seas at the centre of major contemporary geopolitical challenges. At present, the main risk areas are concentrated around the Gulf of Guinea [...].*³⁴⁵

200. The characterisation and nature of piracy is also highly dependent on the region in question. As one author notes:

*[t]he modus operandi of pirates is often determined by the geographic location in which they operate, the sophistication of both their targets and the equipment, particularly weaponry, available to them. This means that piracy often gains characteristics based on its locale [...].*³⁴⁶

201. It is also widely acknowledged that piracy, insurgency and organised crime are "*overlapping activities*".³⁴⁷ In the Gulf of Guinea, there is a close and recognised link between piracy and illegal activities against the oil trade in the region:

Nigerian piracy – occurring in the region spreading from the inland waters of Nigeria to the waters off the coasts of Benin and Togo in the Gulf of Guinea in West Africa – has been characterised by greater incidents of violence, with the highest

³⁴³ See Request from Nigeria regarding *Heroic Idun* (WhatsApp messages), **REG-002** and Note No. 138/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 10 August 2022, **REG-019**.

³⁴⁴ International Law Commission, *First report on prevention and repression of piracy and armed robbery at sea*, Yacouba Cisse, Special Rapporteur, A/CN.4/758, 22 March 2023, ¶ 4. Another author notes, "*piracy was also not considered to be a problem when the UNCLOS was adopted, so the existing provisions were incorporated verbatim without serious deliberation of whether the law was a proper reflection of reality. The language that resulted from this limited attempt to understand modern piracy not only fails to accommodate modern forms of piracy textually, but the interpretation of the text has caused considerable debate. Commentators have been unable to agree on the parameters and limitations of the four elements despite their straightforward appearance at first glance*" (see M. Bob Kao "Against a Uniform Definition of Maritime Piracy", *MarSafeLaw Journal* 3 (2016), p. 7).

³⁴⁵ International Law Commission, *First report on prevention and repression of piracy and armed robbery at sea*, Yacouba Cisse, Special Rapporteur, A/CN.4/758, 22 March 2023, ¶ 5. Furthermore, "*the effect of piracy and armed robbery at sea in the Gulf of Guinea is multifaceted, with the region incurring direct, indirect and opportunity costs as a consequence of maritime insecurity. Interlinked with the other significant governance, security and socioeconomic challenges confronting the Gulf of Guinea States, piracy and armed robbery at sea threaten to hamper the long-term and sustainable development of the region*". See United Nations Security Council, "*Situation of piracy and armed robbery at sea in the Gulf of Guinea and its underlying causes, Report of the Secretary-General*", S/2022/818, 1 November 2022, **REG-003**, ¶ 9.

³⁴⁶ Lisa Otto and Leaza Jernberg "Maritime Piracy and Armed Robbery at Sea" in Lisa Otto (ed), *Global Challenges in Maritime Security*, Springer, 2020, p. 99 (emphasis added).

³⁴⁷ Chatham House, *Piracy and Legal Issues: Reconciling Public and Private Interests*, Africa Programme and International Law Conference Report, 1 October 2009, p. 4.

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*number killings compared to other regions. **The attacks centre on armed robbery and theft of cargo, particularly oil.** There is evidence that the tanker oil thefts are being facilitated by corrupt officials, and the pirates often claim to be redistributing the wealth generated by the oil trade, which adds a political dimension to the attacks.*³⁴⁸

202. This is a well-recognised and documented phenomenon. For example, the UNSC has noted the link between piracy and armed robbery at sea and transnational organised crime in the Gulf of Guinea, while it urged "*support for multilateral efforts for the development of an international framework to address issues of crude oil theft and piracy and armed robbery at sea*".³⁴⁹
203. The European Commission in 2022 also recognised the involvement of pirate groups in oil bunkering activities in the Niger Delta and the close link between piracy and maritime crimes more broadly,³⁵⁰ and that "[m]embers of pirate groups are now involved in the value chain of oil bunkering".³⁵¹ The Niger Delta, in particular, had seen a significant rise in oil bunkering in the previous two years.³⁵² Its findings noted that, for example, "[p]iracy and oil bunkering have also an international and regional reach, enabled by the vast networks of the criminal organisations standing behind these entities. These extremely wide cult groups in Southern Nigeria not only operate in the whole Western African region but they also reach Europe".³⁵³
204. Its report noted that:

*[i]t is clear that (deep offshore) piracy cannot be treated as a one-dimensional challenge isolated from several other structures. Rather, **piracy is better understood as a multifaceted phenomenon with a number of nuances and linkages to other structures, that are often not taken into consideration at first sight.***³⁵⁴

³⁴⁸ M. Bob Kao "Against a Uniform Definition of Maritime Piracy", MarSafeLaw Journal 3 (2016), p. 4.

³⁴⁹ United Nations Security Council, Statement by the President of the Security Council, S/PRST/2016/4, 25 April 2016, **REG-095**, pp. 1-2. The UN Office of Drugs and Crime also notes that "[o]il theft sits at the intersection of DO piracy and other maritime (and onshore) crimes in the Niger Delta. It is a complex economic crime that occurs at different locations (e.g., tapping from pipes, at refineries and during sea transport of refined product or crude oil). It involves actors at different levels" (see United Nations Office of Drugs and Crime, "Pirates of the Niger Delta II: An Update on Piracy Trends and Legal Finish in the Gulf of Guinea", November 2023, **REG-096**, p. 43).

³⁵⁰ European Commission, "Pirates and Oil Theft in the Niger Delta: An analysis of the connection between piracy and oil bunkering", December 2022, **REG-097**, p. 6.

³⁵¹ European Commission, "Pirates and Oil Theft in the Niger Delta: An analysis of the connection between piracy and oil bunkering", December 2022, **REG-097**, p. 13. See also, The Maritime Executive, "UN: Nigeria's Pirates Switch From Kidnapping Seafarers to Stealing Oil", 24 November 2022, "The Gulf of Guinea is witnessing a shift in the dynamics of piracy, with criminal networks moving away from targeting commercial maritime and switching to oil bunkering, theft and illegal fishing".

³⁵² European Commission, "Pirates and Oil Theft in the Niger Delta: An analysis of the connection between piracy and oil bunkering", December 2022, **REG-097**, p. 6.

³⁵³ European Commission, "Pirates and Oil Theft in the Niger Delta: An analysis of the connection between piracy and oil bunkering", December 2022, **REG-097**, p. 13.

³⁵⁴ European Commission, "Pirates and Oil Theft in the Niger Delta: An analysis of the connection between piracy and oil bunkering", December 2022, **REG-097**, p. 8 (emphasis added).

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205. The UNODC, similarly, recognises that:

*[t]here are strong indications to suggest that pirates are engaging in oil theft, especially at artisanal refining, but possibly also in the transportation at sea and protection thereof. This is partly because pirates bring both security and navigational value to other actors involved in oil theft. The pirates – especially those who operate within creeks – are armed and have very good geographical knowledge of the complex interlinked rivers and creeks. They are regularly hired to secure the different transfer phases.*³⁵⁵

206. Regionally, this is recognised in, for example, the 2016 African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter), which obliges States Parties to:

*cooperate and coordinate their actions in combating transnational organized crimes of all kinds including the circulation and trafficking of arms, maritime terrorism, drug trafficking, trafficking in protected species or of its trophies, money laundering and its predicate offences; acts of piracy and armed robbery against ships, taking of hostages at sea, theft of oil and gas.*³⁵⁶

207. Piracy is therefore understood to be closely connected with other illegal activities which it may form part of, including illegal oil bunkering – as also acknowledged by Captain Nsue Esono Nchama.³⁵⁷

208. Similarly, the size or capacity of a large carrier vessel is not an indicator of whether it can be used for piracy. For example, there is well-documented associated use of larger "mother ships" in the Gulf of Guinea to commit attacks further out at sea. As some experts have noted:

[t]he use of 'mother ships' that can launch smaller crafts, allows pirates to extend the range and endurance of their attacks and to operate far off the coast. Attacks as distant as 1,000 nautical

³⁵⁵ United Nations Office of Drugs and Crime, "Pirates of the Niger Delta II: An Update on Piracy Trends and Legal Finish in the Gulf of Guinea", November 2023, **REG-096**, p. 44.

³⁵⁶ African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter), Article 32.

³⁵⁷ As set out in the Witness Statement of Captain Nsue Esono Nchama, there is a "strong link between oil bunkering and piracy in the Gulf of Guinea". See Second Witness Statement of Captain Juan Nsue Esono Nchama, 20 March 2025, **REG-WS-007**, ¶¶ 6-7. The domestic legislation of States in the region also acknowledges, and sometimes does not differentiate, between piracy, armed robbery at sea, and related criminal activities. Summarising States' practice in the region, the ILC Special Rapporteur notes "Some statutes have made a clear distinction between piracy and armed robbery at sea. Others consider that piracy is in itself armed robbery at sea, or include the latter crime in the definition of piracy. The new elements of the definition not contained in article 101 include broader concepts such as 'maritime violence', 'watercraft' and 'any other maritime vehicle', acts of preparation or participation committed from a land territory, deviation of a ship, illegal exploitation of fishery resources, dissemination of false information on a ship or aircraft that endangers maritime safety, violation of people's rights, attack against a land territory from a ship or aircraft, hostage-taking and kidnapping, which are all illegal acts that can be considered crimes connected to or associated with piracy, or crimes constituting maritime piracy". See International Law Commission, *First report on prevention and repression of piracy and armed robbery at sea*, Yacouba Cisse, Special Rapporteur, A/CN.4/758, 22 March 2023, p. 100.

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*miles off shore have been reported, which allow the hijacking of larger vessels, including oil tankers.*³⁵⁸

*[...] merchant bulk carriers captured by pirates have reportedly been used as 'mother ships' for the purpose of carrying out acts of piracy further from the coastline. Thus, a great number of ships transiting the Gulf of Aden could, in some regards, be deemed to be suspicious.*³⁵⁹

209. These "mother ships" are often large oil or supply vessels which are used to re-fuel smaller vessels used for piracy when operating at large distances from shore. These "mother ships" actively support the operation of pirate vessels by enabling the latter to remain operative and fuelled for longer amounts of time and able to operate in targeted areas further offshore. Such "mother ships" have been used with greater frequency since 2010,³⁶⁰ and have been well-known to operate in the Gulf of Guinea.³⁶¹ VLCCs which have been hijacked by pirates in the past include the *MT Sirius Star* in 2008,³⁶² the *Maran Centaurus* in 2009,³⁶³ the *Irene SL* in 2011,³⁶⁴ the *Kalamos* in 2015³⁶⁵ and the *Nave Constellation* in 2019.³⁶⁶
210. It is in light of these factual connections between piracy, and oil bunkering and theft in the Gulf of Guinea that the request made by Nigeria would have given rise to a reasonable suspicion of piracy on the part of Equatorial Guinea. A State is able to exercise such powers on a reasonable suspicion of piracy, rather than waiting for confirmation that a vessel is, in fact, a pirate vessel. For the reasons set out below, such reasonable suspicion arose in relation to the *Heroic Idun*.³⁶⁷

³⁵⁸ Anna Petrig and Robin Geiß, *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden* (Oxford University Press, 2011), p. 10. See also Lisa Otto and Leaza Jernberg "Maritime Piracy and Armed Robbery at Sea" in Lisa Otto (ed), *Global Challenges in Maritime Security*, Springer, 2020, p. 99 (The second main type of piracy is "'the ransacking and robbery of vessels on the high seas or in territorial waters'. This type of piracy is considered medium-level armed robbery by the IMB as it involves 'violent thefts involving serious injury or murder by well-organised gangs who usually operate from a 'mother ship' and are equipped with modern weaponry'").

³⁵⁹ Anna Petrig and Robin Geiß, *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden* (Oxford University Press, 2011), p. 56

³⁶⁰ Priavo Security, "The Evolving Threat of Piracy in the Gulf of Guinea: Challenges and Future Outlook", 11 December 2024, **REG-098**.

³⁶¹ See, for example, Lloyd's List, "Mothership identified for Gulf of Guinea pirates", 30 December 2019, **REG-070**; Priavo Security, "The Evolving Threat of Piracy in the Gulf of Guinea: Challenges and Future Outlook", 11 December 2024, **REG-098**; Arete Group, "Has Nigeria's Piracy problem been solved?", 29 June 2022, **REG-099**; US Department of Transportation Maritime Administration, "Gulf of Guinea: Piracy, Armed Robbery, Kidnapping for Ransom", MSCI Advisory No. 2022-001, 1 April 2022, **REG-069**; Center for International Maritime Security (CIMSEC), "Pirate Horizons in the Gulf of Guinea", 10 January 2013, **REG-100**; U.S. Naval Institute, "Counterpiracy 2020 Maritime Security in the Gulf of Guinea", August 2020, **REG-101**.

³⁶² For example, in November 2008, it was reported that the VLCC *MT Sirius Star* was attacked some 450nm south-east of Mogadishu. See International Chamber of Commerce, "VLCC hijacked by pirates", 17 November 2008, **REG-102**.

³⁶³ Lloyd's List, "Oil spill fears over hijacked Maran VLCC", 11 December 2009, **REG-103**.

³⁶⁴ TradeWinds, "Lemos VLCC hijacked", 9 February 2011, **REG-104**.

³⁶⁵ gCaptain, "Pirates Release Three Sailors Kidnapped from VLCC Off Nigeria", 25 February 2015, **REG-105**.

³⁶⁶ The Maritime Executive, "Pirates Kidnap 19 Crewmembers from Navios VLCC", 4 December 2019, **REG-074**.

³⁶⁷ On this issue, the Marshall Island cites the ICJ's approach to evidence as set out in *Armed Activities on the Territory of the Congo*, where it stated that it would "treat with caution evidentiary materials specially prepared

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211. In its Reply, the Marshall Islands argues that allegations of piracy were not the basis of Nigeria's request, with specific reference to the wording used by Nigeria.³⁶⁸ Its arguments are addressed below:
- a) While the relevant WhatsApp messages note that the acts had occurred in "*Nigerian waters*" or "*waters of Nigeria*",³⁶⁹ a reasonable interpretation is that the message referred to Nigeria's EEZ.³⁷⁰ As Equatorial Guinea has made clear and as the Marshall Islands has accepted, the definition of piracy also plainly applies to the EEZ,³⁷¹ so it is undisputed that "*piracy*" under UNCLOS may occur in a State's EEZ.
 - b) The mistaken reference in the note verbale of 10 August 2022 to "*Nigerian's* [sic] *territorial waters*"³⁷² should similarly be disregarded, for the same reason. In any event,³⁷³ Equatorial Guinea is not able to make submissions on the wording of Nigeria's request (and any possible error mistaken references to "*territorial waters*" by Nigeria, possibly due to drafting by diplomatic officials rather than legal advisers) as only Nigeria would be in a position to do so. However, the nature of diplomatic communication made by Nigeria, and the factual background of piracy in the Gulf of Guinea, formed the factual basis for the request from Nigeria and its understanding of what such communication conveyed.
212. Additionally, the Marshall Islands also refers to several documents claiming that they effectively exonerate or demonstrate the innocence of the Vessel, or could not have supported piracy allegations against the *Heroic Idun*.³⁷⁴ These are addressed below.
- a) First, Equatorial Guinea cannot – and does not purport to – speak to the content of a press release issued by the Nigerian Navy on 20 August 2022,³⁷⁵ nor the informational assessments which informed its contents. These were made solely by Nigeria. However, it is also reasonable to assume that the press release was, as is apparent from its content and purpose, a public document written for general informational purposes, rather than a legal or informational disclosure of the

for this case and also materials emanating from a single source. It will prefer contemporaneous evidence from persons with direct knowledge. It will give particular attention to reliable evidence acknowledging facts or conduct unfavourable to the State represented by the person making them" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, 19 December 2005, ¶ 61). Equatorial Guinea accepts that the Chamber must, rightfully, accord weight to contemporaneous evidence. However, it must also consider and take into account the surrounding context, and not disregard documentation dating after the date of arrest (though prior to the current proceeding). It is for this reason that Equatorial Guinea also submits a further Witness Statement of Captain Nsue Esono Nchama to provide further detail on the circumstances and context surrounding the seizure and arrest of the Vessel. As the most senior naval commander at the time of the events in question, with direct experience of the facts in question, his evidence should be accorded significant weight by the Chamber

³⁶⁸ Reply, ¶ 126.

³⁶⁹ Request from Nigeria regarding *Heroic Idun* (WhatsApp messages), **REG-002**.

³⁷⁰ Such an understanding is also confirmed by the fact that the Nigerian Navy's press release of 22 August 2022 also refers to the location in question and the Akpo Oilfield Terminal as being in "Nigerian waters" (see Nigerian Navy press release, 20 August 2022, **SA 5**).

³⁷¹ UNCLOS, Article 56(2).

³⁷² Note No. 138/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 10 August 2022, **REG-019**.

³⁷³ See also Note No. 142/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 24 August 2022, **REG-020**.

³⁷⁴ Reply, ¶ 128.

³⁷⁵ See Nigerian Navy press release, 20 August 2022, **SA 5**.

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Nigerian authorities' information regarding the *Heroic Idun* and its activities or its suspected infractions under Nigerian law. For example, the fact that the *Heroic Idun* had not actually taken products from the oilfield cannot be read as definitive about what Nigeria may have suspected the Vessel was attempting to do, or could have done.³⁷⁶

- b) Similarly, the notes verbales subsequently sent by Nigeria on 12 September 2022³⁷⁷ and 12 October 2022³⁷⁸ do not prove "*that the 'Heroic Idun' was not, and could not have been, under any interpretation of UNCLOS, a pirate vessel*".³⁷⁹ Equatorial Guinea is not able to speak to the content of the notes verbales, the offences that Nigeria may have suspected the *Heroic Idun* of committing, nor the grounds on which those suspicions arose. In any event, these notes verbales were sent after the arrest of the Vessel by Equatorial Guinea, who was not in a position to conclusively establish the guilt or innocence of the Vessel with regard to offences committed in Nigerian waters, as such an assessment had to be made necessarily by Nigeria.
213. In contrast, documentary evidence following the arrest confirms the existence of the *Heroic Idun*'s association with piracy. For example:
- a) A tweet by the Equatoguinean Vice-President on 10 November 2022 noted "[a]s an incorruptible country, we respond to the motto 'zero tolerance' **for any act of piracy in our area. We are proud to have collaborated with Nigeria for the HEROIC IDUN arrest as a sign of respect for our agreements against maritime piracy**",³⁸⁰
 - b) On 3 June 2023, the Equatoguinean Minister of External Affairs wrote to his Nigerian counterpart on the commencement of this dispute by the Marshall Islands, confirming Equatorial Guinea's understanding that the *Heroic Idun* "**had been pursued by the maritime authorities of Nigeria due to having carried out illicit acts of illegal purchase of fuel and piracy, among others**",³⁸¹ and
 - c) A plea agreement with Nigerian authorities in which the Vessel accepted liability to an offence under Nigeria's piracy-related legislation.³⁸²

³⁷⁶ Regardless of what Nigeria knew or suspected about the *Heroic Idun*, the fact remains that it considered it had enough grounds to make a request to Equatorial Guinea under the Yaoundé Code. If the Marshall Islands implies that, based on what occurred, Nigeria had no grounds to suspect piracy, then such an assertion is plainly only answerable by Nigeria, and one which necessarily triggers its rights and interests, leading to the inadmissibility of the present claim. See Chapter 4, Section I above.

³⁷⁷ Note No. 150/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 12 September 2022, **REG-021**.

³⁷⁸ Request from the Ministry of Defence of the Federal Republic of Nigeria to the Ministry of Foreign Affairs of the Republic of Equatorial Guinea, 12 October 2022, **REG-040**.

³⁷⁹ **Reply**, ¶ 128.

³⁸⁰ Tweet by Vice-President of Equatorial Guinea, 10 November 2022, **SA 25** (emphasis added).

³⁸¹ Note No. 6014/023 from the Ministry of Foreign Affairs, International Cooperation and Diaspora of the Republic of Equatorial Guinea to the Embassy of the Federal Republic of Nigeria in Malabo, 3 June 2023, **REG-053**, p. 2 (emphasis added).

³⁸² The Vessel agreed to plead guilty to an offence under section 16(5)(b) of the Suppression of Piracy and Other Maritime Offences Act, 2019, and to pay a statutory fine of five million Naira (approximately GBP 5,000) in respect of this offence. The Vessel also agreed to pay the sum of USD 15,000,000 as "*restitution*" and to make an apology in Lloyd's List and other local publications. See Witness statement of Stephen Askins, 14 December

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214. As a matter of law, the principle of freedom of the high seas, including freedom of navigation – while cardinal – is subject to certain limitations, including those in respect of authorised policing of activities regarding piracy, the slave trade, narcotics, trafficking, and hot pursuit.³⁸³ These exceptions are recognised and provided for in UNCLOS itself.³⁸⁴ This Tribunal has recognised that, where an act of interference is justified by UNCLOS itself, it cannot be a breach of freedom of navigation.³⁸⁵
215. Similarly, the exclusivity of flag State jurisdiction remains subject to the right of every State to engage in the repression of piracy.³⁸⁶ It is well recognised that piracy "*constitutes an automatic exception to the rule of exclusive flag-state jurisdiction allowing boarding and seizure regardless of flag-state consent or whether the boarding state is affected by the vessel's activities*".³⁸⁷ Further, the right to take enforcement measures against pirates is vested in all States and not only in States which have suffered the particular act of violence.³⁸⁸
216. For the reasons set out above, Equatorial Guinea acted to seize and arrest the *Heroic Idun* on a reasonable suspicion of piracy, in response to a request from Nigeria, in line with its rights and obligations under UNCLOS' anti-piracy provisions and in accordance with its commitments under the Yaoundé Code.³⁸⁹ Contrary to what is asserted by the Marshall Islands, Equatorial Guinea's actions did not require prior exhaustion of the rights and processes set out in Article 110, and confirmation that the vessel in question was a "*pirate ship*" within the meaning of Article 103. As an experienced naval commander – acting under urgency, pursuant to well-established maritime cooperation, and necessarily without the full factual assessment sitting behind Nigeria's request – it

2023, **RMI** 3, ¶ 57(h). See also Plea Bargain, 27 April 2023, **SA** 38 and Judgment Order of the Federal High Court of Nigeria in Port Harcourt, 28 April 2023, **SA** 39.

³⁸³ *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), Article 87, pp. 681-682. See also Robin Churchill, Vaughan Lowe and Amy Sander, *The Law of the Sea*, Fourth Edition (Manchester University Press, 2022), pp. 375-380.

³⁸⁴ UNCLOS, Article 105 codifies the power of any warship or other government vessel meeting the criteria in Article 107 to exercise law enforcement jurisdiction over a pirate ship, in places beyond the territorial jurisdiction of any State; Article 110(1) UNCLOS provides that where there are "*reasonable ground[s] for suspecting*" that a ship is engaged in piracy, it would be justified for a warship belonging to a third State to board such ship. A leading commentary notes that most of the articles dealing with piracy in UNCLOS were adopted with very little dissent or debate. See *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), Article 100, p. 735.

³⁸⁵ *M/V "Norstar" (Panama v. Italy)*, Judgment, ITLOS Reports 2018–2019, p. 10, 10 April 2019, ¶¶ 222-224.

³⁸⁶ See, for example, Tullio Treves, "Piracy and the international law of the sea", *Modern Piracy*, ed. Douglas Guilfoyle (Edward Edgar Publishing Limited, 2013), p. 121.

³⁸⁷ Douglas Guilfoyle, "Piracy and the slave trade", *Shipping Interdiction and the Law of the Sea* (Cambridge University Press, 2009), p. 27. See also Robin Churchill, Vaughan Lowe and Amy Sander, *The Law of the Sea*, Fourth Edition (Manchester University Press, 2022), p. 383: "*The first exception [to exclusiveness of flag State's enforcement jurisdiction] is the long-established right – and, indeed, duty (UNCLOS art 100; HSC art. 14) – of every State to act against piracy*".

³⁸⁸ Rüdiger Wolfrum, "Fighting Terrorism at Sea: Options and Limitations under International Law" (available on the ITLOS website), p. 3.

³⁸⁹ In communication with Equatorial Guinea, Nigeria also recalled the Yaoundé Code, to which both States were parties, and confirmed its view that the Code was a legal basis for Equatorial Guinea to transfer the Vessel and its crew to Nigeria. See Note No. 150/2022 from the Embassy of the Federal Republic of Nigeria in Malabo to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, 12 September 2022, **REG-021**.

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was reasonable and indeed necessary for Captain Nsue Esono Nchama to authorise the *Capitán David* to pursue and seize the *Heroic Idun*.³⁹⁰

217. In the alternative, if the Chamber were to find that the right of seizure under Article 105 must only follow the exercise of a right of visit under Article 110 and confirmation of the existence of a "*pirate ship*", Equatorial Guinea submits that, in these circumstances, it acted solely upon the information, assessment, and request made by Nigeria regarding the *Heroic Idun*'s activities – i.e. any deemed (or attempted)³⁹¹ exercise of this power should be deemed to have been executed by Nigeria, and Equatorial Guinea was entitled to rely on such an assessment to proceed to exercise powers under Article 105 accordingly. It is well acknowledged that Article 105 allows States to transfer to the requesting State those suspected of piracy.³⁹²
218. Similarly, Equatorial Guinea is not liable to the Marshall Islands under Article 106 for "*seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds*". Only Nigeria, as the requesting State behind the seizure, would have been able to make an assessment regarding the *Heroic Idun*'s activities or infractions in relation to suspected piracy. As such, it does not fall for Equatorial Guinea to determine whether, and if, the seizure was carried out "*without adequate grounds*" – or at the least, such an assessment cannot be made in the absence of Nigeria.
219. Alternatively, Equatorial Guinea is not liable as it had "adequate grounds" i.e., a reasonable suspicion of piracy, as set out above, on which it was entitled to carry out seizure under Article 105.
220. As a final point, the consequences of not responding to such urgent requests would be significant, given the serious impacts of piracy and related criminal activity upon the safety and viability of maritime transit in the region. States in the region, particularly coastal States, remain heavily reliant on maritime transit and safety, and there is recognition of the need for defence to combat insecurity in order to facilitate the flow of trade between African States.³⁹³ For example, the Gulf of Guinea contains 25% of all African maritime transit, with nearly 20 commercial seaports.³⁹⁴ It hosts one of the world's richest fishing resources, providing critical employment to millions of individuals.³⁹⁵ On any given day, approximately 1,500 fishing vessels, tankers and cargo ships navigate the Gulf's waters.³⁹⁶
221. Naturally, maritime transit becomes riskier and more precarious and costly if attendant risks of piracy and armed robbery at sea are allowed to remain unaddressed. Cooperation and vigilance by States is a necessity in keeping the Gulf of Guinea free of such threats and a viable maritime corridor. To hold that Equatorial Guinea could

³⁹⁰ See Second Witness Statement of Captain Juan Nsue Esono Nchama, 20 March 2025, **REG-WS-007**, ¶¶ 5-9.

³⁹¹ For example, an attempt by Nigeria to visit the Vessel may have been frustrated by the *Heroic Idun* fleeing the Nigerian naval vessel. See Witness statement of Master, 15 December 2023, **RMI 1**, ¶¶ 71 and 77.

³⁹² Anna Petrig and Robin Geiß, *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden* (Oxford University Press, 2011), pp. 196-197. See also Tamsin Phillippa Paige, "The Impact and Effectiveness on UNCLOS on Counter-Piracy Operations", *Journal of Conflict and Security Law* 22, no. 1 (2017) p. 97, p. 101.

³⁹³ See, for example, Video on the rescue of *Maria E.* by the Equatoguinean Navy, **REG-072**.

³⁹⁴ United Nations Security Council, 9355th meeting, S/PV.9355, 21 June 2023, **REG-032**, p. 20.

³⁹⁵ Centre for Strategic & International Studies (CSIS), "*A Transatlantic Approach to Address Growing Maritime Insecurity in the Gulf of Guinea*", 1 February 2021, **REG-106**, p. 2.

³⁹⁶ European Union External Action, "*EU Maritime Security Factsheet: The Gulf of Guinea*", 25 January 2021, **REG-107**, p. 1.

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not have acted as it did would risk inhibiting the viability of joint responses and inter-State cooperation necessary to combat piracy in the region.

II. Equatorial Guinea acted pursuant to lawful prescriptive jurisdiction

222. Equatorial Guinea does not repeat those submissions made regarding its exercise of prescriptive jurisdiction, as set out in its Counter-Memorial.³⁹⁷
223. In its Reply, the Marshall Islands further alleges that through exercise of prescriptive jurisdiction also "*would have been an abuse of right under Article 300 of UNCLOS, read alongside Part V of UNVCLoS and in particular Article 56(1)*", as Equatorial Guinea only contained custody of the Vessel and could only exercise its jurisdiction "*as a result of an unlawful interception and diversion on the high seas*".³⁹⁸
224. Equatorial Guinea maintains that, for the reasons set out in above in Section I, no such unlawful interception occurred, given that it exercised lawful powers of seizure on a reasonable suspicion of piracy, pursuant to obligations of cooperation. The Vessel was kept lawfully and safely in Luba until the mandated transfer to Nigeria. Therefore, Equatorial Guinea's subsequent exercise of prescriptive jurisdiction cannot be seen as an "*abuse of right*" under Article 300.

III. Equatorial Guinea acted in accordance with Article 225 UNCLOS and the principle of reasonableness

225. In its Reply, the Marshall Islands emphasises that the alleged breach of the principle of reasonableness is a separate claim to that under Article 225 (duty to avoid adverse consequences).³⁹⁹
226. However, although the principle of reasonableness and Article 225 are separate obligations, their assessment may overlap (for example, as recognised by the *Duzgit Integrity* Tribunal, a State's exercise of enforcement powers is governed by, *inter alia*, reasonableness).⁴⁰⁰ As noted by the Marshall Islands:

Article 225 specifically concerns enforcement action which 'endanger[s] the safety of navigation or otherwise creates[s] any hazard to a vessel, or bring[s] it to an unsafe port or anchorage, or expose[s] the marine environment to an unreasonable risk,' whereas [...] the principle of reasonableness in the exercise of enforcement action is of broader application, and applies to,

³⁹⁷ See **Counter-Memorial**, Chapter 6, Section IV; Second Witness Statement of Stephen Askins, 25 November 2024, **RMI 52** notes at ¶ 5 that the Fine refers to a version of the CEMAC Code that was repealed and replaced on 22 July 2012 by Regulation 08/12-UEAC- 088-CM-23. While the latter version replaced the earlier version of the CEMAC Code cited in the Fine, the provisions underlying the Fine remained substantively unchanged. See CEMAC Code, No. 08/12 UEAC 088 CM 23: Translation of relevant excerpts of SA-48, 22 July 2012, **REG-108**, Articles 19, 766, 772, 786, 787, 788, 791 and 793.

³⁹⁸ **Reply**, ¶ 180.

³⁹⁹ **Reply**, ¶ 249.

⁴⁰⁰ *The Duzgit Integrity Arbitration (Malta v. São Tomé and Príncipe)*, PCA Case No. 2014-07, Award, 5 September 2016, ¶ 209.

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*inter alia, the imposition of penalties and fines and the treatment of the crew.*⁴⁰¹

227. For the reasons set out below, Equatorial Guinea maintains that it did not breach either (A) Article 225 of UNCLOS, nor (B) the principle of reasonableness.

A. Equatorial Guinea did not breach Article 225 UNCLOS

228. Article 225 operates to ensure that, in the exercise of their powers of enforcement against foreign ships, port and coastal States act with due regard by adopting the necessary measures to avoid endangering the safety of navigation or creating any hazard to a vessel, as well as refraining from an action that may have adverse consequences.⁴⁰²
229. The Marshall Islands makes two legal points, before using these to allege that on the facts, Equatorial Guinea breached Article 225 of UNCLOS.⁴⁰³ These claims are addressed in turn.
230. First, the Marshall Islands maintains that Article 94 forms part of the relevant context for interpreting Article 225.⁴⁰⁴ This is incorrect.
231. Equatorial Guinea accepts that Article 225 must – in order to be effective – be interpreted in light of those measures and standards necessary to keep vessels, and the marine environment, safe and unharmed. This includes those provisions of UNCLOS regarding obligations on *all States* regarding the marine environment.⁴⁰⁵
232. However, for the reasons set out in its Counter-Memorial, Equatorial Guinea does not accept that Article 94 (regarding duties of the flag State) must inform the content of Article 225 (regarding States' enforcement powers generally under UNCLOS).⁴⁰⁶ It is plain that flag States undertake significant obligations regarding their vessels, which should be informed by and accord to accepted standards set out in relevant IMO Conventions, necessary to ensure safety of life at sea, prevent collisions and control marine pollution. However, it is not the case that all obligations undertaken by flag States in relation to their vessels flying their flag *ipso facto* become opposable to coastal States exercising enforcement powers generally. The nature and relationship between a flag State and its vessel and a vessel subject to the enforcement powers of a coastal State are obviously different in nature, and the obligations that govern each are informed by the State's respective relationship to the vessel in question.
233. The Marshall Islands purports to rely on the following passage of the Proelss Commentary to UNCLOS to show a connection between Article 94 and Article 225:

[safety of navigation] may be attained by coastal States adopting and giving due publicity to rules and regulations [...], without foregoing the compliance with flag States' laws and regulations

⁴⁰¹ **Reply**, ¶ 249.

⁴⁰² *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), Article 225, p. 1536.

⁴⁰³ **Reply**, ¶¶ 250-254.

⁴⁰⁴ **Reply**, ¶¶ 250-251.

⁴⁰⁵ For example, Articles 192, 194(1), 211 and 217 UNCLOS.

⁴⁰⁶ **Counter-Memorial**, ¶¶ 236-237.

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*relating to the seaworthiness of vessels (→ Art. 94(3)(a), (4)(a) and other applicable international rules).*⁴⁰⁷

234. However, the Marshall Islands omits the rest of the commentary, which provides:

In this case, the safety of navigation may be attained by coastal States adopting and giving due publicity to rules and regulations and providing for sea lanes or traffic separation schemes in order to avoid collisions, without foregoing the compliance with flag States' laws and regulations relating to the seaworthiness of vessels (→ Art. 94(3)(a), (4)(a) and other applicable international rules).

235. This entry therefore recognises how coastal States may give effect to safety of navigation but falls short of noting that such States undertake or are bound by flag States' own laws and regulations concerning the seaworthiness of vessels. Had the authors intended to convey that coastal States were themselves bound in each instance to give effect to flag States' own laws and regulations, this would presumably have been written explicitly. Instead, nowhere do the authors imply that coastal States' enforcement measures must be assessed against those obligations imposed on flag States under Article 94 and applicable international standards.
236. Second, the Marshall Islands argues that SOLAS, the STCW and COLREGS are "*relevant rules of international law applicable in the relations between the parties*" under Article 31(3)(c) VCLT and that they are opposable to Equatorial Guinea under Article 225 because they address issues of safety of navigation and hazards to vessels.⁴⁰⁸ However, such an argument is misplaced.
237. International rules addressing similar subject-matter immediately do not *ipso facto* become applicable to parties under obligations in UNCLOS. As set out further in Section VIII below, standards and regulations regulating vessels and their passage applicable to flag States in respect of their flagged vessels were not intended to, and do not *ipso facto* become opposable to coastal vessels when exercising lawful enforcement jurisdiction over those vessels. While the content and objectives of regimes set out in the COLREGS and SOLAS may inform what is considered to be "*adverse consequences*" under Article 225, they do not *ipso facto* become opposable to States exercising enforcement measures under Article 225.
238. Turning to the facts of the case, the Marshall Islands points to various incidents in an attempt to demonstrate a breach of Article 225. However, there is simply no evidence that the *Heroic Idun* was exposed to any hazard or risk that caused damage to the Vessel or marine environment. In fact, the Marshall Islands' own expert report of Voirrey Blount admits that *Heroic Idun* "*was not in imminent peril during her detention*".⁴⁰⁹
239. While the Vessel was stationed at Luba Bay, it was surrounded by a half-mile radius. Ms Blount's report notes that other vessels from Universal Africa Lines passed between the *Wele Nzaz* and *Heroic Idun* "*at a range of around 0.5 nautical miles, which is not unsafe and is also not something that would be unexpected whilst waiting at anchor*".

⁴⁰⁷ Reply, ¶ 251(a) and footnote 494 of the Reply.

⁴⁰⁸ Reply, ¶ 251(c).

⁴⁰⁹ First Expert Report of Voirrey Blount including annexes, 24 November 2023, **RMI** 37, ¶ 36.

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outside a port in a normal situation".⁴¹⁰ The Marshall Islands own record demonstrates that, counter to its subsequent assertions,⁴¹¹ there were tugs on site at Luba Bay to assist with any emergencies.⁴¹²

240. Equatorial Guinea has detailed its responses to the various incidents raised by the Marshall Islands in its Counter-Memorial,⁴¹³ and does not repeat these here. At any rate, none of these incidents demonstrate that Equatorial Guinea failed to comply with any of its obligations, including under Article 225 UNCLOS.
241. As the Director of Luba Freeport confirms, Luba Bay was suitable for the *Heroic Idun*:

Luba Bay is located in the south of Bioko Island, in a cut of land which makes it 75% protected from the elements.⁴¹⁴ As a result, the wind is naturally diverted away from the bay, which has minimal wave activity and a minimal 1.5 metre tide. Additionally, the seabed of the bay where vessels drop anchor is a mixture of shingle and sand. This is one of the better types of seabed (second only to mud). For these reasons, Luba Bay provided a suitable and safe anchoring position for the Heroic Idun. The only other alternative to station the Heroic Idun would have been the port in Malabo. However, in contrast to Luba Bay, Malabo port is wide open to the elements.⁴¹⁵

242. The Marshall Islands purported that three incidents allegedly caused safety concerns for the *Heroic Idun*: namely the *Wele Nzas* dragging anchor near the *Heroic Idun*; a small supply boat catching fire near the *Heroic Idun*; and the *UAL Bodewes* passing near the *Heroic Idun* on 27 October 2022.⁴¹⁶ However, at no point did the Vessel contact the Equatoguinean authorities to request help or inform them of the alleged danger faced by the Vessel in relation to these incidents.⁴¹⁷ Indeed, had the Vessel sought help from the Equatoguinean authorities, they would have been promptly assisted.⁴¹⁸ These allegations of safety concerns to the *Heroic Idun* are merely *ex post facto* arguments by the Marshall Islands. While the *Heroic Idun* was at Luba Bay, it faced no real danger to its safety.
243. The Marshall Islands' own evidence, as contained in the condition survey report of the *Heroic Idun* conducted after its departure from Nigeria indicates that "*the vessel was found to be in good condition*"⁴¹⁹ and that the "*vessel, machinery and outfitting were found in a good condition which can be expected for a similar vessel with a similar*

⁴¹⁰ First Expert Report of Voirrey Blount including annexes, 24 November 2023, **RMI 37**, ¶ 27 (emphasis added).

⁴¹¹ Second Witness Statement of the Master, 23 November 2024, **RMI 50**, ¶ 22 ("*There is no infrastructure at Luba designed to accommodate VLCCs. In particular, there were no berths for VLCCs or tugs on standby to deal with emergencies*").

⁴¹² Email, 8 September 2022, **EK 31**, ("*In Luba, two tug vessels are available to assist the vessel in case of any urgency*").

⁴¹³ See **Counter-Memorial**, ¶¶ 248-256.

⁴¹⁴ A map of Bioko Island is attached to my statement as Bioko Island, Topographical map, **REG-060**.

⁴¹⁵ Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶ 7.

⁴¹⁶ **Reply**, ¶ 38.

⁴¹⁷ Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶¶ 10-11.

⁴¹⁸ Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶ 10.

⁴¹⁹ Condition Survey Report, **EK 78**, p. 280. Further, at p. 283 "*all bridge navigation and communication equipment was in good operational condition at the time of our attendance. A superficial inspection of the equipment did not exhibit any anomalies and all equipment appeared functional and well maintained*".

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age", with no indication that its stay in Equatorial Guinea had had any ill effects.⁴²⁰ Such assessments are plainly inconsistent with allegations that Equatorial Guinea created dangerous situations for the Vessel or exposed it to unreasonable risk under Article 225.

244. Accordingly, the Marshall Islands' own evidence demonstrate that Equatorial Guinea complied with its obligations, including under Article 225 UNCLOS.

B. Equatorial Guinea at all times complied with the principle of reasonableness

245. In addressing the issue of reasonableness in its Reply, the Marshall Islands first disputes that a "*margin of appreciation*" should apply to the exercise of a State's enforcement jurisdiction.⁴²¹ It then goes on to assert that Equatorial Guinea breached the principle of reasonableness through, *inter alia*, the issuing of the Fine and the detention of the crew and Vessel.⁴²² Its legal and factual arguments are addressed below, in turn.
246. First, as a matter of law, there is "*a growing acceptance on the part of many international courts and tribunals of the margin of appreciation doctrine*".⁴²³ According to this doctrine, international courts should grant national authorities a certain degree of deference and respect their discretion on the manner of executing their international law obligations, to preserve the discretion and independent evaluation exercised by national authorities.⁴²⁴
247. Equatorial Guinea reiterates the approach set out by the Joint Dissenting Opinion of Vice-President Hoffmann and Judges Marotta Rangel, Chandrasekhara Rao, Kateka, Gao and Bouguetaia in *M/V Virginia* on the exercise of sovereign powers under Article 73(1) of UNCLOS. In that Opinion, the Judges emphasised that it was not the task of the Tribunal to take the place of the competent national authorities, but rather to review the decisions they delivered in the exercise of their power of appreciation.⁴²⁵ In this case, Equatorial Guinea, in apprehending and seizing the Vessel, acted pursuant to other provisions of UNCLOS. However, those provisions similarly confer discretionary power on a State to exercise rights recognised by the Convention, leaving to State the ultimate decision on the nature of the discharge of that power. In many cases, national

⁴²⁰ Condition Survey Report, **EK 78**, p. 299.

⁴²¹ See **Reply**, ¶¶ 192-198.

⁴²² See **Reply**, ¶¶ 199(a)-(i).

⁴²³ Yuval Shany, "Toward a General Margin of Appreciation Doctrine in International Law?", *European Journal of International Law* Vol. 16 no. 5, p. 907, p. 939. See also Rudiger Wolfrum, "Proportionality: Reconsidering the Application of an Established Principle in International Law", *International Law Studies Series*. US Naval War College 99 (2022), pp. 689-690.

⁴²⁴ Yuval Shany, "Toward a General Margin of Appreciation Doctrine in International Law?", *European Journal of International Law* Vol. 16 no. 5, p. 907, p. 909. The author also notes that "*the capacity to employ the doctrine seems to derive from the inherent power of international judicial bodies to determine their own procedures and to effectively exercise their jurisdiction (these authorities are sometimes couched in explicit 'general powers' rules of procedure)*". 20 *Such broad powers arguably include the ability of courts to set applicable standards of review. Alternatively, the margin of appreciation could be linked to the inherent judicial authority to settle 'the method of handling the evidence' or 'make an objective assessment of the matter'*", p. 911 (footnotes omitted).

⁴²⁵ *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, ¶ 53.

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authorities are well-placed, at the time of the events in question, to "*appreciate all the relevant considerations of law and fact in the State concerned*".⁴²⁶

248. Even if the Chamber were to focus instead on whether Equatorial Guinea's actions where necessary and proportionate in the circumstances,⁴²⁷ the Chamber is urged to have regard to the fact that any exercise of valid enforcement jurisdiction involves the exercise of some degree of sovereign discretion in execution, particularly in law enforcement and when exercising powers in response to maritime threats. Such decision-making is usually recognised as conferring upon the State discretion regarding how that power is realised. While any such exercise of power must remain necessary and proportional in order to achieve the stated or apparent objective at hand, it remains subject to a sovereign discretion or a margin of appreciation.
249. Second, as a matter of facts, the Marshall Islands relies on several points (which all form bases of its other claims) to allege a breach of the principle of reasonableness by Equatorial Guinea. These include, *inter alia*, the issuing of the Fine and the detention of the crew and Vessel.⁴²⁸ Many of these allegations are dealt with in full detail elsewhere in Equatorial Guinea's pleadings, and are not repeated here.⁴²⁹ However, for completeness, these are briefly summarised below.
250. The arrest of the *Heroic Idun* was reasonable and occurred under urgent circumstances. The arrest occurred with no physical force by the *Capitán David*.⁴³⁰ The *Capitán David* made reasonable enquiries (in English, spoken by a member of the *Capitán David*'s crew), including where the *Heroic Idun* was going or coming from, and requested the *Heroic Idun* to stop its engines. At no point did the *Capitán David* board the *Heroic Idun*.

⁴²⁶ *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, ¶¶ 49-50 (emphasis added).

⁴²⁷ **Reply**, ¶¶ 194-197.

⁴²⁸ See **Reply**, ¶¶ 199(a)-(i).

⁴²⁹ See **Reply**, ¶ 199(a)-(i). These issues are addressed throughout Equatorial Guinea's pleadings – for example, the issue of notification is addressed in **Counter-Memorial**, ¶¶ 257-270 and ¶¶ 295-309 of this Reply, the Fine is addressed in **Counter-Memorial**, ¶¶ 271, 281-270 and Second Witness Statement of Captain Juan Nsue Esono Nchama, 20 March 2025, **REG-WS-007**, ¶¶ 21-22, issues of humanity are specifically addressed in **Counter-Memorial**, ¶¶ 303-319, and ¶¶ 266-287 of this Reply, the Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, and Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶¶ 5-23.

⁴³⁰ This Tribunal has recognised that the "*grant of law-enforcement jurisdiction carries with it the right to use reasonable force for purposes of seizure and arrest*". See *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), Article 105, p. 751. See also *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999, p. 10, 1 July 1999, ¶ 156: "[t]he normal practice used to stop a ship at sea is first to give an auditory or visual signal to stop, using internationally recognized signals. Where this does not succeed, a variety of actions may be taken, including the firing of shots across the bows of the ship. It is only after the appropriate actions fail that the pursuing vessel may, as a last resort, use force. Even then, appropriate warning must be issued to the ship and all efforts should be made to ensure that life is not endangered". See also *Guyana v. Suriname*, PCA Case No. 2004-04, Award of the Arbitral Tribunal, 17 September 2007, ¶ 445, "*in international law force may be used in law enforcement activities provided that such force is unavoidable, reasonable and necessary*". The only information known by Equatoguinean authorities at the time was that this was a potential criminal Vessel prepared to take action to evade national authorities (as it had done in Nigerian maritime waters).

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251. The *Heroic Idun* was then given points of coordination in order to ensure it could safely navigate its route into the port at Luba Bay. This ensured the safe navigation and arrival of the *Heroic Idun* into the port.
252. The *Capitán David* remained 200 metres from the *Heroic Idun*. The Equatoguinean frigate *Wele Nzas* subsequently joined the escort of the *Heroic Idun*. This continued until the *Heroic Idun* arrived at Luba late on the night of 13 August 2022 with both Vessel and crew unharmed, and in safe and suitable location for its anchoring.⁴³¹ Once it had arrived, Equatoguinean authorities ensured that the Vessel was kept in a safe port, surrounded by a half-mile radius, and where it was guarded by the frigate *Wele Nzas*.⁴³²
253. Equatoguinean authorities ensured that the Vessel did not come to any harm while stationed in Luba. As noted in the expert report of Voirrey Blount submitted by the Marshall Islands, "[t]he '*HEROIC IDUN*' was not in imminent peril during her detention".⁴³³ On 26 September 2022, the *Wele Nzas* only came within 463 metres of the *Heroic Idun* – a distance of almost half a kilometre and which caused no damage to the *Heroic Idun*.⁴³⁴ Furthermore, the subsequent manoeuvre by the *Wele Nzas* saw it come no closer than two cables' length from the *Heroic Idun*'s stern – a distance of about 370 metres.⁴³⁵ Again, there was no alleged, let alone actual, damage to the Vessel.
254. Similarly, the temporary detention of both the crew and Vessel were necessary and proportionate in regard to the request with which Equatorial Guinea was cooperating. Nigeria had requested the arrest and seizure of the Vessel, which Equatorial Guinea had enacted, in accordance with its obligations. It would not have been appropriate, nor in line with its Yaoundé Code undertakings, for Equatorial Guinea to have unilaterally taken the decision to release the Vessel and crew before Nigeria was able to conclude its investigatory and legal processes.
255. The Marshall Islands' other allegations⁴³⁶ similarly fail to show a breach of reasonableness. A failure to notify the Marshall Islands of the exercise of enforcement action is moot, given that the Marshall Islands was aware of the actions and circumstances of the Vessel, including through the managers of the Vessel, who were in contact with Besora, the local agent.⁴³⁷ There is no basis to the allegation that Equatorial Guinea "*forced*" the Owners to cover expenses for the maintenance of the Vessel and crew. Rather, Besora was requested to take all measures necessary to support and make provisions for the Vessel and crew, which was freely and fully allowed by the Equatoguinean authorities.⁴³⁸
256. Additionally, the Marshall Islands does not provide any official guarantee that payment of the Fine would "*release*" the Vessel and crew from Equatorial Guinea's territory.⁴³⁹ Indeed, this would not have been possible in the framework of cooperation in which

⁴³¹ Witness statement of Howard James McDowall, 2 July 2024, **REG-WS-006**, ¶¶ 7-9.

⁴³² Witness statement of Howard James McDowall, 2 July 2024, **REG-WS-006**, ¶ 8.

⁴³³ First Expert Report of Voirrey Blount including annexes, 24 November 2023, **RMI 37**, ¶ 36.

⁴³⁴ First Expert Report of Voirrey Blount including annexes, 24 November 2023, **RMI 37**, ¶ 22.

⁴³⁵ First Expert Report of Voirrey Blount including annexes, 24 November 2023, **RMI 37**, ¶ 24.

⁴³⁶ **Memorial**, ¶ 249.

⁴³⁷ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶ 17.

⁴³⁸ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶ 20.

⁴³⁹ Nor was this the understanding of Captain Nsue Esono Nchama. See Second Witness Statement of Captain Juan Nsue Esono Nchama, 20 March 2025, **REG-WS-007**, ¶¶ 21-22.

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Equatorial Guinea was acting – under which it acted pursuant to Nigeria's request for cooperation, and was in no position to unilaterally release the Vessel and crew. Instead, the Marshall Islands cites emails between the managers of the Vessel and its lawyers as evidence of this point.⁴⁴⁰ Indeed, if payment of the Fine was conditional upon the release of the crew from Equatorial Guinea's jurisdiction entirely, it is likely that such an assurance would have been provided in writing.

257. Finally, the transfer of the Vessel and crew to Nigeria was in line with Equatorial Guinea's obligations and undertakings under the Yaoundé Code. The Marshall Islands claims that nothing under Article 100 UNCLOS or the Yaoundé Code of Conduct suggests that the transfer was necessary.⁴⁴¹ However, it is well recognised that Article 105 provides a lawful basis for the transfer of suspects and vessels. Further, Article 2(1)(c) of the Yaoundé Code obliges Equatorial Guinea to ensure that persons attempting to commit transnational organised crime are subjected to prosecution, while Article 6(4) allows the State which seizes a vessel suspected of committing piracy to take any action while considering the rights of third parties in good faith. Precise methods of cooperation are left for States' discretion under the Yaoundé Code, which must reasonably be interpreted as allowing States to utilise the most reasonable and efficient measures possible in the circumstances.
258. Accordingly, Equatorial Guinea complied at all times with the principle of reasonableness.

IV. Equatorial Guinea treated the crew with humanity at all times and did not violate their human rights

259. In its Reply, the Marshall Islands alleges that Equatorial Guinea ought not to have combined its response to the Marshall Islands' claims relating to human rights violations and those relating to principle of humanity.⁴⁴² The Marshall Islands argues that Equatorial Guinea did not address its arguments of various external human rights treaty violations, particularly the ICCPR, the Standard Minimum Rules and African Charter.⁴⁴³
260. However, as Equatorial Guinea has demonstrated in its Counter-Memorial, this Chamber does not have jurisdiction to assess claims of violations of external human rights treaty obligations.⁴⁴⁴ The decision of the tribunal in *Arctic Sunrise* makes that clear:

The Tribunal considers that, if necessary, it may have regard to general international law in relation to human rights in order to determine whether law enforcement action such as the boarding, seizure, and detention of the Arctic Sunrise and the arrest and

⁴⁴⁰ See Second Witness Statement of William Gallagher, 22 November 2024, **RMI 53**, citing as evidence Email: 28 September 2022; 12:31, **SA 46**, Email: 5 October 2022; 17:44, **SA 47**, Email, 10 October 2022, **EK 49**, Email, 17 October 2022, **EK 55**, Email, 27 October 2022, **EK 56**, Email, 25 October 2022, **EK 57**, and Email, 26 October 2022, **EK 58**. See also Second Witness Statement of Eivind Kulblik, 25 November 2024, **RMI 54**, citing Email 28 September 2022; 12:31, **EK 80** and Email: 13 October 2022; 12:10, **EK 82**

⁴⁴¹ **Reply**, ¶ 199(h).

⁴⁴² **Reply**, ¶ 208.

⁴⁴³ **Reply**, ¶¶ 211-212.

⁴⁴⁴ **Counter-Memorial**, ¶ 164.

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*detention of those on board was reasonable and proportionate. This would be to interpret the relevant Convention provisions by reference to relevant context. **This is not, however, the same as, nor does it require, a determination of whether there has been a breach of Articles 9 and 12(2) of the ICCPR as such. That treaty has its own enforcement regime and it is not for this Tribunal to act as a substitute for that regime.***

*In determining the claims by the Netherlands in relation to the interpretation and application of the Convention, the Tribunal may, therefore, pursuant to Article 293, have regard to the extent necessary to rules of customary international law, including international human rights standards, not incompatible with the Convention, in order to assist in the interpretation and application of the Convention's provisions that authorise the arrest or detention of a vessel and persons. **This Tribunal does not consider that it has jurisdiction to apply directly provisions such as Articles 9 and 12(2) of the ICCPR or to determine breaches of such provisions.***⁴⁴⁵

261. The tribunal in the *Arctic Sunrise* case assessed a situation involving the use of force by the Russian Coast Guard, including the firing of green flares and four rounds of warning shots.⁴⁴⁶ The Tribunal declined to assess the alleged violations of the ICCPR, stating that it did not have "*jurisdiction to apply directly provisions such as Articles 9 and 12(2) of the ICCPR or to determine breaches of such provisions*".⁴⁴⁷
262. While the Chamber may apply general principles of law and customary international law rules, including considerations of the principle of humanity while making such determinations under UNCLOS, it does not have jurisdiction to determine whether there has been a breach of an external human rights treaty outside of UNCLOS.⁴⁴⁸
263. No ITLOS or Annex VII tribunal has found violations of human rights instruments external to UNCLOS in relation to a State's treatment of detained crew members. For example, in the *M/V "Virginia G"* case, Panama claimed that Guinea-Bissau mistreated the crew, including by not providing food and water, insufficient fuel for subsistence on board, lack of light, and being kept under military guard.⁴⁴⁹ Guinea-Bissau had responded that "*there was no use of excessive force during the arrest of the Virginia G*" and that "*the best proof of this assertion is the fact that there were no claims of any physical harm during the time the crew stayed in the port of Bissau*".⁴⁵⁰ Ultimately, the Tribunal did not make a finding in respect of Panama's claims that Guinea-Bissau had violated the human rights of the detained crew. At most, the Tribunal merely affirmed

⁴⁴⁵ *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on the Merits, 14 August 2015, ¶¶ 197-198 (emphasis added).

⁴⁴⁶ *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on the Merits, 14 August 2015, ¶ 94.

⁴⁴⁷ *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on the Merits, 14 August 2015, ¶ 198.

⁴⁴⁸ **Counter-Memorial**, ¶ 175.

⁴⁴⁹ *M/V "Virginia G" (Panama/Guinea-Bissau)*, Memorial of Panama, 23 January 2012, ¶ 234.

⁴⁵⁰ *M/V "Virginia G" (Panama/Guinea-Bissau)*, Judgment, ITLOS Reports 2014, p. 4, 14 April 2014, ¶¶ 302, 390.

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States' obligations to not use force against vessels or crew members, and did not discuss allegations of ill-treatment of detained crew members.

264. The only Tribunal which has previously found a violation of UNCLOS in relation to the treatment of detained crew members was in *M/V "Saiga"*. The Tribunal found that Guinea had used excessive force and endangered human life before and after boarding the *Saiga*, and thereby violated the rights of Saint Vincent and the Grenadines under international law. In that case, Guinean officers fired indiscriminately while on the deck and used gunfire to stop the engine of the ship.⁴⁵¹ However, even in that case, the Tribunal did not consider international human rights standards while making its assessment. Instead, it had regard to the principle of the prohibition of use of force under international law in the arrest of a vessel.⁴⁵²
265. This case is starkly different from the present case where the Equatoguinean authorities never used any force at the *Heroic Idun* or against its crew, and at all times treated the crew with dignity, humanity and respect, as demonstrated below.

A. The crew of the *Heroic Idun* was provided with all requested amenities, going above and beyond bare necessities

266. The Marshall Islands argues in its Reply that the housing, food, and water provided to the *Heroic Idun* crew members violated the crew member's human rights.⁴⁵³ To the contrary, the evidence shows that Equatorial Guinea acted in accordance with the principle of humanity in its treatment of the *Heroic Idun* and its crew members at all times.
267. First, while the Marshall Islands complains about the accommodation provided to the crew members being "*uncomfortable*," the evidence shows that the Accommodation Facility was a new building with air conditioning, which contained the necessary amenities, including new mattresses, pillows, a fridge, a small cooker, a microwave and a toaster.⁴⁵⁴ Mr Hernández Martín himself noted that the Accommodation Facility was "*comfortable*" and "*suitable*" for housing the crew members.⁴⁵⁵ He also confirms that "[t]here was also cleaning personnel that cleaned the accommodation facility on a regular basis".⁴⁵⁶ The crew members were also able to request cleaning products, supplied by Besora on demand, if they felt the cleanliness of the Accommodation Facility was not enough.⁴⁵⁷ Despite the complaints and allegations now made in the Marshall Islands submissions, no contemporaneous complaint was ever made by the

⁴⁵¹ *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999, p. 10, 1 July 1999, ¶ 158.

⁴⁵² *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999, p. 10, 1 July 1999, ¶¶ 155-156.

⁴⁵³ **Reply**, ¶¶ 214-222.

⁴⁵⁴ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶¶ 10-11; Photographs of the Accommodation Facility, 1 July 2024, **REG-041**; Receipts showing provision of food, provisions and cleaning items to crew, 23 August 2022, **REG-042**, p. 3.

⁴⁵⁵ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶ 10; **Counter-Memorial**, ¶ 70.

⁴⁵⁶ Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶ 18.

⁴⁵⁷ Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-013**, p. 18; Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-012**, p. 23; Receipts showing provision of food, provisions and cleaning items to crew, 23 August 2022, **REG-042**, p. 7.

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crew to Besora about the Accommodation Facility.⁴⁵⁸ This is confirmed by Besora's daily reports for the period of the detention, which do not note any such complaints from the crew.⁴⁵⁹ During their stay in Equatorial Guinea, the crew members received local SIM cards which allowed them to regularly contact whoever they wished by phone, including their families and Besora.⁴⁶⁰ If they had any complaints, as the Marshall Islands now contend, there would be evidence of such complaints.

268. Seconds, the Marshall Islands also cannot credibly complain about the provision of food, water and other supplies. Indeed, the Vessel's owners themselves designated their local agent Besora to provide the crew members with all they needed. Equatorial Guinea therefore did not interfere in the process; instead, it accepted each request made by Besora to provide the crew members with any supplies, or to obtain medical care for the crew. Besora went above and beyond to ensure the crew was comfortable, as demonstrated by the receipts showing the wide variety of restaurants that the crew ordered their meals from.⁴⁶¹ In fact, the crew requested and was given non-essential items such as alcohol, cigarettes, cake, candy, sports clothing, and energy drinks.⁴⁶²
269. Moreover, unlike the other cases where the principle of humanity has been discussed, there was not a single report of any improper conduct by any Equatoguinean security officials at the time. As noted previously in the Counter-Memorial, the Vessel's managers themselves wrote to recognise that they were "*grateful that the crew have been allowed food and water and have been treated well by those tasked to guard them*".⁴⁶³ Indeed, the evidence filed by the Marshall Islands makes this clear, with tasks such as inspecting the crew's luggage being conducted calmly and professionally.⁴⁶⁴
270. Any allegation of wrongdoing must be assessed with caution in light of the contemporaneous evidence.⁴⁶⁵ The crew members at the Accommodation Facility had a very good relationship with the guards, and they would play football and cricket together.⁴⁶⁶ On board the Vessel, crew members and guards would play a "*daily basket game*".⁴⁶⁷ Invoices for a football, as well as 15 pairs of sports shoes, sports t-shirts and "*basket ball sport*" items purchased for the crew provide further support.⁴⁶⁸ Mr Hernández Martín also confirms that that he "*did not hear or receive any complaints*

⁴⁵⁸ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶ 15.

⁴⁵⁹ Daily reports of the *Heroic Idun* provided by Besora, 13 August 2022 - 10 November 2022, **REG-036**.

⁴⁶⁰ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶¶ 11-12; Email, 19 September 2022, **EK 38**, ¶ 8. See also Second Witness Statement of the Chief Officer, 23 November 2024, **RMI 51**, ¶ 22; Second Witness Statement of the Master, 23 November 2024, **RMI 50**, ¶ 18.

⁴⁶¹ Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-012**; Receipts showing provision of food, provisions and cleaning items to crew, 23 August 2022, **REG-042**; Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-013**.

⁴⁶² **Counter-Memorial**, ¶¶ 69-70, 82-83, referring to Witness statement of Alberto Hernández Martín, 11 July 2024, **REG-WS-003**, ¶¶ 8-11, 18-19; Log, **EK 4**, p. 21, entry at 15h20; Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-012**, pp. 14-15, 22-23, 28, 36, 38, 42-43, 50; Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-013**, pp. 14, 16-19, 24, 26-27; Receipts showing provision of food, provisions and cleaning items to crew, 23 August 2022, **REG-042**, pp. 1, 7.

⁴⁶³ Letter from OSM to the Equatoguinean Attorney General, 16 September 2022, **EK 36**; **Counter-Memorial**, ¶ 76.

⁴⁶⁴ Video of the Equatoguinean guards searching our bags, **PJ 3**.

⁴⁶⁵ **Reply**, ¶ 221.

⁴⁶⁶ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶ 16.

⁴⁶⁷ **Counter-Memorial**, ¶ 74; Log, **EK 4**, 22 August 2022, p. 27, 7h.

⁴⁶⁸ Receipts from Besora for provisions for the crew of the *Heroic Idun*, **REG-013**, p. 10; Costs and expenses relating to the Vessel and crew, **RMI 61**, p. 78.

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*about any [issue relating to inappropriate behaviour from guards] at the time, which we would have addressed".*⁴⁶⁹

271. There is no record of any complaint being made at the time. Neither did the crew avail itself to the available resources at its disposal such as presenting a complaint before Equatorial Guinea's Human Rights Commission,⁴⁷⁰ or before the country's Ombudsman.⁴⁷¹

B. The crew of the *Heroic Idun* had access to medical care as often as it was requested

272. The Marshall Islands argues in its Reply that the crew did not have access to high-quality medical care during their time in Equatorial Guinea.⁴⁷² According to the Marshall Islands, the "*initial medical attention*" by an Equatoguinean military doctor was poor,⁴⁷³ the crew members were never assessed for mental trauma,⁴⁷⁴ and the crew suffered from post-trauma mental health condition and likely post-traumatic stress disorder.⁴⁷⁵ None of these allegations withstand scrutiny.
273. First, the Marshall Islands' allegations on the quality of the medical care, including the treatment by a military doctor are contradicted by Mr Hernández Martín's evidence. The Master asserts that "*it was only after the first few incidents of crew sickness that we were taken firstly to a local hospital, which again provided poor medical assistance*".⁴⁷⁶ However, the Master himself acknowledges that the standard of treatment at the La Paz Hospital was appropriate.⁴⁷⁷
274. Mr Hernández Martín of Besora, who was responsible for arranging medical care for the crew members, confirms it was Besora who made arrangements for the crew's medical care, with the exception of an initial adjustment period:

*At any time the crew would have any medical issues, we would let the authorities know and seek medical care. The first few times that the crew needed medical care, the authorities sent the military doctor. I recall that the military doctor only saw the crew a few times. After that initial period, my colleagues at Besora and myself would decide whether the crew should go to a local hospital or to La Paz Hospital where they felt unwell or for any medical issues.*⁴⁷⁸

275. Crucially, at no point were the crew members denied medical treatment.⁴⁷⁹

⁴⁶⁹ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶ 13.

⁴⁷⁰ See Law No. 5/1991 regulating the Right to Complaint and Petition (Excerpt), 10 June 1991, **REG-084**, Articles 2 and 17.

⁴⁷¹ Organic Law No. 4/2.012 regulating the Ombudsman (Excerpt), 16 November 2012, **REG-085**, Articles 14, 17-18, and 22.

⁴⁷² **Reply**, ¶¶ 218-221.

⁴⁷³ **Reply**, ¶ 219(a).

⁴⁷⁴ **Reply**, ¶ 220.

⁴⁷⁵ **Reply**, ¶ 221.

⁴⁷⁶ Second Witness Statement of the Master, 23 November 2024, **RMI 50**, ¶ 8.

⁴⁷⁷ Second Witness Statement of the Master, 23 November 2024, **RMI 50**, ¶ 8.

⁴⁷⁸ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶¶ 20-21.

⁴⁷⁹ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶¶ 12, 19-22.

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276. Dr Irvin Simbarashe, the medical director of La Laz Hospital, in his witness statement noted that most of the crew members who visited La Paz Hospital "*had some underlying chronic illnesses and what are commonly referred to as sailors' illnesses – such as typhoid fever, diarrhoea, malaria and gastritis. These illnesses are very common and easily treatable*".⁴⁸⁰ Dr Simbarashe further confirmed that the crew members received the "*appropriate course of treatment*" for these conditions.⁴⁸¹
277. Dr Simbarashe's evidence is corroborated by studies and official guidance documents prepared by various countries and international organisations for seafarers travelling through tropical areas including Western Africa,⁴⁸² such as the 2022 United Kingdom Guidance on infectious disease at sea, which notes that "[i]n tropical and subtropical regions, malaria and other insect borne diseases are a particular risk".⁴⁸³
278. In its Reply, the Marshall Islands contends that Dr Simbarashe's evidence does not comment on the crew members who had stomach and abdominal pain, or breathing problems.⁴⁸⁴ However, these medical conditions are also widely recognised as common sailors' illnesses,⁴⁸⁵ and therefore are covered by Dr Simbarashe's assessment regarding the commonplace nature of the illnesses experienced by the crew members.
279. The Marshall Islands also implies that the crew would not have become sick if they had been provided with better accommodation facilities while on land. The Master even argues that the crew in the Accommodation Facility suffered from typhoid because of the shared communal facilities, and that it was "*important to note that the crew on the ship did not suffer from typhoid*".⁴⁸⁶ This is again contradicted by the fact that a crew member onboard the Vessel was also taken to hospital for typhoid.⁴⁸⁷ This confirms that the various medical issues suffered by the crew members were common illnesses and could not be attributed to the crew's stay in the Accommodation Facility.
280. Secondly, regarding the crew's mental health, the Marshall Islands does not deny that the report of Dr Lesley Perman-Kerr is primarily based on interviews of the crew members in April and June 2023, i.e., after the crew members had spent some 198 days

⁴⁸⁰ Witness statement of Dr Irvin Simbarashe, 10 July 2024, **REG-WS-004** ¶ 12.

⁴⁸¹ Witness statement of Dr Irvin Simbarashe, 10 July 2024, **REG-WS-004** ¶ 12.

⁴⁸² See for e.g. Tanker Operator, "*Increase in malaria seen among seafarers operating in West Africa*", 25 September 2024, **REG-109**; Graziano Pallotta et al, "First surveillance of malaria among seafarers: evaluation of incidence and identification of risk areas", *Acta Biomed*, 2019, Vol. 90, No. 3, **REG-110**, pp. 378-384.

⁴⁸³ UK Maritime and Coastguard Agency, "*Guidance MGN 652 (M+F) Amendment 1 infectious disease at sea*", 12 August 2022, **REG-111**, ¶ 3.4. See also UK Maritime and Coastguard Agency, "*Prevention of Infectious Disease at Sea by Immunisations and Anti-Malaria Medication (prophylaxis): Notice to all Ship Owners, Ship Operators and Managers, Manning Agencies, Port Operators, Ship Masters and Seafarers*", Marine Guidance Note MGN399(M), **REG-112**, ¶ 3.3: "*Tropical and subtropical regions- Malaria is a particular risk in these areas*"; Vivek Kak, "Infections in Confined Spaces: Cruise Ships, Military Barracks, and College Dormitories", *Infectious Disease Clinics of North America*, 2007, Vol. 21, Issue 3, **REG-113**, p. 777: "*Infections that are endemic in the ports of call, such as malaria, may present on board the cruise ship itself*".

⁴⁸⁴ **Reply**, ¶ 220.

⁴⁸⁵ Nora Annelies Bilir et al, "Accidents, diseases and health complaints among seafarers on German-flagged container ships", *BMC Public Health*, 2023, Vol. 23, Issue 1, **REG-114**, p. 8; Getu Gamo Sagaro et al, "Incidence of occupational injuries and diseases among seafarers: a descriptive epidemiological study based on contacts from onboard ships to the Italian Telemedical Maritime Assistance Service in Rome, Italy", *BMJ Open*, 2021, Vol. 11, Issue 3, **REG-115**.

⁴⁸⁶ Second Witness Statement of the Master, 23 November 2024, **RMI 50**, ¶ 10.

⁴⁸⁷ Witness statement of Eivind Kulblik, 13 December 2023, **RMI 2**, ¶ 40; Email, 27 September 2022, **EK 45**, p. 3.

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in Nigeria.⁴⁸⁸ As Equatorial Guinea demonstrated in its Counter-Memorial, it would be virtually impossible at this stage to attribute various mental health issues to the crew's stay in Equatorial Guinea, in the absence of any contemporaneous evidence at the time of their stay in Equatorial Guinea or assessment of the psychological state of mind of the crew.⁴⁸⁹

281. Dr Perman-Kerr reports that she spoke to two crew members in October 2022, and another crew member in November 2022.⁴⁹⁰ Thereafter, she was only able to speak with the crew members in April 2023 because Nigeria had placed "*severe restrictions*" on communication.⁴⁹¹ The Marshall Islands argues that the reason for the lack of contemporaneous psychiatric evaluation during the crew members' time in Equatorial Guinea was because Equatorial Guinea had "*obstructed*" such evaluation.⁴⁹²
282. To the contrary, the crew members had access to mental health care while in Equatorial Guinea. It was only in Nigeria that crew members were unable to have phone calls with Dr Permann-Kerr in relation to their mental health issues. Mr Hernández Martín states that he never recalled the crew members making requests for mental health care.⁴⁹³ Had the crew members required mental health care, they could have raised the issue with Besora and/or arranged to have more phone or video sessions with Dr Perman-Kerr with their own individual mobile devices. The fact that such events did not happen suggests the crew saw no need for additional mental health support while in Equatorial Guinea. Notably, the Marshall Islands now purports to claim costs for the crew's mental health care while, simultaneously, claiming that Equatorial Guinea obstructed such treatment.⁴⁹⁴
283. Plainly, there is no reason why Equatorial Guinea would have denied such requests for access to mental health care when it had granted all other requests for provision of luxury items, food, leisure activities, and medical care. Indeed, Equatorial Guinea never denied any requests for the crew members' medical or mental health care.

C. The crew of the *Heroic Idun* was not subject to a criminal investigation requiring legal counsel

284. The Marshall Islands alleges that the crew lacked legal representation during the investigations, which violated their fair trial rights under the ICCPR, the African Charter and the Standard Minimum Rules for the Treatment of Prisoners in its Memorial.⁴⁹⁵ However, all of these instruments relate to the fair trial rights of

⁴⁸⁸ Counter-Memorial, ¶ 313.

⁴⁸⁹ Counter-Memorial, ¶ 313.

⁴⁹⁰ First Psychological Report of Dr Lesley Perman Kerr, 20 November 2023, RMI 38, ¶ 8.

⁴⁹¹ First Psychological Report of Dr Lesley Perman Kerr, 20 November 2023, RMI 38, ¶ 8.

⁴⁹² Reply, ¶ 322;

⁴⁹³ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, REG-WS-009, ¶ 22.

⁴⁹⁴ Reply, ¶ 322: "[...] Equatorial Guinea cannot obstruct a proper, contemporaneous psychiatric evaluation, and then contend that the psychiatric evaluation available (carried out after the crew were released) is inadequate because it is not contemporaneous. That would allow Equatorial Guinea to benefit from its own wrong". Cf Reply, ¶ 288(c): "The Marshall Islands has adduced contemporaneous documentary evidence that shows that the crew was provided with medical and psychological assistance".

⁴⁹⁵ Memorial, ¶ 281(c); Reply, ¶ 223.

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individuals facing criminal charges and awaiting a criminal trial.⁴⁹⁶ None of these situations apply to the circumstances of the detention of the *Heroic Idun*.

285. As Mr Hernández Martín confirms, the interviews of the crew members were purely factual and informational statements for the Equatoguinean authorities.⁴⁹⁷ They were not intended for use as evidence in any criminal process and, indeed, the Marshall Islands does not contend that they were used in such a manner. The Marshall Islands does not claim nor can it deny that no criminal investigation, charges or proceedings was ever brought against the *Heroic Idun* crew members during their stay in Equatorial Guinea. Accordingly, Equatorial Guinea had no obligation to provide legal counsel for a mere fact-finding interview of an administrative character. Given that the crew only faced criminal charges in Nigeria, not in Equatorial Guinea, the Marshall Islands' claims on the right to legal representation against Equatorial Guinea must be dismissed.
286. The Marshall Islands' arguments that the crew members were not informed of the reasons for their detention must also be dismissed. Starting from the same morning that they were apprehended, the crew members had multiple discussions with the Equatoguinean authorities as well as interviews with the Nigerian authorities which would have sufficiently informed them of the reasons for their detention. As elaborated upon by Mr Hernández Martín:

*It was quite clear to me and I believe to the crew as to why the crew were being interviewed – the Nigerian authorities were investigating what exactly had happened when the vessel was in Nigerian waters. This interview again was to discuss the facts about the vessel's conduct, what it had been doing and what had happened while it was in Nigerian waters. I cannot say with certainty but I thought that the Nigerians feared the Heroic Idun had been involved in criminal activities.*⁴⁹⁸

287. This argument is therefore also untenable and ought to be dismissed.

V. Equatorial Guinea acted in accordance with the principle of due regard under Article 56(2) UNCLOS

288. In its Reply, the Marshall Islands alleged that Equatorial Guinea's enforcement measures – insofar as they concerned its Equatorial Guinea's EEZ – breached the principle of due regard under Article 56(2), which obliges coastal States, when "*exercising its rights and performing its duties under this Convention in the exclusive economic zone*", to "*have due regard to the rights and duties of other States*" and "*act in a manner compatible with the provisions of this Convention*". It alleged that this breach occurred through (i) restricting the conduct of the *Heroic Idun* in its EEZ and

⁴⁹⁶ See International Covenant on Civil and Political Rights, Article 14; African Charter on Human and Peoples' Rights, Article 7; Standard Minimum Rules for the Treatment of Prisoners, Rule 111(1). In particular, Rule 111 of the Standard Minimum Rules for the Treatment of Prisoners clarifies that S. II(C) (which the Marshall Islands bases its arguments on) are only applicable to "untried prisoners" who are "*arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced*".

⁴⁹⁷ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶ 6.

⁴⁹⁸ Second Witness Statement of Alberto Hernández Martín, 20 March 2025, **REG-WS-009**, ¶ 10.

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(ii) by imposing penalties for failure to comply with its laws, as reflected in the Fine.⁴⁹⁹ It contends that these actions did not accord due regard to "*the rights of the Marshall Islands, including freedom of navigation, exclusive flag State jurisdiction, and the right to be treated reasonably by the coastal State*".⁵⁰⁰

289. Despite the Marshall Islands' allegation in the Reply, Equatorial Guinea did address this issue in its Counter-Memorial.⁵⁰¹ In particular, Equatorial Guinea showed how when responding lawfully to piracy – both a right and a duty under UNCLOS – a State's conduct cannot amount to a failure to exercise "*due regard*" to the rights of other States under Article 56(2), nor a failure to exercise its own freedom of navigation with due regard for the rights of other States under Article 87(2).⁵⁰²
290. First, lawful and reasonable conduct in the execution of enforcement measures taken against piracy cannot by itself amount to a failure to show due regard to the rights of other States. Some other failure or omission in this regard is necessary. Similar to the principle of reasonableness, the obligation of due regard requires an assessment of the nature of the rights held, their importance, the nature of the impairment, the nature and importance of the activities contemplated, and the availability of alternative approaches.⁵⁰³
291. Second, when applying such considerations to the present circumstances, the conduct of Equatorial Guinea in this case did not breach the obligation to show due regard to the rights of the Marshall Islands. Contrary to the assertions made by the Marshall Islands, Equatorial Guinea has demonstrated why, in light of the contextual and regional circumstances, it clearly had a reasonable basis on which to suspect piracy, and act accordingly in response to Nigeria's request for cooperation.⁵⁰⁴ It has also set out why the circumstances of the arrest, and escort of the Vessel to Luba were reasonable and appropriate.⁵⁰⁵
292. While the rights of the Marshall Islands that it contends Equatorial Guinea did not pay "due regard" to are important, they certainly do not override the cardinal duty that UNCLOS provides for States to cooperate in the repression of piracy, and the significant powers it grants States for the enforcement of anti-piracy measures, such as under Article 105. As set out above, UNCLOS' anti-piracy provisions, and the significant discretion they afford to States in determining the nature of anti-piracy cooperation and coordination, are foundational to the modern law of the sea.
293. The conduct in question underlying the Marshall Islands' claim was lawful, proportionate, and reasonable. As set out above in Section I, Equatorial Guinea was entitled to arrest and seize the Vessel in the manner it did. Equatorial Guinea, in acting pursuant to its obligations of cooperation with another State, was not able to take unilateral decisions with respect to the release of the Vessel or crew. For example, Captain Nsue Esono Nchama confirms that payment of the Fine did not mean "*that the vessel would be free from the Nigerian investigation or its eventual return to Nigerian*

⁴⁹⁹ Reply, ¶ 201.

⁵⁰⁰ Reply, ¶ 203.

⁵⁰¹ See Counter-Memorial, ¶¶ 217-231.

⁵⁰² See Counter-Memorial, ¶ 226.

⁵⁰³ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award, 18 March 2015, ¶ 519.

⁵⁰⁴ Chapter 5, Section I.

⁵⁰⁵ See Counter-Memorial, ¶¶ 248-256 and this Rejoinder, ¶¶ 245-252.

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authorities".⁵⁰⁶ As such, it was also required to transfer the Vessel and crew to Nigeria. Therefore, the impairment of the Marshall Islands' rights occurred against significant competing rights and obligations, and in a situation of cooperation and action taken at the behest of another State.

294. Accordingly, Equatorial Guinea's actions were reasonable and appropriate in light of the gravity of the suspected conduct, the importance of anti-piracy cooperation in the region, and Equatorial Guinea's secondary role. It was for Nigeria, and Nigeria alone, to assess and determine the consequences of the Vessel's actions. Equatorial Guinea could not have taken a decision to release the Vessel in the absence of Nigeria's consent, and understood that its obligation of cooperation included the transfer of the Vessel and crew to Nigeria.

VI. There is no specific obligation to notify the flag State of enforcement measures

295. The Marshall Islands maintains the existence of an alleged obligation to notify the flag State of enforcement measures under either customary international law or as a general principle of international law.⁵⁰⁷ As Equatorial Guinea sets out in its Counter-Memorial, there is no evidence of a customary international law obligation on States to notify the flag State of all enforcement measures against a vessel.⁵⁰⁸
296. The ILC elaborated in its Draft Conclusions on the Identification of Customary International Law that a treaty obligation may reflect a rule of customary international law where it is established that the treaty rule:

(a) codified a rule of customary international law existing at the time when the treaty was concluded;

(b) has led to the crystallization of a rule of customary international law that had started to emerge prior to the conclusion of the treaty; or

*(c) has given rise to a general practice that is accepted as law (opinio juris), thus generating a new rule of customary international law.*⁵⁰⁹

297. The Marshall Islands alleges that "*the existence of similar provisions in a number of bilateral or other treaties' may attest to the existence of a corresponding rule of customary international law*" and that the ILC's test has been met.⁵¹⁰ It bases this upon the wording of various IMO treaties and the alleged evidence of *opinio juris* cited by Senior Deputy Commissioner of the Marshall Islands Maritime Administrator.⁵¹¹ Its arguments are misplaced on both counts.

⁵⁰⁶ Second Witness Statement of Captain Juan Nsue Esono Nchama, 20 March 2025, **REG-WS-007**, ¶ 22.

⁵⁰⁷ **Reply**, ¶¶ 256-262.

⁵⁰⁸ **Counter-Memorial**, ¶¶ 263-266.

⁵⁰⁹ International Law Commission, "*Identification of Customary International Law*", A/CN.4/L.908, 17 May 2018, Conclusion 11(1).

⁵¹⁰ **Reply**, ¶ 258.

⁵¹¹ **Reply**, ¶ 258(a)-(b).

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298. The Marshall Islands' only source for this claim is the witness statement of Senior Deputy Commissioner of the Marshall Islands Maritime Administrator.⁵¹² The evidence provided in this witness statement to establish a purported customary international law to notify the flag State is limited to provisions under the MARPOL, BWMC, STCW, SOLAS, and IMO Port State Control Procedures.⁵¹³ However, these provisions alone cannot amount to *opinio juris* owing to the high standard required to establish a rule of custom. As the ILC noted, "*in and of themselves, treaties cannot create a rule of customary international law or conclusively attest to its existence or content*".⁵¹⁴ Rather, often States enter into such treaty obligations specifically *because* of the absence of a corresponding customary international law rule.⁵¹⁵
299. The Marshall Islands fails to show a customary status for the obligation to notify contained in the select few instruments on which it relies. Without supporting evidence that there was a rule of custom already existing at the time these instruments were concluded, or that there is now general State practice as a result of these instruments, no customary international rule may be established by these instruments.
300. For similar reasons, the Marshall Islands' arguments in relation to general principles of law also fail.⁵¹⁶ The Marshall Islands' case on general principles of law relate to the same bilateral and consular treaties mentioned above, which do not indicate an internationally accepted rule of notification to flag States as derived from municipal legislation. According to the ILC's work on general principles of law:

[t]o determine the existence and content of a general principle of law derived from national legal systems, it is necessary to ascertain: (a) the existence of a principle common to the various legal systems of the world; and (b) its transposition to the international legal system.⁵¹⁷

301. The use of the inclusive and broad term "*the various legal systems of the world*" requires that a principle be found in legal systems of the world generally, covering the variety and diversity of national legal systems of the world.⁵¹⁸ The Marshall Islands' examples of various bilateral and consular treaties between various States do not demonstrate this level of universal acceptance in domestic legal systems across the world.
302. Rather than establishing a legal principle under international law, the Marshall Islands makes several arguments, all of which should be dismissed.⁵¹⁹

⁵¹² See **Reply**, ¶ 258(b), citing Witness statement of William Gallagher, 17 December 2023, **RMI 30**, ¶¶ 13, 19, 22, 25.

⁵¹³ Witness statement of William Gallagher, 17 December 2023, **RMI 30**, ¶ 13.

⁵¹⁴ International Law Commission, "Draft conclusions on identification of customary international law, with commentaries", *Yearbook of the International Law Commission*, 2018, Volume II, Part Two, A/73/10, p. 143, ¶ 2.

⁵¹⁵ International Law Commission, "Draft conclusions on identification of customary international law, with commentaries", *Yearbook of the International Law Commission*, 2018, Volume II, Part Two, A/73/10, p. 146, ¶ 8.

⁵¹⁶ **Reply**, ¶ 259.

⁵¹⁷ International Law Commission, "General principles of law: Text of the draft conclusions provisionally adopted by the Drafting Committee on first reading", 12 May 2023, A/CN.4/L.982, Draft Conclusion 4.

⁵¹⁸ International Law Commission, "Report of the International Law Commission on its Seventy-fourth Session", *Yearbook of the International Law Commission*, 2023, Volume II, Part Two, A/78/10, Commentary on Draft Conclusion 4, p. 17, ¶ 3.

⁵¹⁹ **Reply**, ¶¶ 265-268.

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303. First, the Marshall Islands fails to engage with the plain finding of the Tribunal in *Duzgit Integrity*, which confirmed that "*there is no relevant explicit provision in the Convention requiring that the flag State be notified*".⁵²⁰ It does not explain the reasons why it contends the Tribunal was incorrect or if, and how a new norm of custom or general principle has supposedly emerged since the rendering of the *Duzgit Integrity* award in 2016.
304. Second, the Marshall Islands' insistence that any obligations of notification may only be discharged by the State taking enforcement measures is also plainly inconsistent with the finding of the Tribunal in *Duzgit Integrity*. In that case, the Tribunal noted that there was "*no relevant explicit provision in [UNCLOS]*" and therefore considered that it was sufficient that São Tomé notified Malta of the arrest of the Maltese-flagged vessel through Portugal as an intermediary, given that Malta would have been informed by Portugal of the arrest.⁵²¹
305. Third, the Marshall Islands purports to rely upon the ICJ cases of *Pulp Mills and Djibouti v. France* to support its argument that an alleged obligation to notify the flag State of the detention of a vessel cannot be satisfied by communication through private intermediaries.⁵²² However, neither of these cases is analogous to the present facts nor supports the Marshall Islands' submissions. Both cases involved very specific bilateral treaty obligations on the respective respondent States to abide by precise procedural requirements of communication to the claimant State.⁵²³
306. There is no comparable treaty obligation of Equatorial Guinea to inform the Marshall Islands of the detention of a Marshall Islands flagged vessel, much less a formal procedure for making such notification to the effect of precluding notification through intermediaries.
307. Further, the notification requirements assessed in both ICJ cases were evidently mandatory owing to the consequences that failure to notify would have on the rights of the other State party. In *Djibouti v. France*, the ICJ noted that France's failure to follow the proper procedure of notification and inform Djibouti of the reasons for rejecting its request precluded Djibouti from modifying its letter rogatory and submitting a new request for assistance.⁵²⁴ Similarly, in *Pulp Mills*, the obligation to notify was:

intended to create the conditions for successful co-operation between the parties, enabling them to assess the plan's impact on the river on the basis of the fullest possible information and,

⁵²⁰ **Counter-Memorial**, ¶ 257; *The Duzgit Integrity Arbitration (Malta v. São Tomé and Príncipe)*, PCA Case No. 2014-07, Award, 5 September 2016, ¶ 268.

⁵²¹ *The Duzgit Integrity Arbitration (Malta v. São Tomé and Príncipe)*, PCA Case No. 2014-07, Award, 5 September 2016, ¶¶ 267-268.

⁵²² **Reply**, ¶ 261.

⁵²³ In *Pulp Mills*, the Statute of the River Uruguay between Argentina and Uruguay required both States to notify the other party of plans to construct new channels or carry out other works on their shared river. *Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, 20 April 2010, ¶¶ 80, 110. In *Djibouti v. France*, the Convention on Mutual Assistance in Criminal Matters between Djibouti and France included a legal obligation to notify the other State of reasons for refusing to execute a request for mutual assistance. *Case Concerning Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment, I.C.J. Reports 2008, p. 177, 4 June 2008, ¶¶ 149-151.

⁵²⁴ *Case Concerning Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment, I.C.J. Reports 2008, p. 177, 4 June 2008, ¶ 152.

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*if necessary, to negotiate the adjustments needed to avoid the potential damage that it might cause.*⁵²⁵

308. In the present case, the Marshall Islands accepts that an absence of formal notification by Equatorial Guinea via diplomatic channels did not prejudice or impact any of its rights or obligations.⁵²⁶ At most, the Marshall Islands had indicated in its Memorial that a lack of notification may compromise the ability of a flag State to raise a dispute under Part XV of UNCLOS in a timely manner and at an early stage.⁵²⁷ The Marshall Islands was not impacted in any manner in its ability to first file a prompt release application, or to subsequently seek recourse before this Chamber.
309. Finally, the Marshall Islands refers to Article 3(2) of the Yaoundé Code, which states that "*the Signatories intend to liaise and co-operate with*" other States or stakeholders, "*to facilitate the rescue, interdiction, investigation, and prosecution*" under the Code.⁵²⁸ Plainly, the Yaoundé Code recognises the importance of appropriate and necessary cooperation between States. However, this provision is a general one, and fails to support the existence of any specific obligation of flag State notification contended by the Marshall Islands.

VII. UNCLOS' prompt release obligations were not applicable to the *Heroic Idun* and Equatorial Guinea has not violated them

310. As previously set out in Equatorial Guinea's Counter-Memorial, there is no general obligation to release vessels and their crew without undue delay under UNCLOS or international law.⁵²⁹ In its Reply, the Marshall Islands provides no additional evidence of the existence of such a rule, but focuses instead on secondary rules of international law governing the identification of custom or general principles.⁵³⁰ The Marshall Islands merely repeats its unfounded assertions that the duty to promptly release vessels is a norm of customary international law or general principle of law, but fails to demonstrate the independent existence of such a rule.⁵³¹
311. According to the Marshall Islands, "[t]he question is whether, applying the secondary rules concerning the identification of principles or rules of customary law in light of these sources, it is established that there exists a principle or customary rule of international law".⁵³² Plainly, applying these rules, there is not.
312. As noted for Section VI above regarding the obligation to notify the flag State, the ILC's work confirms that a handful of treaties on their own cannot give rise to a customary international law without being supported with widespread State practice – either predating the treaties or arising as a result of the treaties.⁵³³ The ILC cautions:

⁵²⁵ *Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, 20 April 2010, ¶ 113.

⁵²⁶ Reply, ¶ 261.

⁵²⁷ Memorial, ¶ 349.

⁵²⁸ 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 3(2).

⁵²⁹ Counter-Memorial, ¶¶ 320-336.

⁵³⁰ Reply, ¶¶ 263-268.

⁵³¹ Reply, ¶ 266(a)-(b).

⁵³² Reply, ¶ 266.

⁵³³ International Law Commission, "Draft conclusions on identification of customary international law, with commentaries", *Yearbook of the International Law Commission*, 2018, Volume II, Part Two, A/73/10,

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*[t]he existence of similar provisions in a number of bilateral or other treaties, thus establishing similar rights and obligations for a possibly broad array of States, does not necessarily indicate that a rule of customary international law is reflected in such provisions. While it may indeed be the case that such repetition attests to the existence of a corresponding rule of customary international law (or has given rise to it), it "could equally show the contrary" in the sense that States enter into treaties because of the absence of any rule or in order to derogate from an existing but different rule of customary international law.*⁵³⁴

313. The sole source cited by the Marshall Islands to evidence any existence of customary international law rule of prompt release is the statement of the Senior Deputy Commissioner of the Marshall Islands Maritime Administrator.⁵³⁵ However, its arguments are misplaced, for the four reasons set out below.
314. First, in relation to those treaties the Marshall Islands cites to evidence the existence of a general principle to this effect, the Marshall Islands argues that general principles of law need not relate to the "*same specific subject-matter*".⁵³⁶ However, this is not the sole basis on which Equatorial Guinea disputes the Marshall Islands' evidence of such a rule. Rather, general principles of law must be found in the municipal legal systems of the world,⁵³⁷ and the principles must also be transposed to the international legal system.⁵³⁸ However, the Marshall Islands merely refers to various IMO Procedures for Port State Control which are of application to IMO treaties.⁵³⁹ These IMO procedures make clear that they are only "*intended to provide basic guidance*"⁵⁴⁰ to States rather than to create a legal obligation to implement its policies. Such a source cannot satisfy the tests of general principles of law, which require more extensive and wide domestic recognition and acceptance of a rule of law.
315. Second, the instruments cited by the Marshall Islands in support, namely the MARPOL, BWMC, SOLAS, STCW and other Port State Control Procedures, cannot on their own

Commentary on Draft Conclusion 11, p. 143, ¶ 2; International Law Commission, "*Identification of Customary International Law*", A/CN.4/L.908, 17 May 2018, Conclusion 11.

⁵³⁴ International Law Commission, "Draft conclusions on identification of customary international law, with commentaries", *Yearbook of the International Law Commission*, 2018, Volume II, Part Two, A/73/10, Commentary on Draft Conclusion 11, p. 146, ¶ 8.

⁵³⁵ See **Reply**, ¶ 266(b), citing Witness statement of William Gallagher, 17 December 2023, **RMI 30**, ¶¶ 13, 19, 22, 25.

⁵³⁶ **Reply**, ¶ 266(a).

⁵³⁷ International Law Commission, "General principles of law: Text of the draft conclusions provisionally adopted by the Drafting Committee on first reading", 12 May 2023, A/CN.4/L.982, Draft Article 4; International Law Commission, "Report of the International Law Commission on its Seventy-fourth Session", *Yearbook of the International Law Commission*, 2023, Volume II, Part Two, A/78/10, Commentary on Draft Conclusion 4, p. 17, ¶ 3.

⁵³⁸ International Law Commission, "General principles of law: Text of the draft conclusions provisionally adopted by the Drafting Committee on first reading", 12 May 2023, A/CN.4/L.982, Draft Article 4; International Law Commission, "Report of the International Law Commission on its Seventy-fourth Session", *Yearbook of the International Law Commission*, 2023, Volume II, Part Two, A/78/10, Commentary on Draft Conclusion 4, p. 17, ¶ 4.

⁵³⁹ **Reply**, ¶ 266(a).

⁵⁴⁰ IMO Procedures for Port State Control 2023, Resolution A.1185(33), ¶ 1.1.

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amount to a rule of customary international law.⁵⁴¹ At most, these instruments provide for States to make "*all possible efforts*" to avoid undue delay of ships while inspecting them for the requisite certificates or other violations of the underlying treaties.⁵⁴² This plainly lacks the specificity of a "prompt release" obligation, and cannot constitute a legal obligation on States to more generally ensure prompt release of vessels – particularly not where suspicions of piracy are involved.

316. Third, the relevant test to determine whether a general principle found in municipal systems has been transposed to the international system is that such transposition must be shown to be compatible with the international legal system.⁵⁴³ However, the international legal system does not indicate any support for a general obligation to release a vessel which has been apprehended under suspicions of piracy pending final determination of the lawfulness of its acts. To the contrary, the international legal system imposes obligations of repression of piracy, which would be contrary to any such obligation to promptly release a vessel suspected of piracy.
317. Fourth, the Marshall Islands mischaracterises Article 3(5) of the Yaoundé Code as imposing an obligation to promptly release detained vessels.⁵⁴⁴ This provision simply sets out a general obligation "*to avoid any unnecessary delays to international maritime trade in West and Central Africa*".⁵⁴⁵ Plainly, this cannot be read to impose an obligation to promptly release a detained vessel on the Yaoundé Code's signatory States.
318. Ultimately, even if such a rule of international law to promptly release a vessel did exist (which it does not), the circumstances of the apprehension of the *Heroic Idun* did not allow for its release to the high seas.
319. The Marshall Islands claims that "*once it is established that a vessel detained on the grounds of piracy has not engaged in piracy, it must be released*".⁵⁴⁶ However, as Equatorial Guinea has shown, it was Nigeria, not Equatorial Guinea, who had to establish whether the *Heroic Idun* and its crew members had engaged in piracy while in Nigeria's jurisdiction. It was not for Equatorial Guinea to determine the existence or lack of piracy allegations arising from acts committed in Nigeria.
320. In fact, it was incumbent on Equatorial Guinea not to release the Vessel pending such investigations of piracy by Nigeria, in light of its obligations under UNCLOS and the Yaoundé Code to cooperate in the repression of piracy with third States.⁵⁴⁷ Until such

⁵⁴¹ Witness statement of William Gallagher, 17 December 2023, **RMI 30**, ¶¶ 13, 18-19.

⁵⁴² International Convention for the prevention of pollution from ships (MARPOL) (Extracts), **RMI 46**, Article 7; International Convention for the control and management of ships' ballast water and sediments (extracts), **RMI 45**, Article 12; International Convention for the safety of life at sea protocols (SOLAS) (Extracts), **RMI 48**, Regulation I/19(f); International Convention on standards of training, certification and watchkeeping for Seafarers (STCW) (Extracts), **RMI 49**, Article X(4).

⁵⁴³ International Law Commission, "Report of the International Law Commission on its Seventy-fourth Session", *Yearbook of the International Law Commission*, 2023, Volume II, Part Two, A/78/10, Commentary on Draft Conclusion 6, p. 21, ¶ 3. See also Commentary on Draft Conclusion 4, p. 17, ¶ 3; Commentary on Draft Conclusion 5, p. 20, ¶ 7; Commentary on Draft Conclusion 7, p. 22, ¶¶ 3-4.

⁵⁴⁴ **Reply**, ¶ 266(e).

⁵⁴⁵ 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 3(5).

⁵⁴⁶ **Reply**, ¶ 268.

⁵⁴⁷ UNCLOS, Article 100; 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 6(1).

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time that Nigeria was satisfied that the Vessel was not involved in any acts of piracy, Equatorial Guinea could not have unilaterally released the Vessel to the high seas.

VIII. Equatorial Guinea did not breach any obligations under the "gateway" provisions (STCW, SOLAS and COLREGS)

321. The Marshall Islands argues that: (a) STCW imposes safe manning obligations on Equatorial Guinea; (b) SOLAS imposes safe manning obligations on Equatorial Guinea; (c) safe manning obligations were applicable to the *Heroic Idun* while it was anchored in Luba; (d) COLREGS was violated; and (e) Articles 2(3), 87(1) and 94(3) of UNCLOS were engaged as the "gateway" provisions and were violated.⁵⁴⁸
322. Without prejudice to its non-acceptance of the Chamber's jurisdiction over Marshall Islands' claims in relation to treaties external to UNCLOS through any "gateway" provisions (as set out in Chapter 4 above), Equatorial Guinea reiterates that, in any event, it did not breach any of these external treaty obligations – as set out in Subsections A-E below.
323. As a preliminary point, the IMO treaties relevant to the Marshall Islands' claims do not form the basis for any actionable claims against coastal States exercising general enforcement jurisdiction under UNCLOS. Instead, they impose obligations on flag States to ensure their own ships comply with the various regulations and requirements under the treaties.⁵⁴⁹ The IMO Conventions only additionally envisage the role of port States as a "back up" to flag States in ensuring compliance with IMO requirements through inspection of foreign ships in national ports.⁵⁵⁰
324. The IMO Instruments Implementation Code, which provides guidelines on implementation of IMO treaties further supports this understanding.⁵⁵¹ Part 2 of the Code details guidelines for flag States to discharge their duties under the IMO treaties, including compliance with the requirements related to international standards of training, certification and watchkeeping of seafarers, as well as safe manning.⁵⁵² Part 3 of the Code relates to obligations of coastal States, while Part 4 relates to obligations of port States – and neither of these parts includes any obligation on a coastal or port States to comply with safe manning or other watchkeeping requirements. At most, coastal and port States are required to establish legislation, guidance and procedures for the consistent implementation of IMO treaties.⁵⁵³

⁵⁴⁸ Reply, ¶¶ 231-247, 251(a).

⁵⁴⁹ IMO website, "Conventions", **REG-116**: "Contracting Governments enforce the provisions of IMO conventions as far as their own ships are concerned and also set the penalties for infringements, where these are applicable. They may also have certain limited powers in respect of the ships of other Governments".

⁵⁵⁰ IMO website, "Port State Control", **REG-117**. This is also supported by the text of the various IMO treaties which imposes obligations on 'Administrations', namely the flag State, to both implement and oversee the implementation of the obligations under each treaty. See International Convention for the Safety of Life and Sea 1974 (SOLAS), Annex, Chapter I, Regulation 2(b). Even where States have sought to enforce the IMO treaties domestically, such as the European Union through its directive of 2009, the obligations under the IMO treaties are understood as lying with the flag State (or the 'Administration'). See Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements, 23 April 2009, Articles 2 and 3(b).

⁵⁵¹ IMO Instruments Implementation Code (III Code), A 28/Res.1070, 10 December 2013, ¶ 1.

⁵⁵² IMO Instruments Implementation Code (III Code), A 28/Res.1070, 10 December 2013, ¶¶ 16.3 and 17.

⁵⁵³ IMO Instruments Implementation Code (III Code), A 28/Res.1070, 10 December 2013, ¶¶ 46-48, 50, 54-56.

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325. This understanding is supported by remarks of the Secretary-General of the IMO in 2014, who confirmed that the enforcement of IMO treaties lies on the flag State and that the IMO treaties should be read in line with the obligations of a flag State under Article 94 UNCLOS.⁵⁵⁴
326. The various IMO treaties of which the Marshall Islands claims violations neither impose any obligations on Equatorial Guinea as the coastal State, nor did Equatorial Guinea otherwise violate any of these treaties.
- A. Articles 2(3), 87(1) and 94(3) UNCLOS are inapplicable to the Marshall Islands' claims on the STCW, SOLAS and COLREGS
327. The Marshall Islands argues that Articles 2(3) and 87(1) UNCLOS are engaged.⁵⁵⁵ Neither of these Articles operate in the manner suggested by the Marshall Islands, as set out in Chapter 4, Section III (B) above.⁵⁵⁶ Both provisions relate to obligations of the flag State. Neither the text of Article 2(3) nor Article 87(1) give rise to specific obligations on the coastal State, as opposed to the flag State, to implement rules relating to safe manning or vessel safety as a consequence of exercising enforcement jurisdiction over a vessel, particularly while the vessel is anchored at a port.
328. Another UNCLOS provisions that the Marshall Islands relies upon is Article 94(3) of UNCLOS,⁵⁵⁷ which explicitly provides for flag States' obligations to ensure vessels flying its flag are safe at sea, including with regards to safe manning, providing that:
- Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:*
- (a) the construction, equipment and seaworthiness of ships;*
- (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;*
- (c) the use of signals, the maintenance of communications and the prevention of collisions.*
329. Under Article 94(5) UNCLOS, the flag States must "*conform to generally accepted international regulations, procedures and practices*", which include IMO treaties such as SOLAS and STCW.⁵⁵⁸ Neither the text nor the purpose of Article 94 support extending this obligation to become opposable to a coastal State in the exercise of enforcement measures over a vessel.
330. The Chamber must accordingly dismiss the Marshall Islands' arguments under Articles 2(3), 87(1) and 94(3) as the "gateway" provisions.

⁵⁵⁴ IMO website, "*The United Nations Convention on the Law of the Sea (UNCLOS) and the International Maritime Organization*", 18 March 2014, **REG-118**.

⁵⁵⁵ **Reply**, ¶¶ 246-247.

⁵⁵⁶ See ¶¶ 145-146 above.

⁵⁵⁷ **Reply**, ¶ 251(a).

⁵⁵⁸ Yoshifumi Tanaka, *The International Law of the Sea*, Third Edition (Cambridge University Press, 2019), p. 191.

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B. STCW does not impose obligations of safe manning on Equatorial Guinea, nor did Equatorial Guinea violate the STCW

331. As demonstrated in Equatorial Guinea's Counter-Memorial, the STCW is intended to regulate the training and qualifications required of crew aboard a seafaring vessel, rather than the manning requirements of a vessel, particularly a vessel which is anchored at a port.⁵⁵⁹ Further, such an obligation to ensure the training and qualification certifications of the crew members on a vessel lies with the flag State of the vessel rather than any third coastal State exercising enforcement jurisdiction over the vessel.⁵⁶⁰
332. The Marshall Islands argues in its Reply that Article 1(2) STCW implies that obligations under STCW to ensure that the crew on board a vessel possess the relevant qualifications also apply to third States other than the "*Administration*" i.e. flag State of the vessel, with respect to "*vessels within that party's custody and control*".⁵⁶¹ It is unclear from where the Marshall Islands derives such a "*custody and control*" test. The STCW does not provide any such test to extend obligations onto States which are not the identified State of "*Administration*".
333. As the Marshall Islands concedes,⁵⁶² the only provision of the STCW which provides a specific form of obligation on coastal or port States is Article X(3) STCW. All other provisions under the STCW impose obligations on the "*Administration*" alone.
334. In turn, Article X(3) provides that the port State may exercise "*control*" over vessels in its ports, which involves taking "*steps to ensure that the ship will not sail unless and until these requirements are met to the extent that the danger has been removed*".⁵⁶³ The *Heroic Idun* left Equatorial Guinea and sailed with its full crew on board. At no point did Equatorial Guinea allow the Vessel to sail from its ports into the high seas without the full crew being on the Vessel. The Marshall Islands itself confirms that the *Heroic Idun* remained at Luba Bay for the entirety of its stay in Equatorial Guinea, and was not moved to any other bay while it had fewer crew members on board the Vessel.⁵⁶⁴
335. Therefore, Equatorial Guinea complied with the sole obligation that STCW imposed upon it under Article X(3). The Chamber accordingly ought to reject the Marshall Islands' arguments on STCW.

C. SOLAS does not impose obligations of safe manning on Equatorial Guinea, nor did Equatorial Guinea violate the SOLAS

336. The Marshall Islands argues that Equatorial Guinea had an obligation to ensure that the safe manning requirements established by the flag State under SOLAS and IMO Resolution A.1047(27) were applied to the *Heroic Idun* "*in order to ensure safety of life and protection of the marine environment*".⁵⁶⁵ It reiterates that Equatorial Guinea

⁵⁵⁹ Counter-Memorial, ¶¶ 284-287.

⁵⁶⁰ International Convention on standards of training, certification and watchkeeping for Seafarers (STCW) (Extracts), RMI 49, Articles VI-IX.

⁵⁶¹ Reply, ¶ 232(c).

⁵⁶² Reply, ¶ 233.

⁵⁶³ International Convention on standards of training, certification and watchkeeping for Seafarers (STCW) (Extracts), RMI 49, Article X(3).

⁵⁶⁴ Memorial, ¶ 45.

⁵⁶⁵ Reply, ¶ 234.

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did not give "*full and complete effect*" to the SOLAS.⁵⁶⁶ Again, the Marshall Islands is wrong.

337. The Marshall Islands claims that Article 1(2) SOLAS (i.e. that "*Contracting Governments undertake to promulgate all laws, decrees, orders and regulations and to take all other steps which may be necessary to give the present Convention full and complete effect*") may be interpreted in an expansive manner to apply SOLAS obligations of safe manning to coastal States "*in respect of vessels which [that State] has detained and are within its control*".⁵⁶⁷ This is plainly an incorrect interpretation of the SOLAS' objectives and intentions, and is not supported by any other judicial or legal authority. As noted earlier in this Section, SOLAS only imposes obligations on the "*Administration*", i.e. the flag State of a vessel.⁵⁶⁸
338. The sole instance where the SOLAS governs the activity of a coastal State is under Chapter I, Regulation 19. This Regulation provides for the role of "*other Contracting Governments*" in verifying the existence of a valid certificate on board ships in their ports. If Article 1(2) was intended to apply all SOLAS obligations equally to flag States as to coastal or port States as the Marshall Islands wrongly contends, such a distinction in Regulation 19 would not have been required.
339. Plainly, coastal or port States have limited obligations under the SOLAS, and they do not extend to ensuring a vessel moored in its ports complies with safe manning obligations under the SOLAS. For this reason, the Chamber ought to reject the Marshall Islands' arguments in relation to the SOLAS as inapplicable to Equatorial Guinea.

D. The safe manning requirements did not apply to the *Heroic Idun* while anchored at Luba

340. The additional arguments raised by the Marshall Islands' Reply regarding the applicability of safe manning requirements to ships in their anchored state are also baseless.⁵⁶⁹ These, and the various instruments relied upon by the Marshall Islands, are addressed below.
341. The various STCW instruments and provisions discussed by the Marshall Islands⁵⁷⁰ only impose obligations on the flag State and the master of a ship to ensure safe manning of their vessel, and not on a third State which may have intercepted or detained the vessel.
- a) The STCW Code, Section A-VIII/2, does not impose any general safe manning requirements.⁵⁷¹ Instead, provisions cited by the Marshall Islands provide for situations where the master may decide that a navigational or engineering watch may be required while the vessel is anchored (neither of which in turn envisage a

⁵⁶⁶ Reply, ¶ 234.

⁵⁶⁷ Reply, ¶ 234.

⁵⁶⁸ See International Convention for the Safety of Life and Sea 1974 (SOLAS), Annex, Chapter I, Regulation 2(b): "*'Administration' means the Government of the State whose flag the ship is entitled to fly*".

⁵⁶⁹ Reply, ¶¶ 236-242.

⁵⁷⁰ See Reply, ¶ 239 (namely, the STCW Code, Section A-VIII/2; the STCW Convention, Regulation VIII/2; the IMO Assembly Resolution A.772(18); and the STCW Code Regulation A-VIII/1).

⁵⁷¹ Reply, ¶ 239(a).

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minimum manning requirement).⁵⁷² This provision plainly relates to situations where the vessel is "*at anchor in an open roadstead or any other virtually 'at sea' condition*".⁵⁷³ Neither situation applies to the *Heroic Idun*'s case.⁵⁷⁴

- b) The STCW Convention, Regulation VIII/2, clearly imposes obligations of watchkeeping arrangements on "*Administrations*" and the master of the vessels, as noted in the Marshall Islands' Reply itself.⁵⁷⁵
 - c) IMO Assembly Resolution A.772(18) and STCW Code Regulation A-VIII/1 both relate to fatigue of crew members while manning or watchkeeping a vessel.⁵⁷⁶ Neither of these instruments include any obligation on minimum manning requirements on a coastal State. The Marshall Islands claims that these instruments do not distinguish between vessels which are anchored and those that are at sea.⁵⁷⁷ Indeed, no such distinction is required because there is no requirement in the first place for a minimum manning threshold while a vessel is anchored.
342. Further, the "*Minimum Safe Manning Requirements for Vessels*" notice published by the Marshall Islands Maritime Administrator is only relevant to the extent that it confirms that several circumstances may arise where it is not possible to ensure full manning of a vessel.⁵⁷⁸
343. Paragraph 3 of IMO Resolution A.1047(27) explicitly lists the capability to "*manage the safety functions of the ship when employed in a stationary or near-stationary mode at sea*" as one of the nine principles of safe manning.⁵⁷⁹ It is evident that the inclusion of the qualifying term "*at sea*" precludes any interpretation that safe manning principles apply equivalently when a vessel is anchored at a port or anchorage.
344. As Equatorial Guinea demonstrated in its Counter-Memorial, the only other circumstance where these principles are relevant to a vessel's anchoring is at the time the vessel is undertaking the act of mooring or unmooring,⁵⁸⁰ and patently not while it is in the actual state of being moored.⁵⁸¹ Clearly, these safe manning principles are intended to apply to ships undertaking journeys in the seas, or else stationary *at sea*. The *Heroic Idun*'s state of anchorage at the Luba Bay does not fulfil either of these circumstances.
345. Finally, the Marshall Islands claims that "[r]emoving the crew off the Vessel and refusing repeated safe manning requests also meant the mandatory requirements of the

⁵⁷² First Expert Report of Voirrey Blount including annexes, 24 November 2023, **RMI 37**, pp. 288-289, 293, ¶¶ 51, 82.

⁵⁷³ First Expert Report of Voirrey Blount including annexes, 24 November 2023, **RMI 37**, p. 293, ¶ 83.

⁵⁷⁴ Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶ 7.

⁵⁷⁵ **Reply**, ¶ 239(b); First Expert Report of Voirrey Blount including annexes, 24 November 2023, **RMI 37**, p. 279.

⁵⁷⁶ IMO Resolution A.772 (18), **RMI 55**, ¶ 1; First Expert Report of Voirrey Blount including annexes, 24 November 2023, **RMI 37**, p. 293, p. 276.

⁵⁷⁷ **Reply**, ¶ 239(c).

⁵⁷⁸ **Counter-Memorial**, ¶ 293.

⁵⁷⁹ Resolution A.1047(27), ¶ 3.1(1)(3) (emphasis added) as referenced in **Reply**, ¶ 240(b).

⁵⁸⁰ Resolution A.1047(27), ¶ 3.1(1)(2).

⁵⁸¹ **Counter-Memorial**, ¶ 295. As highlighted in this paragraph, at the time of both mooring and unmooring of the *Heroic Idun*, all 15 crew members were aboard the Vessel, and the Vessel satisfied the principle of safe manning.

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*ISPS Code were not complied with".*⁵⁸² The Marshall Islands cites as authority the International Ship & Port Facility Security Code, which itself only imposes obligations to ensure minimum safe manning of a ship on the "Administration"⁵⁸³ (defined as "the Government of the State whose flag the ship is entitled to fly"⁵⁸⁴). Plainly, such obligations are not opposable to Equatorial Guinea as a coastal State in these circumstances.

E. Equatorial Guinea did not violate the COLREGS

346. The Marshall Island maintains that Equatorial Guinea breached the COLREGS,⁵⁸⁵ pointing to the *Wele Nzas* passing "close by" to the *Heroic Idun* and dragging anchor, and the fire on a small supply boat near the Vessel.⁵⁸⁶ However, none of these incidents establish a breach of the COLREGS.
347. Equatorial Guinea submits that the Chamber look to the *South China Sea* award, where the Annex VII arbitral Tribunal noted that:

*[t]he COLREGS do not define what constitutes a "safe speed", and the meaning and application of the phrase remains dependent on the particular facts of each case, including factors such as the vessels' size and probability of harm.*⁵⁸⁷

348. The arbitral Tribunal then considered two expert opinions adduced on this issue, which both considered that the incidents had occurred at "unsafe speeds".⁵⁸⁸ In the present case, however, the expert report of the Marshall Islands' expert Ms Voirrey Blount ultimately concludes that "[t]he 'HEROIC IDUN' was not in imminent peril during her detention" and there was no concern for the safety of the Vessel.⁵⁸⁹ The witness statement of Mr McDowall confirms that the various incidents of the *Wele Nzas* dragging anchor near the *Heroic Idun*, a small supply boat catching fire near the *Heroic Idun*, or the *UAL Bodewes* passing near the *Heroic Idun* did not pose a material risk to the safety of the *Heroic Idun*.⁵⁹⁰ Notably, the *Heroic Idun* never sent any alerts or distress calls on VHF 16 for any of these three occurrences, and the port authorities would have responded immediately had they received such a call.⁵⁹¹

⁵⁸² Reply, ¶ 241.

⁵⁸³ Reply, ¶ 241, fn 463, citing ISPS Code Part B, Para. 4.28, **RMI 58**: "In establishing the minimum safe manning of a ship the Administration should take into account that the minimum safe manning provisions established by regulation V/14 only address the safe navigation of the ship. The Administration should also take into account any additional workload which may result from the implementation of the ship's security plan and ensure that the ship is sufficiently and effectively manned. In doing so the Administration should verify that ships are able to implement the hours of rest and other measures to address fatigue which have been promulgated by national law, in the context of all shipboard duties assigned to the various shipboard personnel".

⁵⁸⁴ International Convention for the safety of life at sea protocols (SOLAS) (Extracts), **RMI 48**, Regulation 2(b).

⁵⁸⁵ Reply, ¶¶ 243-245.

⁵⁸⁶ Reply, ¶¶ 243-245.

⁵⁸⁷ *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, PCA Case No. 2013-09, Award, 12 July 2016, ¶ 1097.

⁵⁸⁸ *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, PCA Case No. 2013-09, Award, 12 July 2016, ¶ 1097.

⁵⁸⁹ First Expert Report of Voirrey Blount including annexes, 24 November 2023, **RMI 37**, ¶¶ 30-31, 36.

⁵⁹⁰ Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶ 11.

⁵⁹¹ Second Witness Statement of Howard James McDowall, 14 March 2025, **REG-WS-008**, ¶ 11(a)-(c).

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349. Plainly, there is no indication that the *Heroic Idun* was under any actual risk of colliding with the *Wele Nzās*. For this reason, the Chamber ought to reject the Marshall Islands' claims under the COLREGS.

IX. Equatorial Guinea did not breach its obligations to preserve the rights of the Marshall Islands and not aggravate the dispute pending proceedings

350. The Marshall Islands does not raise any novel issues in its Reply with regards to Article 283 UNCLOS or the obligation not to aggravate the dispute.⁵⁹² As Equatorial Guinea has demonstrated,⁵⁹³ the scope of the obligation requires that, when a dispute arises, the parties exchange views regarding its settlement by negotiation or by other peaceful means. It does not, however, create an obligation for States to negotiate as a procedure to settle their disputes before there can be resort to the compulsory mechanisms of Part XV(2) of UNCLOS.⁵⁹⁴ A prior exhaustion of a negotiation process is a prerequisite to institution of proceedings only if a specific obligation to that effect has been undertaken.⁵⁹⁵

351. The purpose of the provision is to:

*ensure that resort to the mechanisms of section 2 of Part XV or other compulsory procedures is not premature or a matter of course, but occurs only once it become clear that the dispute cannot be solved by less adversarial means, and is in harmony with the primacy that international law gives to negotiation as a method of settling disputes.*⁵⁹⁶

352. First, the Marshall Islands' case in its Reply seems to rely upon the "*dispute*" in question arising first on 16 August 2022,⁵⁹⁷ followed by subsequent letters and notes verbales sent between September and November 2022. At this point, the *Heroic Idun* had only just been seized lawfully by Equatorial Guinea, pursuant to its request from Nigeria, and been brought to Luba Bay.
353. The Marshall Islands' interpretation does not accord with the totality of the "*dispute*" now presented in its pleadings. Rather, Equatorial Guinea submits that the "*dispute*" at issue is the one presently before the Chamber. It is clear that that "*dispute*" in its current form was raised by the Marshall Islands in its communications of November 2022, after the transfer of the *Heroic Idun* to Nigeria, when the Marshall Islands noted that it would consider submitting the dispute to procedures under UNCLOS,⁵⁹⁸ including by way of proceedings under Annex VII of UNCLOS.⁵⁹⁹

⁵⁹² Reply, ¶¶ 271-273.

⁵⁹³ Counter-Memorial, ¶ 338.

⁵⁹⁴ *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), Article 283, p. 1831.

⁵⁹⁵ *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), Article 283, p. 1831.

⁵⁹⁶ *United Nations Convention on the Law of the Sea - A Commentary*, ed. Alexander Proelss (C.H. Beck, Hart, Nomos, 2017), p. 1831.

⁵⁹⁷ Reply, ¶ 271 and footnote 552.

⁵⁹⁸ Note verbale from RMI Ministry of Foreign Affairs and Trade, SA 16.

⁵⁹⁹ Note verbale from the Marshall Islands to Equatorial Guinea, 14 November 2022, SA 30.

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354. It was after this point, and after the Special Agreement between the parties of April 2023, that Equatorial Guinea wrote to the Marshall Islands on 12 June 2023 noting that *"the Government of the Republic of Equatorial Guinea has kindly requested your Government for an amicable settlement of the dispute between [the Marshall Islands] and the Government of the Republic of Equatorial Guinea concerning the said Vessel"*. It requested initial negotiations to find a peaceful agreement to the dispute.⁶⁰⁰
355. In addition, Equatorial Guinea sent a letter on 22 May 2023 to the Tribunal requesting a moratorium in the understanding that the parties could meet and find an amicable solution.⁶⁰¹
356. The Marshall Islands made clear by response in July 2023 that it would not *"consider any request for consultation or engagement until a concrete and meaningful settlement offer is advanced by Equatorial Guinea"*.⁶⁰²
357. Therefore, Equatorial Guinea acted with respect for the judicial process and peaceful settlement of disputes. It sought and obtained agreement with the Marshall Islands on the submittal of this dispute to a special chamber of the Tribunal under Article 15(2) of the Statute, and additionally sought negotiations with the Marshall Islands in an attempt to peacefully resolve the dispute. It plainly did not act contrary to Article 283 UNCLOS.
358. Second, regarding the Marshall Islands' allegation that Equatorial Guinea aggravated the dispute by transferring the Vessel and crew to Nigeria, Equatorial Guinea has submitted and made clear that this was pursuant to its lawful obligations and undertakings. It could not have done otherwise. While this was prior to the Prompt Release Proceedings initiated by the Marshall Islands, the timing of such a transfer was necessitated by Nigerian requests and administrative procedures. It therefore cannot amount to *"aggravation"* of the dispute in question.
359. For these reasons, Equatorial Guinea did not breach its obligations to preserve the rights of the Marshall Islands and did not aggravate the dispute pending proceedings.

⁶⁰⁰ Note No. 098/MPGE-NY/023/IAG from the Permanent Mission of the Republic of Equatorial Guinea to the United Nations to the Permanent Mission of the Republic of the Marshall Islands to the United Nations, 14 June 2023, **REG-056**, p. 3.

⁶⁰¹ Letter from Agent of Equatorial Guinea to President of the Special Chamber, 22 May 2023, **REG-057**.

⁶⁰² Letter from Marshall Islands to Equatorial Guinea, 10 July 2023, **REG-058**.

CHAPTER 6

THE MARSHALL ISLANDS IS NOT ENTITLED TO COMPENSATION OR SATISFACTION

360. The Marshall Islands contends that it is entitled to compensation because of the allegedly internationally wrongful acts for which it claims Equatorial Guinea is responsible are said to have caused damage to the Marshall Islands. Its arguments on quantum must fail for two reasons: (1) there is no causation between the actions of Equatorial Guinea and the damage claimed by the Marshall Islands; and (2) the evidence filed by the Marshall Islands in support of its claim is obscure, unreliable and deficient. For both reasons, the Marshall Islands' case on quantum fails.
361. The Marshall Islands also argues that it is entitled to compensation for non-material damage for the treatment the crew received while in Equatorial Guinea and Nigeria. The former part of its case falls on the facts as the crew was well-treated in Equatorial Guinea. The latter part of its case regarding alleged mistreatment in Nigeria cannot be ruled on, as it falls foul of the *Monetary Gold* principle and the rights and responsibility of Nigeria, which is not able to defend those claims in these proceedings to which Nigeria is not a party (based on the admitted choice of the Marshall Islands). It also fails on causation. It was in Nigeria that the request for the apprehension of the *Heroic Idun* was made and in Nigeria that this alleged mistreatment is said to have taken place. On no account, can Equatorial Guinea be reasonably said to have caused the alleged mistreatment.
362. Finally, the Marshall Islands' arguments on interest, costs and satisfaction – none of which are warranted in the present case and would actually run contrary to the practice of inter-State disputes – must also fail and are also addressed in turn below.

I. The Marshall Islands has not established a causal link between the losses allegedly suffered and any conduct attributable to Equatorial Guinea

A. It is undisputed that the causal link must be direct, which is not the case here

363. In its Reply, the Marshall Islands accepts that "*only damage directly caused by the wrongful act [...] is the subject of compensation*".⁶⁰³ As noted by Equatorial Guinea, damages must similarly be proximate and clearly consequential.⁶⁰⁴
364. Having accepted that the causal link must be direct, the Marshall Islands attempts to re-characterise the damages it claims to have suffered – which follow the actions of Nigeria – as being "*a direct result*" of Equatorial Guinea's acts.⁶⁰⁵ To this end, the Marshall Islands alleges that Equatorial Guinea "*compounded [the] damage*" by failing to release the Vessel as it: (a) allegedly promised to do; and (b) "*would have been obliged to*" if the prompt release application had succeeded.⁶⁰⁶ Neither was an existing obligation on Equatorial Guinea at the time.

⁶⁰³ Reply, ¶ 279.

⁶⁰⁴ Counter-Memorial, ¶¶ 348-355.

⁶⁰⁵ Reply, ¶ 281.

⁶⁰⁶ Reply, ¶ 281(a).

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- a) Equatorial Guinea never made an undertaking or "*promise*" to release the Vessel upon payment of the Fine and, therefore, there was no breach of any commitment by Equatorial Guinea, let alone an obligation under UNCLOS; and
 - b) The prompt release application did not result in any decision or order on Equatorial Guinea to release the Vessel, meaning that Equatorial Guinea could not have failed to abide by this hypothetical decision. Indeed, this is a purely speculative argument premised on an assumption that the Marshall Islands would have been successful in its application. Even if it had been successful eventually, at the time of the transfer of the Vessel to Nigeria, there was no decision against Equatorial Guinea arising from these proceedings. Since Equatorial Guinea had no legal obligations arising from the prompt release application, its actions could not have resulted in a breach of such obligations.
365. Accordingly, the alleged failure to release the Vessel is not an internationally wrongful act giving rise to a duty of reparation.
- B. It was the actions of Nigeria, not Equatorial Guinea, that directly caused the Marshall Islands' losses (if any)
366. The Marshall Islands argues that "*Nigeria's detention of the Vessel is not an intervening factor. It does not break the causal chain between Equatorial Guinea's conduct and the damage suffered by the Marshall Islands*".⁶⁰⁷ There are multiple logical flaws in the position of the Marshall Islands.
367. First, the events giving rise to the present dispute started when the *NNS Gongola*, a Nigerian Navy ship, first attempted to intercept the Vessel on 8 August 2022. This is not a question of Nigeria being an "*intervening factor*"; Nigeria was the primary cause of later events. In response, the *Heroic Idun* fled, leading to Nigeria's request to Equatorial Guinea for assistance, in full compliance with international law and regional mechanisms for cooperation. Therefore, the first event in the chain of causation is not an action by Equatorial Guinea, but rather Nigeria. The Marshall Islands ignores this fact in its analysis but it cannot have it both ways. If the causal chain is seen as an extending chain, the chain starts with Nigeria's request for assistance, which was the only reason that Equatorial Guinea detained the Vessel. Indeed, causation demands that the Marshall Islands' case be reframed as follows: had Nigeria not asked Equatorial Guinea to arrest the Vessel and return it to Nigeria, the Marshall Islands would not have suffered the (alleged) damage.
368. Second, the Marshall Islands fails to provide any causation analysis between the alleged internationally wrongful act and the alleged damage, thereby failing to demonstrate how the act itself (rather than an intervening act, for example) caused the damage for which it seeks compensation. Conducting such an analysis makes clear that the acts of Equatorial Guinea did not directly cause the alleged damages. For example:
- a) What was the direct cause of the alleged damage of USD 15 million concerning Nigeria's decision to impose a fine on the *Heroic Idun*, together with the owners' decision to plead guilty to an offence under Nigerian anti-piracy legislation?

⁶⁰⁷ Reply, ¶ 282.

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Equatorial Guinea has no knowledge of and was not a party to these events, let alone the cause of an internationally wrongful act.

- b) Similarly, the Marshall Islands has sought a total of USD 19,348,560 for loss of hire costs.⁶⁰⁸ The vast majority of this claim relates to the period that the Vessel was detained in Nigeria and the period following its release by the Nigerian authorities. Again, Equatorial Guinea had no involvement during this period. Nigeria alone can explain why it detained the crew for this period of time.
 - c) The Marshall Islands has claimed USD 15,028,000 in non-material damages "*to compensate the unlawful detention of the Vessel's crew*",⁶⁰⁹ though it glosses over the fact that the overwhelming majority of the time that this amount is claimed in respect of was spent in Nigeria under the control of the Nigerian authorities. Again, only Nigeria can provide information about the conditions of the crew's detention in Nigeria, without which the Chamber cannot make a finding on liability, let alone holding Equatorial Guinea responsible for having caused losses flowing therefrom.
369. It is in this context that the Marshall Islands defensively argues that "*Nigeria's actions or what happened in Nigeria are entirely irrelevant to most of the Marshall Islands' claims*".⁶¹⁰ This protestation is irreconcilable with the Marshall Islands' request that Equatorial Guinea pay for Nigeria's actions. Indeed, these three heads of claim (the fine imposed by Nigeria, lost profits and non-material damage) account for the vast majority of the claims made by the Marshall Islands in these proceedings.
370. Although the Marshall Islands contends that it is not attempting to attribute responsibility of the "*actions of another sovereign State*" to Equatorial Guinea,⁶¹¹ this is exactly what its quantum case demonstrates. As made clear by the PCIJ in the *Chorzów Factory* case, while assessing reparation due for an internationally wrongful act of a State, it is necessary to exclude "*from the damage to be estimated, injury resulting for third parties from the unlawful act*".⁶¹² The ILC in its commentary to Article 31 ARSIWA also unequivocally stated that "*the subject matter of reparation is, globally, the injury resulting from and ascribable to the wrongful act, rather than any and all consequences flowing from an internationally wrongful act*".⁶¹³ In this case, the sovereign actions of Nigeria when imposing a fine or determining the treatment of the crew, which may or may not entail its international responsibility, cannot in any way be attributed and give rise to the responsibility of Equatorial Guinea.
371. The basic principle that "*each State is responsible for its own internationally wrongful conduct*" even when it acts in connection with the act of another State is reflected in Article 16 ARSIWA. This article provides that:

⁶⁰⁸ Reply, ¶ 308.

⁶⁰⁹ Reply, ¶ 318.

⁶¹⁰ Reply, ¶ 66.

⁶¹¹ Reply, ¶ 281.

⁶¹² *Case Concerning the Factory at Chorzów*, P.C.I.J. (ser. A) No. 9, Judgment (Claim for Indemnity) (Merits), 13 September 1928, p. 31.

⁶¹³ International Law Commission, "Responsibility of States for Internationally Wrongful Acts", *Yearbook of the International Law Commission*, 2001, Volume II, Part Two, Report of the Commission to the General Assembly on the work of its fifty-third session, A/CN.4/SER.a/2001/Add.1 (Part 2), Commentary on Article 31, ¶ 9.

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*A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State.*⁶¹⁴

372. As a starting point, Nigeria is the primary acting State, meaning that the Chamber should not admit the present case since it cannot determine whether Nigeria as the acting State, which is not a party to these proceedings, has committed an internationally wrongful act. Second, under this article, Equatorial Guinea's actions would only engage its international responsibility if it had knowledge of the circumstances of the internationally wrongful act. Considering the fact that Nigeria's request for assistance in apprehending the *Heroic Idun* was a *prima facie* lawful request which Equatorial Guinea acted upon in good faith, no such knowledge can be imputed (let alone shown).

373. The commentary to Article 16 ARSIWA also makes clear that:

*Under article 16, aid or assistance by the assisting State is not to be confused with the responsibility of the acting State. In such a case, the assisting State will only be responsible to the extent that its own conduct has caused or contributed to the internationally wrongful act. Thus, in cases where that internationally wrongful act would clearly have occurred in any event, the responsibility of the assisting State will not extend to compensating for the act itself.*⁶¹⁵

374. Under the Marshall Islands' own case concerning lost profits, the *Heroic Idun* would have continued its operations, meaning it had to go back to Nigeria and address the situation caused by its evasion of the Nigerian Navy. Accordingly, whatever actions Nigeria has taken in the present case would have been taken irrespective of Equatorial Guinea's cooperation.⁶¹⁶ As such, Equatorial Guinea's responsibility cannot be engaged even if the Chamber were to determine that Nigeria committed an internationally

⁶¹⁴ International Law Commission, "Responsibility of States for Internationally Wrongful Acts", *Yearbook of the International Law Commission*, 2001, Volume II, Part Two, Report of the Commission to the General Assembly on the work of its fifty-third session, A/CN.4/SER.a/2001/Add.1 (Part 2), Article 16.

⁶¹⁵ International Law Commission, "Responsibility of States for Internationally Wrongful Acts", *Yearbook of the International Law Commission*, 2001, Volume II, Part Two, Report of the Commission to the General Assembly on the work of its fifty-third session, A/CN.4/SER.a/2001/Add.1 (Part 2), Commentary on Article 16, ¶ 1 (emphasis added).

⁶¹⁶ Cf International Law Commission, "Responsibility of States for Internationally Wrongful Acts", *Yearbook of the International Law Commission*, 2001, Volume II, Part Two, Report of the Commission to the General Assembly on the work of its fifty-third session, A/CN.4/SER.a/2001/Add.1 (Part 2), Commentary on Article 16, ¶ 10: "In accordance with article 16, the assisting State is responsible for its own act in deliberately assisting another State to breach an international obligation by which they are both bound. **It is not responsible, as such, for the act of the assisted State.** In some cases this may be a distinction without a difference: where the assistance is a necessary element in the wrongful act in absence of which it could not have occurred, the injury suffered can be concurrently attributed to the assisting and the acting State. In other cases, however, the difference may be very material: the assistance may have been only an incidental factor in the commission of the primary act, and may have contributed only to a minor degree, if at all, to the injury suffered. **By assisting another State to commit an internationally wrongful act, a State should not necessarily be held to indemnify the victim for all the consequences of the act, but only for those which, in accordance with the principles stated in Part Two of the articles, flow from its own conduct**" (emphasis added).

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wrongful act (which is beyond the scope of the present proceedings based on the *Monetary Gold* doctrine). This was also explained by the ILC:

*Article 16 does not address the question of the admissibility of judicial proceedings to establish the responsibility of the aiding or assisting State in the absence of or without the consent of the aided or assisted State. ICJ has repeatedly affirmed that it cannot decide on the international responsibility of a State if, in order to do so, "it would have to rule, as a prerequisite, on the lawfulness" of the conduct of another State, in the latter's absence and without its consent. This is the so-called Monetary Gold principle. That principle may well apply to cases under article 16, since it is of the essence of the responsibility of the aiding or assisting State that the aided or assisted State itself committed an internationally wrongful act. The wrongfulness of the aid or assistance given by the former is dependent, inter alia, on the wrongfulness of the conduct of the latter. [...]*⁶¹⁷

375. Finally, the Marshall Islands states that Equatorial Guinea's return of the Vessel to Nigeria meant the alleged wrongful act continued, and that "[t]he position would be very different had Equatorial Guinea released the Vessel and crew (as it was obliged to do) and they had been subsequently detained by Nigeria. That would have broken the causal chain".⁶¹⁸ The facts are plainly that the Vessel failed to comply with the orders of the Nigerian warship, *NNS Gongola*. After the *Heroic Idun* departed from the Nigerian ports, Nigeria requested that the Vessel be detained on suspicion of criminal offences, and Equatorial Guinea complied with Nigeria's request in accordance with regional mechanisms for cooperation. Then, Nigeria requested that the Vessel be returned to its ports, with which Equatorial Guinea again complied.⁶¹⁹

C. The Marshall Islands has failed to prove that Nigeria committed an internationally wrongful act, let alone that Equatorial Guinea should have foreseen such a breach

376. The Marshall Islands also contends that the damage suffered in Nigeria was foreseeable on the basis of communications received from Nigeria and knowledge of Nigeria's history of detaining vessels.⁶²⁰ As a preliminary point, because of the applicability of the *Monetary Gold* doctrine, the Chamber cannot determine whether Nigeria committed

⁶¹⁷ International Law Commission, "Responsibility of States for Internationally Wrongful Acts", *Yearbook of the International Law Commission*, 2001, Volume II, Part Two, Report of the Commission to the General Assembly on the work of its fifty-third session, A/CN.4/SER.a/2001/Add.1 (Part 2), Commentary on Article 16, ¶ 11 (emphasis added).

⁶¹⁸ **Reply**, ¶ 283.

⁶¹⁹ In its supporting footnote, the Marshall Islands cites passages of *M/V "Norstar"* (See **Reply**, ¶ 283, footnote 565) where the tribunal found that Italy's wrongful act ceased (and any causal link between Italy's wrongful act and damages sustained by Panama ended) on the date that Italy notified the ship owner of the vessel's unconditional release. However, this bears no resemblance to the present situation, where Nigeria, and not Equatorial Guinea, unconditionally released the Vessel. Any ensuing damages sustained in the period that the Vessel and crew were under Nigerian detention, which Equatorial Guinea had no prior knowledge or involvement in, cannot be directly caused by Equatorial Guinea.

⁶²⁰ **Reply**, ¶ 281(b).

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an internationally wrongful act. This would be a pre-requisite step for the Chamber to engage Equatorial Guinea's responsibility for the actions of Nigeria *vis-à-vis* the crew.

377. Moreover, what the Marshall Islands implies is that Equatorial Guinea is responsible for the actions of another sovereign State because Equatorial Guinea should have known that Nigeria was going to commit an internationally wrongful act (presumably, the detention of the crew). This is obviously contrary to the most basic principles of international law. Why and how Nigeria decided to detain the *Heroic Idun* is a matter of Nigerian decision-making as part of its sovereign powers, for which Equatorial Guinea cannot be held responsible.
378. In support of its foreseeability argument, the Marshall Islands purports to rely on the human rights undertaking that Equatorial Guinea asked Nigeria to sign before returning the Vessel to Nigeria.⁶²¹ According to the Marshall Islands, this means that Equatorial Guinea "*knew they would be detained in Nigeria with all the attendant risks that entails*".⁶²² The Marshall Islands' argument is non-sensical. Its argument seems to amount to: Equatorial Guinea knew or should have known that Nigeria would breach human rights. Equatorial Guinea rejects this deliberate misapplication of foreseeability, which seeks to transfer damage flowing from the acts of one sovereign State to another. Indeed, Nigeria's undertaking to adhere to and guarantee human rights standards speaks to Nigeria's own assumption of responsibility for any damage caused to the crew and Vessel whilst in Nigeria.
379. Even if Equatorial Guinea had somehow assisted in the commission of a breach of the crew's human rights while they were in Nigeria (which it did not), the commentary to Article 16 ARSIWA also makes clear that:

*Where the allegation is that the assistance of a State has facilitated human rights abuses by another State, the particular circumstances of each case must be carefully examined to determine whether the aiding State by its aid was aware of and intended to facilitate the commission of the internationally wrongful conduct.*⁶²³

380. In the present case, Equatorial Guinea was neither aware nor did it intend to facilitate human rights abuses. This two-pronged cumulative test is obviously not met, especially when Equatorial Guinea insisted on obtaining binding legal assurances from Nigeria that the crew's human rights would be respected.⁶²⁴

D. Article 47 ARSIWA on concurrent causes does not assist the Marshall Islands' case

381. Finally, the Marshall Islands also states that "[e]ven if Nigeria's conduct is considered a concurrent cause of some damage suffered by the Marshall Islands, Equatorial

⁶²¹ Official handing over of the tanker *MT Heroic Idun* between the governments, Addendum, 10 November 2022, REG-011.

⁶²² Reply, ¶ 281(b).

⁶²³ International Law Commission, "Responsibility of States for Internationally Wrongful Acts", *Yearbook of the International Law Commission*, 2001, Volume II, Part Two, Report of the Commission to the General Assembly on the work of its fifty-third session, A/CN.4/SER.a/2001/Add.1 (Part 2), Commentary on Article 16, ¶ 9.

⁶²⁴ Official handing over of the tanker *MT Heroic Idun* between the governments, Addendum, 10 November 2022, REG-011.

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Guinea would nevertheless be internationally liable for that damage",⁶²⁵ relying on Article 47 ARSIWA.⁶²⁶

382. However, Article 47 ARSIWA does not support the notion that Equatorial Guinea is responsible for the entirety of the damage sustained by the crew and Vessel. Rather, the commentary makes clear that "*Article 47 deals with the situation where there is a plurality of responsible States in respect of the same wrongful act. It states the general principle that in such cases each State is separately responsible for the conduct attributable to it*".⁶²⁷
383. In this case, the events which unfolded in Nigeria are clearly not attributable to Equatorial Guinea.⁶²⁸

II. The Marshall Islands has failed to substantiate the alleged damage suffered

384. After failing to provide evidentiary support for its quantum claim with its Memorial,⁶²⁹ the Marshall Islands has with its Reply provided 2,070 pages of documents purportedly in support of its quantum claim. However, the volume of these documents cannot make up for their deficiencies. The Marshall Islands has failed to present and support its basic quantum position. The many defects in the documentation produced include:
- a) The Marshall Islands has not provided references to the specific pages it relies upon for each head of claim. This is particularly relevant when considering the number of duplicated documents filed. For example, there appears to be a substantial overlap between RMI-63 and RMI-64, which purportedly relate to different heads of claim. The result is that a mere totalling of the figures contained in the exhibits of the Marshall Islands provide substantially different amounts to those claimed.
 - b) The same issue arises when multiple currencies are at play (such as Norwegian krone or Indian rupees), for which the Marshall Islands has provided no information on the exchanges rates applied or their dates.
 - c) The Marshall Islands has chosen to file a number of receipts in other languages (such as Polish, Hindi and Norwegian), without providing the required translation.⁶³⁰

⁶²⁵ **Reply**, ¶ 283.

⁶²⁶ See **Reply**, ¶ 283, footnote 566 "[s]ee Articles 31 and 47 of the Articles on State Responsibility".

⁶²⁷ International Law Commission, "Responsibility of States for Internationally Wrongful Acts", *Yearbook of the International Law Commission*, 2001, Volume II, Part Two, Report of the Commission to the General Assembly on the work of its fifty-third session, A/CN.4/SER.A/2001/Add.1 (Part 2), Commentary on Article 47, p. 124, ¶ 1 (emphasis added).

⁶²⁸ Nor do the passages of *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* referred to in **Reply**, ¶ 283, footnote 566 have any relevance to the matter. In this case, the DRC alleged that Uganda had violated international law and various human rights through armed activities of Uganda in the DRC, whilst Uganda maintained it had acted with in self-defence and with the DRC's consent. In the paragraphs cited by the Marshall Islands, the Court found that a ceasefire agreement did not constitute consent to Uganda deploying additional troops into the DRC. The passages that the Marshall Islands cite are therefore inapposite.

⁶²⁹ For example, see **Counter-Memorial**, ¶¶ 365, 372, 376 and 378.

⁶³⁰ For example, see Costs and expenses to assist the crew during detention, **RMI 60**, pp. 670-671, 675-682, 688, 693-696, 700-702, 736-739, 782-783, 785-789, 837-838, 913-920, 922.

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385. It is a general principle of law that reparation for an unlawful act should not be allowed to "*become a source of enrichment for the injured person*".⁶³¹ As affirmed by the PCIJ in *Chorzów Factory*:

*in estimating the damage caused by an unlawful act, only the value of property, rights and interests which have been affected and the owner of which is the person on whose behalf compensation is claimed, or the damage done to whom is to serve as a means of gauging the reparation claimed, must be taken into account.*⁶³²

386. The Marshall Islands has submitted correspondence with the *Heroic Idun's* insurers which indicates that an undisclosed number of expenses are recoverable under the Vessel's insurance cover.⁶³³ The Marshall Islands has not specified which expenses it is seeking to recover from both Equatorial Guinea and the Vessel's insurers. This accords with the communications of the Marshall Islands to the Chamber that the owners of the Vessel were going to share the pleadings in the present case in a commercial arbitration with the insurers of the Vessel.⁶³⁴
387. Turning to the more granular detail of the Marshall Islands' submission, the Marshall Islands has increased its material damages claim to USD 43,017,837.72 and EUR 2,000,132. It also makes a non-material damages claim for USD 15,028,000.⁶³⁵ However, the expenses allegedly incurred by the Marshall Islands are exorbitant, unreasonable and often unrelated to the heads of claim to which the Marshall Islands has attributed them. Equatorial Guinea accordingly respectfully submits that the Chamber should dismiss the Marshall Islands' claims.
388. To name a few of the many glaring defects in the damages sought and evidence submitted, the Marshall Islands has included receipts and invoices for a number of expenses that could not possibly have been directly caused by Equatorial Guinea's actions. This includes the alcoholic consumption of OSM employees.
- a) The Marshall Islands claim for Mr Kulblik's tab at a hookah pool bar in Dubai, such as five servings of Bombay Sapphire and a shot of Gordon's gin on a single night in July 2023 (among others).⁶³⁶
 - b) It also claims for entire bottles of wine and shots of Monkey 47 gin ordered by Geir Arvid Sekkesaeter on 10 July 2023.⁶³⁷

⁶³¹ Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Cambridge University Press, 2003), p. 236. In *Delagoa Bay Railway Arbitration* (1900), II (30) N.R.G., p. 329, at pp. 413, the tribunal explicitly declared that it would be "[...] *contrary to the most elementary considerations of equity to make this measure [compensation] a source of enrichment for the Company*".

⁶³² *Case Concerning the Factory at Chorzów*, P.C.I.J. (ser. A) No. 9, Judgment (Claim for Indemnity) (Merits), 13 September 1928, p. 31.

⁶³³ Costs and expenses relating to the Vessel and crew, **RMI 61**, pp. 38, 41 and 44.

⁶³⁴ Letter from the Republic of the Marshall Islands to the Registrar, 30 August 2024.

⁶³⁵ **Reply**, ¶ 334.

⁶³⁶ Costs and expenses to repair the Vessel, **RMI 64**, pp. 56-57 and 59.

⁶³⁷ Costs and expenses to repair the Vessel, **RMI 64**, pp. 64-68.

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ANNEX RMI/-63

Crowne Plaza Jumeirah

Past Day Check Report

POOL BAR

(2023-07-01)

Printed:2023-07-10 16:00:13 (Income Auditor)

Check#: 20307979

Table#: 441 Cover: 1

Open: 2023-07-01 13:11:20 Santos

Kenneth

Item Name	Qty	Item Total
Bombay Sapphire single	2	62.04
* Tonic Water		
Bombay Sapphire single	2	62.04
* Tonic Water		
Bombay Sapphire single	2	62.04
* Tonic Water		
Bombay Sapphire single	2	62.04
* Tonic Water		
Bombay Sapphire single	2	62.04
* Tonic Water		
gordons shot	2	48.98
* pink		
* Tonic Water		
Fresh Juices	1	21.22
Sub-total:		380.40
Service Charge:		38.04
Tax:		47.55
Rounding:		0.01
Check Total:		466.00

Close: 2023-07-01 17:43:02 Santos

Kenneth

Amount	Tips	Changes
Room Charge		
466.00	0.00	0.00
Room#:		441

**** END OF REPORT ****

ANNEX RMI/-63

Crowne Plaza Jumeirah
Past Day Check Report
THE DOCKS
(2023-07-01)

Printed: 2023-07-10 15:55:16 (Income Auditor)

Check#: 20230966

Table#: 7 Cover: 0

Open: 2023-07-01 19:32:52

Ioklonazarova Snakinoza

Item Name	Qty	Item Total
monkey 47 shot	1	48.98
* Tonic Water		
monkey 47 shot	1	48.98
* Tonic Water		
monkey 47 shot	1	48.98
* Tonic Water		
Sub-total:		146.94
Service Charge:		14.69
Tax:		18.37
Check Total:		180.00

Close: 2023-07-01 20:40:43 **Namarasa**

Paradee

	Amount	Tips	Changes
Room Charge			
	180.00	40.00	0.00
Room#:			410

** END OF REPORT **

Example of Mr Kulblik's alcohol consumption in the bar of a 5-star hotel in Dubai.
Exhibited by the Marshall Islands as "*Costs and expenses to repatriate the crew*" / "*Costs and expenses relating to the Vessel and crew*" in RMI-63, p. 158, and as "*Costs and expenses to repair the Vessel*" in RMI-64, p. 59.

Example of Mr Sekkesaeter's alcohol consumption
in the restaurant of a 5-star hotel in Dubai.
Exhibited by the Marshall Islands as "*Costs and
expenses to repatriate the crew*" / "*Costs and
expenses relating to the Vessel and crew*" in RMI-
63, p. 167 and as "*Costs and expenses to repair the
Vessel*" in RMI-64, p. 68.

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389. Other items claimed by the Marshall Islands as alleged damage directly caused by Equatorial Guinea include:
- a) Business class flights;⁶³⁸
 - b) Bonus items like extra leg room in flights;⁶³⁹
 - c) Unexplained payments of cash to crew members;⁶⁴⁰
 - d) Accommodation at 5-star hotels;⁶⁴¹ and
 - e) Materials to equip the *Heroic Idun* for future work in August 2023, for example, a flat screen smart TV and air conditioning.⁶⁴²
390. All the heads of claim for material damage filed by the Marshall Islands suffer from these incurable defects. Each of them is examined below in turn.
- A. Costs and expenses allegedly incurred to assist the crew during their detention
391. The Marshall Islands is claiming costs and expenses allegedly incurred to assist the crew during their stay in Nigeria and Equatorial Guinea in the sum of USD 1,712,336.15. These include:
- a) EUR 15,255.44 and USD 6,136.93 to provide psychological support while in Equatorial Guinea.⁶⁴³
 - (i) For the amount in EUR, the Marshall Islands cannot purport to claim for the cost of mental health care while, at the same time, claiming that Equatorial Guinea obstructed such treatment.⁶⁴⁴
 - (ii) For the amount in USD, the only receipt which matches this figure corresponds to the advance payment requested by Captain Ramaswamy for "*consultancy services*".⁶⁴⁵ Who this person is and in which capacity he provided psychological support while in Equatorial Guinea is unexplained.

⁶³⁸ For example, see Costs and expenses to assist the crew during detention, **RMI 60**, pp. 137-138, 157, 602-603 and 622. Equatorial Guinea understands that business class seats are represented by codes 'Z' in respect of Air India airlines, code 'J' in respect of Emirates airlines, and code 'C' in respect of SriLankan Airlines.

⁶³⁹ For example, see Costs and expenses to assist the crew during detention, **RMI 60**, pp. 678, and 688-692.

⁶⁴⁰ For example, see Costs and expenses to repatriate the crew, **RMI 63**, pp. 78-81 and 83-87 and Costs and expenses to repair the Vessel, **RMI 64**, p. 120.

⁶⁴¹ For example, see Costs and expenses to assist the crew during detention, **RMI 60**, pp. 956 and Costs and expenses to repair the Vessel, **RMI 64**, pp. 106-111, 115, and 117.

⁶⁴² Costs and expenses to repair the Vessel, **RMI 64**, p. 179.

⁶⁴³ **Reply**, ¶ 285(a).

⁶⁴⁴ **Reply**, ¶ 322: "[...] Equatorial Guinea cannot obstruct a proper, contemporaneous psychiatric evaluation, and then contend that the psychiatric evaluation available (carried out after the crew were released) is inadequate because it is not contemporaneous. That would allow Equatorial Guinea to benefit from its own wrong". Cf **Reply**, ¶ 288(c): "The Marshall Islands has adduced contemporaneous documentary evidence that shows that the crew was provided with medical and psychological assistance".

⁶⁴⁵ Costs and expenses to assist the crew during detention, **RMI 60**, pp. 74-75.

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- b) EUR 126,436.33 in correspondent costs incurred due to detention and release efforts.⁶⁴⁶
- (i) There is double-counting under this head of claim as this amount already includes the EUR 15,255.44 figure claimed in psychological care in the line above.⁶⁴⁷
 - (ii) This amount is listed as occurring "[...] *following incident in Nigeria port on 08/08/2022*", clearly showing the direct cause of the apprehension of the *Heroic Idun* by Equatoguinean authorities.⁶⁴⁸
 - (iii) Part of this amount is comprised of invoices for events that occurred before Equatorial Guinea even knew of the existence of the *Heroic Idun* and pre-dating its apprehension.⁶⁴⁹
- c) USD 1,567.55 for "*Captain Ramaswamy's travel costs for discussions with Indian authorities regarding detention and release*".⁶⁵⁰ The Marshall Islands has never mentioned Captain Ramaswamy or his role in neither their Memorial nor Reply. It is unknown who Captain Ramaswamy is and why he incurred travel costs on behalf of the Marshall Islands in this case (which appear to include several business class flights⁶⁵¹ and accommodation at a luxury hotel).⁶⁵²
- d) Claims for a number of different additional wages and bonuses paid to the crew "*due to their detention*" totalling USD 1,102,402, which include: (1) an "*additional salary paid to the crew from August to November 2022*"; (2) a "*Christmas bonus*" paid while the crew was in Nigeria; (3) a "*high-risk bonus*" paid while the crew was in Nigeria; (4) an "*additional bonus*" paid while the crew was in Nigeria; and (5) "*compensation paid to the crew on disembarkation, due to their detention*" paid after the crew's release from Nigeria.⁶⁵³ The Marshall Islands states that "*the Owners had to grant*"⁶⁵⁴ such payments, yet has not provided any legal or contractual basis which would trigger such an obligation. Therefore, the Marshall Islands has failed to explain how these losses can be characterised as anything other than voluntary expenses and how they can be considered a consequence of any alleged breach by Equatorial Guinea. In fact, the evidence strongly points to the voluntary nature of this expense: "[b]onus/compensation payment at the end" "[i]n agreement with Owner".⁶⁵⁵

⁶⁴⁶ Reply, ¶ 285(a).

⁶⁴⁷ Costs and expenses to assist the crew during detention, **RMI 60**, p. 1054.

⁶⁴⁸ Costs and expenses to assist the crew during detention, **RMI 60**, p. 1023.

⁶⁴⁹ Costs and expenses to assist the crew during detention, **RMI 60**, pp. 2-4 (9 August 2022, 11 August 2022), pp. 26-27 (9 August 2022), p. 67 (9 August).

⁶⁵⁰ Reply, ¶ 285(c).

⁶⁵¹ See Costs and expenses to assist the crew during detention, **RMI 60**, pp. 137-138, 157, 602-603 and 622. Equatorial Guinea understands that business class seats are represented by codes 'Z' in respect of Air India airlines, code 'J' in respect of Emirates airlines, and code 'C' in respect of SriLankan Airlines.

⁶⁵² Costs and expenses to assist the crew during detention, **RMI 60**, p. 956.

⁶⁵³ Reply, ¶ 285(d)-(h).

⁶⁵⁴ Reply, ¶ 290.

⁶⁵⁵ Costs and expenses to repatriate the crew, **RMI 63**, p. 8.

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- e) USD 121,302.32, EUR 151,532.04 and INR 290,396 in "[m]edical expenses for the crew".⁶⁵⁶
- (i) For the amount in USD, the invoices provided appear to relate entirely to the period that the Vessel and crew were detained in Nigeria. For September and November 2022, the Marshall Islands' evidence consists of unofficial spreadsheets, referencing various "voucher" and "invoice" numbers, without any such vouchers or invoices being supplied.⁶⁵⁷
- (ii) For the amount in EUR, the Marshall Islands has supplied an invoice which shows that the sum relates to multiple items such as liaison regarding Equatorial Guinea's Fine on the Vessel,⁶⁵⁸ "15 [c]rew taken to Restaurant for lunch",⁶⁵⁹ the supply of power banks,⁶⁶⁰ correspondence with a local lawyer,⁶⁶¹ the arrangement of transport for the crew,⁶⁶² and liaison regarding the crew's mobile phones.⁶⁶³ Other than the fact that these cannot constitute medical expenses, this amount has also been reimbursed in full by the insurer: "[w]e confirm that we have paid this invoice in full under OSM's Crew Cover file".⁶⁶⁴
- (iii) For the amount in INR, it includes receipts for medical tests conducted before the apprehension of the crew by Equatorial Guinea for people who were not even aboard the *Heroic Idun* at the time.⁶⁶⁵ It also includes receipts for the treatment of children, who were obviously not aboard the *Heroic Idun* at any point in time.⁶⁶⁶
- f) USD 107,227.46 in sick wages of the crew during detention.⁶⁶⁷ This amount appears to include sick wages of people who were not aboard the *Heroic Idun*.⁶⁶⁸
- g) USD 236.54 and PHP 68,339.70 in medical costs for the crew receiving treatment at home.⁶⁶⁹ Considering the currency in which they were incurred, presumably they occurred in the Philippines and far removed from any Equatorial Guinea action.
- h) USD 20,375.08, EUR 225 and NOK 482,204.61 in travel costs, including those of the crew's family across India for family updates and for the manager's representatives to travel to West Africa.⁶⁷⁰

⁶⁵⁶ Reply, ¶ 285(i).

⁶⁵⁷ Costs and expenses to assist the crew during detention, **RMI 60**, pp. 74 and 950.

⁶⁵⁸ Costs and expenses to assist the crew during detention, **RMI 60**, p. 79.

⁶⁵⁹ Costs and expenses to assist the crew during detention, **RMI 60**, p. 82.

⁶⁶⁰ Costs and expenses to assist the crew during detention, **RMI 60**, p. 83.

⁶⁶¹ Costs and expenses to assist the crew during detention, **RMI 60**, p. 83.

⁶⁶² Costs and expenses to assist the crew during detention, **RMI 60**, p. 84.

⁶⁶³ Costs and expenses to assist the crew during detention, **RMI 60**, p. 84.

⁶⁶⁴ Costs and expenses to assist the crew during detention, **RMI 60**, p. 89.

⁶⁶⁵ Costs and expenses to assist the crew during detention, **RMI 60**, pp. 952-953.

⁶⁶⁶ Costs and expenses to assist the crew during detention, **RMI 60**, pp. 160 and 208-209.

⁶⁶⁷ Reply, ¶ 285(j).

⁶⁶⁸ Costs and expenses to assist the crew during detention, **RMI 60**, pp. 268-274.

⁶⁶⁹ Reply, ¶ 285(k).

⁶⁷⁰ Reply, ¶ 285(l).

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- (i) For the amount in USD, the evidence includes documents in unknown currencies⁶⁷¹ and illegible.⁶⁷² It also includes, among others: (1) receipts for hard liquor;⁶⁷³ (2) receipts for "*beer all day*" and "*liquor [sic] all day*";⁶⁷⁴ (3) drug and alcohol tests;⁶⁷⁵ and (4) a prescription for a pair of glasses (with a corresponding "*two-years gold membership*" in June 2023).⁶⁷⁶
- (ii) For the amount in NOK, tellingly, the Vessel's managers' own system records these expenses as "*Nigerian Conflict*" and "*Nigeria Conflict*".⁶⁷⁷ It also includes a receipt at a caviar house.⁶⁷⁸

392. Accordingly, the Marshall Islands has failed to show that it incurred costs and expenses to assist the crew during their stay in Equatorial Guinea and its proper quantification as a result of the alleged wrongful actions of Equatorial Guinea.

B. Costs and expenses relating to the Vessel and crew

393. The Marshall Islands is claiming USD 3,052,184.08 for costs and expenses relating to the Vessel and crew.⁶⁷⁹ These include:

- a) USD 1,029,409 for bunkers consumed between 12 August 2022 and 26 December 2022.⁶⁸⁰ The Marshall Islands contends that these bunkers were already on the Vessel at the time of detention but no evidence is provided. This means that there is double-counting between this item and the lost profits claim since, presumably, the Vessel would have used these bunkers in its normal operations in the but-for world.
- b) USD 1,179,122.58 for bunkers consumed by the Vessel between 26 December 2022 to 23 July 2023,⁶⁸¹ meaning during and after its stay in Nigeria.
- c) USD 809,349.54 in agency fees and related costs.⁶⁸² It is unknown which receipts correspond to these alleged expenses. However, it appears that a series of receipts in the corresponding bundle correspond to random expenses in Nigeria,⁶⁸³ including internal flights of individuals who are not known to Equatorial Guinea and receipts for peanut butter donuts.⁶⁸⁴

⁶⁷¹ Costs and expenses to assist the crew during detention, **RMI 60**, pp. 830-831.

⁶⁷² Costs and expenses to assist the crew during detention, **RMI 60**, p. 909.

⁶⁷³ Costs and expenses to assist the crew during detention, **RMI 60**, pp. 149, 153, 614 and 618.

⁶⁷⁴ Costs and expenses to assist the crew during detention, **RMI 60**, pp. 180 and 645.

⁶⁷⁵ Costs and expenses to assist the crew during detention, **RMI 60**, pp. 936-949.

⁶⁷⁶ Costs and expenses to assist the crew during detention, **RMI 60**, p. 928.

⁶⁷⁷ See, for example, Costs and expenses to assist the crew during detention, **RMI 60**, pp. 528, 749, 783, 960, 964, 965, and 975.

⁶⁷⁸ Costs and expenses to assist the crew during detention, **RMI 60**, p. 991.

⁶⁷⁹ **Reply**, ¶ 293.

⁶⁸⁰ **Reply**, ¶ 293(a).

⁶⁸¹ **Reply**, ¶ 293(b).

⁶⁸² **Reply**, ¶ 293(c).

⁶⁸³ Costs and expenses relating to the Vessel and crew, **RMI 61**, pp. 189-204 (which is duplicated at pp. 209-224 and then again at pp. 229-244) pp. 245-250, pp. 254-274 (which is duplicated at pp. 278-298), pp. 306-329 and pp. 333-359.

⁶⁸⁴ Costs and expenses relating to the Vessel and crew, **RMI 61**, p. 320.

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- d) USD 17,054.86 in Vessel investigation expenses.⁶⁸⁵ This amount includes an extension to certificate of registry.⁶⁸⁶ The Marshall Islands does not even attempt to explain how this expense is even remotely related to Equatorial Guinea's actions.
 - e) USD 17,248.10 for provisions.⁶⁸⁷ The receipts show that these amounts were incurred while in Nigeria.⁶⁸⁸
394. Finally, there is double-counting *vis-à-vis* the third head of claim concerning the fine imposed by Nigeria as the Marshall Islands has submitted separate invoices and receipts in its evidence for this second head of claim.⁶⁸⁹
395. Accordingly, the Marshall Islands' claimed costs and expenses relating to the crew and Vessel and their quantification are disputed and unsubstantiated.

C. Payments made to secure the release of the Vessel and crew

396. In relation to the Marshall Islands' claims to recover "[p]ayments made to secure the release of the Vessel and crew",⁶⁹⁰ the Marshall Islands has not established a causal link between Equatorial Guinea and the sums paid by the Vessel to the Nigerian authorities. This related to the fine imposed by Nigeria and the amount payable pursuant to the plea bargain, which the Vessel's owners reached with the Nigerian authorities, independently of Equatorial Guinea.

D. Costs and expenses to repatriate the crew

397. The Marshall Islands claims USD 699,589.13⁶⁹¹ for the costs and expenses of repatriating the crew following their release, plus the costs of putting in place a replacement crew. These include:
- a) USD 385,740 in costs incurred hiring a security escort vessel and security guards to be onboard the Vessel for the transit on release.⁶⁹² Again, the Marshall Islands has failed to justify which direct action of Equatorial Guinea caused this alleged expense.
 - b) USD 59,607.70 in travel wages and standby payment for the on-signing crew.⁶⁹³ The quantification of this amount is not set out on the basis of the documents provided. Further, even if the Marshall Islands were correct in its contention that it incurred additional costs because of the circumstances,⁶⁹⁴ the Marshall Islands should have claimed for the difference between normal replacement costs and those incurred in so-called unusual circumstances. By failing to do so, it

⁶⁸⁵ Reply, ¶ 293(d).

⁶⁸⁶ Costs and expenses relating to the Vessel and crew, **RMI 61**, p. 362.

⁶⁸⁷ Reply, ¶ 293(e).

⁶⁸⁸ Costs and expenses relating to the Vessel and crew, **RMI 61**, pp. 363-378.

⁶⁸⁹ Costs and expenses relating to the Vessel and crew, **RMI 61**, pp. 309 and 317.

⁶⁹⁰ Reply, ¶ 295-297.

⁶⁹¹ Reply, ¶ 298.

⁶⁹² Reply, ¶ 298(a).

⁶⁹³ Reply, ¶ 298(b).

⁶⁹⁴ Reply, ¶ 300.

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impermissibly attempts to pass on its regular operating costs to Equatorial Guinea.

- c) USD 231,385.99, ZAR 179,032 and NOK 146,700.16 in costs and expenses incurred by the Vessel's call to Cape Town (including replacing and repatriating the crew on release).⁶⁹⁵ Again, the Marshall Islands has failed to demonstrate a causal link between Equatorial Guinea's and these alleged costs and expenses.
 - (i) For the amount in USD, this includes a payment of USD 50,000 in cash to the Master for undisclosed reasons.⁶⁹⁶
 - (ii) For the amount in NOK, these expenses are labelled as "*Nigeria Conflict*" by the managers of the Vessel, as the active hyperlinks in the documents show.⁶⁹⁷ As shown above, these expenses also include a number of bonus items like extra leg room in flights⁶⁹⁸ and accommodation at 5-star hotels.⁶⁹⁹

398. Accordingly, the Marshall Islands has failed to show and properly quantify any costs and expenses to repatriate the crew that it has incurred without Equatorial Guinea's actions.

E. Costs and expenses to repair the Vessel

399. The Marshall Islands claims USD 466,451.46 for the costs and expenses of repairing the Vessel.⁷⁰⁰ Concerning this head of claim, the Marshall Islands has merely stated that "[a]s to causation, the repairs were carried out immediately after the Vessel was released from its unlawful detention"⁷⁰¹, though this is irrelevant in determining whether the repairs would have been required in the but-for world.
400. The Marshall Islands has failed to show that these so-called repairs would not have been required in any event as part of standard maintenance. The burden of proof is on the Marshall Islands to show how the Vessel's stay in Equatorial Guinea caused these costs. For instance, the following expenses appear to be regular maintenance costs:
- a) USD 140,990.34 in the costs of painting the Vessel.⁷⁰²
 - b) EUR 18,786 for the repair of Scanjet machines.⁷⁰³ Had the machines been broken while in Equatorial Guinea, the Marshall Islands would have been able to provide evidence to this effect, which is not the case.

⁶⁹⁵ Reply, ¶ 298(c).

⁶⁹⁶ Costs and expenses to repatriate the crew, **RMI 63**, p. 77.

⁶⁹⁷ Costs and expenses to assist the crew during detention, **RMI 60**, p. 787; Costs and expenses to repair the Vessel, **RMI 64**, p. 142.

⁶⁹⁸ For example, see Costs and expenses to assist the crew during detention, **RMI 60**, pp. 678, and 688-692.

⁶⁹⁹ For example, see Costs and expenses to assist the crew during detention, **RMI 60**, pp. 956.

⁷⁰⁰ Reply, ¶ 301.

⁷⁰¹ Reply, ¶ 306.

⁷⁰² Reply, ¶ 301(b).

⁷⁰³ Reply, ¶ 301(c).

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- c) USD 7,375 for the servicing of life rafts.⁷⁰⁴ The supporting invoice shows that rafts were loaned/used between 14 March 2021 and 8 April 2023,⁷⁰⁵ meaning long before and long after the Vessel's time in Equatorial Guinea. A reading of Survitec's Lifteraft Rental Standard Terms and Conditions also reveals that, depending on the rental, the life rafts require servicing or exchange in intervals of either 12 or 30 months in any event.⁷⁰⁶
 - d) USD 9,229.31 for vetting inspection.⁷⁰⁷ The Marshall Islands has submitted an invoice in respect of "*Sire Inspection Management*",⁷⁰⁸ yet fails to mention that on average, vessels carry out inspections 2.4 times per year.⁷⁰⁹
 - e) EUR 7,639.75 for the maintenance of the continuous emission monitoring systems unit.⁷¹⁰
401. None of these expenses were directly caused by the actions of Equatorial Guinea and the Marshall Islands has not even attempted to prove so. This is also the case for USD 3,495.99 for miscellaneous repair expenses, which are not even detailed.⁷¹¹
402. Finally, concerning USD 258,302.02 and NOK 182,816.69 in drydocking and de-slopping costs,⁷¹² the Marshall Islands relies heavily on the evidence of Mr Kulblik to suggest the *Heroic Idun* suffered from a number of disrepairs.⁷¹³ However, among others, Mr Kulblik fails to explain:
- a) how he was able to assess that these disrepairs actually were caused in Equatorial Guinea as opposed to Nigeria;
 - b) when he conducted his assessment of the state of the Vessel or if he even conducted such an assessment himself;
 - c) how the disrepairs were caused by an alleged lack of maintenance while in Equatorial Guinea; and
 - d) how his extensive alcohol consumption while in Dubai is attributable to Equatorial Guinea and necessary to repair the Vessel.⁷¹⁴
403. In fact, the official report of the assessment of the *Heroic Idun* shows that it was "*in good condition*" on 11 July 2023.⁷¹⁵

⁷⁰⁴ **Reply**, ¶ 301(d).

⁷⁰⁵ Costs and expenses to repair the Vessel, **RMI 64**, p. 140.

⁷⁰⁶ Survitec, Lifteraft Rental (LRE) Standard Terms and Conditions, 27 July 2023, **REG-119**, p. 1, see definition of "Lifteraft(s)".

⁷⁰⁷ **Reply**, ¶ 301(e).

⁷⁰⁸ Costs and expenses to repair the Vessel, **RMI 64**, p. 171.

⁷⁰⁹ Oil Companies International Marine Forum, "*SIRE 2.0: Frequently Asked Questions*", **REG-120**, p. 7.

⁷¹⁰ **Reply**, ¶ 301(f).

⁷¹¹ **Reply**, ¶ 301(g).

⁷¹² **Reply**, ¶ 301(a).

⁷¹³ Second Witness Statement of Eivind Kulblik, 25 November 2024, **RMI 54**, ¶ 100.

⁷¹⁴ Costs and expenses to repair the Vessel, **RMI 64**, pp. 56-57 and 59.

⁷¹⁵ Condition Survey Report, **EK 78**, p. 280.

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404. Moreover, the receipts filed by the Marshall Islands also show a number of unexplained expenses in Dubai which bear no relation to drydocking and de-slopping costs. For example:
- a) the Master received a cash payment of USD 20,000 for unexplained reasons;⁷¹⁶
 - b) couriers to Reed Smith;⁷¹⁷ and
 - c) materials to equip the *Heroic Idun* for future work in August 2023, for example, a flat screen smart TV and air conditioning.⁷¹⁸
405. As such, the alleged costs and expenses claimed as repairs to the Vessel are unsubstantiated as a matter of causation and quantification.

F. Loss of hire

406. The Marshall Islands claims USD 19,348,560 for loss of hire.⁷¹⁹ These include:
- a) USD 7,114,807.46 for the hire due between 12 August 2022 and 26 December 2022. This period includes more than a month spent in Nigeria.
 - b) USD 9,212,416 for hire due between 26 December 2022 and 27 May 2023, when the Vessel was exclusively in Nigeria.
 - c) USD 3,021,336 for the period between 27 May 2023 and 24 July 2023, allegedly representing the Vessel's release from detention and it re-entering employment under a subsequent time charter.
407. As is clear from the dates above, the Marshall Islands has brought the claim across 11 months, that is, for an additional eight months after the Vessel departed from Equatorial Guinea. The loss of hire during a part of the first period (from 12 August 2022 and 26 December 2022) and the entire second period (from 26 December 2022 to 27 May 2023) cannot be attributed to Equatorial Guinea but rather to Nigeria. As such, it should be summarily dismissed. As to the third period (from 27 May 2023 to 24 July 2023), the Marshall Islands does not even attempt to show why the Vessel remained inactive for two months after its release from Nigeria, let alone why such loss of hire would be attributable to Equatorial Guinea.
408. In support of its claim, the Marshall Islands relies on the expert report of Mr Horne. It seeks to justify certain choices made by Mr Horne in his report but does not provide a second expert report or even clarifications by Mr Horne himself. Rather, the Marshall Islands purports to speak on behalf of its expert.⁷²⁰

⁷¹⁶ Costs and expenses to repair the Vessel, **RMI 64**, p. 120.

⁷¹⁷ Costs and expenses to repair the Vessel, **RMI 64**, pp. 177-178.

⁷¹⁸ Costs and expenses to repair the Vessel, **RMI 64**, p. 179.

⁷¹⁹ **Reply**, ¶ 308. Equatorial Guinea notes that this head of claim has been reduced by USD 600,000 as previously quantified in the Memorial.

⁷²⁰ **Reply**, ¶ 312.

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409. However, this is not enough to justify why Mr Horne's opinion is based on issues of volatility,⁷²¹ operational expenses⁷²² or an alleged efficiency of the Vessel.⁷²³ It is therefore unclear whether these points are instructions or independent opinions held by Mr Horne based on the particular facts of the case.

G. War risk premium

410. The Marshall Islands claims an increased war risk premium of USD 304,962,⁷²⁴ yet fails to explain how this figure was reached and is payable by Equatorial Guinea, particularly given the fact that only 1/6 of the amount claimed relates to time that the Vessel spent in Equatorial Guinea.
411. The Marshall Islands states that the increased war risk premium is not a cost that would have been incurred in any event in the ordinary course of business because "*Equatorial Guinea (and Nigeria) are located inside what war risk insurers consider 'high-risk areas.' Every time a vessel enters a high-risk area it must notify its insurer and pay an additional premium at a daily rate*".⁷²⁵ Yet the Marshall Islands fails to provide evidence as to how long the Vessel would have stayed in high-risk areas but for the stay of the Heroic Idun in Equatorial Guinea. Rather, the Marshall Islands has supplied invoices for unexplained insurance costs⁷²⁶ and invoices for premiums incurred prior to and after time spent in Equatorial Guinea.⁷²⁷ Crucially, the Marshall Islands has failed to provide a copy of the actual insurance policy itself.

H. Wasted costs of the Prompt Release Proceedings

412. The Marshall Islands has sought to recover GBP 376,923.50 in costs incurred in the wasted prompt release proceedings⁷²⁸ without showing a single comparable case where wasted costs for prior arbitration or litigation has been successfully claimed in a future proceeding.
413. Accordingly, the Chamber ought to also dismiss this head of damage.

III. The Marshall Islands is not entitled to compensation for non-material damages

414. The Marshall Islands claims USD 15,028,000 in non-material damages.⁷²⁹ The Marshall Islands seeks to rely mainly on witness evidence from the crew to support this claim. Of note in this regard is that the crew has a vested interest in the success of this particular claim – they stand to gain USD 578,000 each.⁷³⁰

⁷²¹ Reply, ¶ 312(a)(ii).

⁷²² Reply, ¶ 312(d).

⁷²³ Reply, ¶ 312(c).

⁷²⁴ Reply, ¶ 314.

⁷²⁵ Reply, ¶ 315.

⁷²⁶ For example, see War risk premium, **RMI 65**, p. 75 which contains amounts for USD 1,870 in respect of the period 21 July 2022 to 31 December 2022 for "*Hull War*" and USD 100 in respect of "*Clause 16 SIR*".

⁷²⁷ For example, see War risk premium, **RMI 65**, pp. 68 and 85 which contain amounts for USD 23,027.03 in respect of 7-8 August 2022 while the Vessel was at Akpo Terminal in Nigeria, and p. 83 which contains amounts for USD 202,500 in respect of 27 June 2023 to 19 July 2023 while the Vessel was in Dubai.

⁷²⁸ Reply, ¶ 316.

⁷²⁹ Reply, ¶ 318.

⁷³⁰ USD 2,000 per day * 289 days (of which 198 spent in Nigeria) = USD 578,000 per crew member.

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415. The Marshall Islands' non-material damages claim mostly concerns time spent in Nigeria. As undisputed by the Marshall Islands, Equatorial Guinea had no knowledge nor involvement with the conduct of the Nigerian authorities and treatment of the crew in Nigeria. In fact, Equatorial Guinea took proactive measures to try and ensure the crew's safety by securing an undertaking from Nigeria guaranteeing adherence to human rights standards. For Equatorial Guinea to incur international responsibility for not having anticipated that another sovereign State would fail to honour its obligations and undertakings would run counter to core principles of public international law.⁷³¹
416. In its Reply, the Marshall Islands alleges that the crew suffered mental harm while in Equatorial Guinea and that Dr Perman-Kerr "*spoke on the phone with some crew members whilst they were in Equatorial Guinea*".⁷³² In the same paragraph, it alleges that the reason for a lack of evidence in psychiatric harm in respect of the period that the crew spent in Equatorial Guinea is because "*it was not possible to carry out more in-depth psychological assessments [...] because the governmental authorities refused to grant the necessary permits*".⁷³³ Given the wide availability of psychiatric care and treatment through remote means as well as the crew's unimpeded access to communicate via mobile in Equatorial Guinea, the Marshall Islands cannot now seek to argue that Equatorial Guinea is seeking to benefit from its own wrong.⁷³⁴ Mental health care could have been provided by Dr Perman-Kerr at any time for any crew member through voice or video calls.⁷³⁵ The fact that no crew member even requested such treatment despite having spoken to Dr Perman-Kerr while in Equatorial Guinea is further proof that the crew was well-treated and required no such support at the time.
417. As such, the Marshall Islands' claim for non-material damages is unfounded and should be dismissed in its entirety.

⁷³¹ On the quantification of the claim, the Marshall Islands cannot cite a single case in which a tribunal has awarded non-material damages at the unprecedented and exceptional rate of USD 2,000 per day per crew member (**Reply**, ¶ 323). In its Reply, the Marshall Islands simply refers to the reasoning in its Memorial to explain why it is claiming four times the amount awarded in *Arctic Sunrise* and almost double the amount awarded in the *Diallo* case (**Reply**, ¶ 319). Neither in its Reply nor Memorial has the Marshall Islands acknowledged that the tribunal in *Arctic Sunrise* considered "*compensation awarded in the Diallo case as an upper limit*" (*Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on Compensation, 10 July 2017, ¶ 77), or the more severe detention conditions which justified the rate of non-material damages. These conditions included separation from fellow crewmates, confinement to cold and unsanitary cells for 23 hours per day, solitary confinement, and the deprivation of telephone communications for weeks at a time (*Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on Compensation, 10 July 2017, ¶ 77). The circumstances in the present case are in sharp contrast with the aforementioned cases. While on land, the crew either stayed at a 4-star hotel or otherwise the new Accommodation Facility, in which they were permitted to move freely ¶ 78. In addition, they were provided with local sim cards, allowing them to freely communicate with their families abroad ¶¶ 68, 267. Besora representatives were also permitted to attend and translate during interviews of crewmates ¶¶ 56, 58, provide any requested provisions including a choice of different cuisines, alcohol and cigarettes ¶¶ 67, 268, cleaning supplies ¶¶ 67, 80, 267 and high-quality medical care ¶¶ 71-77. Despite labelling these conditions as "atrocious" (**Reply**, ¶ 320(c)), the Marshall Islands has not adduced a single piece of evidence proving that concerns about the conditions or treatment of the crew were ever raised with the Equatoguinean authorities.

⁷³² **Reply**, ¶ 322.

⁷³³ **Reply**, ¶ 322.

⁷³⁴ **Reply**, ¶ 322.

⁷³⁵ See, for example, this possibility being mentioned in Costs and expenses to repatriate the crew, **RMI 63**, p. 16, line 7: "*Deploy the counsellor/psychiatrist, phone calls sessions with the crew*".

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IV. The Marshall Islands is not entitled to interest

418. The Marshall Islands in its Reply has failed to substantiate the basis for its interest claims. It has also failed to provide calculations for its interest case, including the date from which it purports interest should run and on what basis. These are basic requirements with which the Marshall Islands has failed to comply, and which should preclude the Chamber from finding in its favour.
419. In support of the interest rates it seeks, the Marshall Islands quotes *Arctic Sunrise*, which held that the rate should be appropriate "*in light of the commercial conditions prevailing in the countries where the expenses were incurred*".⁷³⁶ The Marshall Islands argues that the EURIBOR six-month + 5% rate should therefore apply to the *Heroic Idun's* fine in Equatorial Guinea "*as those sums were paid by Owners, in Euros*".⁷³⁷ However, simultaneously it seeks US Prime + 1% for all other material damages despite the fact that substantial portions of these damages were incurred in currencies other than in USD and outside the US. For example, the Marshall Islands has sought to recover:
- a) The equivalent in USD of EUR 126,436.33 "*in correspondent costs incurred due to detention and release efforts*";⁷³⁸
 - b) The equivalent in USD of ZAR 179,032 "*in costs and expenses incurred by the Vessel's call to Cape Town*";⁷³⁹
 - c) The equivalent in USD of NOK 482,204.61 in "*travel costs*";⁷⁴⁰
 - d) The equivalent in USD of GBP 376,923.50 in its novel claim for wasted costs for the prompt release proceedings.⁷⁴¹
420. The Marshall Islands' reliance on the cited passage of *Arctic Sunrise* is misplaced. Not a single authority has been cited to justify its approach that expenses incurred in Norway, South Africa and the United Kingdom, among others, should be subject to US Prime + 1% interest rates. Consequently, the Marshall Islands has failed to establish a consistent or credible basis for its claimed interest rates.
421. In its Reply, the Marshall Islands also fails to justify why it is appropriate for interest to be compounded, let alone every six months. The Marshall Islands merely states that tribunals have discretion in awarding interest – a point which Equatorial Guinea does not dispute – before quoting a passage from the investment treaty case of *Cyprus Popular Bank v Hellenic Republic*.⁷⁴² That passage, however, simply states that, in an investment treaty context, case law has accepted annual and semi-annual capitalisation

⁷³⁶ *Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on Compensation, 10 July 2017, ¶ 122.

⁷³⁷ Reply, ¶ 325.

⁷³⁸ Reply, ¶ 285(b).

⁷³⁹ Reply, ¶ 298(c).

⁷⁴⁰ Reply, ¶ 298(l).

⁷⁴¹ Reply, ¶ 316.

⁷⁴² Reply, ¶ 327.

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of unpaid interest.⁷⁴³ It does not provide support as to why a six-month compound rate would be appropriate in the context of the present inter-State dispute.

422. In reality, the commentary to Article 38 ARSIWA makes clear that in respect of State-to-State claims "[t]he general view of courts and tribunals has been against the award of compound interest [...] given the present state of international law, it cannot be said that an injured State has any entitlement to compound interest, in the absence of special circumstances which justify some element of compounding as an aspect of full reparation".⁷⁴⁴ The Marshall Islands has neither identified or substantiated any such special circumstances which warrant departure from the general position. Instead, the Marshall Islands has arbitrarily asserted that "*interest compounded semi-annually / at six-month intervals is appropriate because it would more closely track market conditions*".⁷⁴⁵
423. Finally, the Marshall Islands has sought to rely on *Diallo* and a number of human rights decisions to justify application of the same type of interest to both material and non-material damages. This is contrary to the practice of this Tribunal and should be disregarded accordingly.⁷⁴⁶
424. On the basis that the Marshall Islands has failed to justify its chosen interest rates, its demand for compound interest, as well as the rationale for applying a uniform rate to both material and non-material damages, the Chamber must dismiss the Marshall Islands' claims for interest.

V. It is not appropriate to allocate the costs of the proceedings to the Marshall Islands

425. Article 34 of the ITLOS Statute states that "*unless otherwise decided by the Tribunal, each party shall bear its own costs*". In its Reply, the Marshall Islands states that "[t]here are particular reasons why it would be appropriate for the Chamber to award costs in this case"⁷⁴⁷ before going on to accuse Equatorial Guinea of "*bad faith*"⁷⁴⁸ conduct supposedly justifying departure from the general position under Article 34.
426. Notwithstanding the fact that allegations of bad faith are categorically denied by Equatorial Guinea, to date, the Marshall Islands has not cited a single case to where

⁷⁴³ *Cyprus Popular Bank Public Co. Ltd v Hellenic Republic*, ICSID Case No. ARB/14/16, Award, 15 April 2021, ¶ 426, as cited in **Reply**, ¶ 327.

⁷⁴⁴ International Law Commission, "Responsibility of States for Internationally Wrongful Acts", *Yearbook of the International Law Commission*, 2001, Volume II, Part Two, Report of the Commission to the General Assembly on the work of its fifty-third session, A/CN.4/SER.A/2001/Add.1 (Part 2), Commentary on Article 38, ¶¶ 8-9.

⁷⁴⁵ **Reply**, ¶ 327.

⁷⁴⁶ In *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999, p. 10, 1 July 1999, at ¶ 173 the Tribunal awarded interest was awarded on both material and non-material damages, but at different rates: "[i]n the present case, the Tribunal has set an interest rate of 6% in respect of award of compensation. A higher rate of 8% is adopted in respect of the value of the gas oil to include loss of profit. A lower rate of interest of 3% is adopted for compensation for detention and for injury, pain and suffering, disability and psychological damage"; in *Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on Compensation, 10 July 2017, at ¶ 121 the Tribunal held that "[t]he amounts awarded for non-material damages constitute a monetary estimate of the value of non-financial losses, whereas the material damages [...] represent expenses actually incurred. Accordingly, the rate to be applied in respect of these material damages ought to be higher than that applied to the Tribunal's award of non-material damages".

⁷⁴⁷ **Reply**, ¶ 329.

⁷⁴⁸ **Reply**, ¶ 330.

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ITLOS has awarded costs to a party. Nor has the Marshall Islands brought a single authority where an ITLOS tribunal has considered any of the "*bad faith*" factors that the Marshall Islands alleges relevant in considering whether to award costs.

427. Accordingly, each party should bear its own cost as per Article 34 of the ITLOS Statute.

VI. The Marshall Islands is not entitled to satisfaction

428. Given the fact that Equatorial Guinea has acted in compliance with UNCLOS, the Chamber must dismiss the Marshall Islands' request for satisfaction. In the alternative and in line with ITLOS jurisprudence, if the Chamber were to find that satisfaction is warranted, Equatorial Guinea maintains that a judicial declaration would provide full and adequate satisfaction.⁷⁴⁹
429. The Marshall Islands has argued that a judicial declaration would be "*insufficient*" because "*the effects of Equatorial Guinea's actions have serious and wider implications. They are not limited to the Vessel and crew but rather expand to other vessels that are part of the Marshall Islands' fleet (as well as other flag States whose vessels operate off West Africa)*".⁷⁵⁰ The Marshall Islands' demands for additional assurances and guarantees presume a risk of future breach without substantiating that any such risk exists. There is no evidence that Equatorial Guinea has engaged in a pattern of violations requiring preventative measures and the Marshall Islands' reliance on potential risk to other vessels is purely hypothetical.
430. On the other hand, the Marshall Islands has admitted that Nigeria has a "*previous history of detaining vessels and their crews, some of which have been subject to proceedings before the Tribunal*".⁷⁵¹ As demonstrated above, the very subject-matter of the Marshall Islands' claim rests on shifting responsibility onto Equatorial Guinea for the decisions of Nigeria and damages allegedly suffered whilst in Nigeria. It would therefore be wholly inappropriate for Equatorial Guinea to provide assurances and guarantees of non-repetition in respect of acts and consequences attributable to another sovereign State.
431. For the same reasons, an express acknowledgement is neither necessary nor proportionate. The Marshall Islands' insistence on an express acknowledgment appears aimed not at ensuring compliance, but rather at imposing reputational harm on Equatorial Guinea, who cannot properly be held accountable for the acts of Nigeria.⁷⁵²

⁷⁴⁹ *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999, p. 10, 1 July 1999, ¶ 176; *M/V "Virginia G" (Panama/Guinea-Bissau)*, Judgment, ITLOS Reports 2014, p. 4, 14 April 2014, ¶ 448. See also *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, PCA Case No. 2014-02, Award on the Merits, 14 August 2015, ¶ 380.

⁷⁵⁰ Reply, ¶ 332.

⁷⁵¹ Reply, ¶ 281(b).

⁷⁵² Reply, ¶ 332.

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CHAPTER 7

SUBMISSIONS

432. Equatorial Guinea requests the Chamber to adjudge and declare that:
- a) The claims brought by the Marshall Islands regarding the apprehension of the *Heroic Idun* fall outside the jurisdiction of the Chamber, or in the alternative are inadmissible, due to the *Monetary Gold* principle (paragraphs 101-120);
 - b) The Marshall Islands has failed to exhaust local remedies where this is required by international law (paragraphs 121-137);
 - c) The Chamber's jurisdiction is in any event limited to claims made under UNCLOS (paragraphs 138-147);
 - d) Equatorial Guinea acted in accordance with its duty to cooperate to suppress piracy and did not breach the principles of freedom of navigation or exclusivity of flag State jurisdiction (paragraphs 156-221);
 - e) Equatorial Guinea acted pursuant to lawful prescriptive jurisdiction (paragraphs 222-224);
 - f) Equatorial Guinea acted in accordance with Article 225 UNCLOS and the principle of reasonableness (paragraphs 225-258);
 - g) Equatorial Guinea acted in accordance with the principle of humanity towards the crew members of the *Heroic Idun* at all times (paragraphs 258-287);
 - h) Equatorial Guinea acted in accordance with the principle of due regard under Article 56(2) UNCLOS (paragraphs 288-294)
 - i) There is no specific obligation to notify the flag State of enforcement measures (paragraphs 295-309);
 - j) UNCLOS' prompt release obligations were not applicable to the present circumstances and consequently, Equatorial Guinea has not violated these obligations (paragraphs 310-320); and
 - k) Equatorial Guinea did not breach any obligations under the "gateway" provisions (STCW, SOLAS and COLREGS) (paragraphs 321-349);
 - l) Equatorial Guinea did not breach its obligation to preserve the rights of the Marshall Islands, nor aggravate the dispute pending proceedings (paragraphs 350-359).
433. Having regard to this, Equatorial Guinea further requests the Chamber to:
- a) Dismiss all of the Marshall Islands' requests for payment of compensation for material and/or non-material damages (paragraphs 360-417);
 - b) Dismiss the Marshall Islands' requests for satisfaction (paragraphs 428-431);

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- c) Dismiss all of the Marshall Islands' requests for payment of interest (paragraphs 418-424); and
 - d) Direct that each party should bear its own costs (paragraphs 425-427).
434. Equatorial Guinea reserves the right to supplement and/or amend its pleading and the relief sought as necessary, and to make such other requests to the Chamber as may be necessary to preserve its rights under UNCLOS.

Respectfully submitted,



H. E. Mr Carmelo Nvono-Ncá
Agent for the Republic of Equatorial Guinea

Paris, 24 March 2025

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REG-118	IMO website, <i>"The United Nations Convention on the Law of the Sea (UNCLOS) and the International Maritime Organization"</i>	18 March 2014	488
REG-119	Survitec, Liferaft Rental (LRE) Standard Terms and Conditions	27 July 2023	495
REG-120	Oil Companies International Marine Forum, <i>"SIRE 2.0: Frequently Asked Questions"</i>	Undated	503