INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

YEAR 2026

27 May 2026

List of Cases:
No. 32

THE M/T "HEROIC IDUN" (No. 2) CASE

(MARSHALL ISLANDS/EQUATORIAL GUINEA)

JUDGMENT

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Present: Judge HOFFMANN, *President of the Special Chamber*; *Judges* INFANTE CAFFI, BROWN; *Judges* ad hoc EIRIKSSON, COUVREUR; *Registrar* HINRICHS OYARCE.

In

The M/T "Heroic Idun" (No. 2) Case

between

the Marshall Islands,

represented by

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

as Agent;

Mr Bernard J. Adiniwin, Attorney-General,

as Representative;

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

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

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

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

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

as Counsel and Advocates;

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

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

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

as Counsel;

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

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

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

as Advisers,

and

Equatorial Guinea,

represented by

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

as Agent (until 27 April 2026);

Mr Miguel Oyono Ndong Mifumu, Ambassador Extraordinary and Plenipotentiary of the Republic of Equatorial Guinea to Belgium,

as Agent (from 27 April 2026);

Mr Hussein Haeri KC, Partner, Withers LLP, London, United Kingdom; Solicitor-Advocate of England and Wales, School of Oriental and African Studies (SOAS), University of London, London, United Kingdom,

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

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

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

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

as Counsel and Advocates;

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

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

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

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

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

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

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

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

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

as Counsel;

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

as Adviser,

THE SPECIAL CHAMBER,

composed as above,

after deliberation,

delivers the following Judgment:

I. Introduction

1. Further to consultations held by the President of the International Tribunal for the Law of the Sea (hereinafter "the Tribunal") with representatives of the Republic of the Marshall Islands (hereinafter "the Marshall Islands") and the Republic of Equatorial Guinea (hereinafter "Equatorial Guinea") in Hamburg on 18 April 2023, a special agreement was concluded between the two States on the same date to submit to a special chamber of the Tribunal, to be formed pursuant to article 15, paragraph 2, of the Statute of the Tribunal (hereinafter "the Statute"), "the dispute concerning the *M/T "Heroic Idun"* and her crew."

2. The Special Agreement and Notification between the Marshall Islands and Equatorial Guinea dated 18 April 2023 (hereinafter "the Special Agreement"), in its relevant part, reads as follows:

> **Special Agreement and Notification**
>
> Pursuant to article 15, paragraph 2, of the Statute of the Tribunal, the Republic of the Marshall Islands and the Republic of Equatorial Guinea hereby record their agreement to submit to a special chamber of International Tribunal for the Law of the Sea the dispute concerning the *M/T "Heroic Idun"* and her crew. The agreement was reached on 18 April 2023, under the conditions reflected in the agreed Minutes of Consultations (18 April 2023), attached hereto.
>
> The Republic of the Marshall Islands and the Republic of Equatorial Guinea further record their agreement that the special chamber shall be comprised of the following five individuals:

> Judge Albert J. Hoffmann, as President
> Judge María Teresa Infante Caffi
> Judge Kathy-Ann Brown
> Mr Gudmundur Eiriksson, Judge *ad hoc* (Marshall Islands)
> Mr Philippe Couvreur, Judge *ad hoc* (Equatorial Guinea)
>
> Delivery on today's date of an original of this Agreement and Notification to the Registry of the Tribunal shall constitute the notification contemplated in article 55 of the Rules of the Tribunal.

3. The Minutes of Consultations agreed between the Marshall Islands and Equatorial Guinea on 18 April 2023 and attached to the Special Agreement read in their relevant part as follows:

> 3. During the consultations, the parties agreed to transfer the arbitral proceedings instituted by the Marshall Islands in the dispute between the Marshall Islands and Equatorial Guinea concerning the *M/T "Heroic Idun"* and her crew to a special chamber of the Tribunal to be formed pursuant to article 15, paragraph 2, of the Statute.
>
> 4. The proceedings of the special chamber shall be governed by the provisions contained in the Statute and the Rules of the Tribunal.
>
> 5. The parties agreed that the special chamber to be formed pursuant to article 15, paragraph 2, of the Statute shall be composed of five members, two of whom will be judges *ad hoc* chosen by the parties in accordance with article 17 of the Statute of the Tribunal. The composition of the special chamber will be determined by the Tribunal with the approval of the parties. In this respect, the parties have agreed on the following names:
>
> > Judge Albert J. Hoffmann
> > Judge María Teresa Infante Caffi
> > Judge Kathy-Ann Brown
>
> The judges *ad hoc* shall be Mr Gudmundur Eiriksson (nominated by the Marshall Islands) and Mr Philippe Couvreur (nominated by Equatorial Guinea).

4. An original copy of the Special Agreement was delivered to the Registry on 18 April 2023. Pursuant to the Special Agreement, delivery of an original of the Special Agreement and Notification to the Registry constituted the notification contemplated in article 55 of the Rules of the Tribunal (hereinafter "the Rules").

5. As stated in the Special Agreement, the Government of the Marshall Islands had appointed Ms Meredith Kirby, Deputy Commissioner of Maritime Affairs, as

Agent for the Marshall Islands, and the Government of Equatorial Guinea had appointed Mr Carmelo Nvono-Ncá, Ambassador, as Agent for Equatorial Guinea.

6. By Order dated 27 April 2023, the Tribunal decided to accede to the request of the Marshall Islands and Equatorial Guinea to form a special chamber of five judges to deal with "the dispute concerning the *M/T "Heroic Idun"* and her crew" (hereinafter "the Special Chamber"), and determined, with the approval of the Parties, the composition of the Special Chamber as follows:

President	Hoffmann
Judges	Infante Caffi
	Brown
Judges *ad hoc*	Eiriksson
	Couvreur

7. In the Order, the Tribunal stated that it found no objection to the choice of Mr Gudmundur Eiriksson and Mr Philippe Couvreur to sit as judges *ad hoc* in the Special Chamber.

8. The Registrar transmitted a copy of the Order of 27 April 2023 to the Parties on 28 April 2023.

9. The case was entered in the List of Cases as Case No. 32.

10. By letter dated 2 May 2023, the Registrar, pursuant to the Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea of 18 December 1997, notified the Secretary-General of the United Nations of the institution of proceedings. By note verbale of the same date, the Registrar also notified the States Parties to the United Nations Convention on the Law of the Sea (hereinafter "the Convention"), in accordance with article 24, paragraph 3, of the Statute, of the institution of proceedings.

11. On 17 May 2023, in accordance with article 45 of the Rules, video consultations were held by the President of the Special Chamber with representatives of the Parties to ascertain their views with regard to questions of procedure in respect of the case.

12. Having ascertained the views of the Parties, by Order dated 19 May 2023, the President of the Special Chamber, in accordance with articles 59 and 61 of the Rules, fixed the following time limits for the filing of the pleadings in the case: 20 November 2023 for the Memorial of the Marshall Islands and 20 May 2024 for the Counter-Memorial of Equatorial Guinea. The Registrar transmitted a copy of the Order to the Parties on 19 May 2023.

13. In a letter dated 22 May 2023 addressed to the President of the Special Chamber, received by the Registry on 23 May 2023, the Agent of Equatorial Guinea requested "a postponement of sixty (60) days to start negotiations with the Marshall Islands". By letter dated 30 May 2023, the Agent of the Marshall Islands stated, among others, that the Marshall Islands "does not consider there is any justification for a postponement of the proceedings at this stage" and that, "pending further developments on the issue of negotiations, the Marshall Islands considers [that] this request is premature."

14. By letter dated 31 May 2023, the Registrar, at the request of the President of the Special Chamber, informed the Agents of the Parties, with reference to their respective letters mentioned in paragraph 13, that at this stage the request for postponement could not be granted.

15. By letter dated 4 August 2023 addressed to the President of the Special Chamber, the Agent of the Marshall Islands recalled that, during the consultations held on 17 May 2023, the Marshall Islands had raised the application of article 67 of the Rules and the issue of confidential information. The Agent indicated that the Marshall Islands "will identify and mark any confidential information as appropriate in its written pleadings and annexes with a view to requesting necessary arrangements in due course to preserve the character of such information." The Registrar transmitted a copy of the letter to the Agent of Equatorial Guinea on 7 August 2023.

16. By letter dated 31 October 2023, and received by the Registry on 8 November 2023, the Attorney-General of the Marshall Islands notified the Registrar of the appointment of Ms Alison Wilson, Deputy Commissioner of Maritime Affairs,

Republic of the Marshall Islands Maritime Administrator, as Deputy Agent for the Marshall Islands. The Registrar transmitted a copy of the letter to the Agent of Equatorial Guinea on 10 November 2023.

17. By letter dated 9 November 2023, the Agent of the Marshall Islands requested that the time limit fixed for the submission of the Memorial of the Marshall Islands be extended until 18 December 2023 and that a corresponding adjustment be made as regards the time limit for the submission of the Counter-Memorial of Equatorial Guinea. In its letter, the Marshall Islands indicated that it requested the extension "for technical reasons concerning the finalization of the Memorial." On 10 November 2023, the Registrar transmitted the letter to the Agent of Equatorial Guinea for comments by 15 November 2023. No response was received from Equatorial Guinea.

18. By Order dated 16 November 2023, the President of the Special Chamber, having ascertained the views of the Parties, extended the time limits to 18 December 2023 for the submission of the Memorial of the Marshall Islands and to 15 July 2024 for the submission of the Counter-Memorial of Equatorial Guinea. The Registrar transmitted a copy of the Order to the Parties on 16 November 2023.

19. The Memorial of the Marshall Islands was duly filed on 18 December 2023 in electronic format, and a copy thereof was transmitted to Equatorial Guinea on the same date. A certified paper copy of the Memorial was transmitted to Equatorial Guinea on 2 February 2024.

20. In a letter dated 24 January 2024, the Agent of the Marshall Islands informed the Registrar that the Marshall Islands wished to submit a number of additional video files in relation to some documents annexed to its Memorial. By letter dated 26 January 2024, the Registrar, with reference to article 65, paragraph 4, of the Rules, transmitted the letter of the Marshall Islands to the Agent of Equatorial Guinea for comments by 1 February 2024. No response was received from Equatorial Guinea.

21. By letter dated 2 February 2024, the Registrar informed the Agents of the Parties that the request from the Marshall Islands on the submission of additional

video files had been accepted by leave of the President of the Special Chamber pursuant to article 65, paragraph 4, of the Rules.

22. The Counter-Memorial of Equatorial Guinea was duly filed on 15 July 2024 in electronic format, and a copy thereof was transmitted to the Marshall Islands on the same date. A certified paper copy of the Counter-Memorial was transmitted to the Marshall Islands on 23 July 2024.

23. By email dated 16 July 2024, the Registrar, at the request of the President of the Special Chamber, sought the Parties' preliminary views with regard to the filing of a second round of written pleadings in the case. In communications dated 17 and 22 July 2024 respectively, the Agent of Equatorial Guinea and the Agent of the Marshall Islands expressed the view that a second round of written pleadings was necessary. With regard to the time limits for the filing of a Reply and a Rejoinder, the Agents of the Parties stated that the time limits should be four months.

24. In accordance with article 61 of the Rules, the President of the Special Chamber, taking into account the agreement of the Parties, authorized by Order dated 25 July 2024 the submission of a Reply by the Marshall Islands and a Rejoinder by Equatorial Guinea. In the Order, the President of the Special Chamber fixed the following time limits for the filing of those pleadings in the case: 25 November 2024 for the Reply of the Marshall Islands and 24 March 2025 for the Rejoinder of Equatorial Guinea. The Registrar transmitted a copy of the Order to the Parties on 25 July 2024.

25. In a letter dated 30 August 2024, the Agent of the Marshall Islands informed the Special Chamber that the owners of the vessel *M/T "Heroic Idun"* intended "to disclose the Memorial of the Marshall Islands and the Counter-Memorial of Equatorial Guinea" in commercial arbitral proceedings in which the owners were involved. In the letter, it was further stated that "[t]he Owners have copies of the Pleadings because, as an entity which is part of the 'unit of the vessel', they have been assisting the Marshall Islands in the preparation of its case before the Chamber." The Agent of the Marshall Islands thus sought the Special Chamber's direction as to "[w]hether Article 67 of the Rules is relevant in respect of the

disclosure and use of the Pleadings by the Owners in the commercial proceedings" and "[w]hat if any measures should be taken by the Marshall Islands if the Pleadings are disclosed in the commercial arbitration." In this regard, the Agent of the Marshall Islands indicated that the Marshall Islands "will use its best efforts to ensure that arrangements are made so that the Pleadings are not disclosed beyond the commercial arbitration until the opening of the Chamber's oral proceedings, or any other time the Chamber may direct." The Registrar transmitted a copy of the letter to the Agent of Equatorial Guinea on 2 September 2024 for comments by 5 September 2024.

26. By letter dated 2 September 2024, the Registrar, at the request of the President of the Special Chamber, asked the Agent of the Marshall Islands "to engage with the owners of the vessel with a view to ensuring that they refrain from disclosing the contents of the Memorial and the Counter-Memorial to the arbitral tribunal or to the parties involved in the commercial arbitration, pending a decision by the Special Chamber on the Marshall Islands' request for directions".

27. By letter dated 3 September 2024, the Agent of Equatorial Guinea stated that "Equatorial Guinea does not object to the pleadings being shared at this stage." The Agent of Equatorial Guinea further stated that the "Marshall Islands indicates that it will use its best efforts to ensure that arrangements are made so that the pleadings are not disclosed beyond the commercial arbitration until the opening of the Chamber's oral proceedings (or any other time the Chamber may direct)" and that "Equatorial Guinea believes this undertaking is sufficient in the circumstances."

28. By letter dated 4 September 2024, the Registrar, at the request of the President of the Special Chamber, informed the Agents of the Parties that, taking into account the agreement expressed by Equatorial Guinea, the President had decided to authorize the Marshall Islands to disclose the written pleadings in the commercial arbitration proceedings. The Registrar further recalled that, in accordance with article 67 of the Rules, the written pleadings remain confidential until the opening of the oral proceedings and that the Marshall Islands was therefore "requested to ensure that the pleadings are not disclosed beyond the commercial arbitration until the opening of the oral proceedings in Case No. 32 or as the

Chamber may further direct." By letter dated 4 September 2025, the Agent of the Marshall Islands confirmed that the Marshall Islands was taking immediate steps "to comply with the President's direction."

29. The Reply of the Marshall Islands was duly filed on 25 November 2024 in electronic format, and a copy thereof was transmitted to Equatorial Guinea on the same date by the Registrar. A certified paper copy of the Reply was transmitted to Equatorial Guinea on 27 December 2024.

30. By letter dated 27 November 2024, the Agent of the Marshall Islands transmitted a translation of a video clip that had been submitted as an annex to the Reply of the Marshall Islands only in the original language. On 29 November 2024, the Registrar informed the Agents of the Parties that the President of the Special Chamber had granted leave, pursuant to article 65, paragraph 4, of the Rules, to make this correction.

31. Further to a request from the Registrar dated 6 December 2024, the Marshall Islands submitted supplementary documentation in relation to two annexes to its Reply on 14 January 2025, a copy of which was transmitted to Equatorial Guinea on 16 January 2025.

32. In a letter dated 13 February 2025, and received by the Registry on 14 February 2025, the Agent of Equatorial Guinea informed the Registry that, with regard to the issue of compensation sought by the Marshall Islands, "Equatorial Guinea proposes to address in detail the issue of compensation in a separate phase of proceedings concerning compensation and satisfaction, only if required, following the judgment of the Special Chamber on liability." On 17 February 2025, the Registrar transmitted a copy of the letter to the Agent of the Marshall Islands for comments by 24 February 2025.

33. By letter dated 24 February 2025, the Agent of the Marshall Islands stated that "the Marshall Islands opposes Equatorial Guinea's Proposal and respectfully requests that the Chamber reject it". The Registrar transmitted a copy of the letter to the Agent of Equatorial Guinea on 25 February 2025.

34. By letter dated 12 March 2025, the Registrar, at the request of the President of the Special Chamber, informed the Agents of the Parties that "[t]he President of the Special Chamber, in consultation with the Members of the Chamber, decided not to authorize, at this stage of the proceedings, the holding of a separate phase concerning compensation." In that letter, Equatorial Guinea was invited "to set out in further detail its position on compensation in its Rejoinder and during the oral proceedings, including on the submissions made by the Marshall Islands in its Reply, should Equatorial Guinea deem it necessary."

35. By letter dated 19 March 2025 addressed to the Agents of the Parties, the Registrar, at the request of the President of the Special Chamber, noted that both Parties had confirmed their availability for a hearing starting on 6 October 2025 and that, on this basis, that date would be fixed as the date for the opening of the hearing.

36. The Rejoinder of Equatorial Guinea was duly filed on 24 March 2025 in electronic format, and a copy thereof was transmitted to the Marshall Islands on the same date by the Registrar. The Registrar transmitted a certified paper copy of the Rejoinder to the Marshall Islands on 31 March 2025.

37. Further to a request from the Registrar dated 1 April 2025, Equatorial Guinea submitted supplementary documentation in relation to an annex to its Rejoinder on 2 April 2025, a copy of which was transmitted to the Marshall Islands on 3 April 2025.

38. By Order dated 13 May 2025, the President of the Special Chamber, having ascertained the views of the Parties and referring to the letter of the Registrar dated 19 March 2025 mentioned in paragraph 35 above, fixed 6 October 2025 as the date for the opening of the oral proceedings. The Registrar transmitted a copy of the Order to the Parties on the same date.

39. By letter dated 25 June 2025, the Agent of Equatorial Guinea informed the Registry that Equatorial Guinea intended to use the Spanish language "during part of

Equatorial Guinea's submissions, including in witness testimony" and requested that the necessary arrangements be made for its interpretation into the Tribunal's official languages, when so required, as well as for the simultaneous interpretation of the hearing proceedings into Spanish. By letter dated 8 July 2025, the Registrar informed the Agent of Equatorial Guinea that the Registry could make the requested arrangements at the expense of Equatorial Guinea, and by letter dated 17 July 2025, the Agent of Equatorial Guinea confirmed this understanding.

40. Further to a request from the Registrar of 1 August 2025, the Agent of the Marshall Islands submitted supplementary documentation in relation to an annex to its Reply on 13 August 2025, a copy of which was transmitted to Equatorial Guinea on 14 August 2025.

41. By letter dated 10 September 2025, the Agent of the Marshall Islands raised matters relating to the "[t]reatment of sensitive personal data and other information during the hearing" and to the redactions of annexes to its written pleadings. With regard to the first issue, the Agent requested "directions from the Special Chamber regarding appropriate modalities for the safeguarding of sensitive personal data or confidential commercial or security-related information in the course of the hearing." With regard to the second issue, the Marshall Islands submitted redacted versions of annexes to its written pleadings, indicating that "there are no redactions in the Memorial, Vol. I and Reply, Vol. I" and that "[t]he redactions are confined to the annex volumes which will be published in the ITLOS Pleadings series". The Registrar transmitted a copy of this letter to the Agent of Equatorial Guinea on 11 September 2025 for comments by 24 October 2025 with regard to the issue of redacted versions of annexes and by 17 September 2025 with regard to the issue of directions requested by the Marshall Islands.

42. With regard to the issue of directions requested by the Marshall Islands, the Agent of Equatorial Guinea, by letter dated 17 September 2025, stated that "Equatorial Guinea does not raise any objections to the adoption of the directions requested by the Marshall Islands in … its letter." With regard to the issue of redacted versions of annexes, no response was received from Equatorial Guinea.

43. By another letter dated 10 September 2025, the Marshall Islands, referring to article 71 of the Rules, requested leave to submit a number of additional documents. In this letter, the Marshall Islands stated that "based on its review of the additional information …, the Marshall Islands considers that it should reduce its claim for material damages indicated at paragraphs 284 and 334 (a)(i)(1) of its Reply". The Registrar transmitted a copy of the letter to the Agent of Equatorial Guinea on 11 September 2025 for comments by 19 September 2025.

44. By letter dated 16 September 2025, the Agent of Equatorial Guinea, with reference to previous correspondence from the Registrar dated 17 April 2025 and 8 July 2025 concerning possible redactions to the Counter-Memorial and the Rejoinder, informed the Registrar that "Equatorial Guinea does not seek to place redactions on its written pleadings".

45. By letter dated 18 September 2025, the Agent of Equatorial Guinea stated that, "notwithstanding … serious reservations, Equatorial Guinea does not object to the production of the documents referred to in the Marshall Islands' letter" of 10 September 2025. The Agent of Equatorial Guinea also stated that "Equatorial Guinea takes note of the removal of the Marshall Islands' claims under paragraphs 8(a)-(c) and (f) of the Marshall Islands' letter" and "also takes note of the reduction of other claims owing to calculation errors." The Registrar transmitted a copy of the letter to the Agent of the Marshall Islands on 19 September 2025.

46. By letter dated 19 September 2025 concerning the language of examination of a witness called by Equatorial Guinea, the Agent of the Marshall Islands indicated that the Marshall Islands considers that the witness "should be giving evidence in English". The Registrar transmitted a copy of the letter on 22 September 2025 to the Agent of Equatorial Guinea. By letter of the same day, the Agent of Equatorial Guinea confirmed that the witness would be examined and available to respond to cross-examination in English. By letter dated 24 September 2025, the Registrar, at the request of the President of the Special Chamber, informed the Agent of the Marshall Islands that the witness would be examined and cross-examined in English.

47. By letter dated 24 September 2025, with reference to the Marshall Islands' letter dated 10 September 2025, the Registrar, at the request of the President of the Special Chamber, informed the Agents of the Parties that "the documents submitted by the Marshall Islands will be included in the case file and the Parties may refer to these documents during the oral proceedings."

48. At a public sitting held on 1 October 2025, Mr Eiriksson and Mr Couvreur each made the solemn declaration required under article 9 of the Rules.

49. By letter dated 1 October 2025, with reference to the letter from the Marshall Islands dated 10 September 2025 (see para. 41 above) and the letter from Equatorial Guinea dated 17 September 2025 (see para. 42 above), the Registrar, at the request of the President of the Special Chamber, informed the Agents of the Parties that the Special Chamber, taking into account the views expressed by the Parties, had adopted the following decision pursuant to article 74, paragraph 1, of the Rules:

> The Special Chamber takes note of the concern expressed by the Marshall Islands regarding the protection of sensitive personal data and other information during the hearing. Taking into account technical and practical requirements, the Special Chamber will proceed as follows during the hearing:
>
> (a) In accordance with article 74, paragraph 1, of the Rules of the Tribunal, the hearing will, in principle, be public. However, pursuant to the request from the Marshall Islands, to which Equatorial Guinea did not object, the parts of the hearing during which witnesses will be examined, including any cross-examinations, re-examinations or questions from the Special Chamber or the judges, will be conducted *in camera*, i.e., in private session.
>
> (b) During private sessions, the general public will be required to remain out of the courtroom. Only the Special Chamber, representatives of the Parties and their teams, the witness under examination and staff of the Registry of the Tribunal will be in attendance. At the beginning of a private session, the President of the Special Chamber will inform the persons attending the session that they may not make a recording or otherwise transmit or convey the content of the session.
>
> (c) Public parts of the hearing will be streamed live through webcast. For technical reasons, it is not possible to delay the streaming as requested by the Marshall Islands. There will be no webcast of private sessions. Video recordings of public parts of the hearing will be posted on the website of

the Tribunal at the end of each sitting. Video recordings of private sessions will not be made available to the public.

(d) Pursuant to article 86, paragraph 1, of the Rules of the Tribunal, verbatim records will be made of the entire hearing, including of private sessions. Corrections to the verbatim records may be made by Parties and witnesses in accordance with article 86, paragraphs 4 and 5, of the Rules. Only verbatim records of public parts of the hearing will be made public and posted on the website of the Tribunal.

50. On 2 October 2025, the Parties each submitted materials required under paragraph 14 of the Guidelines Concerning the Preparation and Presentation of Cases before the Tribunal.

51. In accordance with article 68 of the Rules, the Special Chamber held initial deliberations on 1 and 2 October 2025, prior to the opening of the oral proceedings.

52. On 5 October 2025, the President of the Special Chamber held consultations with the Agents of the Parties to ascertain their views regarding the organization of the hearing.

53. From 6 to 14 October 2025, the Special Chamber held 12 sittings. At these sittings, the following speakers addressed the Special Chamber:

For the Marshall Islands:

Ms Meredith Kirby,
as Agent;

Mr Bernard J. Adiniwin,
as Representative;

Sir Daniel Bethlehem KC,
Ms Penelope Nevill,
Mr Paolo Busco,
Mr Manuel Casas Martínez,
Ms Courtney Grafton,
as Counsel and Advocates;

For Equatorial Guinea:

Mr Carmelo Nvono-Ncá,
as Agent;

Mr Hussein Haeri KC,
Ms Floriane Lavaud,
Mr Dapo Akande,
Mr Francisco Moro Nve Obono,
Ms Clàudia Baró Huelmo,
as Counsel and Advocates.

54. Pursuant to the decision of the Special Chamber, as reproduced in paragraph 49 above, the parts of the hearing concerning the examination of witnesses were conducted *in camera*. At sittings held on 6 and 7 October 2025, the following witnesses were called by the Marshall Islands:

Mr Sanu Jose, former Chief Officer of the *M/T "Heroic Idun"*
(examined by Ms Grafton, cross-examined by Mr Haeri);

Mr Tanuj Mehta, former Master of the *M/T "Heroic Idun"*
(examined by Ms Grafton, cross-examined by Mr Haeri, re-examined by Ms Grafton).

55. At a sitting held on 9 October 2025, the following witnesses were called by Equatorial Guinea:

Mr Juan Nsue Esono Nchama, Inspector General of the Armed Forces
(examined by Ms Baró Huelmo, cross-examined by Mr Casas, re-examined by Ms Baró Huelmo);

Mr Alberto Hernández Martín, Head of Logistics Department, Besora
(examined by Mr Haeri, cross-examined by Ms Neville).

56. Certain speeches or statements made on behalf of Equatorial Guinea were delivered in Spanish. The witness called by Equatorial Guinea, Mr Esono Nchama, gave evidence in Spanish. Pursuant to article 85 of the Rules, the necessary arrangements for interpretation were made for speeches and statements as well as for the evidence given.

57. During the hearing, the Parties displayed a number of exhibits on screen, including maps, photographs and excerpts of documents.

58. The hearing was broadcast on the Internet as a webcast, with the exception of the parts of the hearing that were conducted *in camera*.

59. Pursuant to article 67 of the Rules, copies of the pleadings were made accessible to the public on the opening of the oral proceedings.

60. In accordance with article 86, paragraph 1, of the Rules, the transcripts of the verbatim record of each sitting were prepared by the Registry in the official languages of the Tribunal used during the hearing. In accordance with article 86, paragraph 4, of the Rules, copies of the transcripts of the said records were circulated to the judges sitting in the case, and to the Parties. The transcripts of public sittings were also made available to the public in electronic form.

61. By note verbale dated 27 April 2026, received by the Registry on 29 April 2026, the Embassy of Equatorial Guinea in Belgium transmitted a letter dated 27 April 2026 from the Minister of Foreign Affairs, International Cooperation and Diaspora of Equatorial Guinea. The Registry was thereby informed of the designation, with effect from the date of the letter, of Mr Miguel Oyono Ndong Mifumu, Ambassador Extraordinary and Plenipotentiary of Equatorial Guinea to Belgium, as Agent for Equatorial Guinea to replace the initially designated Agent, Mr Carmelo Nvono-Ncá, in these proceedings (see para. 5 above). The Registrar transmitted a copy of the communication to the Agent of the Marshall Islands on 29 April 2026.

II. Submissions of the Parties

62. In paragraph 438 of its Memorial, the Marshall Islands requested the Special Chamber to adjudge and declare that:

> 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, Equatorial Guinea breached Articles 87(1), 90 and 92 of UNCLOS.
>
> b. 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.

c. 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.

d. By enacting and implementing its criminal laws in respect of activities of the "*Heroic Idun*" and her crew in the EEZ of Equatorial Guinea without any basis in UNCLOS, and by usurping the Marshall Islands' exclusive prescriptive jurisdiction in respect of those activities, Equatorial Guinea breached Articles 56(1), 58, 87, 89 and 92 of the Convention or Article 300 read with Part V of UNCLOS.

e. Equatorial Guinea in any case adopted measures in respect of the "*Heroic Idun*" and her crew that were contrary to principle of reasonableness and considerations humanity and, in so far as those measures purportedly concerned the EEZ of Equatorial Guinea, it also failed to have due regard to the rights of the Marshall Islands in that maritime zone, in breach of Article 56(2) of UNCLOS.

f. By failing 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 Prisoners, Equatorial Guinea breached:

> i. rules and principles of international law not incompatible with the Convention to which the Chamber may have recourse under Article 293;
>
> ii. Article 87(1) of UNCLOS, in respect of its obligation to exercise its freedom of the high seas under conditions laid down by "other rules of international law;"
>
> iii. Article 87(2) of UNCLOS, in respect of its obligation to have due regard for the interests of the Marshall Islands;
>
> iv. Article 2(3) of UNCLOS, in respect of its obligation to exercise sovereignty in the territorial sea subject to other rules of international law;
>
> v. Article 58(2), in respect of its obligation to comply with other pertinent rules of international law and its obligation under Article 56(2) to have due regard to the rights and duties of the Marshall Islands, insofar as the relevant conduct concerned alleged activities in its EEZ.

g. By preventing the *"Heroic Idun"* from being properly manned, and by refusing the Marshall Islands' repeated requests in this regard, Equatorial Guinea breached:

> i. Article 1(b) of SOLAS, in respect of its obligation to take all necessary steps to give SOLAS full and complete effect;

ii. Article 1(2) of the STCW, in respect of its obligation to take all necessary steps to give the STCW full and complete effect;

iii. Article 1 of the COLREGS, in respect of its obligation to give effect to the Rules contained therein;

iv. Article 87(1) of UNCLOS, in respect of its obligation to exercise its freedom of the high seas under conditions laid down by "other rules of international law," in this instance Article 1(b) of SOLAS, Article 1(2) of the STCW, and Article 1 of the COLREGS;

v. Article 87(2), in respect of its obligation to have due regard for the interests of the Marshall Islands, as flag State, to meet its duties under Articles 94 and 217 of the Convention;

vi. Article 2(3) to exercise its sovereignty over the territorial sea subject to the Convention, including Article 87(1), and to other rules of international law, including Article 1(b) of SOLAS, Article 1(2) of the STCW, and Article 1 of the COLREGS.

h. By the unsafe manoeuvring of the naval vessel the "*Wele Nzas*" on 26 September 2022, Equatorial Guinea breached Rules 2, 6, 7 and 8 of the COLREGS.

i. By preventing the "*Heroic Idun*" from being properly manned, requesting the vessel to be moored in a location where it was at a significant risk of collision, and by the unsafe manoeuvring of its naval vessel "*Wele Nzas*" on 26 September 2022 in respect of the "*Heroic Idun*," Equatorial Guinea breached Article 225 of UNCLOS.

j. By failing to notify the Marshall Islands of, *inter alia*, (i) the interception, diversion and detention of the "*Heroic Idun*" and her crew, (ii) the imposition of a penalty on the Master of the Vessel, and (iii) the transfer of the Vessel to Nigeria, Equatorial Guinea breached its duty to notify the Marshall Islands as the flag State of enforcement measures adopted in respect of its Vessel, which duty has general application in law of the sea and/or Articles 87(1) and 87(2), read with Article 58(2), and Article 56(2) of the Convention.

k. By detaining the "*Heroic Idun*" and its crew for a period of 92 days, and by continuing the detention despite the payment of a penalty amounting to two million, one hundred and thirty-two Euros (€2,000,132), Equatorial Guinea breached its obligation to release vessels promptly, which has general application in law of the sea and/or Articles 87(1) and 87(2), read with Article 58(2), and Article 56(2), and/or Article 294(2) of the Convention.

l. By repeatedly failing to engage with the Marshall Islands in respect of the "*Heroic Idun*" and her crew, and by handing over control of the Vessel and crew to Nigeria on 11 November 2022, after having been notified of the Marshall Islands' prompt release application, Equatorial Guinea breached:

i. Articles 283 of UNCLOS;

ii. Articles 286, 288, 292, 296 and/or 297(1) of the Convention, and Article 300 of the Convention read alongside these provisions; and

iii. the general obligation not to aggravate the dispute with the Marshall Islands.

63. In paragraph 439 of its Memorial, the Marshall Islands further requested the Special Chamber to:

a. Order that Equatorial Guinea:

i. pay compensation to the Marshall Islands:

1. for material damage in the amount of thirty-nine million, seven hundred and sixty seven thousand, nine hundred and seventy-nine dollars (USD $39,767,979);

2. for non-material damage of fifteen million and twenty-eight hundred dollars (USD $15,028,000);

ii. pay two million, one hundred and thirty-two Euros (€ 2,000,132) in restitution (or, alternatively, in compensation);

b. Order that Equatorial Guinea pay interest in respect of the sums specified above calculated:

i. on sums awarded in US dollars, the US prime rate plus 1% (one per cent), compounded at quarterly intervals;

ii. on sums awarded in Euros, the EURIBOR six month rate plus 5% (five per cent), compounded at six monthly intervals;

to run (as relevant) from the date of the commission of the wrongful act or the date the date the costs/expenses were incurred (in respect of the sums awarded in compensation) and from the date of payment of the Fine until the date of restitution or (if awarded as compensation) the date of payment of compensation.

c. Award costs of the present proceedings to the Marshall Islands;

d. Order that Equatorial Guinea:

i. revoke the Fine imposed on the Master;

ii. acknowledge its wrongful conduct in respect of the Marshall Islands; and

iii. provide an assurance and guarantee of non-repetition.

64. In paragraph 333 of its Reply, the Marshall Islands requested the Special Chamber to dismiss all of Equatorial Guinea's defenses and to adjudge and declare that

> 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.
>
> [b]. 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.
>
> [c]. 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.
>
> [d]. By enacting and implementing its criminal laws (including by the imposition of lengthy periods of detention and hefty fines) in respect of activities of the "*Heroic Idun*" and her crew in the EEZ of Equatorial Guinea without any basis in UNCLOS, and/or by usurping the Marshall Islands' exclusive prescriptive jurisdiction in respect of those activities, and/or by exceeding the limits of prescriptive jurisdiction allowed by UNCLOS in respect of those activities, Equatorial Guinea breached Articles 56(1), 58, 87, 89 and 92 of the Convention or Article 300 read with Part V of UNCLOS.
>
> [e]. Equatorial Guinea in any case adopted measures in respect of the "*Heroic Idun*" and her crew that were contrary to principle of reasonableness and considerations humanity and, in so far as those measures purportedly concerned the EEZ of Equatorial Guinea, it also failed to have due regard to the rights of the Marshall Islands in that maritime zone, in breach of Article 56(2) of UNCLOS.
>
> [f]. By failing 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 Prisoners, Equatorial Guinea acted contrary to rules and principles of international law not incompatible with the Convention to which the Chamber may have recourse under Article 293 and breached:
>
> > i. Article 87(1) of UNCLOS, in respect of its obligation to exercise its freedom of the high seas under conditions laid down by "other rules of international law;"
> >
> > ii. Article 87(2) of UNCLOS, in respect of its obligation to have due regard for the interests of the Marshall Islands;

iii. Article 2(3) of UNCLOS, in respect of its obligation to exercise sovereignty in the territorial sea subject to other rules of international law;

iv. Article 58(2), in respect of its obligation to comply with other pertinent rules of international law and its obligation under Article 56(2) to have due regard to the rights and duties of the Marshall Islands, insofar as the relevant conduct concerned alleged activities in its EEZ.

[g]. By preventing the *"Heroic Idun"* from being properly manned, and by refusing the Marshall Islands' repeated requests in this regard, Equatorial Guinea breached:

i. Article 1(b) of SOLAS, in respect of its obligation to take all necessary steps to give SOLAS full and complete effect;

ii. Article 1(2) of the STCW, in respect of its obligation to take all necessary steps to give the STCW full and complete effect;

iii. Article 1 of the COLREGS, in respect of its obligation to give effect to the Rules contained therein;

iv. Article 87(1) of UNCLOS, in respect of its obligation to exercise its freedom of the high seas under conditions laid down by "other rules of international law," in this instance Article 1(b) of SOLAS, Article 1(2) of the STCW, and Article 1 of the COLREGS;

v. Article 87(2), in respect of its obligation to have due regard for the interests of the Marshall Islands, as flag State, to meet its duties under Articles 94 and 217 of the Convention;

vi. Article 2(3) to exercise its sovereignty over the territorial sea subject to the Convention, including Article 87(1), and to other rules of international law, including Article 1(b) of SOLAS, Article 1(2) of the STCW, and Article 1 of the COLREGS.

[h]. By the unsafe manoeuvring of the naval vessel the "*Wele Nzas*" on 26 September 2022, Equatorial Guinea breached Rules 2, 6, 7 and 8 of the COLREGS.

[i]. By preventing the "*Heroic Idun*" from being properly manned, requesting the vessel to be moored in a location where it was at a significant risk of collision, and by the unsafe maneuvering of its naval vessel "*Wele Nzas*" on 26 September 2022 in respect of the "*Heroic Idun*," Equatorial Guinea breached Article 225 of UNCLOS.

[j]. By failing to notify the Marshall Islands of, *inter alia*, (i) the interception, diversion and detention of the "*Heroic Idun*" and her crew, (ii) the imposition of a penalty on the Master of the Vessel, and (iii) the transfer of the Vessel to Nigeria, Equatorial Guinea breached its duty to notify the Marshall Islands as the flag State of enforcement measures adopted in respect of its Vessel, which duty has general application in law

of the sea and/or Articles 87(1) and 87(2), read with Article 58(2), and Article 56(2) of the Convention.

[k]. By detaining the "*Heroic Idun*" and its crew for a period of 92 days, and by continuing the detention despite the payment of a penalty amounting to two million, one hundred and thirty-two Euros (€2,000,132), Equatorial Guinea breached its obligation to release vessels promptly, which has general application in law of the sea and/or Articles 87(1) and 87(2), read with Article 58(2), and Article 56(2), and/or Article 294(2) of the Convention and/or Article 300 of the Convention read alongside these provisions.

[l]. By repeatedly failing to engage with the Marshall Islands in respect of the "*Heroic Idun*" and her crew, and by handing over control of the Vessel and crew to Nigeria on 11 November 2022, after having been notified of the Marshall Islands' Prompt Release Application, Equatorial Guinea breached:

i. Article 283 of UNCLOS;

ii. Articles 286, 288, 292, 296 and/or 297(1) of the Convention, and Article 300 of the Convention read alongside these provisions; and

iii. the general obligation not to aggravate the dispute with the Marshall Islands.

65. In paragraph 334 of its Reply, the Marshall Islands further requested the Special Chamber to:

a. Order that Equatorial Guinea:

i. pay compensation to the Marshall Islands:

1. for material damage in the amount of forty-three million, seventeen thousand, eight hundred thirty-seven dollars, with seventy-two cents (US$43,017,837.72);

2. for non-material damage of fifteen million and twenty-eight hundred dollars (USD $15,028,000);

ii. insofar as not already paid as compensation, to pay two million, one hundred and thirty-two Euros (€2,000,132) in restitution;

b. Order that Equatorial Guinea pay interest in respect of the sums specified above calculated:

i. on sums awarded in US dollars, the US prime rate plus 1% (one per cent), compounded at quarterly intervals;

ii. on sums awarded in Euros, the EURIBOR six month rate plus 5% (five per cent), compounded at six monthly intervals;

to run (as relevant) from the date of the commission of the wrongful act or the date the date the costs/expenses were incurred (in respect of the sums awarded in compensation) and from the date of payment of the Fine until the date of restitution or (if awarded as compensation) the date of payment of compensation.

c. Award costs of the present proceedings to the Marshall Islands;

d. Order that Equatorial Guinea:

i. revoke the Fine imposed on the Master;

ii. acknowledge its wrongful conduct in respect of the Marshall Islands; and

iii. provide an assurance and guarantee of non-repetition.

66. In paragraph 399 of its Counter-Memorial, Equatorial Guinea requested the Special Chamber to adjudge and declare that:

a) The claims brought by the Marshall Islands fall outside the jurisdiction of the Chamber, or in the alternative are inadmissible, due to the *Monetary Gold* principle (paragraphs 105-145);

b) The Marshall Islands has failed to exhaust local remedies for those claims where this is required by international law (paragraphs 146-155);

c) The Chamber's jurisdiction is in any event limited to claims made under UNCLOS (paragraphs 156-167);

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 179-231);

e) Equatorial Guinea acted in accordance with the principles of due regard and reasonableness (paragraphs 232-256);

f) There is no general obligation to notify the flag State of enforcement measures (paragraphs 257-270);

g) Equatorial Guinea acted pursuant to lawful prescriptive jurisdiction (paragraphs 271-281);

h) Equatorial Guinea did not breach any other international obligations alleged by the Marshall Islands (paragraphs 282-300);

i) Equatorial Guinea acted in accordance with the principle of humanity towards the crew members of the *Heroic Idun* at all times (paragraphs 301-319);

j) UNCLOS' prompt release obligations were not applicable to the present circumstances and consequently, Equatorial Guinea has not violated these obligations (paragraphs 320-336); and

k) Equatorial Guinea did not breach its obligation to preserve the rights of the Marshall Islands, nor aggravate the dispute pending proceedings (paragraphs 337-345).

67. In paragraph 400 of its Counter-Memorial, Equatorial Guinea further requested the Special Chamber to:

a) Dismiss all of the Marshall Islands' requests for payment of compensation for material and/or moral damages (paragraphs 347-391);

b) Dismiss the Marshall Islands' requests for satisfaction (paragraphs 397-398);

c) Dismiss all of the Marshall Islands' requests for payment of interest (paragraphs 392-394); and

d) Direct that each party should bear its own costs (paragraphs 395-396).

68. In paragraph 432 of its Rejoinder, Equatorial Guinea requested the Special 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).

69. In paragraph 433 of its Rejoinder, Equatorial Guinea further requested the Special 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);

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).

70. In accordance with article 75, paragraph 2, of the Rules, the following final submissions were presented by the Parties at the conclusion of the last statement made by each Party at the hearing:

On behalf of the Marshall Islands:

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

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

2. By its conduct in intercepting the "*Heroic Idun*" on 12 August 2022 in the exclusive economic zone of São Tomé and Príncipe, by

forcing it to divert course to Luba anchorage, and by detaining the "*Heroic Idun*" at Luba anchorage, the Republic of Equatorial Guinea acted in breach of the Republic of the Marshall Islands' Flag State freedom of navigation rights and/or exclusive flag State jurisdiction with respect to the "*Heroic Idun*" contrary, *inter alia*, to Articles 87(1), 90 and 92(1) of UNCLOS, having regard to Article 58(2) of UNCLOS.

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

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

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

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

    b. In addition or in the alternative to 5(a) above, by its conduct in intercepting the "*Heroic Idun*" on 12 August 2022 in the exclusive economic zone of São Tomé and Príncipe, by forcing it to divert course to Luba anchorage, and by detaining the "*Heroic Idun*" at Luba anchorage, the Republic of Equatorial Guinea failed to cooperate with the Republic of the Marshall Islands in its capacity as Flag State of the "*Heroic Idun*" contrary, *inter alia*, to Article 100 of UNCLOS, having regard, on the facts of this case, to the ample opportunity to do so before the Republic of Equatorial Guinea took steps to seize the "*Heroic Idun*", including:

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

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

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

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

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

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

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

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

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

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

ii. breached its obligations under Article 1(b) of the Convention on Safety of Life at Sea, Article I(2) of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers at Sea, and Article 1 of the Convention on

the International Regulations for Preventing Collisions at Sea, by failing to take necessary steps to enable the conventions to be given full and complete effect, thereby preventing the Republic of the Marshall Islands from exercising its rights, duties and responsibilities thereunder.

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

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

e. By failing to engage with the Republic of the Marshall Islands in respect of the "*Heroic Idun*" and her crew, and by handing over the Vessel and her crew to the Federal Republic of Nigeria on 11 November 2022, the Republic of Equatorial Guinea acted in breach of the general obligation not to aggravate the dispute with the Republic of the Marshall Islands.

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

a. Loss, damage and injury caused by the Republic of Equatorial Guinea that was visible and quantifiable within the period 12 August 2022 to 11 November 2022, including:

i. EUR 2,000,132.00, being the amount of the fine improperly levied by the Republic of Equatorial Guinea to release of the "*Heroic Idun*" and her crew;

ii. USD 7.628 million for material loss, damage or injury sustained by the "*Heroic Idun*" in the period 12 August 2022 to 11 November 2022;

iii. USD 4.784 million for non-material loss, damage or injury sustained by the crew of the "*Heroic Idun*" in the period 12 August 2022 to 11 November 2022.

b. Loss, damage or injury that was a direct consequence of Equatorial Guinea's conduct within the period 12 August 2022 to 11 November 2022 but only crystallised after this period or only became quantifiable after this period, specifically: USD 3.339 million for material loss and damage

to the "*Heroic Idun*" that was a direct consequence of Equatorial Guinea's conduct within the period 12 August 2022 to 11 November 2022 but was only quantifiable in the period 27 May 2023 to 24 July 2023, namely, loss of hire, costs and expenses to repatriate the crew, and costs and expenses to repair the Vessel.

c. Loss, damage or injury to the "*Heroic Idun*" and her crew in the period 11 November 2022 to 27 May 2023 in consequence of the Republic of Equatorial Guinea's extra-judicial rendition of the "*Heroic Idun*" and her crew to the Federal Republic of Nigeria that is sufficiently proximate to that rendition and is properly traceable to Equatorial Guinea, in an amount to be determined by the Special Chamber.

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

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

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

g. An award of the costs of the Republic of the Marshall Islands in these proceedings, subject to assessment in the case of dispute.

On behalf of Equatorial Guinea:

Pursuant to Article 75(2) of the Rules of the Tribunal, having regard to its written and oral submissions, the Republic of Equatorial Guinea requests the Special Chamber to adjudge and declare as follows:

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

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

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

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

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

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

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

d) Equatorial Guinea did not breach Article 300 of UNCLOS; and

e) to the extent that the Chamber finds, contrary to paragraph 1 above, that such matters fall within the jurisdiction of the Chamber, all measures adopted by Equatorial Guinea subsequent to the interception of the *Heroic Idun* are not in breach of other rules of international law.

5. Through the interception and seizure of the *Heroic Idun*, Equatorial Guinea did not violate Article 225 of UNCLOS or the principle of reasonableness.

6. In levying the Fine on the Master of the *Heroic Idun*, Equatorial Guinea acted pursuant to lawful prescriptive jurisdiction.

7. There is no general obligation to notify the flag State of enforcement measures, and in the alternative, Equatorial Guinea did not fail to comply with any obligation to notify Marshall Islands of enforcement measures.

8. In addition, or in the alternative to paragraphs (1) and (3),

a) the Marshall Islands' human rights claims fall outside the Chamber's jurisdiction and the so-called "gateway provisions" do not allow for determination of human rights treaties or customary international human rights law; and

b) in any event, Equatorial Guinea acted in accordance with considerations of humanity towards the crew members of the *Heroic Idun*.

9. In addition, or in the alternative to paragraph (1), the obligations invoked by the Marshall Islands under the Convention on Safety of Life and Sea ("SOLAS"), the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers at Sea ("SCTW"), or the Convention on the International Regulations for Preventing Collisions at Sea ("COLREGS")

a) are either not applicable as pleaded;

b) cannot have been breached in isolation; or

c) were not breached by Equatorial Guinea.

10. Equatorial Guinea did not breach any obligations of the Marshall Islands as flag State of the *Heroic Idun* under Articles 94 and 212 of UNCLOS, under Articles 2(3) or 87(2) of UNCLOS.

11. Equatorial Guinea did not breach its obligation to preserve the rights of the Marshall Islands, nor any obligation, in so far as it exists, not to aggravate the dispute pending proceedings.

12. 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;

b) dismiss the Marshall Islands' requests for satisfaction;

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

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

III. Factual background

71. The *M/T "Heroic Idun"* is a very large crude carrier (VLCC) flying the flag of the Marshall Islands. According to the Marshall Islands, it is owned by Idun Maritime Ltd., an Isle of Man company which is also registered in the Marshall Islands as a "Foreign Maritime Entity", and managed by OSM Ship Management AS, a Norwegian company. At the time of its interception and detention by Equatoguinean authorities, the *M/T "Heroic Idun"* was time chartered to Mercuria Shipping Pte Limited which sub-chartered it to BP Shipping Ltd. It was carrying a Master and a 25-member crew of Indian (14), Sri Lankan (9), Filipino (1) and Polish (1) nationality.

72. On 7 August 2022, the *M/T "Heroic Idun"* arrived near the Akpo Offshore Terminal (hereinafter "the Terminal"), located 71 nautical miles off the coast of Nigeria, in Nigeria's exclusive economic zone, with instructions to load crude oil. Since the vessel did not have the requisite authorizations at the time, on 8 August 2022, it moved to a waiting position just over 10 nautical miles from the Terminal.

73. On the evening of 8 August 2022, the *M/T "Heroic Idun"* was approached and contacted by a Nigerian Navy vessel, the *NNS "Gongola"*. According to the Marshall Islands, at the time of the encounter, the crew of the *M/T "Heroic Idun"* "was unable to identify it as such", "as its Automatic Identification System ('AIS') was turned off", and the general concern was that the *NNS "Gongola"* "could be a pirate vessel pretending to be the Nigerian Navy". For its part, Equatorial Guinea points to the fact that, at the time, the Terminal informed the *M/T "Heroic Idun"* that the vessel had identified itself to the Terminal as "Nigerian navy ship Gongola", and that it is the "modus of operation" of Nigerian naval vessels to switch off their AIS when they go for investigation. Thus, according to Equatorial Guinea, the *M/T "Heroic Idun"* "was aware that the *NNS Gongola* was a Nigerian Navy ship." The Marshall Islands states that the *NNS "Gongola"* asked the *M/T "Heroic Idun"* to follow it to Bonny Fairway Buoy in Nigeria, where the vessel "would be 'released' when it received all of the necessary clearances." In response, according to the Marshall Islands, the Master of the *M/T "Heroic Idun"* informed the *NNS "Gongola"* that his instructions were not to follow it, and then "he proceeded to move further offshore as quickly as possible." Shortly thereafter, the *NNS "Gongola"* aborted its attempts to arrest the *M/T "Heroic Idun"*.

74. The *M/T "Heroic Idun"* continued moving further offshore. It entered the exclusive economic zone of Equatorial Guinea (around Annobón Island) on 9 August 2022 and sailed into the exclusive economic zone of São Tomé and Príncipe on 10 August 2022. The vessel then drifted in the exclusive economic zone of São Tomé and Príncipe until its interception by Equatorial Guinea on 12 August 2022 (see para. 76 below).

75. According to Equatorial Guinea, the Director General of Military Cooperation in the Ministry of National Defence of Equatorial Guinea received text messages from the Nigerian authorities via the messaging service WhatsApp on 10 August 2022. The messages stated that the *M/T "Heroic Idun"* "came to load crude without approval and is suspected of being involved in an illegal fuel supply operation" and that "[w]hen *NNS Gongola* contacted [the *M/T "Heroic Idun"*] for interrogation, it raised a false alarm of a piracy attack and to avoid collateral damage, it left Nigerian

waters". The messages further stated that the vessel entered the exclusive economic zone of Equatorial Guinea and requested that the navy of Equatorial Guinea "tracks and stops the vessel" in order to explain its activities "in waters of Nigeria." In a note verbale also dated 10 August 2022, the Embassy of Nigeria in Equatorial Guinea informed the Ministry of External Affairs and Cooperation of Equatorial Guinea that the *M/T "Heroic Idun"* "was involved in the illegal entry into [Nigeria's] territorial waters to load crude oil without proper approval" and that it "escaped into Equatoguinean maritime domain by raising a false piracy attack alarm to avoid collateral damage." The note verbale further stated that

> it would be highly appreciated, if, in line with subsisting defence cooperation protocols between the two countries, the Equatorial Guinea Navy and other competent authorities would track and arrest the vessel and hand them (both vessel and crew) over to the Nigerian Government for proper investigation.

76. On 12 August 2022, at 12:37 UTC, while the *M/T "Heroic Idun"* was drifting in the exclusive economic zone of São Tomé and Príncipe, it was contacted via radio by the Equatoguinean naval vessel *CC David Eyama Angüe Osa* (hereinafter *"Capitán David"*) and ordered to stop its engines. When the *MT "Heroic Idun"* asked whether the *"Capitán David"* intended to board the vessel, the latter responded that it was there "only for investigation." Having approached the *M/T "Heroic Idun"* more than an hour later, the *"Capitán David"* told the *M/T "Heroic Idun"* to follow it to the port of Malabo, Bioko Island, in Equatorial Guinea and announced that it had received "orders to shoot" in case of any "suspect operation". The *M/T "Heroic Idun"* followed the route to Equatorial Guinea given by the *"Capitán David"*, and while en route to Equatorial Guinea, a second Equatoguinean naval vessel, the *"Wele Nzas"*, joined the *"Capitán David"* in escorting the *M/T "Heroic Idun".* The *M/T "Heroic Idun"* was redirected to Luba Freeport, Bioko Island.

77. Following its interception by the *"Capitán David"*, the *M/T "Heroic Idun"* arrived at the Luba anchorage in Equatorial Guinea on 13 August 2022, shortly before midnight. It remained detained there until 11 November 2022 (see para. 85 below). The Parties disagree as to whether the vessel was exposed to certain risks during that period. Their positions are reflected in paragraphs 421 to 443 below.

78. On 14 August 2022, Equatoguinean authorities boarded and inspected the *M/T "Heroic Idun"*. On the same day, 15 crew members, including the Master, were disembarked from the vessel. The other 11 crew members remained on the vessel, guarded by armed Equatoguinean naval officers.

79. On the same day, the 15 crew members who had been disembarked were transferred to a facility in Malabo, where they were guarded by Equatoguinean officers. The Parties provide differing accounts regarding the condition and the equipment of the facility, the supply of provisions such as water and food, and the availability of medical care. The positions of the Parties are reflected in paragraphs 379 to 402 below.

80. On 17 August 2022, the Master, the Chief Engineer and the Second Officer were questioned by Equatoguinean authorities. The crew and the owners of the *M/T "Heroic Idun"* were informed on 22 and 23 August 2022, respectively, that the investigation by the authorities of Equatorial Guinea had been concluded. On several days between 31 August and 20 September 2022, crew members were interviewed by Nigerian officials. The interviews were facilitated by Equatorial Guinea and were conducted in the presence of officials of Equatorial Guinea.

81. On 23 September 2022, the Ministry of National Defence of Equatorial Guinea issued a fine of 1.312 billion West African francs against the Master of the *M/T "Heroic Idun"* (hereinafter "the Fine"). The decision of the Ministry stated that

> at around 1 p.m. last 12 August 2022, the warship from the Navy of Equatorial Guinea, "C.C. David Eyama ANGÜE OSA," intercepted the ship M/T HEROIC IDUN, with IMO No. 9858058, registered in the Marshall Islands …, upon its illegal entry into the jurisdictional waters of the Republic of Equatorial Guinea, sailing without flying any flag as well as sailing and remaining in the Exclusive Economic Zone of Annobón Island, from 9 August 2022 around 2:58 p.m. and leaving on the 10th of the same month around 10:53 a.m., without having been given authorisation by the National Maritime Authority; facts are set forth and sanctioned in Articles 581 of the Community Code of the Merchant Navy (annexed to regulations 03/01UEAC088-CM06, adopted by the Council of Ministers of the CEMAC [Central African Economic and Monetary Community] at its meeting held in Bangui on 3 August 2001) (CEMAC CODE) and 10, 12 and 698.2 b) and c) of Law No. 2/2020 dated 8 July, General Law of the Merchant Navy: offences for which [the] Captain of the tanker in question, is criminally liable as perpetrator.

The decision further indicated that the Fine was imposed "for the maritime offences committed as well as the expenses incurred during the operation of the apprehension and custody in the port of Luba."

82. The Fine was paid in full by means of a bank transfer of EUR 2,000,132 made by the owners of the *M/T "Heroic Idun"* on 4 October 2022.

83. By note verbale dated 12 September 2022, the Embassy of Nigeria in Equatorial Guinea informed the Ministry of External Affairs and Cooperation of Equatorial Guinea of "infractions" allegedly committed by the *M/T "Heroic Idun"* "while within the jurisdiction of the Nigerian maritime space" and requested that the vessel and crew be transferred to Nigeria. This request was reiterated in further communications by Nigeria to Equatorial Guinea dated 12 October 2022, 26 October 2022, 31 October 2022 and 1 November 2022. By note verbale dated 27 October 2022, the Ministry of External Affairs and Cooperation of Equatorial Guinea informed the Embassy of Nigeria that it had approved the request for the transfer of the *M/T "Heroic Idun"* and its crew to Nigeria, "in application of the Yaounde code of conduct". A document dated 5 November 2022 and signed by representatives of Equatorial Guinea and Nigeria attests that, on that date, Equatorial Guinea "officially hand[ed] over" the *M/T "Heroic Idun"* and its crew to Nigeria.

84. On 10 November 2022, the Marshall Islands initiated prompt release proceedings before the Tribunal under article 292 of the Convention. A certified copy of the application was transmitted to Equatorial Guinea on the same day. The proceedings were discontinued at the instance of the Marshall Islands on 15 November 2022 (see *M/T "Heroic Idun" (Marshall Islands* v. *Equatorial Guinea), Order of 15 November 2022, ITLOS Reports 2022–2023*, p. 184).

85. On 11 November 2022, the 15 crew members who were onshore in Equatorial Guinea were transferred to the *M/T "Heroic Idun"*, and the vessel sailed from Luba, escorted by two vessels of the Nigerian Navy. An Equatoguinean vessel accompanied them to the outer limit of Equatorial Guinea's territorial sea. The *M/T "Heroic Idun"* arrived at Bonny anchorage in Nigeria on 12 November 2022.

86. On 27 April 2023, the Director of Public Prosecutions of Nigeria and the vessel's owners entered into a plea bargain agreement. Under the terms of the agreement, the owners of the vessel pleaded guilty to what is described therein as "a lesser offence" under Nigeria's Suppression of Piracy and Other Maritime Offences Act and the Miscellaneous Offences Act, 2019, paid a statutory fine and a further amount as "restitution", and made an apology in Lloyd's List. For its part, Nigeria dropped all of the charges against the crew. The *M/T "Heroic Idun"* and its crew were eventually released by the Nigerian authorities on 27 May 2023. On the following day, the vessel sailed from Nigeria to South Africa, where it arrived on 7 June 2023. On 8 June 2023, the vessel sailed from South Africa and arrived in the United Arab Emirates on 28 June 2023. It was drydocked in Fujairah, United Arab Emirates, from 2 to 6 July 2023, where it underwent inspection and repairs. As of 12 July 2023, the vessel was chartered to another party.

IV. Jurisdiction

87. Both the Marshall Islands and Equatorial Guinea are States Parties to the Convention. The Marshall Islands acceded to the Convention on 9 August 1991, and Equatorial Guinea ratified the Convention on 21 July 1997. As noted in paragraph 3 above, the Parties agreed by Special Agreement dated 18 April 2023

> to transfer the arbitral proceedings instituted by the Marshall Islands in the dispute between the Marshall Islands and Equatorial Guinea concerning the *M/T "Heroic Idun"* and her crew to a special chamber of the Tribunal, to be formed pursuant to article 15, paragraph 2, of the Statute.

The request by the Parties was acceded to by the Tribunal and the Special Chamber was duly constituted.

88. The Parties disagree on the scope of the Special Chamber's jurisdiction.

89. The Special Chamber notes that article 288, paragraph 1, of the Convention provides that "[a] court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is

submitted to it in accordance with [Part XV]" and that, pursuant to article 288, paragraph 4, "[i]n the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal." The Special Chamber must therefore satisfy itself of the existence of a dispute and that it has jurisdiction to deal with the case as submitted by the Parties.

90. The Special Chamber further notes that, for it to have jurisdiction to entertain this case, a dispute concerning the interpretation or application of the Convention between the Parties must have existed at the time of the institution of proceedings, which in this case is the date of the institution of the arbitral proceedings (see *Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives), Preliminary Objections, Judgment, ITLOS Reports 2020–2021*, p. 17, at p. 110, para. 335).

91. The Special Chamber also notes that, in the *Southern Bluefin Tuna* cases*,* the Tribunal stated:

> [A] dispute is a "disagreement on a point of law or fact, a conflict of legal views or of interests" (*Mavrommatis Palestine Concessions, Judgment, No. 2, 1924, P.C.I.J. Series A, No. 2*, p. 11), and "[i]t must be shown that the claim of one party is positively opposed by the other" (*South West Africa, Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328).
> *(Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280, at p. 293, para. 44; see also *M/V "Norstar" (Panama* v. *Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 44, at p. 65, para. 85; *Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives), Preliminary Objections, Judgment, ITLOS Reports 2020-2021*, p. 17, at pp. 106-107, para. 323)

92. According to the Marshall Islands, "the Special Chamber has jurisdiction in respect of each of the claims of … the Marshall Islands". In this regard, the Marshall Islands contends that "[t]here is a dispute", which concerns "the interpretation and application of the Convention." The Marshall Islands further contends that "Equatorial Guinea ... violated … Articles 87 and 92" of the Convention and "various of the other provisions of the Convention". Moreover, with respect to the exchange of views under article 283 of the Convention, the Marshall Islands states that "[t]he requirement … has … been met."

93. Equatorial Guinea "contests the jurisdiction of this Chamber to deal with some of the claims presented by the Marshall Islands". Equatorial Guinea contends that this Chamber "does not have jurisdiction to make determinations regarding alleged breaches of treaties or rules of international law outside" the Convention and that "the Chamber's jurisdiction is in any event limited to claims made under UNCLOS." On this matter, Equatorial Guinea also submits that "this Special Chamber can only exercise jurisdiction with respect to disputes 'concerning the interpretation or application of th[e] Convention…'" and that "[t]he jurisdiction of this Chamber does not extend to disputes regarding the interpretation or application of any other instrument of international law or rule of customary international law."

94. The Special Chamber observes that, although Equatorial Guinea challenges the scope of the Special Chamber's jurisdiction, it does not argue that no dispute at all exists between the Parties concerning the interpretation or application of the Convention. The Special Chamber also observes that the disagreement between them regarding the lawfulness of the apprehension of the *M/T "Heroic Idun"* and its crew involves several provisions of the Convention.

95. In view of the above, the Special Chamber concludes that there is a dispute between the Parties and that the dispute concerns the interpretation or application of the Convention.

96. Moreover, having regard to the Marshall Islands' repeated attempts to raise its claims with Equatorial Guinea and Equatorial Guinea's failure to respond thereto, in addition to the Marshall Islands' subsequent unsuccessful attempts to engage with Equatorial Guinea regarding the dispute prior to the transmission of the Notification and Statement of Claim, the Special Chamber concludes that the dispute existed at the time of the institution of proceedings.

97. The Special Chamber will now turn to the question whether the requirements of article 283, paragraph 1, of the Convention have been satisfied. This provision reads:

> When a dispute arises between States Parties concerning the interpretation or application of the Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.

98. The Special Chamber takes note of the point made by the Marshall Islands that it "raised its claims repeatedly with Equatorial Guinea, prior to the transmission of its Notification and Statement of Claim under Annex VII and the commencement of these proceedings with the Special Agreement" and that "Equatorial Guinea failed to respond, when in the circumstances a response was plainly called for." The Marshall Islands states that it "expressly invited discussions of the dispute in a Note Verbale dated 28 October 2022, in which the Ministry of Foreign Affairs of the Marshall Islands informed the Ministry of Foreign Affairs of Equatorial Guinea that it remained 'ready to discuss' the matter of the *M/T "Heroic Idun"* with Equatorial Guinea, but also advised that if no diplomatic solution could be reached very shortly, the Marshall Islands would have to consider submitting the dispute to the judicial procedures under UNCLOS. Equatorial Guinea did not reply."

99. The Marshall Islands further submits that it likewise received no replies to its subsequent attempts "to discuss the dispute or its settlement." It accordingly maintains that the requirements in article 283, paragraph 1, have been met.

100. The Special Chamber notes that Equatorial Guinea did not submit any arguments on the point made by the Marshall Islands concerning article 283 of the Convention.

101. In this regard, the Special Chamber reaffirms the finding of the Tribunal in the *M/V "Norstar"* case

> that the absence of a response from one State Party to an attempt by another State Party to exchange views on the means of settlement of a dispute arising between them does not prevent the Tribunal from finding that the requirements of article 283 have been fulfilled.
> (*M/V "Norstar" (Panama* v. *Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 44, at p. 92, para. 215)

102. The Special Chamber considers that, by disregarding correspondence from the Marshall Islands and failing to respond to invitations to engage in discussions with the Marshall Islands regarding the apprehension of the *M/T "Heroic Idun"* and its crew, Equatorial Guinea precluded any possibility for an exchange of views between them towards settling the dispute, and that the Marshall Islands was justified in concluding that it had fulfilled its obligation under article 283.

103. The Special Chamber therefore finds that the requirements of article 283 of the Convention are satisfied.

104. In light of the foregoing, the Special Chamber finds that it has jurisdiction over the dispute concerning the *M/T "Heroic Idun"* and its crew.

105. The Special Chamber will now turn to the question whether some of the claims made by the Marshall Islands fall outside the jurisdiction of the Special Chamber or, in the alternative, are inadmissible owing to the *Monetary Gold* principle.

106. At the outset, the Special Chamber notes a disagreement among the Parties as to whether the *Monetary Gold* principle concerns a question of jurisdiction or admissibility. Equatorial Guinea asserts that "pursuant to the *Monetary Gold* … doctrine … disputes which directly implicate the rights of third States whose legal interests 'would form the very subject-matter of the decision' are inadmissible in inter-State proceedings."

107. For its part, the Marshall Islands submits that "Equatorial Guinea's case … must stand or fall as an objection to jurisdiction". Accordingly, the Marshall Islands submits that "[i]t cannot survive as an objection to admissibility."

108. The Special Chamber recalls that the International Court of Justice (hereinafter "the ICJ") has drawn "a distinction between two different concepts: on the one hand, the existence of the Court's jurisdiction and, on the other, the exercise of its jurisdiction where that jurisdiction is established" (*Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Preliminary Objection, Judgment, I.C.J. Reports*

2023 (I), p. 262, at p. 281, para. 64; see also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, p. 412, at p. 456, para. 120). The ICJ has further observed that, "[w]hen rejecting an objection that a third State is an indispensable party without the consent of which the Court cannot adjudicate in a given case, the Court has proceeded on the basis that the objection concerned the exercise of jurisdiction rather than the existence of jurisdiction" (*Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Preliminary Objection, Judgment, I.C.J. Reports 2023 (I)*, p. 262, at p. 281, para. 63). The ICJ has thus concluded that an objection "on the basis of the Monetary Gold principle is an objection to the exercise of the Court's jurisdiction and thus does not constitute an objection to jurisdiction" (*ibid.*, at p. 281, para. 64).

109. The Special Chamber will proceed on the basis that an objection based on the *Monetary Gold* principle concerns the exercise, and not the existence, of the Special Chamber's jurisdiction.

110. Equatorial Guinea submits that "[t]he Marshall Islands' claims alleging breaches of freedom of navigation and exclusive flag State jurisdiction are inadmissible, due to the *Monetary Gold* / indispensable third party principle." Equatorial Guinea further submits that "what remains … is only the fine and arguments of alleged mistreatment."

111. For the Marshall Islands, "the *Monetary Gold* principle does not apply, does not exclude all or any of the Marshall Islands' claims and it does not oust the Chamber's jurisdiction over this dispute." Furthermore, the Marshall lslands states that the objection concerning the *Monetary Gold* principle "is not directed to the entirety of the Marshallese case."

112. The Special Chamber notes that there is no disagreement between the Parties on the content of the *Monetary Gold* principle and the jurisprudence that addresses it. What the Parties do not agree on is whether the principle applies in the present case.

113. Equatorial Guinea states that the *Monetary Gold* principle "represents a general rule of international law" and that it "applies in this case because Nigeria's role does concern the '*very subject matter of the dispute*'".

114. Equatorial Guinea asserts that,

> [f]or the [Special] Chamber to examine whether in apprehending the Heroic Idun, Equatorial Guinea breached various provisions of UNCLOS, would involve prior judgment – both as a logical and temporal matter – the rights and interests of Nigeria which is a State not party to this dispute.

Equatorial Guinea further contends that "[t]he legal rights and interests of Nigeria accordingly form an inextricable part of the 'subject-matter' of several of the legal claims made by the Marshall Islands" and that, "[a]t all times, Equatorial Guinea acted in furtherance of its obligations of cooperation with Nigeria". According to Equatorial Guinea,

> [t]o 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 [Nigeria's] absence.

115. Referring to the *M/V "Norstar"* case, Equatorial Guinea argues that "the position of Equatorial Guinea is similar to that of Spain in the *"Norstar"* case, and Nigeria's position is similar to that of Italy." Equatorial Guinea contends that "in the *M/V "Norstar"*, the apprehension was carried out by Spain in accordance with the Strasbourg Convention", and that, "[s]imilarly, Nigeria's request was made under the Yaoundé Code, to which both Nigeria and Equatorial Guinea are parties, and which contains similar commitments". Equatorial Guinea also contends that "[l]ike Italy in *M/V "Norstar"*, … without Nigeria's request, no arrest of the *Heroic Idun* by the Equatoguinean Navy would have occurred."

116. Equatorial Guinea argues that, just as Spain acted at Italy's request in the *M/V "Norstar"* case – in which the Tribunal concluded that "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" and that "it is not necessary, let alone indispensable, for Spain to be a party to the proceedings for the Tribunal to determine whether Italy violated the

provisions of the Convention" – it too acted at Nigeria's request in apprehending the *M/T "Heroic Idun"* and that it therefore follows that Nigeria's rights and interests are central to the dispute.

117. Equatorial Guinea maintains that "Nigeria's rights and interests form the factual foundations of this dispute and the very '*subject-matter*' of the main dispute." Equatorial Guinea also maintains that "the subject matter at issue is the interdiction of the *"Heroic Idun"* and its return to Nigeria, which corresponds to claims on freedom of navigation and exclusive flag State jurisdiction." For Equatorial Guinea, "many of the factual assertions that form the basis of … claims relate to the actions of, and can only be confirmed or denied, by Nigeria."

118. According to Equatorial Guinea,

> [t]he 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 … require prior logical examination of Nigeria's sovereign rights and interests ….

In this regard, Equatorial Guinea asserts that "the Chamber should not exercise jurisdiction where to do so would involve logical prior determination of the legal rights and interests of … Nigeria". Equatorial Guinea argues that the rights and interests of Nigeria are central to the dispute, and that, for the Special Chamber to examine the lawfulness of Equatorial Guinea's actions, a prior determination of Nigeria's rights and interests would be required, thus engaging the *Monetary Gold* or "indispensable third party" principle.

119. Equatorial Guinea maintains that "[t]he *Heroic Idun'*s apprehension was pursuant solely to Nigeria's request." Equatorial Guinea further submits that it "undertook its actions … consistent with its commitments" and that "[i]ts position … was therefore secondary, and facilitative of … Nigeria … whose rights to do so remain the '*subject-matter*' underlying this dispute." With reference to the assertion of the Marshall Islands "that Equatorial Guinea is in breach of its obligation to cooperate with the Marshall Islands under Article 100 of UNCLOS", Equatorial Guinea argues that "[b]y claiming that Equatorial Guinea has breached that

obligation …, the Marshall Islands leaves no doubt that the *Monetary Gold* doctrine is … engaged."

120. The Marshall Islands states that "the 'indispensable party principle' … is a well-established procedural rule of international law", with respect to which the Parties "largely agree on the content of the principle and the jurisprudence that addresses it." For the Marshall Islands, the *Monetary Gold* principle "does not exclude all or any of the Marshall Islands' claims" and whether it applies "depends on how the Marshall Islands has presented its claims, not on the defenses that Equatorial Guinea has raised". The Marshall Islands maintains that "[t]here is nothing in the Marshallese case that call for [the Special Chamber] to address and assess the lawfulness or otherwise of Nigeria's conduct" and that "[n]o claim is made in these proceedings, either directly or indirectly, expressly or impliedly, against Nigeria."

121. According to the Marshall Islands, "the *M/V "Norstar"* does not assist Equatorial Guinea". Referring to the *M/V "Norstar"* case, the Marshall Islands argues that "Panama elected to bring proceedings against Italy as the State requesting the seizure of the … vessel", whereas "the Marshall Islands has elected … to bring … proceedings against the State effecting the seizure, namely Equatorial Guinea …, with reference to Equatorial Guinea's own obligations." Moreover, the Marshall Islands submits that

> [i]n Spain's case, according to Panama, … responsibility would have concerned the 'manner and methods of the seizure,' since the vessel was in the internal waters of Spain … Equatorial Guinea's responsibility is engaged … also in respect of whether the seizure was permitted …, having occurred on the high seas ….

122. The Marshall Islands states that the analogy to the *M/V "Norstar"* case is misplaced since it is not seeking to challenge the lawfulness of Nigeria's conduct but rather to hold Equatorial Guinea accountable for its own conduct under the Convention. The Marshall Islands emphasizes that its claims were directed solely at Equatorial Guinea's obligations, not at Nigeria's conduct, and that the Special Chamber could resolve the dispute without addressing Nigeria's rights and interests.

123. For the Marshall Islands, "[t]he 'subject-matter …' concerns the legal interests of Equatorial Guinea". The Marshall Islands contends that it is "exclusively seeking to hold Equatorial Guinea accountable". The Marshall Islands submits that "its rights and obligations under UNCLOS and general international law did not permit or allow Equatorial Guinea to seize the *"Heroic Idun,"* or detain the Vessel and crew or transfer them to Nigeria." In this regard, the Marshall Islands further submits that "these rights and obligations … constitute the very subject matter of the dispute, and … relate exclusively to Equatorial Guinea's own conduct".

124. The Marshall Islands submits that "Equatorial Guinea's interception and diversion of the *M/T "Heroic Idun"* and her crew in the EEZ of a third State, contrary to the principles of freedom of navigation and exclusive flag State jurisdiction", are in direct violation of Equatorial Guinea's own rights and obligations under articles 87 and 92 of the Convention. It is these rights and obligations "which constitute the very subject matter of the dispute, and which relate exclusively to Equatorial Guinea's own conduct" upon which the Marshall Islands' claims are based and for which the Marshall Islands "is exclusively seeking to hold Equatorial Guinea accountable for Equatorial Guinea's conduct and the breaches of Equatorial Guinea's international obligations to the Marshall Islands."

125. The Marshall Islands states that "[n]one of the claims … requires the logical prior determination of Nigeria's legal rights and obligations, including any question of Nigeria's responsibility". Referring to "[t]he damages sought … in respect of events occurring after the Vessel was transferred to Nigeria are simply a consequence of Equatorial Guinea's wrongful conduct", the Marshall Islands maintains that "[t]he issue … is not one of prior determination of rights or obligations of Nigeria engaging the *Monetary Gold* principle, but one of causation of the damage."

126. The Marshall Islands submits that while "Nigeria may appear … to be relevant in respect of … claims that the *"Heroic Idun"* was arrested on the high seas, and … transferred to Nigeria … pursuant to a request by Nigeria", the *Monetary Gold* principle "is not, however, applicable to these claims". The Marshall Islands also submits that "on Equatorial Guinea's own pleaded case, the only circumstance that would have justified its apprehension and seizure of the *"Heroic Idun"* and its crew

and … transfer to Nigeria is that Nigeria's request concerned the apprehension of a pirate vessel." For the Marshall Islands, "there is … no basis for this in the contemporaneous evidence".

* * *

127. The Special Chamber will now examine whether the application of the *Monetary Gold* or "indispensable third party" principle may preclude the Special Chamber from exercising jurisdiction in the present case over any of its aspects or of the claims made by the Marshall Islands.

128. The Special Chamber recalls that, in the *M/V "Norstar*" case, the Tribunal acknowledged that the *Monetary Gold* principle is "a well-established procedural rule in international judicial proceedings" and that "where 'the vital issue to be settled concerns the international responsibility of a third State' or where the legal interests of a third State would form 'the very subject-matter' of the dispute, a court or tribunal cannot, without the consent of that third State, exercise jurisdiction over the dispute" (*M/V "Norstar" (Panama* v. *Italy), Preliminary Objections, Judgment, ITLOS Reports 2016,* p. 44, at p. 84, para. 172*;* see *Delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives), Preliminary Objections, Judgment, ITLOS Reports 2021*, p. 17, at p. 47, para. 97; *Monetary Gold Removed from Rome in 1943 (Italy* v. *France, United Kingdom and United States of America), Judgment, I.C.J. Reports 1954,* p. 19, at pp. 32-33; *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995,* p. 90, at p. 92, para. 29; *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, at p. 431, para. 88; *Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992,* p. 240, at pp. 259-262, paras. 50-55; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005,* p. 168, at pp. 237-238, paras. 203-204).

129. A key aspect of the arguments advanced by the Parties is whether the dispute can be framed and resolved exclusively in terms of Equatorial Guinea's obligations under the Convention, as the Marshall Islands contends, or whether, as Equatorial

Guinea argues, the rights and interests of Nigeria form the "very subject-matter" of the dispute. If, in order to decide on the Marshall Islands' claims, the Special Chamber were required to make a finding on Nigeria's legal rights and interests, such as the lawfulness of Nigeria's actions or its request to Equatorial Guinea for assistance, the *Monetary Gold* or "indispensable third party" principle would preclude the Special Chamber from exercising jurisdiction over such claims. On the other hand, if the Special Chamber were able to confine its examination to the conduct of Equatorial Guinea in apprehending the *M/T "Heroic Idun"* and its crew on the high seas, the claims would be admissible.

130. The Special Chamber will therefore examine the claims of the Marshall Islands to consider if, on an objective assessment, they are directed solely at the conduct of Equatorial Guinea. In this regard, the Special Chamber notes that the dispute between the Parties concerns the lawfulness of the arrest and detention of the *M/T "Heroic Idun"* and its crew by Equatorial Guinea on the high seas.

131. The Special Chamber considers that the exercise of its jurisdiction in this case would depend on the character of the dispute submitted to it and the issues thus raised (see *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II),* p. 558*,* at p. 575, para. 24; see also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021,* p. 71*,* at p. 87, para. 42). In this regard, the Special Chamber notes that the Marshall Islands made it clear that its claims are directed at the conduct of Equatorial Guinea alone and that it "is exclusively seeking to hold Equatorial Guinea accountable for *Equatorial Guinea's* conduct and the breaches of *Equatorial Guinea's* international obligations to the Marshall Islands." The Marshall Islands further insists that it does not require the Special Chamber to assess the lawfulness of Nigeria's conduct, that there are no claims against Nigeria, and that the dispute can be resolved by reference only to Equatorial Guinea's obligations under the Convention.

132. The Special Chamber regards the subject matter of the dispute to be the conduct of Equatorial Guinea towards the Marshall Islands. It concerns the question whether Equatorial Guinea's conduct in apprehending the *M/T "Heroic Idun"* and its crew was consistent with its obligations under the Convention.

133. In the view of the Special Chamber, the submissions of the Marshall Islands do not call upon the Special Chamber to make findings on the lawfulness of Nigeria's conduct. Nor is such a finding necessary for the Special Chamber to address the Marshall Islands' claims. In this connection, the Special Chamber cannot accept the argument of Equatorial Guinea that, since the arrest of the vessel was made at the request of Nigeria, the Special Chamber would not be able to decide whether Equatorial Guinea's conduct was lawful under the Convention without a "logical prior determination of the legal rights and interests of … Nigeria." The Special Chamber accordingly considers that the actions of Equatorial Guinea and Nigeria are not inseparable in this regard and that a distinction can be made between the lawfulness of Equatorial Guinea's conduct and that of Nigeria's.

134. The Special Chamber holds that the legality of the apprehension and detention of the *M/T "Heroic Idun"* and its crew by Equatorial Guinea can be determined without a prior examination of Nigeria's rights and interests. A determination of the lawfulness of Nigeria's conduct and its request to Equatorial Guinea is not a necessary prerequisite for the Special Chamber to adjudicate on the conduct of Equatorial Guinea. In other words, for the Special Chamber to make a finding on the legality of the conduct of Equatorial Guinea, a judicial determination of the rights and interests of Nigeria is not required. In the view of the Special Chamber, the question is not whether Nigeria was legally entitled to request assistance from Equatorial Guinea to interdict the vessel but rather whether Equatorial Guinea, by seizing the vessel, acted in violation of the provisions of the Convention. Such judicial determination can be made independently from the conduct of Nigeria and the events that led to the seizure of the vessel.

135. The Special Chamber is of the view that the events that actually occurred in the exclusive economic zone of Nigeria before the apprehension of the *M/T "Heroic Idun"* and its crew – as opposed to any communications in relation thereto on which

Equatorial Guinea relies to ground the reasonableness of its actions – are not determinant of the question whether Equatorial Guinea's conduct was in breach of the Convention. The Special Chamber therefore finds that it is not necessary to determine Nigeria's legal interests. Rather, the request from Nigeria to Equatorial Guinea for assistance should be treated as a fact.

136. The Special Chamber recalls that, according to Equatorial Guinea, "the position of Equatorial Guinea is similar to that of Spain in the *"Norstar"* case, and Nigeria's position is similar to that of Italy." In the view of the Special Chamber, however, there are fundamental differences in the facts of the two cases, and it does not follow from the Tribunal's decision in *M/V "Norstar"* that in the present case Nigeria should be considered an indispensable third party.

137. In light of its finding that it is required to consider only the lawfulness of Equatorial Guinea's conduct towards the Marshall Islands, and that therefore Nigeria is not an indispensable third party in the present proceedings, the Special Chamber rejects the objection raised by Equatorial Guinea.

* * *

138. The Special Chamber will now consider the objection by Equatorial Guinea that the Special Chamber "does not have jurisdiction to make determinations regarding alleged breaches of treaties or rules of international law outside of the [Convention]."

139. The Special Chamber notes Marshall Islands' acknowledgement that a number of its claims invoke or rely on rules of international law and treaties outside of the Convention. The Marshall Islands submits that "Equatorial Guinea failed to respect the human rights of the crew in multiple respects" in that it, *inter alia*, "unlawfully and arbitrarily detained the crew", "prevented the crew from leaving the country", "denied the crew the right of legal representation" and "subjected the crew to cruel, inhuman and degrading treatment and imprisonment", which constitute direct breaches of various provisions in human rights treaties such as "the ICCPR and African Charter, and the customary rules or principles of international law

reflected in the Standard Minimum [Treatment] Rules". The Marshall Islands argues that reliance on human rights treaties and rules of international law does not preclude the Special Chamber from exercising jurisdiction over these claims. The Marshall Islands further submits that the Special Chamber "may … have recourse to customary rules and principles of international law outside the Convention by virtue of Article 293 of UNCLOS" and that this article permits the Chamber to apply external rules as applicable law.

140. In response, Equatorial Guinea "rejects the characterisation of the Chamber's jurisdiction as set out by the Marshall Islands, which purports to broaden the Chamber's jurisdiction to treaties and regulations external to UNCLOS", emphasizing that "the question of applicable law is distinct to the question of the Chamber's jurisdiction." According to Equatorial Guinea, "the Marshall Islands … wrongly seeks to use the principle that rules of international law other than the Convention may, in some cases, constitute applicable law, to extend the jurisdiction of this Special Chamber."

* * *

141. At the outset, the Special Chamber wishes to make clear that its jurisdiction is circumscribed by the Convention. Article 288, paragraph 1, of the Convention reads: "A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part." It is thus clear that the jurisdiction of the Special Chamber is confined to "any dispute concerning the interpretation or application of [the] Convention" (see *Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives), Preliminary Objections, Judgment, ITLOS Reports 2020-2021*, p. 17, at p. 51, para. 109).

142. The Special Chamber notes that there is a fundamental distinction between the provisions of article 288, paragraph 1, of the Convention, which circumscribes the Special Chamber's jurisdiction, and article 293, paragraph 1, which deals with applicable law. Pursuant to the latter provision, "[a] court or tribunal having jurisdiction under this section shall apply this Convention and other rules of

international law not incompatible with this Convention." The Special Chamber confirms, as was stated by the Tribunal in the *M/V "Norstar"* case, "that a distinction must be made between the question of [the Tribunal's] jurisdiction, on the one hand, and the applicable law, on the other", and that "article 293 of the Convention on applicable law may not be used to extend the jurisdiction of the Tribunal" (*M/V "Norstar" (Panama* v. *Italy), Judgment, ITLOS Reports 2019*, p. 10, at p. 47, para. 136). This relationship between jurisdiction and applicable law was further made clear by the arbitral tribunal in the *Arctic Sunrise* case, stating that "Article 293 is not … a means to obtain a determination that some treaty other than the Convention has been violated, unless that treaty is otherwise a source of jurisdiction, or unless the treaty otherwise directly applies pursuant to the Convention" (*Arbitration regarding the Arctic Sunrise between the Kingdom of the Netherlands and the Russian Federation, Award on the Merits of 14 August 2015, RIAA, Vol. XXXII*, p. 205, at p. 260, para. 192).

143. The Special Chamber further notes that the jurisdiction conferred on it is restricted to determining possible breaches of the Convention. This jurisdiction cannot be extended to the Special Chamber making determinations about breaches of other treaties or other rules of international law (see *The Duzgit Integrity Arbitration between the Republic of Malta and the Democratic Republic of São Tome and Principe, Award on Jurisdiction and the Merits of 5 September 2016*, para. 210; *Arbitration regarding the Arctic Sunrise between the Kingdom of the Netherlands and the Russian Federation, Award on the Merits of 14 August 2015, RIAA, Vol. XXXII,* p. 205, at p. 262, para. 198).

144. The Special Chamber therefore does not consider itself competent to entertain claims relating to human rights violations which rely on treaties other than the Convention, such as the International Covenant on Civil and Political Rights (hereinafter "the ICCPR") and the African Charter on Human and Peoples' Rights (hereinafter "the African Charter"), which the Chamber would be required to interpret and apply with a view to determining breaches of any of its provisions. Any such determination does not fall within the scope of the Special Chamber's jurisdiction. The Special Chamber notes that the Marshall Island's claims have evolved in the course of the proceedings. In its written pleadings, the Marshall Islands requested,

inter alia, findings that Equatorial Guinea, "[b]y failing 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 … breached rules and principles of international law". In its final submissions, however, the Marshall Islands confines its claims to alleged breaches by Equatorial Guinea of its obligations under the Convention.

145. Although it is important to clarify that the jurisdiction of the Special Chamber cannot be extended, by reference to the applicable law, to include disputes arising under treaties external to the Convention, this does not preclude the Special Chamber from having regard to such external treaties and rules of international law that are not incompatible with the Convention when resolving a dispute concerning the interpretation or application of the Convention. As the Tribunal has affirmed, "coordination and harmonization between the Convention and external rules are important to clarify, and to inform the meaning of, the provisions of the Convention and to ensure that the Convention serves as a living instrument" (*Request for Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024, ITLOS Reports 2024*, p. 4, at p. 56, para. 130). The Special Chamber may thus have recourse to external sources in accordance with article 293 of the Convention.

146. The Special Chamber notes that, in its final submissions, the Marshall Islands also requests the Special Chamber to find that Equatorial Guinea "breached its obligations under Article 1(b) of the Convention on Safety of Life at Sea, Article I(2) of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers …, and Article 1 of the Convention on the International Regulations for Preventing Collisions at Sea". In this regard, the Marshall Islands submits that "[t]here is here a dispute under UNCLOS over which the Chamber has jurisdiction under Article 288(1); therefore, Article 297(1)(c) allows determinations of breach by reference to external rules", thus supporting the existence of the Special Chamber's jurisdiction over claims that may involve external treaties. With particular reference to its claim in relation to the aforementioned treaties adopted by the International Maritime Organization (hereinafter "the IMO"), namely, Equatorial Guinea's alleged violations of the International Convention for the Safety of Life at Sea (hereinafter "SOLAS"), the International Convention on Standards of Training,

Certification and Watchkeeping for Seafarers (hereinafter "the STCW") and the Convention on the International Regulations for Preventing Collisions at Sea (hereinafter "the COLREGS"), the Marshall Islands submits that "[t]he Chamber … has direct jurisdiction over the claims of breach of the IMO treaties under Article 297(1)(c) of the Convention".

147. Equatorial Guinea maintains that article 297 of the Convention "only allow[s] a limited *renvoi* to sources of law beyond the UNCLOS itself where such sources of law are necessary to interpret UNCLOS claims". It does not, in its view, permit the Special Chamber to adjudicate breaches of external treaties as stand-alone claims.

148. The Special Chamber notes that article 297 of the Convention sets out limitations on the applicability of Part XV, section 2. It provides that

> [d]isputes concerning the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention shall be subject to the procedures provided for in section 2 in the following cases ….

Article 297, paragraph 1(c), sets out one of those cases, namely, "when it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by this Convention or through a competent international organization or diplomatic conference in accordance with this Convention."

149. Article 297, paragraph 1(c), of the Convention provides recourse for disputes concerning the protection and preservation of the marine environment in relation to a coastal State's jurisdiction in its own exclusive economic zone. Such recourse, however, is not applicable here since the interception of the *M/T "Heroic Idun"* did not take place in the exclusive economic zone of Equatorial Guinea but rather in the exclusive economic zone of a third State, namely, São Tomé and Príncipe. Furthermore, article 297, paragraph 1(c), addresses environmental disputes in the context of a coastal State's rights and obligations within its exclusive economic zone and would allow a limited *renvoi* to environmental rules and standards, to be found in

sources beyond the Convention, that are considered necessary to interpret claims under the Convention. It does not, however, provide a basis of jurisdiction for the Special Chamber to find that the IMO instruments invoked by the Marshall Islands (i.e., SOLAS, the STCW and the COLREGS) have been breached. The Special Chamber therefore finds that article 297, paragraph 1(c), is not applicable in the present case.

150. The Special Chamber will now deal with the question whether "gateway" provisions of the Convention, as they are referred to by the Parties, provide a basis of jurisdiction for some of the Marshall Islands' claims. The Special Chamber notes that the Marshall Islands invokes several provisions of the Convention which it considers "gateway" provisions because they incorporate by reference other rules of international law, potentially opening the door for the application of external treaties or customary international law in interpreting or applying the Convention. These provisions are article 2, paragraph 3, which requires a coastal State to exercise sovereignty over its territorial sea subject to the Convention and to other rules of international law; article 56, paragraph 2, which requires a coastal State to exercise its rights and perform its duties in the exclusive economic zone with due regard to the rights and duties of other States and to act in a manner compatible with the Convention; and article 87, paragraphs 1 and 2, which provide that freedom of the high seas is exercised under the conditions laid down by the Convention and by other rules of international law and with due regard for the interests of other States.

151. The Marshall Islands asserts that, "[b]y recourse to the gateway provisions in Articles 2(3), 56(2), 58(2), 87(1) and 87(2), the Marshall Islands is not seeking in any way to extend the Chamber's jurisdiction beyond UNCLOS." The Marshall Islands states that "instruments other than UNCLOS are relied upon solely to inform the interpretation and application of UNCLOS, the adjudication of which would fall within the jurisdiction of the Chamber." The Marshall Islands maintains that

> [e]ven though the interpretation and application of these provisions for the purpose of several of the Marshall Islands' claims requires consideration of customary rules or general principles of international law or treaties and the compatibility of Equatorial Guinea's conduct therewith, those claims are nevertheless properly characterized as claims under the Convention.

152. For Equatorial Guinea, the Marshall Islands "attempts to use these provisions to expand the Special Chamber's jurisdiction so as to cover essentially 'any question of international law'". According to Equatorial Guinea, "so-called '*gateway*' provisions … do not inherently allow a tribunal to apply and exercise jurisdiction over alleged breaches of those treaties or rules … external to UNCLOS" and "they can at most allow a tribunal to refer to the externally referenced international agreement or rule of law to assess whether there has been a breach of UNCLOS itself." Equatorial Guinea maintains that "Articles 2(3), 56(2), 58(2), 87(1)-(2) of UNCLOS … cannot be used to expand the scope of the Chamber's jurisdiction to external treaties." Equatorial Guinea argues that the jurisdiction of tribunals under Part XV of the Convention "does not, as a general matter, extend to making determinations about violations of other treaties or other rules of international law". It states that "one exception to this jurisdictional limit is explicitly set out in Article 288(2) of the Convention in relation to cases where an international agreement other than the Convention specifically confers jurisdiction on the Tribunal" but submits that this "exception is not applicable here."

* * *

153. The Special Chamber notes the Marshall Islands' arguments that, by invoking these "gateway" provisions, it is not seeking to extend the Special Chamber's jurisdiction beyond the Convention and that those instruments other than the Convention are relied upon solely to inform the interpretation and application of the Convention. The adjudication of the Marshall Islands' claims would thus fall within the jurisdiction of the Special Chamber. The Special Chamber further notes that an exception can be found in article 288, paragraph 2, where it is explicitly provided that "[a] court or tribunal … shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement." The Special Chamber also notes, however, that article 288, paragraph 2, does not apply to the present case as the Special Agreement by which the Parties agreed to transfer the dispute to the Special Chamber makes no mention of a dispute concerning the interpretation or application of any other international agreement over which the Parties agree to confer jurisdiction on the Special Chamber.

154. The Special Chamber finds that the same conclusion reached in paragraph 144 above regarding claims relating to human rights violations, which rely on treaties external to the Convention, is also valid in respect of the "gateway provisions" invoked by the Marshall Islands. These provisions allow the Special Chamber to refer to external rules only to the extent necessary to interpret or apply provisions of the Convention. The Special Chamber recalls in this context that "the Convention contains certain provisions – also called rules of reference – that refer to external rules" (*Request for Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024, ITLOS Reports 2024*, p. 4, at p. 56, para. 131). As the Tribunal observed, "[t]hese rules of reference employ different terms and have both a different scope and legal effect" (*Ibid.*). To the extent necessary for the interpretation or application of these provisions, the Special Chamber can have recourse to such external rules. This, however, is to be distinguished from making determinations about breaches of other rules of international law, for which the Special Chamber does not have jurisdiction.

155. Accordingly, the Special Chamber holds that the "gateway provisions" through which, as the Marshall Islands asserts, relevant external rules are incorporated into the Convention, do not provide a basis of jurisdiction for the Special Chamber to make any findings whether such rules have been breached.

V. Admissibility

156. The Special Chamber will now consider whether the rule that local remedies must be exhausted applies in this case and, if so, whether the requirement under article 295 of the Convention has been fulfilled. The Parties disagree on whether the Marshall Islands has failed to exhaust local remedies in respect of some of its claims, which would render such claims inadmissible.

157. The Marshall Islands contends that the exhaustion of local remedies "does not apply and does not exclude admissibility in this case." Referring to article 295 of the

Convention, the Marshall Islands submits that "[t]his provision does not … require local remedies to be exhausted" and that "[i]t says simply that local remedies must be exhausted 'where this is required by international law'". Furthermore, according to the Marshall Islands, "there were no reasonably available and effective domestic remedies or any that provided a reasonable prospect of redress".

158. The Marshall Islands submits that it "is not asserting the claims of the crew or of the Owners of the vessel" but rather "i[t]s own claims, rooted in its rights and duties as flag State". Moreover, for the Marshall Islands, "the overwhelming preponderance of the rights that the Marshall Islands claims to have been violated are the rights of the Marshall Islands as the flag State". The Marshall Islands argues that "it is the rights of the Marshall Islands based on damage suffered by the unit of the vessel that are being pursued in this case." The Marshall Islands asserts that the case it has brought "at its core, concerns freedom of navigation and exclusive flag State jurisdiction."

159. Equatorial Guinea states that the Marshall Islands "has failed to exhaust local remedies as required by international law, rendering inadmissible those claims related to the treatment of individuals." Equatorial Guinea asserts that the rule of exhaustion of local remedies, as expressed in article 295 of the Convention, "is applicable to all disputes under UNCLOS, except prompt release proceedings". Equatorial Guinea also submits that "available and effective remedies capable of redressing the alleged injury of the crew exist under its laws" and that "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."

160. Equatorial Guinea points out that "the Marshall Islands' case certainly includes several claims relating to its rights as a flag State under UNCLOS." However, according to Equatorial Guinea, "the Marshall Islands also makes extensive independent claims concerning the treatment of the crew." For Equatorial Guinea, "such claims preponderantly relate to allegations concerning the treatment accorded by Equatorial Guinea to the foreign nationals of the *Heroic Idun* crew". According to Equatorial Guinea, claims relating to the treatment of the crew, including allegations that Equatorial Guinea breached the crew's human rights, are in

substance claims made on behalf of the crew and are therefore subject to the exhaustion of local remedies rule. Consequently, they must first be pursued through available and effective remedies under Equatorial Guinea's laws.

* * *

161. The Special Chamber recalls article 295 of the Convention, which provides that

> [a]ny dispute between States Parties concerning the interpretation or application of this Convention may be submitted to the procedures provided for in this section only after local remedies have been exhausted where this is required by international law.

The Tribunal observed in the *M/V "SAIGA" (No. 2)* case that "the question whether local remedies must be exhausted is answered by international law" *(M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10, at p. 45, para. 96).

162. The Special Chamber notes that the international jurisprudence confirms that the exhaustion of local remedies rule applies in cases of diplomatic protection where a State espouses the claims of its nationals (see *Interhandel Case, I.C.J. Reports 1959*, p. 6, at p. 27; *Elettronica Sicula S.p.A. (ELSI) Case, I.C.J. Reports 1989*, p. 15, at p. 43, para. 53).

163. In the *M/V "Virginia G"* case, the Tribunal held:

> It is a well-established principle of customary international law that the exhaustion of local remedies is a prerequisite for the exercise of diplomatic protection. This principle is reflected in article 14, paragraph 1, of the Draft Articles on Diplomatic Protection adopted by the International Law Commission in 2006, which provides that "[a] State may not present an international claim in respect of an injury to a national … before the injured person has … exhausted all local remedies". It is also established in international law that the exhaustion of local remedies rule does not apply where the claimant State is directly injured by the wrongful act of another State.
> (*M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 4, at pp. 53-54, para. 153)

164. The above confirmation of the exhaustion of local remedies rule and its application was reaffirmed by the Tribunal in the *M/V "Norstar"* case (*M/V "Norstar" (Panama* v. *Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 31, at pp. 102-103, para. 266).

165. In both the *M/V "Virginia G"* case and the *M/V "Norstar"* case, the Tribunal examined the nature of the rights which the applicants in both these cases had claimed to have been violated by the respondents, with a view to determining whether there were "direct" violations of the applicant State's rights under the Convention.

166. The first question the Special Chamber will consider is whether the claims of the Marshall Islands relate to a "direct" violation on the part of Equatorial Guinea of the rights of the Marshall Islands. If the answer is in the affirmative, the rule that local remedies must be exhausted does not apply (see *M/V "Virginia G" (Panama/ Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 4, at p. 54, para. 154).

167. The Special Chamber notes that the Marshall Islands frames its claims as direct violations concerning its own rights as a flag State under the Convention. Some of the claims advanced by the Marshall Islands are claims for damages or injury to the persons and entities connected with the *M/T "Heroic Idun"*. These claims relate to persons and entities with an interest in the ship or its cargo, such as the owners and the crew of the vessel.

168. It therefore appears that while there are claims brought in respect of direct injury to the Marshall Islands as the flag State, others are brought in respect of injury to the crew and the owners of the *M/T "Heroic Idun"*. The Special Chamber recalls article 14, paragraph 3, of the Draft Articles on Diplomatic Protection of the International Law Commission (hereinafter "the ILC"), which provides that the exhaustion of local remedies rule applies where the claim "is brought preponderantly on the basis of the injury to a national" or, in the present case, to the crew and owners of the vessel. This article contains a general statement of the preponderance test. In the *M/V "Virginia G"* case, the Tribunal stated that "[w]hen the claim contains elements of both injury to a State and injury to an individual, for the purpose of

deciding on the applicability of the exhaustion of local remedies rule, the Tribunal has to determine which element is preponderant." This led to the Tribunal's finding that "the claim of Panama as a whole is brought on the basis of an injury to itself."

169. The Special Chamber must therefore examine the nature of the claims invoked by the Marshall Islands to determine whether the rights that have allegedly been violated are direct rights that belong to the Marshall Islands. The rights which the Marshall Islands claims to have been violated by Equatorial Guinea are set out in its final submissions referred to in paragraph 70 above. The Special Chamber notes that most of the provisions of the Convention referred to in the final submissions of the Marshall Islands confer rights mainly on States.

170. The Special Chamber is mindful that the dispute in the present case concerns Equatorial Guinea's apprehension of the *M/T "Heroic Idun"* and, consequently, its alleged breach of the Marshall Islands' rights under the Convention relating to freedom of navigation and exclusive flag State jurisdiction. These rights are rights conferred on the Marshall Islands as a flag State, and any alleged interference with or violation of such rights would amount to a direct injury to the Marshall Islands.

171. The Special Chamber considers that none of the alleged violations of rights claimed by the Marshall Islands, referred to above, can be described as breaches of rights of persons and entities with an interest in the vessel, such as the owners and the members of the crew. They are direct violations of the rights of the Marshall Islands and therefore the rule that local remedies must be exhausted would not ordinarily apply.

172. If, however, the Special Chamber were to accept Equatorial Guinea's contention that

> [t]he Marshall Islands makes numerous standalone claims relating to alleged human rights breaches of crew members, well outside those claims that can be reasonably said to flow from, or follow naturally from, apprehension of the Vessel itself,

the question would arise whether the exhaustion of local remedies rule applies in respect of these claims.

173. In this regard, the Marshall Islands maintains that there

> is no jurisdictional connection between those persons and Equatorial Guinea, since it was only as a consequence of an unlawful interception and diversion in the EEZ of a third State that the Vessel and its crew came to be within Equatorial Guinea's territory, custody and control and subject to its enforcement measures,

and further argues that "Equatorial Guinea took measures 'outside the scope of its jurisdiction,' both prescriptive and enforcement" and "[i]n the circumstances, a jurisdictional link does not exist". The Marshall Islands also contends that

> there was no jurisdictional connection between the Vessel and crew and Equatorial Guinea's purported exercise of prescriptive jurisdiction in its application of Articles 10, 12 and 698(2)(b) and (c) of Law No. 2/2020 of 8 July, and Article 581 of the Community Code of the Merchant Navy, as set out in Chapter 6 of Part IV.

The Marshall Islands refers to the Tribunal's conclusion in the *M/V "SAIGA"(No. 2)* case that "there was no jurisdictional connection between Guinea and the natural and juridical persons in respect of whom Saint Vincent and the Grenadines made claims" and that, "[a]ccordingly, on this ground also, the rule that local remedies must be exhausted does not apply in the present case" (*M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999,* p. 10, at p. 46, para. 100).

174. Equatorial Guinea asserts that a valid jurisdictional connection existed between it and those allegedly injured by its conduct because its conduct was lawful and points out that it "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)." It contends moreover that "the Special Chamber cannot determine the existence of a valid jurisdictional connection between Equatorial Guinea and the crew without ruling on the legality of a third State; that is Nigeria", and "[e]ven assuming … that [the

Monetary Gold] principle does not apply, Equatorial Guinea submits that a valid jurisdictional link exists because its actions were lawful."

175. It is not contested between the Parties that, under customary international law, for the exhaustion of local remedies rule to apply, there must be a jurisdictional connection or link between the persons suffering the damage and the State alleged to be responsible for the wrongful act which caused the damage. In the absence of such jurisdictional connection, the local remedies need not be exhausted. This exception to the exhaustion of local remedies rule is reflected in draft article 15(c) of the ILC's Draft Articles on Diplomatic Protection, which states that "[l]ocal remedies do not need to be exhausted where there was no relevant connection between the injured person and the State alleged to be responsible at the date of the injury." In its commentary to this exception, the ILC explains that

> [t]his connection must be 'relevant' in the sense that it must relate in some way to the injury suffered. A tribunal will be required to examine not only the question whether the injured individual was present, resided or did business in the territory of the host State but whether, in the circumstances, the individual, by his conduct, had assumed the risk that if he suffered an injury it would be subject to adjudication in the host State.

It follows that, in the present case, the pertinent question is whether the *M/T "Heroic Idun"* and its crew, by their conduct, had assumed the risk that if they suffered an injury it would be subject to adjudication in Equatorial Guinea.

176. The Special Chamber is of the view that the existence of a relevant or jurisdictional connection between Equatorial Guinea and the crew members in respect of whom the Marshall Islands made claims must be determined in light of Equatorial Guinea's conduct in apprehending the *M/T "Heroic Idun"* and its crew on the high seas and subsequently detaining them in Equatorial Guinea.

177. The crew's presence in Equatorial Guinea was not the result of their own conduct or voluntary entry, but rather the consequence of Equatorial Guinea's enforcement actions which have been challenged in the present case. In the view of the Special Chamber, a jurisdictional link cannot be established simply because individuals are present in a State's territory owing to that State's own contested

conduct. In the circumstances in which the *M/T "Heroic Idun"* and its crew were apprehended and detained in the present case, it cannot be said that the crew, by their conduct, assumed the risk that if they suffered an injury it would be subject to adjudication under the domestic jurisdiction of Equatorial Guinea. Therefore, there was no jurisdictional connection between Equatorial Guinea and the crew sufficient to trigger the exhaustion of local remedies rule.

178. For the reasons set out above, the Special Chamber finds that the Marshall Islands' claims for damages, including those in respect of injury to the crew of the *M/T "Heroic Idun"*, are not subject to the exhaustion of local remedies rule and are therefore admissible.

* * *

179. In light of its finding that the exhaustion of local remedies rule is not applicable in this case, the Special Chamber does not consider it necessary to address the arguments of the Parties on the question whether available and effective local remedies exist under Equatoguinean law to redress the alleged injury to the crew of the *M/T "Heroic Idun"*.

VI. Interception and apprehension of the *M/T "Heroic Idun"* and its crew

180. The Special Chamber will now turn to the question whether Equatorial Guinea acted in violation of the Convention when it intercepted and then apprehended the *M/T "Heroic Idun"* and its crew. To answer this question, the Special Chamber will ascertain whether the *M/T "Heroic Idun"* was exercising the right to freedom of navigation in the exclusive economic zone of São Tomé and Príncipe under the conditions laid down by the Convention and other rules of international law when it was intercepted by an Equatoguinean naval vessel, as the Marshall Islands claims, or whether, as Equatorial Guinea claims, the apprehension of the vessel and crew was justified on the basis of an exception expressly provided for in international treaties or in the Convention, namely, acts in the repression of piracy.

181. The Marshall Islands, in its final submissions (see para. 70 above), states:

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

182. The Special Chamber considers that the facts relevant to an assessment of the lawfulness of the interception of the *M/T "Heroic Idun"* in the exclusive economic zone of São Tomé and Príncipe occurred between 10 August 2022 and 12 August 2022, inclusive.

A. The relevant facts

183. Equatorial Guinea states that the requests received from Nigeria on 10 August 2022 were the immediate cause for the interception and seizure of the *M/T "Heroic Idun"* on 12 August 2022. The Director General of Military Cooperation of the Ministry of National Defence of Equatorial Guinea received the following WhatsApp message from the Military Attaché of the Embassy of Nigeria in Equatorial Guinea:

> CURRENT INTELLIGENCE INDICATES THAT A LARGE CARRIER OF CRUDE OIL (VLCC), HEROIC IDUN (IMO: 9858058), A 336-METER SUPER TANKER, CAME TO LOAD CRUDE WITHOUT APPROVAL AND IS SUSPECTED OF BEING INVOLVED IN AN ILLEGAL FUEL SUPPLY OPERATION. WHEN NNS GONGOLA CONTACTED THEM FOR INTERROGATION, IT RAISED A FALSE ALARM OF A PIRACY ATTACK AND TO AVOID COLLATERAL DAMAGE, IT LEFT NIGERIAN WATERS AND ENTER [SIC] THEREFORE IT IS NECESSARY TO STOP THE VESSEL SO THAT IT EXPLAINS ITS ACTIVITIES IN WATERS OF NIGERIA. IT IS KINDLY REQUESTED THAT, FOR EXAMPLE, THE NAVY TRACKS AND STOPS THE VESSEL.
> VLCC REDUCED THE SPEED FROM 14.7KN - 5.7KN WHEN ENTERING THE EQUATORIAL GUINEA EEZ ABOUT 40NM TO THE SUBMARINE MOUNTAINS OF MUNGO PARK AND 186NM TO THE NW OF ISLAND ANN...

This message was followed by further messages:

> The Nigerian CNS requests your help to stop the MV HEROIC IDUN involved in theft of crude oil in Nigeria.
>
> CURRENT POSITION OF MT HEROIC IDUN AT 0625 GMT ON 10 AUGUST 2022
>
> 1. The Very Large Crude Carrier, HEROIC IDUN, with IMO number 9858058, is currently adrift in the EEZ of Equatorial Guinea, location 189,391 nm northeast of Annobón Island, exactly at the position Lat 00°46'26" N, Long 003° 19'51 "E, at 0625 GMT on 10 August 2022.

184. The messages were forwarded to the Inspector General of the Equatoguinean armed forces, Captain Juan Nsue Esono Nchama, who instructed the Equatoguinean naval vessel *"Capitán David"* to intercept and apprehend the *M/T "Heroic Idun".*

185. On the same day, the Embassy of Nigeria in Equatorial Guinea followed up with a note verbale to the Ministry of External Affairs and Cooperation of Equatorial Guinea, requesting that Equatorial Guinea

> intervene in the tracking, arrest and repatriation of an illegal large Crude Carrier (VLCC) Heroic IDUN No. (IMO9858058), a 336 meter super tanker which was involved in the illegal entry into Nigerian's territorial waters to load crude oil without proper approval. It is pertinent to indicate the Heroic Idun was a Martial Island flagged ship but escaped into Equatoguinean maritime domain by raising a false piracy attack alarm to avoid collateral damage.

The Nigerian authorities requested that Equatorial Guinea "*track and arrest the vessel and hand them (both vessel and crew) over to the Nigerian Government for proper investigation*".

186. Approximately two and a half days later, on 12 August 2022, while the *M/T "Heroic Idun"* was drifting in the exclusive economic zone of São Tomé and Príncipe, it was contacted on its very high frequency range (VHF) radio by the *"Capitán David"* and asked to stop its engines. The Parties agree that the *M/T "Heroic Idun"* was intercepted in the exclusive economic zone of São Tomé and Príncipe and escorted to Luba Freeport by the *"Capitán David"* and the *"Wele Nzas"*, an Equatoguinean Navy frigate on patrol in the area.

187. Equatorial Guinea does not dispute that the decision of the Master of the *M/T "Heroic Idun"* to proceed to Luba Freeport was not voluntary. The transcript of the conversations between the *"Capitán David"* and the *M/T "Heroic Idun*" show that the *"Capitán David"* instructed the *M/T "Heroic Idun"* to follow it to Bioko Island "for investigations" and indicated that if the Master did anything suspicious, it had "orders to shoot." The *"Capitán David"* provided the *M/T "Heroic Idun"* with a set of waypoints that it was told to follow and the speed for each leg of the route.

188. The Marshall Islands asserts, and Equatorial Guinea does not deny, that from the initial visual sighting of the *"Capitán David"* by the crew of the *M/T "Heroic Idun"*, the guns of the Equatoguinean Naval vessel were trained on the bridge of the *M/T "Heroic Idun"* and at the crew's accommodation block. As the relative positions of the two vessels were altered, the canopy guns on the *"Capitán David"* were also altered to keep the *M/T "Heroic Idun"* as a target, and for the duration of the escort, the guns on the *"Capitán David"* were manned and continued to be trained on the *M/T "Heroic Idun"*. The *"Capitán David"* was later joined by the *"Wele Nzas"*, which also had armed personnel on board and its guns trained on the *M/T "Heroic Idun"*. For the remainder of the journey, the *"Capitán David"* was on the *M/T "Heroic Idun's"* starboard quarter, and the *"Wele Nzas"* was on her port quarter.

189. The issues of the factual record in dispute between the Parties are not substantial. Equatorial Guinea maintains that "[a]t no point was any force used against the vessel by the *"Capitán David"*." The Special Chamber notes that the Marshall Islands has not claimed that the *"Capitán David"* used force against the *M/T "Heroic Idun"* but rather threatened to use force against it.

190. Equatorial Guinea also asserts that the Master of the *M/T "Heroic Idun"* considered fleeing when approached by the *"Capitán David"*. This is disputed by the Marshall Islands. Equatorial Guinea cites the Voyage Data Recorder (VDR) transcript of the communications between the *"Capitán David"* and the *M/T "Heroic Idun"* demonstrating that the *M/T "Heroic Idun"* had to be asked three times to stop its engines. The Marshall Islands produced a video recording from the deck of the *M/T "Heroic Idun"* showing that "the *"Heroic Idun"*s speed was in fact decreasing, not

increasing through these exchanges", as the revolutions per minute of the engine gradually dropped from 8.9 knots to 8.8 knots, continuing to decelerate.

B. Freedom of navigation

191. In light of the above statement of relevant facts, the Special Chamber will now address the submissions of the Parties with respect to the freedom of navigation, the principle of exclusive flag State jurisdiction and the right of all States to sail ships flying their flag on the high seas.

192. The Marshall Islands submits that as the *M/T "Heroic Idun"* was intercepted by the Equatoguinean naval vessel *"Capitán David"* in the exclusive economic zone of São Tomé and Príncipe, articles 87, paragraph 1, 90 and 92, paragraph 1, of the Convention, are applicable by virtue of article 58, paragraphs 1 and 2. The Marshall Islands states that in the reciprocal relationship between two flag States, both exercising freedom of navigation in the exclusive economic zone of a third coastal State, the "freedom of navigation is recognized and regulated by Articles 87 and 90 of the Convention alone. None of the provisions concerning the EEZ apply to this relationship."

193. The Marshall Islands asserts that the principles of freedom of navigation and exclusive flag State jurisdiction, as stated in articles 87, paragraph 1, and 92 of the Convention, respectively, "constitute the foundation of modern law of the sea and correspond to quintessential flag State rights under the Convention." The Marshall Islands submits that the freedom of navigation involves "a positive and a negative aspect: positively, vessels of every State may freely navigate on the high seas; negatively, no State may exercise any authority against any vessel sailing under the flag of another State".

194. The Marshall Islands refers to the jurisprudence of the Tribunal and arbitral tribunals constituted under Annex VII to the Convention in calling attention to the nexus between the principles of freedom of the seas, including freedom of navigation, exclusive flag State jurisdiction and the right of all States for ships flying their flag to sail on the high seas. In particular, reference is made to the statement of

the Tribunal in the *M/V "Norstar"* case that the "[f]reedom of navigation would be illusory if a ship – a principal means for the exercise of the freedom of navigation – could be subject to the jurisdiction of other States on the high seas (…)" (*M/V "Norstar" (Panama v. Italy), Judgment, ITLOS Reports 2018–2019*, p. 10, at p. 73, para. 216). The Marshall Islands further refers to the observation of the arbitral tribunal in the *"Enrica Lexie"* case that the right of all States to sail ships flying their flag on the high seas "reinforce[s] the freedom of navigation provided for in Article 87 with a specific right" *(Arbitration concerning the "Enrica Lexie" Incident between the Italian Republic and the Republic of India, Award of 21 May 2020*, para. 1037).

195. The Marshall Islands submits that any act of interference with navigation of foreign ships or any exercise of jurisdiction over such ships on the high seas constitutes a breach of the freedom of navigation in violation of articles 87, paragraph 1, and 92 of the Convention, unless justified by the Convention or other international treaties, and that the "same low threshold" applies in establishing a breach of article 90.

196. Referring to the facts and findings of the *"Enrica Lexie"* and *M/V "Norstar"* cases, the Marshall Islands argues that articles 87 and 90 of the Convention are breached when a State causes a foreign-flagged vessel to change its intended direction or course or alter its movement on the high seas by way of physical interference. Moreover, in the view of the Marshall Islands, conduct falling short of physical or material interference, including the threat of use of force or non-physical forms of interference whose effect is that of instilling fear in, or causing hindrance to, the exercise of the freedom of navigation, may be contrary to the freedom of navigation. In this regard, the Marshall Islands also refers to the decision of the arbitral tribunal in *Guyana* v. *Suriname* as suggesting that a mere demand by a naval vessel that others should leave a certain area in 12 hours or "the consequences will be yours", constituted "a threat of the use of force in contravention of the Convention, the UN Charter and general international law" (*Arbitration regarding the delimitation of the maritime boundary between Guyana and Suriname, Award of 17 September 2007, RIAA, Vol. XXX*, p. 1, at p. 147, para. 445).

197. The Marshall Islands submits that this jurisprudence is directly applicable to the facts of the present case. In particular, the "express and unequivocal" threat to use force by the *"Capitán David"*, an Equatoguinean naval vessel, constitutes physical or material interference with the freedom of navigation contrary to articles 87, paragraph 1, 90 and 92 of the Convention: the *"Capitán David"* had its guns clearly trained against the *M/T "Heroic Idun"* when it approached the *M/T "Heroic Idun"*, communicated to the Master that it had "orders to shoot", and diverted the *M/T "Heroic Idun"* to Equatorial Guinea's Bioko Island, preventing it from navigating on its original course. The *"Wele Nzas"* also had its guns trained on the *M/T "Heroic Idun"* and kept it within shooting range. The Marshall Islands asserts that, "[f]aced with a threat of use of force by a military vessel, the Master immediately complied."

198. The Marshall Islands submits that "[a]n express threat to use force to compel a vessel to change its intended course on the high seas is fundamentally incompatible with any concept of freedom of navigation. So is intercepting a vessel and placing it under military escort to restrict its freedom of movement and prevent it from resuming its originally planned course. … Bar boarding and forcibly taking over a vessel, there could be no greater act of physical interference with freedom of navigation than what occurred in this case."

199. In taking enforcement action against the *M/T "Heroic Idun"* and its crew in the exclusive economic zone of São Tomé and Príncipe, including by threatening the use of force, the Marshall Islands submits that Equatorial Guinea also violated article 92 of the Convention, as "[c]onduct that is prohibited on the high seas by … the freedom of navigation is also proscribed by the related principle of exclusive flag State jurisdiction."

200. Equatorial Guinea neither contests that the freedom of the high seas and the principle of exclusive flag State jurisdiction are generally applicable to the exclusive economic zone by virtue of article 58 of the Convention, nor does it challenge the specific claims made by the Marshall Islands concerning the interception of the *M/T "Heroic Idun"* in the exclusive economic zone of São Tomé and Príncipe, other than to state that "at no point was any force used against the vessel by the *Capitán*

David." Rather, Equatorial Guinea submits that the freedom of navigation and the exclusivity of flag State jurisdiction are restricted and conditioned by other legal rules and, in particular, that

> the right to freedom of navigation is subject to a number of limitations in respect of authorised policing of activities regarding piracy, the slave trade, narcotics, trafficking, and hot pursuit. These exceptions are recognised and provided for in UNCLOS itself, and as such, cannot be deemed to be unlawful interference with freedom of navigation.

* * *

201. The Special Chamber will first address the significance of the freedom of navigation and the principle of exclusive flag State jurisdiction in the circumstances of the present case involving the interception of the *M/T "Heroic Idun"* in the exclusive economic zone of São Tomé and Príncipe by an Equatoguinean naval vessel, before examining whether there are adequate grounds expressly provided for in the Convention or other international agreements for the measures taken by Equatorial Guinea against the *M/T "Heroic Idun"*.

202. The Special Chamber notes that the principal right in dispute between the Parties concerns the freedom of navigation. Article 87 of the Convention reads:

> Article 87
> Freedom of the high seas
>
> 1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:
>
> (a) freedom of navigation;
> (b) freedom of overflight;
> (c) freedom to lay submarine cables and pipelines, subject to Part VI;
> (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
> (e) freedom of fishing, subject to the conditions laid down in section 2;
> (f) freedom of scientific research, subject to Parts VI and VIII.
>
> 2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

203. By virtue of article 58, paragraph 1, of the Convention, in the exclusive economic zone, all States enjoy the freedom of navigation referred to in article 87, subject to the relevant provisions of the Convention. Paragraph 2 of article 58 further states that

> Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with [Part V].

The freedom of navigation referred to in article 87, paragraph 1, as well as articles 90 and 92 of the Convention are therefore applicable to the exclusive economic zone and, specifically, to the conduct of both the Marshall Islands and Equatorial Guinea in the exclusive economic zone of São Tomé and Príncipe.

204. The freedom of navigation is a fundamental principle of international law and is enhanced by the right of every State, expressed in article 90 of the Convention, to sail ships flying its flag on the high seas, and the exclusive nature of that right, as stated in article 92, in the following terms:

> Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas.

205. Articles 90 and 92 therefore complement and reinforce the freedom of navigation provided for in article 87. As stated in the *M/V "Norstar"* case:

> As no State may exercise jurisdiction over foreign ships on the high seas, in the view of the Tribunal, any act of interference with navigation of foreign ships or any exercise of jurisdiction over such ships on the high seas constitutes a breach of the freedom of navigation, unless justified by the Convention or other international treaties. It goes without saying that physical or material interference with navigation of foreign ships on the high seas violates the freedom of navigation.
> (*M/V "Norstar" (Panama* v. *Italy), Judgment*, *ITLOS Reports 2018–2019*, p. 10, at p. 74, para. 222)

206. The Special Chamber notes that the *"Capitán David"* caused the *M/T "Heroic Idun"* to change its intended course, diverting it to Luba Freeport, by threatening the use of force. In the view of the Special Chamber, this constitutes a breach of the

freedom of navigation, unless justified by the Convention or other international treaties.

207. The Special Chamber observes that the Convention provides for certain narrowly defined exceptions to exclusive flag State jurisdiction. Measures taken in the repression of piracy on the high seas constitute one such exception.

C. Measures allegedly taken in the repression of piracy

208. The Special Chamber will now consider whether the interception, arrest and detention of the *M/T "Heroic Idun"* were carried out for the purpose of repressing piracy and therefore do not violate articles 87, 90 and 92 of the Convention. Before assessing the applicability of the provisions of the Convention on the repression of piracy, the Special Chamber will examine the relationship between the regional arrangements on the repression of piracy and the Convention as argued extensively by the Parties.

1. The relationship between the Yaoundé Code and the Convention

209. Equatorial Guinea submits that the exclusivity of flag State jurisdiction "is subject to the right of every State to engage in the repression of piracy", and that the seizure of the *M/T "Heroic Idun"* occurred as a result of cooperation in the repression of piracy in accordance with the Code of Conduct concerning the Repression of Piracy, Armed Robbery Against Ships, and Illicit Maritime Activity in West and Central Africa (hereinafter "the Yaoundé Code"). Equatorial Guinea notes that the preamble to the Yaoundé Code refers explicitly to article 100 of the Convention and seeks to operationalize the obligation of cooperation under the Convention in Central and West Africa.

210. In characterizing the Yaoundé Code as "the flagship regional counter-piracy framework within the Gulf of Guinea", Equatorial Guinea submits that any interpretation of the Convention must consider regional contexts. Equatorial Guinea contends that article 293 of the Convention permits recourse to regional agreements that give effect to the obligations of the Convention for the purpose of deciding

claims under the Convention. As "[t]he commitments set out by the Yaoundé Code represent the agreement and commitments of West and Central African States regarding how they will operationalize and implement various obligations of the Convention within the context of the regional maritime security architecture[,] State practice pursuant to the Yaoundé Code must be seen as relevant State practice for the implementation of the provisions of UNCLOS." In this regard, Equatorial Guinea notes that

> Article 1(5) of the Code stipulates that "transnational organized crime in the maritime domain" includes "illegal oil bunkering" and "crude oil theft", 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 …".

211. Equatorial Guinea understands piracy to be closely connected with other illegal activities, including illegal oil bunkering:

> 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". ... 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 [of the Convention] include broader concepts such as 'maritime violence', … illegal exploitation of fishery resources, dissemination of false information on a ship or aircraft that endangers maritime safety, …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.

212. Equatorial Guinea notes that under the Yaoundé Code, a signatory State may request any other signatory State to cooperate in detecting ships where there are reasonable grounds to suspect that they have engaged in transnational organized crime and other illegal activities at sea. Article 6 of the Yaoundé Code on measures to repress piracy further provides that "each Signatory to the fullest possible extent intends to co-operate in (a) arresting, investigating, and prosecuting persons who have committed piracy or are reasonably suspected of committing piracy".

213. Equatorial Guinea claims that it maintains "zero tolerance for any act of piracy" and notes the extensive multilateral efforts, supported in the strongest terms by the United Nations Security Council, for regional cooperation to enhance maritime security and anti-piracy operations in the Gulf of Guinea. Had it not acceded to Nigeria's request, Equatorial Guinea claims that it would have been contravening its obligations to Nigeria under the Convention and its commitments under the Yaoundé Code: "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". Equatorial Guinea asserts that upholding "[t]he assertions made by the Marshall Islands … would create a chilling effect on lawful measures taken by States in cooperative and joint efforts against piracy and maritime crime, which are of the gravest nature and greatest importance."

214. The Marshall Islands contends that the Yaoundé Code "is not an agreement in the formal sense of the term, but a non-binding code of conduct". Moreover, it does not purport to authorize action inconsistent with international law but is intended to be read in a manner consistent with international law. In support of this, the Marshall Islands notes "Article 2(1) provides that cooperation as envisaged in the Yaoundé Code will be '[c]onsistent with (…) applicable rules of international law'".

215. Referring to article 6, paragraph 2, of the Yaoundé Code which provides that "[a]ny Signatory may seize a pirate ship beyond the outer limit of any State's territorial sea (…)", the Marshall Islands states that "no provision suggests that a similar right of seizure exists in relation to other forms of transnational organized crime". The Marshall Islands further refers to other provisions of the Yaoundé Code. In particular, article 19(b) provides that "[n]othing in this Code is intended to (…) affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag". Article 19(d) provides that "[n]othing in this Code is intended to (…) apply to or limit boarding of ships conducted by any Signatory in accordance with international law, beyond the outer limit of any State's territorial sea, including boardings based upon the right of visit …".

216. The Marshall Islands argues that it is not a signatory to the Yaoundé Code and that "Equatorial Guinea's rights and obligations towards the Marshall Islands derive from treaties to which both the Marshall Islands and Equatorial Guinea are parties, as well as from customary and general principles of international law." Moreover, it submits that a code of conduct between regional coastal States does not engage, for interpretative purposes, any of the principles reflected in article 31, paragraphs 2 or 3, of the Vienna Convention on the Law of Treaties (hereinafter "the VCLT").

217. The Marshall Islands observes that "[t]he Yaoundé Code is not an agreement in the formal sense of the term, but a non-binding code of conduct, … [with] limited membership of 25 countries". It therefore cannot be a "subsequent agreement" between the States Parties to the Convention regarding its interpretation or the application of its provisions for the purposes of paragraph (3)(a) of article 31 of the VCLT. Nor, for the same reason, is it "subsequent practice" in the application of the Convention, "which establishes the agreement of the parties" regarding its interpretation for the purposes of paragraph (3)(b) of article 31 of the VCLT. The Marshal Islands asserts that the Yaoundé Code also cannot be relied on for the purposes of article 31, paragraph 3, subparagraph (c), of the VCLT, as "relevant rules of international law applicable in the relations between the parties", for the same reasons that it argues that the Code is not applicable as "other rules of international law" as under article 293 of the Convention.

218. The Marshall Islands submits that the Yaoundé Code is not among the "rules of international law not incompatible with this Convention" applicable by virtue of article 293 of the Convention to the dispute between the Parties because the Code does not purport to codify customary international law and is not a "rule of international law", as it "does not for the most part purport to be binding even among its signatories." Moreover, if interpreted as Equatorial Guinea contends, namely, as allowing the seizure of a foreign-flagged vessel solely because a signatory to the Code requests it, the Yaoundé Code would be "incompatible with the Convention".

* * *

219. The Special Chamber notes that article 293 of the Convention determines the sources of law applicable for the settlement of disputes concerning the interpretation or application of the Convention. Article 293, paragraph 1, states: “A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.” The primacy of the Convention is therefore clearly stipulated in article 293 and the competent court or tribunal may apply other rules of international law only where they are not incompatible with the Convention.

220. As regards agreements between States Parties to the Convention, article 311, paragraph 3, states:

> Article 311
> Relation to other conventions and international agreements
> …
> 3. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Convention, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Convention, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

221. The Special Chamber considers that, were the Yaoundé Code to be interpreted in a manner that affects the enjoyment by other States Parties to the Convention of their rights or the performance of their obligations under the Convention, the Yaoundé Code would not be a source of law to which reference could be made under article 293 of the Convention.

222. The Special Chamber is conscious of the persistent threats involving piracy and other maritime crime, including oil theft and illegal bunkering, to the socio-economic stability of the West and Central African region, and of the global implications they entail. The Special Chamber notes that the Yaoundé Code is widely recognized as an important regional framework to coordinate and strengthen efforts to counter maritime crime in the Gulf of Guinea. The United Nations Security Council in resolution 2634,

> encourages Member States to continue to cooperate with the national authorities of the States of the Gulf of Guinea in the fight against piracy and armed robbery at sea, without impeding the exercise of high seas freedoms or other navigational rights and freedoms by ships of any State, *consistent with international law, as reflected in UNCLOS*;
> (United Nations Security Council, Resolution 2634, S/RES/2634 (2022), 31 May 2022, paragraph 8) (Emphasis added by the Special Chamber)

223. Article 1 of the Yaoundé Code reproduces the definition of piracy set out in article 101 of the Convention and includes piracy as one of several activities encompassed in the definition of "transnational organized crime in the maritime domain", which also covers armed robbery at sea, illegal oil bunkering and crude oil theft, among others.

224. Article 2 of the Yaoundé Code sets out the object and purpose of the Code. Paragraph 1 of article 2 states:

> Consistent with their available resources and related priorities, their respective national laws and regulations, and applicable rules of international law, the Signatories intend to co-operate 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 …

The Special Chamber notes that, according to this provision, cooperation to repress the crimes referred to therein is to be "[c]onsistent with … applicable rules of international law".

225. Specific measures to repress piracy, distinct from other transnational organized crime in the maritime domain, are set out in article 6 of the Yaoundé Code. Paragraphs 1 and 2 of article 6 state:

> 1. Consistent with Article 2, each Signatory to the fullest possible extent intends to co-operate in:
>
> (a) arresting, investigating, and prosecuting persons who have committed piracy or are reasonably suspected of committing piracy:
> (b) seizing pirate ships and/or aircraft and the property on board such ships and/or aircraft; and
> (c) rescuing ships, persons, and property subject to piracy.
>
> 2. Any Signatory may seize a pirate ship beyond the outer limit of any State's territorial sea, and arrest the persons and seize the property on board.

226. The Special Chamber also notes that article 19 of the Yaoundé Code, on "miscellaneous provisions", states in pertinent part:

> Nothing in this Code of Conduct is intended to:
> (a) create or establish a binding agreement, except as noted in Article [13];
> (b) affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag …

227. In light of the above, the Special Chamber is of the view that there is no basis for concluding that the Yaoundé Code confers powers on its signatories with respect to vessels flying the flag of non-signatories beyond those powers provided in the Convention. The Special Chamber finds that the Yaoundé Code cannot provide a legal basis for Equatorial Guinea to take measures contrary to the Convention.

* * *

228. The Special Chamber will now turn to the issue whether the provisions of the Convention concerning the repression of piracy are applicable in the circumstances of this case. The Special Chamber will first examine the duty to cooperate in the repression of piracy, which is integral to the submission of Equatorial Guinea that the interception and detention of the *M/T "Heroic Idun"* were lawful and in accordance with the Convention.

2. Article 100 of the Convention

229. In addressing the obligation to cooperate under the Yaoundé Code, which seeks to implement the obligation imposed by article 100 of the Convention, Equatorial Guinea submits that the duty to cooperate "is not a mere exhortation … [but] imposes an obligation on each party to the Convention to cooperate with other States in the repression of piracy". In support of its position, Equatorial Guinea refers to the award in the "*Enrica Lexie"* case, in which the arbitral tribunal held that "[t]he repression of piracy by States in the exclusive economic zone is thus not only sanctioned by the Convention but also, pursuant to Article 100 of the Convention as incorporated into Article 58, paragraph 2, a duty incumbent on all States." (*Arbitration*

concerning the "Enrica Lexie" Incident between the Italian Republic and the Republic of India, Award of 21 May 2020, para. 979).

230. Equatorial Guinea argues that "Article 100 UNCLOS must be read to permit (even mandate) acts of cooperation in the repression of piracy before or regardless of whether an act meeting all the definitional aspects in Article 101 UNCLOS is deemed to have occurred." It is therefore argued that it is "the reasonableness of the response to a request to cooperate, rather than the reasonableness of the suspicion of the requested State", that should be the relevant test by which its conduct must be examined. Equatorial Guinea contends that "a *de novo* assessment on potentially limited facts and in the context of presumed urgency, would very much defeat the purpose of the obligation of cooperation in the repression of piracy." Therefore, the requested State need not prove "adequate grounds" for the seizure of a ship on suspicion of piracy as would otherwise be required by article 106 of the Convention.

231. Equatorial Guinea relies on the *M/V "Norstar"* case to support this submission. Equatorial Guinea notes that the Tribunal found Italy responsible for the arrest and detention of the *M/V "Norstar"* carried out by Spain as part of the criminal investigation and proceedings conducted by Italy against the *M/V "Norstar"*, following a request made under the European Convention on Mutual Assistance in Criminal Matters, concluded in Strasbourg on 20 April 1959 (hereinafter "the 1959 Strasbourg Convention"). As Spain merely provided assistance in accordance with its obligations under the 1959 Strasbourg Convention, it would not have been reasonable to expect Spain, in that case, to establish its own legal basis for the arrest and detention of the *M/V "Norstar"*. Equally, it is argued, "it would [not] be reasonable in our case to expect Equatorial Guinea to establish an independent reasonable suspicion that the *"Heroic Idun"* was engaged in piracy before responding to a request for cooperation under the Convention and the Yaoundé Code."

232. The Marshall Islands contends that article 100 of the Convention "is simply not engaged by the facts [as] … there is no support whatsoever for Equatorial Guinea's contention that the request for the seizure of the "Heroic Idun" and her crew was based on allegations of piracy." The allegations that the *M/T "Heroic Idun"* may have committed an act of piracy are characterized as "an ex post facto construct, by

which Equatorial Guinea seeks to justify its conduct." The Marshall Islands states that it was not made aware by Equatorial Guinea that piracy was the reason for the interception and detention of the *M/T "Heroic Idun"* and crew until the Counter-Memorial in these proceedings, and no allegations of piracy were ever communicated to the owners, crew or others involved in the vessel.

233. The Marshall Islands further argues that "[t]here is simply nothing in the communications from Nigeria that suggests the "Heroic Idun" was being pursued on grounds of piracy", and submits in addition that article 100 does not confer "an autonomous basis to exercise enforcement jurisdiction". Therefore, the requested State must assess the compatibility of the requested action with its own obligations under the Convention and international law, including the duty to respect freedom of navigation and exclusive flag State jurisdiction.

234. Equatorial Guinea maintains that documentary evidence following the arrest of the *M/T "Heroic Idun"* confirms that the interception and apprehension of the *M/T "Heroic Idun"* were measures it took in fulfilment of its duty to cooperate in the repression of piracy. In particular, it makes reference to a tweet by the Equatoguinean Vice-President on 10 November 2022, that "[w]e are proud to have collaborated with Nigeria for the HEROIC IDUN arrest as a sign of respect for our agreements against maritime piracy". It also makes reference to a letter, dated 3 June 2023, from the Equatoguinean Minister of External Affairs to his Nigerian counterpart on the establishment of the Special Chamber, confirming that Equatorial Guinea acted "within the framework of respect for international and subregional obligations, … [and] in accordance with the Yaoundé Code" in seizing the *"Heroic Idun"* which "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". Equatorial Guinea likewise adverts to the plea agreement with Nigerian authorities, in which the *M/T "Heroic Idun"* accepted liability to an offence under Nigeria's "piracy-related legislation".

235. The Marshall Islands contests the evidence adduced by Equatorial Guinea, claiming that the tweet by the Equatoguinean Vice-President dated 10 November 2022 "marks the very first time …, since the events of August 2022, that allegations

of piracy were linked to the *"Heroic Idun"*." The Marshall Islands draws attention to the fact that the tweet is dated the same day as the Marshall Islands' institution of prompt release proceedings before the Tribunal. With reference to the note verbale dated 3 June 2023 sent by the Minister of Foreign Affairs of Equatorial Guinea to his Nigerian counterpart, the Marshall Islands points out that this was sent nearly 10 months after Equatorial Guinea's seizure of the vessel and crew on 12 August 2022; more than six months after the Marshall Islands commenced prompt release proceedings before the Tribunal; and more than five months after the Marshall Islands' submission of the present dispute to compulsory dispute settlement under Part XV of the Convention on 18 December 2022. The Marshall Islands states: "It is telling that there is nothing on the record, though, to suggest that Nigeria ever responded to that note verbale of 3 June 2023". As to the nature of the plea bargain, the Marshall Islands contends that "the offence in question had nothing to do with allegations of the vessel being a pirate vessel. The offence concerned the reporting of an alleged piracy incident – again, the allegation that the *M/T "Heroic Idun"* falsely reported being the victim of a piracy attack." Section 16(5) of Nigeria's Suppression of Piracy and Other Maritime Offences Act 2019, under which the *M/T "Heroic Idun"* eventually accepted liability, concerns "incident reporting and evidence preservation", not commission of acts of piracy.

236. The Marshall Islands also submits that, were article 100 of the Convention applicable, Equatorial Guinea would have had an obligation to cooperate with the Marshall Islands as the flag State, as well as Nigeria, in the repression of piracy. Yet, during the approximately 60 hours between the receipt of the WhatsApp messages from Nigeria on 10 August 2022 and the interception of the *M/T "Heroic Idun"* on 12 August 2022, Equatorial Guinea did not undertake any steps whatsoever to cooperate with the Marshall Islands.

237. The Marshall Islands claims that after the request from Nigeria for the apprehension of the *M/T "Heroic Idun"*, the Equatoguinean authorities could have carried out further inquiries, such as contacting the Marshall Islands in respect of any piracy suspicion that they may have had in respect of the *M/T "Heroic Idun"*, or relevant regional or global piracy reporting centres that are crucial for maritime security, asking for further information. The Marshall Islands asserts that "[t]here is

no evidence Equatorial Guinea did any of these things" and notes that "[t]his was not a hot pursuit operation. This was not a time-sensitive, logistically fraught or security-sensitive maritime interdiction. The vessel was not trying to flee. Its location was known from multiple sources".

* * *

238. The Special Chamber considers that the duty to cooperate is an obligation of conduct, the fulfilment of which is assessed against a standard of due diligence. States are required to fulfil this obligation in good faith (*Request for Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024, ITLOS Reports 2024,* p. 4, at p. 113, para. 309; *Obligations of States in respect of Climate Change, ICJ, Advisory Opinion, 23 July 2025,* para. 218). The ICJ in its advisory opinion on climate change noted that,

> the duty to co-operate lies at the core of the Charter of the United Nations, in particular Article 1 thereof, which states the purpose of the organization and commits States to "achiev[ing] international cooperation in solving international problems of an economic, social, cultural, or humanitarian character".
> (*ibid*., para. 364)

239. The Special Chamber has already referred to United Nations Security Council resolution 2634 encouraging all Member States to cooperate in the fight against piracy in the Gulf of Guinea in accordance with the United Nations Charter and the Convention (see para. 222 above). The duty to cooperate is integral to addressing the serious threat that piracy continues to pose to international trade, maritime security and economic and social stability in many regions, especially West and Central Africa.

240. Article 100 of the Convention on the duty to cooperate in the repression of piracy reads as follows:

Article 100
Duty to cooperate in the repression of piracy

> All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

The Special Chamber is of the view that the requirement to cooperate "to the fullest possible extent" in the repression of piracy imposes an obligation on all States to expend meaningful efforts with all other States to achieve this end. Cooperation may take various forms depending on the particular circumstances, and States retain discretion in determining the particular measures to pursue in good faith.

241. The Special Chamber notes that article 100 of the Convention mirrors the language of article 14 of the 1958 Convention on the High Seas, which in turn reflects the text adopted by the ILC in article 38 of the Articles Concerning the Law of the Sea. The commentaries to this provision address the intended breadth of the obligation on cooperation as follows:

> Any State having an opportunity of taking measures against piracy, and neglecting to do so, would be failing in a duty laid upon it by international law. Obviously, the State must be allowed a certain latitude as to the measures it should take to this end in any individual case.
> (ILC, Report of the International Law Commission: Commentaries to the Articles Concerning the Law of the Sea, UN Doc. A/3159 (1956), *Yearbook of the International Law Commission*, 1956, Vol. II, p. 265, at p. 282)

242. The duty to cooperate extends to all States, including flag States. The exchange of information is an essential element of the general duty to cooperate. The Special Chamber considers that this would entail, at a minimum, sharing relevant information that may enable successful international cooperation in counter-piracy operations with the most directly affected States, including the flag State, subject to national security concerns.

243. The duty to cooperate in the repression of piracy is indispensable in initiating an effective response to some of the most serious acts threatening maritime security. Cooperation measures may include the interception and seizure of foreign-flagged vessels engaged in piracy on the high seas.

244. The Special Chamber notes the reference made to mutual assistance treaties in the context of the *M/V "Norstar"* case. In that case, Italy's request for judicial assistance was sent to Spain because the *M/V "Norstar"* was anchored in Spain's internal waters at the Palma de Mallorca Bay. The request was based upon articles 3, 4 and 15 of the 1959 Strasbourg Convention, and articles 49, 51 and 53 of the Convention implementing the Schengen Agreement of 14 June 1985, concluded in Schengen on 19 June 1990, and concerned letters rogatory relating to ongoing criminal proceedings, addressed to the requested party by the judicial authorities of the requesting party. The aforementioned structured mutual legal assistance arrangements of the 1959 Strasbourg Convention are court-supervised instruments that are clearly distinguishable from cooperation under the Yaoundé Code in the context of article 100 of the Convention.

245. The Special Chamber notes that the Yaoundé Code provides, in article 3, paragraph 1, that

> any measures taken pursuant to this Code of Conduct should be carried out by law enforcement or other authorized officials from warships or military aircraft, or from other ships or aircraft clearly marked and identifiable as being in government service and authorized to that effect.

The Code concerns operations at sea, including areas beyond national jurisdiction and contains several provisos regarding foreign-flagged vessels, as noted in paragraphs 222 to 226 above. It is a law enforcement cooperation code which expressly states that it is not intended to "preclude or limit any Signatory from requesting or granting assistance in accordance with the provisions of any applicable Mutual Legal Assistance Agreement or similar instrument" (Yaoundé Code, article 19, paragraph (m)).

246. The Special Chamber does not view the aforementioned mutual legal assistance provisions of the Strasbourg Convention and the Schengen Agreement to be comparable to naval cooperation pursuant to the Yaoundé Code, which is "inspired also" by article 100 of the Convention "in the fight against piracy armed robberies, and illicit activities at sea" (sixteenth preambular paragraph). Moreover, the Special Chamber does not consider the *M/V "Norstar"* case relevant in defining

the scope of the obligation to cooperate in the repression of piracy under the Convention.

247. The Special Chamber is of the view that, while the duty to cooperate is necessary for the repression of piracy, article 100 of the Convention does not provide an autonomous basis for the apprehension of the *M/T "Heroic Idun"*. The seizure of a pirate ship, or of a ship taken by piracy and under the control of pirates, must conform to the requirements of articles 101 to 107, read together with article 110.

3. Enforcement action against pirate ships under the Convention

The definition of piracy

248. The Special Chamber will now turn its attention to the definition of piracy under the Convention and the question whether there were "adequate grounds" to intercept and seize the *M/T "Heroic Idun"* in the exclusive economic zone of São Tomé and Príncipe in accordance with the provisions of the Convention on the repression of piracy.

249. Equatorial Guinea submits that a textual reading of the definition of piracy in the Convention does not accommodate modern forms of piracy, and it refers to commentary suggesting that the interpretation of the definition in the Convention is a source of considerable debate. Although not addressing any particular ambiguities in the text of article 101 of the Convention, Equatorial Guinea submits that "[t]he characterization and nature of piracy is highly dependent on the region in question" and that, in the Gulf of Guinea, there is a close and recognized link between piracy and illegal activities against the oil trade.

250. Equatorial Guinea argues that piracy is better understood as a multifaceted phenomenon, and it is "in light of the factual connections between piracy and oil bunkering and theft in the Gulf of Guinea" that the interception and detention of the *"Heroic Idun"* and its crew must be assessed.

251. The Marshall Islands notes that the definition of piracy is found in article 101 of the Convention and that the enforcement powers in respect of piracy are set out in articles 105 and 110, read in conjunction with articles 103 and 106.

252. The Marshall Islands submits that the constituent elements of the definition of piracy, as set out in article 101 of the Convention, are not present in the communications from Nigeria requesting the assistance of Equatorial Guinea in the arrest of the *M/T "Heroic Idun"*. In the view of the Marshall Islands, Equatorial Guinea therefore had no basis on which to infer that the *M/T* "*Heroic Idun"* was engaged in piracy.

253. In particular, the Marshall Islands highlights references to the offensive conduct as having occurred "in Nigeria", in the "waters of Nigeria" and in the "territorial waters of Nigeria", and observes that "[a]n act cannot constitute piracy unless it occurs on the high seas (or in an EEZ), or in a place outside the jurisdiction of any State." The Marshall Islands contends that other essential requirements of article 101 of the Convention are also absent from the communications from Nigeria, namely, that an act of piracy must be directed "against another ship", and there must be evidence of some act of "depredation". The further observation is made that allegations of falsely reporting a piracy attack are not among the grounds allowed for seizure of a pirate ship under article 105.

254. The Marshall Islands submits that the enforcement powers conferred by the Convention are limited to piracy and "do not extend to other forms of criminal conduct that do not fall within the legal definition of Article 101" of the Convention. In this regard, the Marshall Islands observes that

> Equatorial Guinea has a tendency in its pleadings, especially when referring to the Yaoundé Code, to blur the lines a little, to mix piracy with other maritime offences or with crimes under domestic law, or with other forms of transnational crime. But … universal enforcement powers are a narrow exception to the principles of freedom of navigation and exclusive flag State jurisdiction. Piracy alone justifies the exception.

255. In responding to the Marshall Islands, Equatorial Guinea submits that a reasonable interpretation of references to "Nigerian waters" or "waters of Nigeria" in

the WhatsApp messages received from Nigeria is the exclusive economic zone of Nigeria, and the "mistaken reference in the note verbale of 10 August 2022 to "Nigerian's [sic] territorial waters" should similarly be disregarded". Acts committed in the exclusive economic zone may qualify as piracy owing to the cross reference provided in article 58, paragraph 2, of the Convention. Moreover, the communications from Nigeria must be read in light of the factual background of piracy in the Gulf of Guinea.

256. Equatorial Guinea maintains that meeting all the definitional aspects in article 101 of the Convention is not necessary in this case since a suspected pirate vessel that is encountered in international waters may be seized even where the authorized naval vessel making the seizure has not actually observed or found any other evidence that the suspected pirate vessel was committing an act of piracy under article 101, subparagraph (a).

257. At the hearing, Equatorial Guinea sought to expand consideration of the definition of acts of piracy from the more limited examination of article 101, subparagraph (a), of the Convention, to subparagraph (c) of article 101, as follows:

> Article 101(a) does not exhaust the definition of piracy. … [R]ead[ing] the *chapeau* and paragraph (c) together[, p]iracy consists of "any act of inciting or intentionally facilitating an act described in subparagraph (a) or (b)". Thus – and this is important for our factual context in the Gulf of Guinea – when we are considering whether there was a reasonable suspicion that the vessel was engaged in piracy[, t]he question is not necessarily one of whether there was a reasonable suspicion that a ship is engaged in illegal acts of violence or detention. One must also assess whether there was a reasonable suspicion that the vessel was intentionally facilitating those acts set out in Article 101(a) and (b).

258. The implication of this, Equatorial Guinea asserts, is that "a ship that engages in acts described in subparagraph (c) is a pirate ship, even if it has not itself been involved in ship-on-ship action". In light of article 101, subparagraph (c), of the Convention, Equatorial Guinea argues that a suspicion of loading oil without approval, combined with allegations of illegal fuel supply, as indicated in the WhatsApp messages sent by Nigeria on 10 August 2022, led to a reasonable suspicion that the *M/T "Heroic Idun"* could be involved in facilitating piracy via bunkering.

259. Captain Juan Nsue Esono Nchama, Inspector General of the Equatoguinean armed forces, explained at the hearing that as pirate vessels need to refuel at sea rather than returning to the coast, they are supplied by larger vessels involved in conducting oil theft and illegal bunkering so that they can continue their illegal activities. These larger vessels are "motherships" that provide integral support for piracy operations. In light of this, Captain Juan Nsue Esono Nchama expressed the view that "there is a strong link between the theft of fuel and piracy; they are one and the same."

260. Notwithstanding the submission "that Equatorial Guinea does not need to show that it independently established its own reasonable suspicion that the *"Heroic Idun"* was engaged in piracy before acting upon a request for cooperat[ion] in the repression of piracy", Equatorial Guinea contends that it, in fact, held such reasonable suspicions. These are based on the *M/T "Heroic Idun"*'s allegedly "fleeing a naval vessel" of Nigeria at the time of its interception, although "it might have been silly that it did this with its AIS system on". In addition, when the Captain of the *"Capitán David"* contacted the *M/T "Heroic Idun"* indicating that he had instructions to bring the vessel to Equatorial Guinea, the *M/T "Heroic Idun"* allegedly started up its engines and started its flight. According to Equatorial Guinea, "this behaviour by the *"Heroic Idun"* is what actually confirmed our own suspicions" and led to the apprehension of the *M/T "Heroic Idun"* and its crew.

261. Equatorial Guinea cites five instances in which very large crude carriers (VLCCs) have been hijacked by pirates in the region since 2008. Although acknowledging that VLCCs are less commonly used than fishing vessels as mother ships, and that the evidence suggests that in the Gulf of Guinea "the use of mother vessels is occasional [and] largely opportunistic," Equatorial Guinea asks, "in the light of the known activities of [the *M/T "Heroic Idun"*], what reasonable and responsible naval commander would conclude that it was absurd that this vessel was used a mother ship?"

262. The suggestion that the *M/T "Heroic Idun"* – a slow, extremely difficult to manoeuvre, 336-metre carrier requiring a crew of 26 people – might have been a

pirate's mother ship is described by the Marshall Islands as "entirely detached from reality." The Marshall Islands observes that the definition of a pirate ship in article 103 of the Convention would require "the persons in dominant control" of the *M/T "Heroic Idun"* to intend that the vessel "be used for the purpose of committing one of the acts referred to in article 101". Referring to the instances cited by Equatorial Guinea in which certain VLCCs were hijacked by pirates and used as mother ships, the Marshall Islands notes that "Equatorial Guinea has never suggested that the *"Heroic Idun"* was hijacked by pirates."

263. In addressing the factual circumstances of the *M/T "Heroic Idun"*s arrest and, in particular, that the *M/T "Heroic Idun"* may have increased its speed and attempted to flee when approached by the *"Capitán David"* on 12 August 2022, the Marshall Islands adduces evidence demonstrating that the first request to stop the engines came at 12:37:09, the second at 12:37:27, and the third at 12:37:59. The Marshall Islands states that the three requests were all within 50 seconds. It argues that the video recording from the deck of the *M/T "Heroic Idun"*, showing the revolutions per minute, demonstrates that the engine of the *M/T "Heroic Idun"* was in fact reducing its speed from 8.9 knots, 8.8 knots and so forth, which does not accord with the claim that the vessel was attempting to flee.

"Adequate grounds" for the seizure of a pirate ship

264. With respect to whether there were "adequate grounds" to intercept and seize the *M/T "Heroic Idun"* in the exclusive economic zone of São Tomé and Príncipe in accordance with the Convention, the Parties express opposing views on the degree of certainty required before a vessel may be seized as a pirate ship in accordance with article 105 of the Convention, the relationship between articles 105, 106 and 110, and whether the need for "adequate grounds" requires the sequencing of enforcement actions against a pirate vessel.

265. In contrasting the language of article 110 of the Convention, which provides for the right of visit where there is a "reasonable ground for suspecting" that the ship is engaged in piracy, with that of article 106 which provides for liability for the seizure of a ship on suspicion of piracy "without adequate grounds", the Marshall Islands

contends that article 106 establishes a much higher test as it forms the legal basis for seizing a vessel. Moreover, as article 105 permits the seizure of a "pirate ship", the definition of this term as stated in article 103 is "thus the predicate enquiry to the application of Article 105 and the entitlement to seize."

266. On the basis of article 105 of the Convention, the Marshall Islands submits that "a mere suspicion that a ship might be engaged in piracy would not seem to suffice to trigger the enforcement powers provided by Article 105 UNCLOS", and that before Equatorial Guinea could lawfully seize the *M/T "Heroic Idun"*, it would have had to conclude that the vessel was in fact a pirate ship.

267. In reinforcing the point, the Marshall Islands asserts that the relationship between the enforcement powers in articles 110 and 105 of the Convention is one of progression, and therefore the right of visit under article 110 must be exercised before a vessel may be seized in accordance with article 105. The Marshall Islands states 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 meaning of Article 103, only then do Article 105 powers of *seizure* become available." The Marshall Islands asserts that article 105 must be read in context, in particular in light of articles 106 and 110, paragraph 3.

268. Equatorial Guinea contends that, whereas exercising the right to visit before seizing a vessel may be the natural progression in many cases, there is absolutely nothing in the Convention that conditions the exercise of the power conferred in article 105 of the Convention on the right to visit provided for in article 110. The decision whether to board a ship suspected of piracy, as provided for in article 110, will depend on the circumstances and the assessment made by the warship. Equatorial Guinea asserts that "[a] visit is reasonable where it can assist in establishing the allegation and where it will be effective, also where it's possible."

* * *

269. The Special Chamber notes that the provisions of the Convention permitting the interception, boarding and seizure of a vessel in the repression of piracy require

that it be engaged in piracy as defined in the Convention. Article 101 of the Convention provides the definition of piracy in the following terms:

> Article 101
> Definition of piracy
>
> Piracy consists of any of the following acts:
> (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
> (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
> (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
> (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
> (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

270. The Special Chamber notes that article 101 of the Convention defines piracy with reference to three distinct activities, each of which independently constitutes piracy. The jurisdiction conferred on all States by international law over pirate ships is an exception to the freedom of navigation and therefore must be strictly construed. In this regard, it may be noted that, as a general rule, the party invoking an exception bears the burden of proving that the specific circumstances of the case call for its application.

271. The scope of maritime offences of concern to the international community is broader than piracy as properly defined under the Convention. Permissible measures to address such unlawful acts are found in various international agreements, including the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereinafter “the SUA Convention”) and the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. The Yaoundé Code provides a cooperation framework for implementing various aspects of the SUA Convention and its protocols, in addition to article 101 of the Convention.

272. In addressing the definition of piracy, the Special Chamber will first examine the necessary elements of subparagraph (a) of article 101 of the Convention, before

turning its attention to subparagraph (c), which refers to acts described in subparagraphs (a) or (b) of article 101.

273. In accordance with article 101, subparagraph (a), of the Convention, for an act to constitute piracy: (1) there must be “illegal acts of violence or detention, or any act of depredation”, (2) they must be “committed for private ends”, (3) “by the crew or passengers of a private ship or a private aircraft”, and (4) directed “against another ship or aircraft or against persons and property on board such ship or aircraft”, (5) on the high seas or “in a place outside the jurisdiction of any State”. All five conditions must be satisfied for an act to constitute piracy within the meaning of article 101, subparagraph (a).

274. The Special Chamber considers it useful to emphasize for present purposes that acts of piracy must be directed by a private ship against other ships on the high seas or, in accordance with article 58, paragraph 2, in the exclusive economic zone. An act of piracy, within the meaning of this provision, must entail some element of force and duress but may not necessarily involve robbery. Piracy as defined in the Convention must therefore be distinguished from armed robbery at sea and other transnational organized crimes in the maritime domain that are referred to in article 1, paragraph 5, of the Yaoundé Code.

275. The Special Chamber notes that the WhatsApp messages and note verbale of 10 August 2022, from Nigeria to Equatorial Guinea, that were communicated prior to the interception of the *M/T “Heroic Idun”*, refer to a “LARGE CARRIER OF CRUDE OIL (VLCC), HEROIC IDUN (IMO: 9858058), A 336-METER SUPER TANKER” seeking “TO LOAD CRUDE WITHOUT APPROVAL”, escaping by raising “A FALSE ALARM OF A PIRACY ATTACK … TO AVOID COLLATERAL DAMAGE”. The first WhatsApp message of 10 August 2022 also states that the vessel was “SUSPECTED OF BEING INVOLVED IN AN ILLEGAL FUEL SUPPLY OPERATION”, and the second WhatsApp message mentions the “theft of crude oil in Nigeria.” Reference is also made to “NIGERIAN WATERS” and “Nigerian territorial waters” in the correspondence, which, in the view of the Special Chamber, may be read to include the exclusive economic zone of Nigeria.

276. The Special Chamber considers that assertions that a slow-moving super tanker may have sought to load crude oil without approval or is suspected of being involved in an illegal fuel supply operation and crude oil theft do not, in themselves, raise suspicions of piracy as opposed to other transnational organized crimes. There are no references to the crew of the *M/T "Heroic Idun"* taking actions directed against another ship or aircraft or against persons and property on board another vessel. Moreover, mere allegations that a false alarm of a piracy attack was raised cannot lead to the conclusion that the vessel raising the alarm is engaged in piracy.

277. The Special Chamber notes that the Parties have referred to communications from Nigeria after the interception of the *M/T "Heroic Idun"* as substantiating the claims that each has made. In the interest of completeness, the Special Chamber observes that the communications received after 10 August 2022, including Note No. 142/2022, dated 24 August 2022, and Note No. 150/2022, dated 12 September 2022, both from the Embassy of Nigeria in Equatorial Guinea to the Ministry of External Affairs and Cooperation of the Republic of Equatorial Guinea, also provide no support for the suggestion that the *M/T "Heroic Idun"* was suspected of engaging in piracy as opposed to other transnational organized crimes.

278. Note No. 142/2022 contains only a "request for tracking, arrest and repatriation of Crew and Heroic IDUN (No. IMO9858058), a 336 meter super tanker involved in illegal entry into Nigeria's territorial waters for unauthorized loading of crude oil", without any reference to piracy.

279. Note No. 150/2022 cites the SUA Convention and articles 56 and 60 of the Convention as source of its "authority to enforce criminal jurisdiction over [the] vessel, although it is a foreign-flagged vessel". Articles 56 and 60 of the Convention concern the sovereign rights of the coastal State to manage and conserve the resources of the exclusive economic zone, as well as the exclusive jurisdiction of the coastal State over relevant installations and structures, including jurisdiction with regard to customs and fiscal laws, in the exclusive economic zone.

280. The alleged "infractions" referred to in Note No. 150/2022 consist of "attempt[ing] to conduct illegal loading operations at Akpo oil field" and evading

arrest by the Nigerian Navy. Furthermore, article 3(f) of the SUA Convention is cited as the relevant provision for the exercise of jurisdiction to prosecute the *M/T "Heroic Idun"* for an alleged communication of false information about a piracy attack against it. There is no reference to any provision of the Convention concerning piracy. Cooperation is sought under "the Yaounde Code of Conduct Architecture which allows States to cooperate to arrest persons and vessels involved in illegal acts at sea and ensure their prosecution."

281. A subsequent letter from the Ministry of Defence of the Federal Republic of Nigeria to the Minister of Foreign Affairs of Equatorial Guinea, dated 12 October 2022, conveys information similar to that contained in Note No. 150/2022.

282. The Parties make further reference to a press release published by the Nigerian Navy on 20 August 2022, which "reiterated that there was no piracy attack on Nigeria waters in the last one year," and alleges that the *M/T "Heroic Idun"* had the "intention to load oil illegally"; that it "refused to cooperate with NNS Gongola"; and that this act of "defiance to constituted authority … necessitated the Navy to invoke the collaboration of neighbouring Equatorial Guinea through the Yaoundé architecture to arrest the vessel." The only reference to piracy is the explicit denial of any piracy attacks in Nigerian waters for one year.

283. Equatorial Guinea correctly states that the aforementioned correspondence submitted by either Party does not prove that the *M/T "Heroic Idun"* was not and could not have been a pirate vessel, contrary to what the Marshall Islands asserted in its Reply. Yet it is equally true, as the Marshall Islands states, that the correspondence does not support the assertion that Nigeria would have requested the arrest of the *M/T "Heroic Idun"* for the reason that it was a pirate ship, as suggested by Equatorial Guinea.

284. In light of this, the Special Chamber finds nothing in the correspondence received by Equatorial Guinea from Nigeria that provides adequate grounds for the interception and diversion of the *M/T "Heroic Idun"* to Luba Freeport on 12 August 2022, on the basis of article 101, subparagraph (a), of the Convention.

285. The Special Chamber now turns to consider subparagraph (c) of article 101 of the Convention. Subparagraph (c) includes within the definition of piracy "any act of inciting or of intentionally facilitating an act described in subparagraphs (a) or (b)." The Special Chamber notes that the provision is broad and is not limited either in temporal or in geographical scope, or in the nature of the facilitation provided.

286. In this regard, article 101, subparagraph (c), of the Convention must be read in conjunction with article 103, which provides:

> A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

In accordance with article 103 of the Convention, a ship may be considered a pirate ship even if no act of piracy has occurred, once the persons in effective control of the vessel intend it to be used for that purpose.

287. The Special Chamber is of the view that acts of facilitation under article 101, subparagraph (c), of the Convention therefore may include the provision of bunkering services to ships with the knowledge that they are intended to be used to commit acts of piracy.

288. In light of this, the Special Chamber will now consider whether the assertion of Equatorial Guinea that "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" is sufficiently tenable in the circumstances of this case to support the argument that there were adequate grounds for the seizure of the *M/T "Heroic Idun"* consistent with the Convention.

289. A mother ship is generally defined as a vessel that services other craft operating at a distance from a home port. Were the *M/T "Heroic Idun"* to have served as a mother ship, it would be expected that smaller pirate vessels would have been in the area at the relevant time.

290. The Special Chamber notes that while no evidence was adduced of any acts of piracy in the area at or around the relevant time, the prevalence of acts of piracy in the Gulf of Guinea is a matter of common knowledge. The press release published by the Nigerian Navy on 20 August 2022, as above noted, indicates, however, that there had been no piracy attack in Nigerian waters in one year. The Parties also agree that the piracy alarm raised by the *M/T "Heroic Idun"* proved to be false. The absence of any recorded piracy attacks in Nigerian waters in 2022 is confirmed by authoritative bodies such as the International Maritime Bureau, which no longer includes Nigeria on its international list of countries prone to piracy. However, in the years prior to 2022, several incidents of piracy were recorded in Nigerian waters.

291. In assessing the likelihood that a very large crude carrier (VLCC), such as the *M/T "Heroic Idun"*, may have been used as a mother ship, note is taken of the evidence suggesting that pirates in the Gulf of Guinea primarily use fishing boats as mother vessels to refuel and for other support, including food and water, and that there is no more than "the occasional use of larger vessels, hijacked and used by a pirate group as a semi-permanent mother vessel" in the area. Equatorial Guinea cites five instances in which VLCCs have been hijacked by pirates in the region since 2008.

292. As noted by the Marshall Islands, the suggestion has never been made that the *M/T "Heroic Idun"* may have been hijacked by pirates. Moreover, any suspicions about the nature of the activities undertaken by the *M/T "Heroic Idun*" could have been investigated in the approximately 60 hours between receipt of the request for assistance from Nigeria and the interception of the vessel. However, there is no evidence that any investigation was undertaken.

293. The Special Chamber is of the view that, following the apprehension of the *M/T* "*Heroic Idun*", Equatorial Guinea would have been required to investigate any suspicion it had of piracy and to act according to the results of this investigation, including by releasing the vessel if no proof of piracy was found.

294. The Special Chamber considers, however, that the seizure of a vessel on the basis of article 105 of the Convention does not require conclusive evidence of piracy. Article 105 of the Convention states:

Article 105
Seizure of a pirate ship or aircraft

> On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or 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. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

295. Article 105 of the Convention must be read together with article 106, which states as follows:

Article 106
Liability for seizure without adequate grounds

> Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure.

296. Article 106 of the Convention implies that sufficient corroboration of a suspicion of piracy constituting “adequate grounds” is required before a private ship may be seized in accordance with article 105. There are various ways to confirm a suspicion of piracy.

297. Article 110 of the Convention provides in relevant part:

Article 110
Right of visit

> 1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:
>
> (a) the ship is engaged in piracy;
>
> …
>
> 2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship’s right to fly its flag. To this end, it may send a boat under

> the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.
>
> 3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

298. The right of visit is premised on the existence of a "reasonable ground for suspecting" that a ship may be engaged in piracy. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying such suspicions, the ship is entitled to receive compensation for any loss or damage sustained in accordance with article 110, paragraph 3, of the Convention.

299. The standards by which enforcement action under articles 105 and 110 of the Convention are adjudged differ, and a more exacting standard is required for seizing a pirate ship in accordance with article 105, read together with article 106. The universal right of seizure of a foreign-flagged vessel on the high seas may only be exercised on grounds of piracy. The right of visit is less intrusive on the freedom of navigation and is permitted in other defined circumstances. In the normal course of investigations into acts of piracy, the enforcement measures that may be taken under articles 110 and 105 would be pursued sequentially, with seizure occurring only after the suspicions are verified through the exercise of the right of visit.

300. The Parties disagree on whether the exercise of the right of visit under article 110 is a necessary precondition to the seizure of a pirate ship. The Special Chamber is of the view that enforcement operations at sea should begin with less intrusive measures, where feasible, before more coercive action is taken (see *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10, at pp. 61-62, paras. 155 and 156).

301. The right of visit in accordance with article 110 of the Convention permits a warship to conduct inquiries into a ship exercising the freedom of the high seas in certain limited circumstances, including a suspicion that the ship is engaged in piracy. The warship may verify the ship's right to fly its flag by checking its documents. If the suspicion remains, the warship may proceed to a further

examination on board the ship. This would be expected to precede a more severe measure like seizure in most circumstances. However, it may not be feasible or prudent in all cases.

302. The Special Chamber finds nothing in the language of articles 105, 106 or 110 of the Convention that mandates a sequencing of enforcement measures. While there is no requirement to exercise the right of visit pursuant to article 110 before seizing a vessel under article 105, the Special Chamber observes that the requirement of proportionality supports the view that this would be the appropriate course of action where circumstances permit.

303. The Special Chamber notes that the Captain of the *"Capitán David"* chose not to exercise the right of visit to verify any suspicions that his authorities might have had concerning the activities of the *M/T "Heroic Idun"*. In addition to this, Equatorial Guinea made no inquiries to clarify the nature of the activities of the *M/T "Heroic Idun"* in the Gulf of Guinea during the approximately 60 hours between receipt of the request for assistance from Nigeria and the interception of the vessel in the exclusive economic zone of São Tomé and Príncipe. Rather, Equatorial Guinea bases its argument on its own assumptions concerning the legality of its actions without giving consideration to the interests of the Marshall Islands and that of its flagged vessel, the *M/T "Heroic Idun"*.

304. The Parties made extensive submissions, both written and oral, on measures that may be taken in the repression of piracy that are consistent with the Convention. The Special Chamber is mindful of the scourge of piracy on the freedom of navigation in vital shipping lanes, in particular the Gulf of Guinea, and the broader impact on society, the economy and the political sphere. However, for the reasons stated above, the Special Chamber does not find that the evidence adduced by Equatorial Guinea provides adequate grounds to justify the seizure of the *M/T "Heroic Idun"* on suspicion of piracy. Articles 100 to 107 and 110 of the Convention are therefore not applicable in the present case.

305. The Special Chamber is mindful of the "zero tolerance" policy implemented by the Government of Equatorial Guinea in cooperation with neighbouring States and the

positive impact this has had on countering acts of piracy in the region. It is not for the Special Chamber to determine Equatorial Guinea's intentions in this case.

306. In light of the foregoing, the Special Chamber finds that by intercepting and apprehending the *M/T "Heroic Idun"* and its crew in the exclusive economic zone of São Tomé and Príncipe, Equatorial Guinea violated articles 87, paragraph 1, 90 and 92, paragraph 1, of the Convention.

* * *

307. The Special Chamber observes that while the Marshall Islands, in the course of the written proceedings, had extensively argued its claims regarding violations of article 87, paragraph 2, of the Convention, or in the alternative, article 300, read alongside articles 87, paragraph 1, and 90, it did not include those claims in its final submissions. The Special Chamber, therefore, is not required to address those claims.

* * *

308. The Marshall Islands submits that as there is no legal basis in the Convention for Equatorial Guinea's exercise of enforcement jurisdiction over the *M/T "Heroic Idun"* in the exclusive economic zone of São Tomé and Príncipe, any measures adopted by Equatorial Guinea following the unlawful interception and diversion of the *M/T "Heroic Idun"* have no basis in the Convention and other rules of international law and are therefore unlawful.

309. In support of its position, the Marshall Islands refers to the decision of the arbitral tribunal in the *Arctic Sunrise* case. In that case, having found that Russia had breached its obligations under articles 56, 58, 87 and 92 of the Convention, the arbitral tribunal held that "all law enforcement measures taken by Russia *vis-à-vis* the *Arctic Sunrise* subsequent to its unlawful boarding, seizure, and detention of the vessel have no basis in international law" (*Arbitration regarding the Arctic Sunrise between the Kingdom of the Netherlands and the Russian Federation, Award on the Merits of 14 August 2015, RIAA, Vol. XXXII,* p. 205, at p. 298, para. 333). The

Marshall Islands notes that the subsequent measures referred to in the *Arctic Sunrise* case included opening a criminal case against the crew of the "*Arctic Sunrise*" and carrying out criminal investigations; detaining members of the crew in detention facilities in Russia; searching the vessel and seizing documents on board; levying piracy charges against the crew; and imposing a fine for the alleged commission of an administrative offence.

310. The Marshall Islands contends that, "[i]f the Convention were interpreted in a manner that recognized the exercise of jurisdiction by a State as lawful under UNCLOS in respect of the conduct of a foreign-flagged vessel intercepted on the high seas in breach of UNCLOS, the principles of exclusive flag State jurisdiction and freedom of navigation, and the protection that they afford from enforcement action on the high seas, would be rendered nugatory."

* * *

311. The Special Chamber notes that the Marshall Islands makes this submission "without prejudice" to the arguments made in support of each of its claims. In this respect, the Marshall Islands argues in its final submissions that "[b]y detaining the *"Heroic Idun"* and her crew …, the Republic of Equatorial Guinea acted in breach of Article 56(1), 58(2), 87(1), 89 and 92(1) of the Convention and/or Article 300 read with Part V of UNCLOS." The Special Chamber observes that the forced rerouting of the *M/T "Heroic Idun"* and its crew necessarily imposed restrictions on the liberty of the vessel and all persons on board (*Medvedyev v. France*, App No 3394/03 (Grand Chamber, ECtHR, 29 March 2010), paras. 66 et seq.).

312. In light of the Special Chamber's finding in paragraph 306 above, it follows that the detention of the *M/T "Heroic Idun"* and its crew was a continuing wrongful international act. The Special Chamber recalls that the breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation (ILC Articles on Responsibility of States for Internationally Wrongful Acts, article 14, paragraph 2). The Special Chamber does not consider it necessary to further address this matter.

313. The Special Chamber will now proceed to examine the Marshall Islands' remaining arguments in light of the finding that the interception and seizure of the *M/T "Heroic Idun"* and its crew was an unlawful act and violated articles 87, paragraph 1, 90 and 92, paragraph 1, of the Convention.

VII. Prescriptive jurisdiction

314. The Special Chamber will now deal with the issue of the legality of the exercise of prescriptive jurisdiction by Equatorial Guinea, in particular its levying of the Fine, in respect of the activities of the *M/T "Heroic Idun"* and its crew in the exclusive economic zone of Equatorial Guinea.

315. The Marshall Islands contends that Equatorial Guinea "breached UNCLOS because it enacted and implemented criminal and other laws in respect of activities of the "*Heroic Idun*" in its EEZ without any basis in UNCLOS, and in direct contravention of UNCLOS." In its final submissions, the Marshall Islands asks the Special Chamber to adjudge and declare that

> by criminally charging the Master, and by levying a fine of EUR 2,000,132.00 on the Master, without any basis in and contrary to UNCLOS, the Republic of Equatorial Guinea acted in breach of Articles 56(1), 58(2), 87(1), 89 and 92(1) of the Convention and/or Article 300 read with Part V of UNCLOS.

316. The Marshall Islands also states that

> even if – *quod non* – the "*Heroic Idun*" had not been unlawfully diverted on the high seas and the enforcement measures subsequently adopted by Equatorial Guinea did not already lack legal basis as a consequence, Equatorial Guinea's exercise of jurisdiction would nonetheless be unlawful in the light of the rules governing a coastal State's prescriptive jurisdiction in its EEZ.

317. According to the Marshall Islands, the laws enacted by Equatorial Guinea set out criminal sanctions in case of their breach, which reinforces that Equatorial Guinea's exercise of prescriptive jurisdiction purported to extend Equatorial Guinea's sovereignty over its exclusive economic zone. Furthermore, the Marshall Islands

claims that Equatorial Guinea's interpretation and application of the laws in question "are *prima facie* incompatible with UNCLOS, even if (which is not the case) they had been adopted pursuant to a valid legal basis under UNCLOS." The Marshall Islands states that, following this reasoning, Equatorial Guinea breached articles 56, paragraph 1, 58, 87, 89 and 92 of the Convention.

318. The Marshall Islands asserts that a coastal State seeking to regulate conduct in its exclusive economic zone beyond the "limited grounds" provided for in the Convention is acting in breach of article 56, paragraph 1, of the Convention. For the Marshall Islands, the exercise of prescriptive jurisdiction engages article 89 of the Convention, which provides that "[n]o State may validly purport to subject any part of the high seas to its sovereignty". Accordingly, the Marshall Islands submits that "the principle of 'no sovereignty'" applies in the exclusive economic zone.

319. The Marshall Islands refers to article 92 of the Convention, which provides that a vessel on the high seas is subject to the exclusive jurisdiction of the State whose flag it flies, save in exceptional cases expressly provided for in international treaties or in the Convention. In this regard, the Marshall Islands submits that,

> [f]rom the perspective of all States other than the flag State, Article 92 is a prohibitive rule: it prohibits them – including, therefore, the coastal State – from exercising jurisdiction in respect of a foreign-flagged vessel in the coastal State's EEZ.

320. According to the Marshall Islands,

> [a] coastal State's exercise of prescriptive jurisdiction in respect of the conduct of foreign-flagged vessels in the EEZ is therefore in breach of exclusive flag State jurisdiction pursuant to Articles 92 and 58(2) of UNCLOS, unless justified by UNCLOS or other relevant international treaties.

Moreover, the Marshall Islands contends that save for limited exceptions, it also contravenes freedom of navigation, in breach of articles 87 and 58 of the Convention.

321. According to the Marshall Islands, the Convention provides a comprehensive system of maritime zones and a complete basis for the rights and duties of the

States Parties. With respect to the coastal State's rights over the exclusive economic zone, the Marshall Islands states that the basic principle is, therefore, that the State's authority, including to adopt laws, must find a justification under the Convention.

322. The Marshall Islands states that the rights that a coastal State enjoys in its exclusive economic zone are limited and set out in general terms in Part V of the Convention. For the Marshall Islands, "[t]he coastal State's exercise of prescriptive jurisdiction in its EEZ must find an anchoring in these rights, in order to be lawful." The Marshall Islands further states that a coastal State's exercise of prescriptive jurisdiction may violate the Convention where it is expressly prohibited therein. It adds that "[t]his occurs when a State usurps the prescriptive jurisdiction that UNCLOS reserves on an exclusive basis to another State".

323. The Marshall Islands argues that "[m]easures adopted pursuant to an unlawful exercise of prescriptive jurisdiction are unlawful irrespective of where they were adopted, including in areas subject to the State's full sovereignty." In this regard, the Marshall Islands refers to the Fine which Equatorial Guinea imposed on the Master of the "*Heroic Idun*" on 23 September 2022, which states, in relevant part:

> [W]hereby at around 1 p.m. last August 12, 2022, the warship from the Navy of Equatorial Guinea, "C.C. David Eyama ANGÜE OSA," intercepted the ship M/T HEROIC IDUN, with IMO No. 9858058, registered in the Marshall Islands and captained by the Indian citizen called [redacted] and other members of its Crew respectively, upon its illegal entry into the territorial waters of the Republic of Equatorial Guinea, sailing without flying any flag as well as sailing and remaining in the Exclusive Economic Zone of Annobón Island, from August 9, 2022 around 2:58 p.m. and leaving on the 10th of the same month around 10:53 a.m., without having been given authorization by the National Maritime Authority: which facts are set forth and penalized in Articles 581 of the Community Code of the Merchant Navy [Código Comunitario de la Marina Mercante] (attached to regulations 03/01UEAC088-CM06, adopted by the Council of Ministers of the CEMAC [Central African Economic and Monetary Community] in a meeting held in Bangui on August 3, 2001) (CEMAC CODE) and 10, 12 and 698.2 b) and c) of Law No. 2/2020 dated July 8, General Law of the Merchant Navy: violations for which he is criminally responsible as the author [redacted], Captain of the aforementioned tanker.

324. With reference to the legal provisions referred to by Equatorial Guinea in the Fine as the justification for the exercise of its criminal jurisdiction, the Marshall Islands cites the relevant parts of those provisions, which read:

> Article 10 of Law No. 2/2020 (hereinafter "the Merchant Marine Law") …
>
> 1. Every ship, vessel or naval craft of Equatoguinean nationality shall fly the flag of the Republic of Equatorial Guinea at the stern, if in port, and at the mast or mast mast-top during navigation.
> …
>
> Article 12 of the Merchant Marine Law …
>
> 1. All ships, vessels and naval craft shall request authorization from the National Maritime Authority for entry, stay and dispatch in the jurisdictional waters and ports of the Republic of Equatorial Guinea.
> …

325. The Marshall Islands refers to article 698(2)(b) and (c) of the Merchant Marine Law, which provides in relevant part:

> The following misdemeanours, actions or omissions shall be considered very serious infractions: (…) 2. with respect to the management of maritime traffic (b) navigating without having obtained the navigation license, passport or document accrediting their nationality, or without carrying the name, IMO number and regulatory registration folio, when applicable. (c) navigating without the ship or vessel or naval craft or artifact intended for transport, fishing or recreational use being duly registered, or with the regulatory certificates expired.

The Marshall Islands also refers to article 581 of the Community Code of the Merchant Navy (hereinafter "the CEMAC Code"), which provides in relevant part that "[t]he competent maritime authority has the discretionary power to establish the following offences concerning the navigation police, namely: - not displaying the flag".

326. The Marshall Islands maintains that article 12 of the Merchant Marine Law exceeds the limits of prescriptive jurisdiction allowed by the Convention. In this regard, the Marshall Islands submits that coastal States are not entitled to subject a foreign-flagged vessel's entry into their exclusive economic zone to their authorization, even for reasons of navigational safety. Consequently, this provision "hamper[s] rights of freedom of navigation and exclusive flag-State jurisdiction in the EEZ."

327. With reference to article 12 of the Merchant Marine Law, the Marshall Islands also contests the arguments of Equatorial Guinea (see para. 339 below) that this provision would be consistent with a "new norm of customary international law that allows coastal States to regulate navigation through their EEZ based on the nature of the ship and its cargo." In this respect, the Marshall Islands argues that the legal regime of the exclusive economic zone does not permit the coastal State to adopt measures concerning safety of navigation that are more restrictive than those allowed in the territorial sea. According to the Marshall Islands, "the few instances in which States have sought to restrict access of foreign-flagged vessels to their EEZ … do not reflect either widespread and consistent practice, or *opinio juris*." Moreover, the Marshall Islands observes that even though in a few instances some States may have adopted restrictive rules applicable to foreign-flagged vessels carrying extremely dangerous substances, their legality has been highly contested and they cannot establish a new norm of customary international law.

328. The Marshall Islands further contends that article 12 of Equatorial Guinea's Merchant Marine Law "exceeds the limits on the prescriptive jurisdiction allowed by the Convention" with reference to article 22 of the Convention. In this regard, the Marshall Islands states that this provision of the Convention at most allows coastal States to regulate "*where* foreign ships may transit, not *whether* they may transit".

329. According to the Marshall Islands, the applicable rule on this subject is contained in article 211, paragraph 1, of the Convention, which stipulates that "States, acting through the competent international organization or general diplomatic conference," shall adopt

> international rules and standards to prevent, reduce and control vessel-source pollution in the marine environment from vessels, and promote the adoption (…) wherever appropriate, of routeing systems designed to minimize the threat of accidents which might cause pollution of the marine environment including the coastline, and pollution damage to the related interests of coastal States.

330. The Marshall Islands also refutes Equatorial Guinea's contention that, on the basis of article 581 of the 2001 CEMAC Code, it had the right to impose an offence in respect of the *M/T "Heroic Idun"*'s failure to fly a physical flag in the exclusive

economic zone of Equatorial Guinea and to impose fines on the Master accordingly. The Marshall Islands explains that "[t]he 2001 CEMAC Code was repealed and replaced on 22 July 2012 by Regulation 08/12-UEAC-088-CM-23" and that therefore "the part of the Fine predicated on the 2001 CEMAC Code had no basis in domestic law." The Marshall Islands further points out that "[t]he port of registration of the *"Heroic Idun"* – Majuro, the capital of the Marshall Islands – was printed very clearly at the stern of the Vessel, in accordance with Marshall Islands' legislation", and that "the Vessel also properly displayed the IMO number for purposes of identification in accordance with SOLAS."

331. The Marshall Islands thus contends that the laws relied upon by Equatorial Guinea have no basis in the limited rights accorded to Equatorial Guinea as a coastal State by the Convention. It further contends that "[w]hat is a lawful exercise of prescriptive jurisdiction is a question of international law, not domestic law." Thus, for the Marshall Islands, the way in which Equatorial Guinea purported to exercise its prescriptive jurisdiction, which was through "the adoption of that legislation, the creation of offences and the imposition of fines pursuant to that legislation, in respect of the conduct of foreign-flagged vessels that falls within the regime of freedom of the high seas (applicable, *mutatis mutandis*, in the EEZ)", constitutes a breach of the rules of the Convention on prescriptive jurisdiction.

332. The Marshall Islands had also argued that the exercise by Equatorial Guinea of prescriptive jurisdiction amounts to "an abuse of right under Article 300 of UNCLOS, read alongside Part V of UNCLOS and in particular Article 56(1)." However, this claim was not pursued further in the final submissions of the Marshall Islands.

333. Equatorial Guinea submits that "[i]n levying the Fine on the Master of the *Heroic Idun*, Equatorial Guinea acted pursuant to lawful prescriptive jurisdiction". Equatorial Guinea contends that the exclusivity of flag State jurisdiction does not preclude the lawful exercise of prescriptive jurisdiction by another State where provided for by treaty and pursuant to the relevant customary international law. In this regard, Equatorial Guinea states that article 56 of the Convention sets out the rights, jurisdiction and duties of the coastal State in the exclusive economic zone.

Accordingly, Equatorial Guinea asserts that it "did not breach Articles 56, 58, 87, 89 or 92 UNCLOS".

334. Equatorial Guinea reiterates that "the *Heroic Idun* was not apprehended for commission of offences under Equatorial Guinea's legislation, which were the subject of the Fine imposed on the Captain of the *Heroic Idun* on 23 September 2022." Rather, according to Equatorial Guinea, "the Vessel's apprehension occurred in response to the request by Nigeria under the Yaoundé Code." Further, Equatorial Guinea argues that "[i]t was only after the Vessel had been brought to Luba that it was investigated by Equatoguinean authorities and thereafter subject to a fine for infractions under Equatoguinean and regional legislation."

335. Equatorial Guinea submits that the Fine had a legal basis in the CEMAC Code and was imposed following an investigative process in Equatorial Guinea by governmental authorities after interviews of the crew and an inspection of the vessel. With regard to the CEMAC Code, Equatorial Guinea states 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.

336. Moreover, according to Equatorial Guinea, the Fine was accompanied by reasons and was reasonable in relation to the offences charged and maintenance claimed. It states that the amount of the Fine included expenses for the investigation of the vessel and its crew while in Equatorial Guinea. Equatorial Guinea contends that the Fine was imposed for

> illegal entry into the jurisdictional waters of the Republic of Equatorial Guinea, sailing without flying any flag as well as sailing and remaining in the Exclusive Economic Zone of Annobón Island, from August 9, 2022 around 2:58 p.m. and leaving on the 10th of the same month around 10:53 a.m., without having been given authorization by the National Maritime Authority.

Equatorial Guinea submits that "the Fine was not imposed for illegal entry into the 'territorial waters' of Equatorial Guinea, but rather into its 'jurisdictional waters', which is understood under the CEMAC Code to include the EEZ."

337. Equatorial Guinea points out that it was not disputed that the *M/T "Heroic Idun"* was not flying any physical flag at the time of its detention. Equatorial Guinea further submits that "[t]he CEMAC Code, as cited in the Fine, recognises at Article 581 the power of competent national authorities to impose offences regarding the failure to display a flag."

338. Equatorial Guinea notes that according to the relevant Equatoguinean legislation, found in article 12 of the Merchant Marine Law, "[a]ll ships, vessels and naval craft shall request authorization from the National Maritime Authority for entry, stay and dispatch in the jurisdictional waters and ports of the Republic of Equatorial Guinea." According to Equatorial Guinea, "it is also recognized that '[c]oastal States have jurisdiction to adopt laws and regulations relating to navigational safety and vessel-source pollution from foreign ships in their exclusive economic zone (legislative jurisdiction) – where vessels enjoy the freedom of navigation – and they have far-reaching enforcement jurisdiction.'"

339. Equatorial Guinea submits that the requirement set out in article 12 of the Merchant Marine Law seeks to provide for, *inter alia*, the navigational safety of vessels traversing through the exclusive economic zone. Furthermore, Equatorial Guinea contends that "State practice … supports the existence of a new norm of customary international law that allows coastal States to regulate navigation through their EEZ based on the nature of the ship and its cargo".

340. Equatorial Guinea maintains that "no unlawful interception occurred" and that "[t]he Vessel was kept lawfully and safely in Luba until the mandated transfer to Nigeria." For Equatorial Guinea, its "subsequent exercise of prescriptive jurisdiction cannot be seen as an '*abuse of right*' under article 300" of the Convention.

* * *

341. The Special Chamber will consider whether, when exercising prescriptive jurisdiction and invoking its national legislation to justify enforcement of measures over a foreign-flagged vessel in its exclusive economic zone or territorial sea,

Equatorial Guinea acted in a manner contrary to the Convention, in particular, articles 56, paragraph 1, 58, 87, 89 and 92.

342. The Special Chamber recalls that, in the "*Enrica Lexie"* case, the arbitral tribunal stated:

> Prescriptive jurisdiction is the authority of a State to make laws in relation to persons, property, or conduct; adjudicative jurisdiction is the authority of a State to apply law to persons or things; and enforcement jurisdiction is the authority of a State to exercise its power to compel compliance with law. Under international law, the exercise of jurisdiction by a State entails prescribing laws, rules or regulations over conduct, or applying or enforcing such laws, rules, or regulations over persons or property.
> (*Arbitration concerning the "Enrica Lexie" Incident between the Italian Republic and the Republic of India, Award of 21 May 2020,* para. 526)

343. The Special Chamber finds it necessary to clarify the scope of its competence to examine national law. In this regard, it recalls that the Tribunal, in its judgment in the *M/V "SAIGA" (No. 2)* case, confirmed its competence to determine the compatibility of national laws and regulations with the Convention (*M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999,* p. 10, at pp. 52-53, para. 121). Moreover, in the *M/V "Virginia G"* case, the Tribunal indicated that

> under several provisions of the Convention, it is called upon to determine whether, in enacting or implementing its law, a State Party has acted in conformity with the Convention (see *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999,* p. 10, at p. 52, para. 121).
> (*M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014,* p. 4, at p. 71, para. 227)

Similarly, the Special Chamber considers that it is competent to determine the compatibility of Equatorial Guinea's national legislation with the Convention, as regards both its enactment and its application in the present case.

344. As set out in paragraph 70 above, the Marshall Islands, in its final submissions, asks the Special Chamber to adjudge and declare that

> by criminally charging the Master, and by levying a fine of EUR 2,000,132.00 on the Master, without any basis in and contrary to UNCLOS, the Republic of Equatorial Guinea acted in breach of

> Articles 56(1), 58(2), 87(1), 89 and 92(1) of the Convention and/or Article 300 read with Part V of UNCLOS.

In the view of the Special Chamber, the claim presented by the Marshall Islands, as formulated in its final submissions, pertains to the application of legislation by Equatorial Guinea and not its enactment. Therefore, in the present case, the Special Chamber is called upon only to examine whether the enforcement measures taken by Equatorial Guinea against the *M/T "Heroic Idun"* and its crew on the basis of its national legislation, in particular the levying of the Fine, are in conformity with the Convention, in particular with articles 56, paragraph 1, 58, 87, 89 and 92.

345. The Special Chamber notes that Equatorial Guinea imposed the Fine on the Master of the *M/T* "*Heroic Idun*" on 23 September 2022, the particulars of which are reproduced in paragraph 323 above.

346. The legal provisions referred to in the Fine, i.e., articles 10, 12 and 698(2)(b) and (c) of the Merchant Marine Law and Article 581 of the Community Code of the Merchant Navy, are reproduced in paragraphs 324 and 325 above.

347. The Special Chamber observes that, according to Equatorial Guinea, the Fine levied on the Master of the *M/T* "*Heroic Idun"* was founded on two grounds: first, the entry of the *M/T* "*Heroic Idun"* into Equatorial Guinea's exclusive economic zone without prior authorization; and second, its failure to display a physical flag while navigating in its exclusive economic zone. For Equatorial Guinea, as indicated in the Fine, such acts constitute infringements of the relevant provisions of its national legislation and provided the basis for the enforcement measures taken in relation to the *M/T* "*Heroic Idun"* and its crew.

348. To answer the question whether enforcement measures taken by a coastal State against a foreign-flagged vessel for violation of its national legislation requiring authorization for entry into its exclusive economic zone and the display of a physical flag while navigating therein have a basis in the Convention, the Special Chamber will examine whether article 56, paragraph 1, or articles 58, 87, 89 and 92 of the Convention provide such a basis.

349. The Special Chamber will first address article 56, paragraph 1, of the Convention, which concerns rights, jurisdiction and duties of the coastal State in the exclusive economic zone. This provision reads:

> Article 56
> Rights, jurisdiction and duties of the coastal State in the exclusive economic zone
>
> 1. In the exclusive economic zone, the coastal State has:
>
> (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
>
> (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
>
> (i) the establishment and use of artificial islands, installations and structures;
>
> (ii) marine scientific research;
>
> (iii) the protection and preservation of the marine environment;
>
> (c) other rights and duties provided for in this Convention.
>
> …

350. In accordance with article 56, paragraph 1(a), of the Convention, the coastal State has, in the exclusive economic zone, sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources. The Special Chamber recalls that, in the *M/V "Virginia G"* case, the Tribunal observed that the term "sovereign rights" "encompasses all rights necessary for and connected with the exploration, exploitation, conservation and management of the natural resources, including the right to take the necessary enforcement measures" (*M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014,* p. 4, at p. 67, para. 211). In the view of the Special Chamber, the taking of enforcement measures on the basis of non-compliance with national legislation requiring authorization for entry into the exclusive economic zone and the display of a physical flag while navigating therein does not fall within the scope of the sovereign rights accorded to coastal States in article 56, paragraph 1(a).

351. Pursuant to article 56, paragraph 1(b) and (c), of the Convention, the coastal State has jurisdiction, as provided for in the relevant provisions of the Convention,

with regard to the establishment and use of artificial islands, installations and structures; marine scientific research; the protection and preservation of the marine environment; and has other rights and duties provided for in the Convention. In the view of the Special Chamber, the grounds invoked by Equatorial Guinea for taking enforcement measures are not among those matters over which coastal States have jurisdiction under article 56, paragraph 1(b), or which fall within the rights and duties referred to in article 56, paragraph 1(c).

352. The Special Chamber will now consider articles 58, 87, 89 and 92, paragraph 1, of the Convention. These provisions read:

> Article 58
> Rights and duties of other States in the exclusive economic zone
>
> 1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.
> 2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.
> 3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

> Article 87
> Freedom of the high seas
>
> 1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:
> (a) freedom of navigation;
> …
> 2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

Article 89
Invalidity of claims of sovereignty over the high seas

> No State may validly purport to subject any part of the high seas to its sovereignty.

Article 92
Status of ships

> 1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.
> …

353. It follows from article 58, read together with the applicable provisions of Part VII of the Convention, that in the exclusive economic zone of a coastal State, all other States enjoy the freedom of navigation, exercised under the conditions laid down by the Convention and by other rules of international law, and that vessels flying their flag are subject to their exclusive jurisdiction, save in exceptional cases expressly provided for in the Convention or in other international treaties.

354. In the *M/V "Norstar"* case, the Tribunal stated that

> the principle of exclusive flag State jurisdiction is an inherent component of the freedom of navigation under article 87 of the Convention. This principle prohibits not only the exercise of enforcement jurisdiction on the high seas by States other than the flag State but also the extension of their prescriptive jurisdiction to lawful activities conducted by foreign ships on the high seas.
> (*M/V "Norstar" (Panama* v. *Italy), Judgment, ITLOS Reports 2018-2019*, p. 10, at p. 75, para. 225)

355. On the penalization of activities conducted by foreign ships on the high seas, the Tribunal has also stated:

> [I]f a State applies its criminal and customs laws to the high seas and criminalizes activities carried out by foreign ships thereon, it would constitute a breach of article 87 of the Convention, unless justified by the Convention or other international treaties.
> (*M/V "Norstar" (Panama* v. *Italy), Judgment, ITLOS Reports 2018-2019*, p. 10, at p. 75, para. 225)

356. The Special Chamber notes that Equatorial Guinea, in justifying its enforcement actions, made the further argument that "State practice … supports the existence of a new norm of customary international law that allows coastal States to regulate navigation through their EEZ based on the nature of the ship and its cargo". The Special Chamber, however, has been unable to identify the existence of a new rule of customary international law such as asserted by Equatorial Guinea.

357. In light of the above, the Special Chamber finds no foundation upon which the Convention could be interpreted as permitting a coastal State to take enforcement measures on the basis of non-compliance with national law requiring authorization for entry into the exclusive economic zone and the display of a physical flag while navigating therein.

358. The Special Chamber concludes that Equatorial Guinea adopted measures pursuant to the exercise of prescriptive jurisdiction interpreted in an expansive manner in relation to the Convention, thus amounting to an unlawful exercise of a competence not falling within the coastal State jurisdiction.

359. In conformity with the above, the Special Chamber finds that by taking enforcement measures against the *M/T "Heroic Idun"*, in particular by levying the Fine on the Master in respect of the activities of the vessel and its crew in the exclusive economic zone of Equatorial Guinea, Equatorial Guinea violated articles 56, paragraph 1, 58, 87, 89 and 92, paragraph 1, of the Convention.

VIII. Obligation to notify the flag State

360. The Special Chamber will now address the issue of notification to the flag State of enforcement measures taken against vessels flying its flag.

361. In its final submissions (see para. 70 above), the Marshall Islands claims that

> [b]y failing to notify the Marshall Islands, *inter alia*, of the interception, diversion and detention of the *"Heroic Idun"* and her crew, of the imposition of a criminal [charge] and fine on the Master of the Vessel, and of the

> transfer of the Vessel to the Federal Republic of Nigeria, the Republic of Equatorial Guinea breached its duty to notify the Republic of the Marshall Islands as the Flag State of enforcement measures adopted in respect of its Vessel.

362. The Marshall Islands argues that "Equatorial Guinea breached obligations under the Convention and applicable law to notify the flag State of enforcement measures taken against their vessels and their crews." It notes that the Convention "contains express provisions which expressly require notification of the flag State of a vessel upon the adoption of measures of constraint against the vessel and its crew where the State is exercising enforcement jurisdiction under the Convention" and refers, in this regard, to articles 27, paragraph 3, 73, paragraph 4, and 231 of the Convention.

363. The Marshall Islands maintains that, although no express provision in the Convention requires "notification where enforcement measures have been exercised over a foreign vessel in the high seas or the EEZ of a third State", "this obligation is a customary rule or a general principle of the international law of the sea to which the Chamber may have recourse under Article 293". Thus, according to the Marshall Islands, this obligation is relevant in the context of "the interpretation and application of one or more of gateway provisions." In the Marshall Islands' view, the obligation applies "irrespective of the lawfulness under the Convention of the exercise of enforcement measures over the Vessel."

364. In the Marshall Islands' view, there is "sufficient evidence to support the identification of the obligation to notify the flag State of enforcement measures against [a] Vessel as a rule of customary international law." In support of its position, the Marshall Islands refers to several international legal instruments that include provisions on the duty to notify certain measures, such as IMO conventions and the procedures adopted under them, including port state control memoranda of understanding, as well as other treaty rules and instruments that govern the exercise of enforcement measures against foreign vessels in the field of fisheries. The Marshall Islands also highlights bilateral consular treaties in this regard.

365. Moreover, the Marshall Islands submits that "[t]he obligation to notify the flag State is a corollary of exclusive flag State jurisdiction." The Marshall Islands argues that this obligation would enable the flag State to exercise the remedies available under international law.

366. According to the Marshall Islands, "[i]t is customary and expected that other States notify the flag State of a vessel which has been detained and subjected to any enforcement action immediately or as soon as possible, whatever the grounds for those actions." In the Marshall Islands' view, "[r]equiring the State taking the enforcement measure against a foreign vessel to notify the flag State necessarily involves a *direct communication with* the flag State." In addition, in its final submissions, the Marshall Islands refers to a lack of cooperation on the part of Equatorial Guinea "by [its] failing to inform the … Marshall Islands of allegations regarding the conduct of the "*Heroic Idun*"".

367. Equatorial Guinea contends that "where UNCLOS contains obligations requiring notification to a flag State or other affected State, such obligations are provided clearly in relevant provisions." According to Equatorial Guinea, these provisions are articles 27, paragraph 3, and 73, paragraph 4, of the Convention. Equatorial Guinea also maintains that article 231 of the Convention is not helpful to the Marshall Islands as it "is located in Section 7 (Safeguards) of Part XII (Protection and Preservation of the Marine Environment) and explicitly limits its operation to the enforcement of measures set out in Part 6 of that Section."

368. Equatorial Guinea further denies the existence of any general obligation to notify the flag State under general international law and affirms that the Convention "contains no general obligation of flag State notification, nor has the Marshall Islands demonstrated the existence of any rule of custom to this effect." Equatorial Guinea thus submits that it "cannot be held to have violated any such rule." Equatorial Guinea contends that, in any event, "the Marshall Islands had knowledge of the Vessel's interdiction from the outset, and therefore was caused no prejudice in its ability to intervene or communicate on the Vessel's behalf to Equatorial Guinea."

* * *

369. The Special Chamber will first consider the question whether Equatorial Guinea was under an obligation pursuant to the Convention to notify the Marshall Islands of the enforcement measures it adopted in respect of the *M/T "Heroic Idun"* and its crew.

370. The Special Chamber notes that it is not the Marshall Islands' contention that Equatorial Guinea has violated any of the provisions of the Convention explicitly setting out a duty of flag State notification. Rather, the Marshall Islands argues that Equatorial Guinea has violated a general obligation of notification to flag States which may be derived from those provisions.

371. The Special Chamber recalls the provisions of the Convention which impose an obligation to notify a flag State of enforcement measures exercised over a foreign-flagged vessel in the circumstances prescribed in those provisions. Reference may be made to articles 27, paragraph 3, 73, paragraph 4, 226, paragraph 1(c), and 231. In the view of the Special Chamber, those provisions cannot be read to impose a general obligation on a State Party to notify a flag State whenever it adopts enforcement measures in respect of a foreign-flagged vessel. Accordingly, Equatorial Guinea was not required under any specific provision of the Convention to notify the Marshall Islands of the enforcement measures it took in respect of the *M/T "Heroic Idun"*.

372. The Special Chamber will next address the question whether customary international law imposes an obligation of flag State notification to which it may refer in accordance with article 293 of the Convention. The Special Chamber notes that the Marshall Islands alleges the existence of a duty of flag State notification under customary international law or "general principle[s] of the international law of the sea". The Marshall Islands points to a number of international instruments containing a duty of flag State notification in the event of vessel arrest or detention, such as MARPOL (article 5, paragraph 3), SOLAS (regulation 10(d) of Chapter I), the STCW (article X, paragraph 2) and various port State agreements.

373. The Special Chamber recalls that the ICJ, in its advisory opinion on climate change of 23 July 2025, observed that “treaties may play a role in the identification and determination of the content of rules of customary international law” (*Obligations of States in respect of Climate Change*, *Advisory Opinion of 23 July 2025*, para. 312). The ICJ has also observed that “multilateral conventions may have an important role to play in recording and defining rules deriving from custom, or indeed in developing them” (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, pp. 29-30, para. 27) and that treaties may “g[i]ve expression ... to principles already present in customary international law”, and these customary principles may even “[develop] under the influence of the [treaty], to such an extent that a number of rules contained in the [treaty] ... acquir[e] a status independent of it” (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, pp. 96-97, para. 181). Likewise, the Special Chamber is aware of the ILC Conclusions on identification of customary international law, which provides that “[a] rule set forth in a treaty may reflect a rule of customary international law” in certain circumstances (Conclusion 11, paragraph 1, of the ILC Conclusions on identification of customary international law, *Report of the International Law Commission on the work of its seventieth session, Yearbook of the International Law Commission*, 2018, Vol. II, Part Two, p. 91). The Special Chamber also recalls that a number of instruments dealing with environmental law and legal assistance contain notification requirements, including various forms of communication of decisions or actions to a third party.

374. However, the Special Chamber does not find sufficient grounds to conclude that there is a rule of customary international law requiring a State to notify the flag State of any enforcement measures it has taken in respect of one of the flag State’s vessels. It may be noted that the prevalence of a rule across multiple treaties is not necessarily indicative of its status as a rule of customary international law. In this connection, the Special Chamber finds it appropriate to refer once more to the ILC Conclusions on identification of customary international law, which provides that “[t]he fact that a rule is set forth in a number of treaties may, but does not necessarily, indicate that the treaty rule reflects a rule of customary international law” (*ibid.*, Conclusion 11, para. 2).

375. The Special Chamber notes the Marshall Islands' suggestion that the Special Chamber could identify a general principle of international law on notification "through an inductive analysis of existing rules in the international legal system". The Special Chamber also notes the Marshall Islands' reference in support thereof to the Commentary to draft conclusion 7 of the ILC's Draft conclusions on general principles of law (2022) (Report of the International Law Commission, Seventy-fourth Session, document A/78/10 (2023)). Just as it was unable to establish the existence of a customary rule of international law to that effect, the Special Chamber is likewise unable to identify a general principle of international law such as suggested by the Marshall Islands requiring notification to the flag State of any enforcement measures in respect of one of its vessels.

376. While the Special Chamber is unable to conclude that there is a general obligation under international law requiring a State to notify the flag State of enforcement measures taken in respect of one of its vessels, it nevertheless considers that in the framework of the obligation to cooperate, engagement by means of communication and exchange of information between the parties is necessary for preventing disputes; such engagement should have been all the more active in this case, in particular in view of the long duration of the detention.

377. In light of the foregoing, the Special Chamber finds that Equatorial Guinea did not violate the rights of the Marshall Islands under the Convention by failing to notify it, as the flag State of the *M/T "Heroic Idun"*, of enforcement measures taken in respect of one of its vessels and its crew.

IX. Conditions of detention and the treatment of the *M/T "Heroic Idun"* and its crew

378. The Special Chamber will now deal with the claims of the Marshall Islands concerning the detention and treatment of the *M/T "Heroic Idun*" and its crew by Equatorial Guinea.

379. The Marshall Islands submits a series of claims concerning Equatorial Guinea's conduct in the period after the detention of the vessel. In its final submissions (see para. 70 above), Marshall Islands states:

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

In its final submissions, the Marshall Islands further states that in the period from 12 August 2022 to 11 November 2022, Equatorial Guinea "acted in breach of considerations of humanity and UNCLOS, including, *inter alia*, Articles 2(3) and 87(1)."

380. The Marshall Islands asserts that the crew members were "deprived of their liberty at the time Equatorial Guinea intercepted their ship on 12 August 2022 at gunpoint, with no choice but to follow its orders", and that they remained deprived of their liberty "at each stage thereafter, until they were rendered to Nigeria". The Marshall Islands states that "the crew's passports were taken on arrival [in Equatorial Guinea], and they were detained 24 hours a day under armed guard."

381. According to the Marshall Islands, "[t]he crew were never formally arrested or informed of any legal charges against them" and Equatorial Guinea "continued to hold the crew after the initial investigations were complete and without any formal arrest or court order."

382. The Marshall Islands also contends that Equatorial Guinea "denied the crew the right to legal representation". In particular, Equatorial Guinea "refus[ed] to permit the crew to be accompanied by lawyers during the lengthy interviews conducted in police custody", they "were forced to sign statements in a foreign language" that they did not understand.

383. The Marshall Islands maintains that at the facility in Malabo, where a part of the crew was detained (see para. 79 above), "there was poor sanitation, dirty water

which regularly ran out, common toilets, no beds and lots of mosquitoes, rats, and cockroaches". The Marshall Islands adds that at no stage in Equatorial Guinea's almost three-month detention of the crew did it provide food, safe drinking water or any other provisions to the crew and that all provisions were made by the local agents of the owners of the vessel.

384. The Marshall Islands also refers to instances affecting the physical and mental health conditions of the crew, whether of those members remaining on board or of those onshore, during the period of stay in Equatorial Guinea. It submits, in particular, that "the crew's ongoing detention was having a serious impact on their physical and mental well-being" and that crew members contracted various illnesses, including malaria and typhoid.

385. Referring to the 2015 United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as the "Mandela Rules", the Marshall Islands submits that

> [t]he minimum standard[s] of treatment during detention are set out in the Mandela Rules, and they provide that the State must provide sufficient floor space and cubic content of air for each prisoner, adequate sanitary facilities, provision of food and drinking water, provision of health care services, the right to be informed promptly of the reasons for their arrest, any charges against them, and access to their lawyer.

In this regard, the Marshall Islands argues that "Equatorial Guinea cannot escape its failure to afford the crew minimum standard of treatment by pointing to the fact that the vessel owner's local agents Besora provided the crew with some basic necessities."

386. The Marshall Islands thus contends that "Equatorial Guinea failed to show basic considerations of humanity due to the conditions on which it detained the crew for several months." It maintains that

> Equatorial Guinea's treatment of the crew while they were detained also violated the rights to be treated with humanity and respect for the inherent dignity for the person and without cruel, inhuman and degrading treatment. These were rights applicable through the crew's detention and irrespective of whether with the detention was unlawful or not.

The Marshall Islands adds that considerations of humanity apply to the exercise of enforcement powers and that they may influence whether such powers are exercised reasonably.

387. Moreover, the Marshall Islands argues that "by its conduct, Equatorial Guinea has breached gateway provisions of UNCLOS that incorporate, by *renvoi*, other rules of international law, including fundamental human rights standards". In its Reply, it explains that

> [t]he Marshall Islands is not seeking a determination of breach of the ICCPR or the African Charter, or that the Chamber act as an "enforcement regime" for those treaties. Rather, the Marshall Islands has sought that the Chamber establish breaches of UNCLOS provisions (the gateway provisions) on grounds that Equatorial Guinea has failed to respect and has violated the human rights of the crew, including as set out in the ICCPR and the African Charter.

388. The Marshall Islands submits that the transfer of control and custody of the vessel and crew to Nigeria was "not reasonable, necessary, or proportionate", and that

> [i]t showed no consideration of humanity towards the crew and their families, especially given the length of time and conditions in which they had already been detained and the lack of legal process or any explanation for the grounds of the transfer.

The Marshall Islands notes, in this regard, that "the crew were absolutely terrified at the prospect of being unlawfully transferred to Nigeria, *manu militari*."

389. The Marshall Islands further states that prior to the crew's actual departure, they were left at the quayside

> the entire day without any food, water or access to toilets. A senior officer in the Equatoguinean Navy threatened the crew by pointing his gun at them when they expressed their unwillingness to sail without two crew members who were hospitalised at the time. The crew on the Vessel were told to prepare the Vessel for departure. The Equatoguinean Navy then took the crews' mobile phones as well as the satellite phones from the Vessel. A member of the crew collapsed and was taken to hospital.

390. The Marshall Islands adds that

> [f]rom the point of the *"Heroic Idun"*'s interception, to the transfer of the ship and its crew to Nigeria's custody, Equatorial Guinea consistently failed to respect the crew's human rights. It did so by unlawfully and arbitrarily depriving the crew of their liberty, and by subjecting the crew to treatment that fell short of minimum human rights standards. By that conduct, Equatorial Guinea breached the Law of the Sea Convention.

391. With reference to the transfer of the vessel and its crew to Nigeria, Equatorial Guinea states that this was done "[o]n request from Nigeria, and in compliance with the Yaoundé Code of Conduct". It also emphasizes that the transfer "was done after entering into an agreement with Nigeria that it would respect the crew's human rights and guarantee the safety of the vessel while under investigation in Nigeria."

392. Equatorial Guinea refutes the Marshall Islands' allegations regarding the treatment of the crew. It emphasizes that "no criminal investigation, charges or proceedings was ever brought against the *Heroic Idun* crew members during their stay in Equatorial Guinea." Therefore, Equatorial Guinea argues that it "had no obligation to provide legal counsel for a mere fact-finding interview of an administrative character."

393. Equatorial Guinea contends that "the interviews conducted by Equatoguinean authorities were handled with care and transparency" and that "[t]he questions the authorities asked were simple factual questions about the vessel and its journey." With reference to the statements that the crew members signed at the end of their interviews, Equatorial Guinea notes that they were interpreted line-by-line into English (a language that the crew members understood), so that the crew members "understood what they were signing and signed their statements freely".

394. Moreover, Equatorial Guinea points out that "[s]tarting 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."

395. Equatorial Guinea further maintains that

> Equatoguinean authorities at all times treated the *Heroic Idun* crew members in accordance with the principles of humanity, including with respect to providing their housing, food, water, high-quality medical care, and retaining communication through their mobile phones.

Equatorial Guinea further maintains that the facility where some crew members stayed was "brand new, with air conditioning, bathrooms, showers, and tap water available" and that the crew members "were able to move freely". It adds that, at all times, the local agent "was authorized by the Equatoguinean authorities to have complete and constant access to the crew, to facilitate and provide all necessary amenities, food and provisions, and assist in the response to any other needs from the crew." This, in Equatorial Guinea's view, "can hardly be said to be consistent with 'inhumane' treatment."

396. Equatorial Guinea also states that "the crew at all times had access to high-quality medical care." It explains that the local agent "would select and arrange the crew's medical visits when requested", and that the crew members "were seen and treated, several times, at … the 'premier hospital in Equatorial Guinea'."

397. According to Equatorial Guinea, it is irrelevant that it did not directly issue provisions to the crew. Equatorial Guinea argues in this regard that

> [t]here is no jurisprudence to support that considerations of humanity applicable to the law of the sea require … that State agents must be the ones directly providing the required care and treatment. There can be no breach of the principle and certainly no inhumane treatment where the State allows, facilitates and even encourages others to meet those needs after they have requested to do so.

398. Equatorial Guinea underlines that "[t]he crew members … never complained to [the local agent] about the conditions at the accommodation facility, including the level of hygiene, cleanliness of water tanks, about any pests, or about the security personnel". It adds that "[t]he crew never complained to [the local agent] about any ill treatment by Equatoguinean authorities on board the vessel at that time." Equatorial Guinea states that if complaints had been made, the local agent "would have taken steps directly to raise or address these with the Equatoguinean authorities", and if

the local agent had not acted, “the Equatoguinean authorities would have stepped in.”

399. Equatorial Guinea thus concludes that “[t]he full circumstances of the conditions of the crew members’ stay in Equatorial Guinea clearly do not support the Marshall Islands’ alarming suggestion of mistreatment”. Instead, according to Equatorial Guinea, the evidence in the case file “shows beyond any reasonable doubt that the crew were treated in accordance with the principle of humanity at all times.”

400. Equatorial Guinea accepts that States must ensure that enforcement measures taken under the Convention “are carried out in accordance with international law, including with the principle of reasonableness.” It notes, however, that “account must be taken of the discretion given to States in matters of enforcement.” According to Equatorial Guinea, “the temporary detention of both the crew and Vessel were necessary and proportionate in regard to the request with which Equatorial Guinea was cooperating.”

401. Equatorial Guinea submits that “Marshall Islands’ human rights claims fall outside the Chamber’s jurisdiction and the so-called ‘gateway provisions’ do not allow for determination of human rights treaties or customary international human rights law”. In Equatorial Guinea’s view, if the Marshall Islands “is, in fact, only seeking determinations of violations of UNCLOS provisions, … [i]ts human rights claims must then be limited to allegations of violations of human rights at sea.” Equatorial Guinea points out, however, that the Marshall Islands’ claims in relation to human rights “are set out almost entirely in relation to the detention facility.”

402. In any case, Equatorial Guinea denies that its conduct might have given rise to human rights violations. It concludes that

> [f]or the entirety of the time that the Heroic Idun crew were in Equatorial Guinea, they were given the best possible treatment that could reasonably be expected given the resources and facilities available, and treated with humanity, dignity and respect by the Equatoguinean authorities, who also

> sought an undertaking from Nigeria to this effect, seeking to ensure the crew's human rights would be respected there as well.

* * *

403. The Special Chamber will now consider the arguments of the Parties in relation to Equatorial Guinea's detention of the *M/T "Heroic Idun"* and the treatment given to its crew.

404. The Special Chamber observes that, according to the Marshall Islands, there has been a breach of considerations of humanity and of the Convention itself, including, *inter alia*, articles 2, paragraph 3, and 87, paragraph 1.

405. Article 2, paragraph 3, of the Convention states that "[t]he sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law". Article 87, paragraph 2, of the Convention on freedom of the high seas states that "[t]hese freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas".

406. In the present case, the Parties disagree whether considerations of humanity inform the interpretation and application of those articles, and relatedly, whether these articles are applicable to the treatment of individuals in the context of detention and interrogation.

407. The Special Chamber recalls that in the *M/V "SAIGA" (No. 2)* case, the Tribunal stated that "[c]onsiderations of humanity must apply in the law of the sea, as they do in other areas of international law" (*M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10, at p. 62, para. 155) and that the Tribunal referred to considerations of humanity or humanitarian concerns also in other cases (*"Juno Trader" (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release, Judgment, ITLOS Reports 2004,* p. 17, at pp. 38-39, para. 77; *"Enrica Lexie" (Italy* v. *India), Provisional Measures, Order of 24 August 2015, ITLOS Reports 2015*, p. 182, at p. 204, para. 133; *Detention of three Ukrainian naval vessels (Ukraine* v. *Russian Federation),*

Provisional Measures, Order of 25 May 2019, ITLOS Reports 2018-2019, p. 283, at p. 309, para. 112; *M/T "San Padre Pio" (Switzerland* v. *Nigeria), Provisional Measures, Order of 6 July 2019, ITLOS Reports 2018-2019*, p. 375, at p. 405, para. 130).

408. The Special Chamber notes that, in the jurisprudence of the Tribunal, considerations of humanity and humanitarian concerns have not been linked to specific provisions of the Convention; rather, such considerations and concerns "must apply in the law of the sea".

409. The Special Chamber is of the view that, in the present case, the treatment of individuals in the context of detention and interrogation may raise humanitarian concerns, in particular as regards the conditions and length of the detention, the rights of the detainees as well as the mental and physical well-being of the crew. The Special Chamber notes that an expert report has been submitted by the Marshall Islands in this respect.

410. In this regard, the Special Chamber recalls that, in the *M/T "San Padre Pio"* case, the Tribunal stated that restrictions on the liberty and freedom of the crew of a vessel for a lengthy period "raise humanitarian concerns" (*M/T "San Padre Pio" (Switzerland* v. *Nigeria), Provisional Measures, Order of 6 July 2019, ITLOS Reports 2018–2019,* p. 375, at p. 405, para. 130; see also *Detention of three Ukrainian naval vessels (Ukraine* v. *Russian Federation), Provisional Measures, Order of 25 May 2019, ITLOS Reports 2018-2019*, p. 283, at p. 309, para. 112).

411. In the present case, in the view of the Special Chamber, humanitarian concerns arise from the conditions under which the crew were detained in Equatorial Guinea for 92 days, even after the Fine imposed had been paid, considering that they were subject to strict vigilance by Equatoguinean guards, that they were suffering from various health issues and that there was a lack of a clear and fair procedure.

412. In addition, the Special Chamber considers that the treatment of the crew, including their conditions of detention, was not optimal. While Equatorial Guinea

asserts that no criminal charge was ever brought against the *M/T "Heroic Idun"*'s crew (see para. 392 above), the Special Chamber notes that the Fine imposed on the Master states that "he is criminally responsible" for violations of local law. Moreover, the Special Chamber notes that it has not been contested that the crew did not have access to legal representation during the investigation carried out in Equatorial Guinea, in contravention of the due process criterion, and that they were forcibly handed over to a third State without being informed of the basis of that decision, while also not being subject to any legal process.

413. In this regard, the Special Chamber recalls its conclusion in paragraphs 306 and 312 above that Equatorial Guinea breached articles 87, paragraph 1, 90 and 92, paragraph 1, of the Convention through the interception and seizure of the *M/T "Heroic Idun"* and its crew, and that this was a wrongful act extending over the entire period during which the act continued. Equatorial Guinea bears responsibility for the injury caused by its internationally wrongful act, including the mistreatment of the crew and the procedural injustices imposed upon them during their detention in Equatorial Guinea, and attributable to the acts and omissions of the Equatoguinean authorities.

414. The Special Chamber also notes that the *M/T "Heroic Idun"* and its crew were forced to sail from Luba, escorted by two vessels of the Nigerian Navy, and that an Equatoguinean vessel accompanied them to the outer limit of Equatorial Guinea's territorial sea (see para. 85 above). The Special Chamber considers that the transfer of the vessel and its crew was unlawful because it was done without consideration of due process of law.

415. The Special Chamber takes note of the Marshall Islands' argument that through "gateway provisions" of the Convention, other rules of international law are incorporated by *renvoi*, including "fundamental human rights standards", and of Equatorial Guinea's contention that the Tribunal lacks the power to invoke other rules of international law in respect of human rights issues.

416. In this regard, the Special Chamber recalls the statement of the arbitral tribunal in the *Arctic Sunrise* case, to the effect that the tribunal did not have

jurisdiction either to apply directly or to determine breaches of the provisions of human rights treaties (*Arbitration regarding the Arctic Sunrise between the Kingdom of the Netherlands and the Russian Federation, Award on the Merits of 14 August 2015, RIAA, Vol. XXXII*, p. 205, at p. 262, para. 198).

417. The Special Chamber observes that a court or tribunal having jurisdiction under Part XV of the Convention would not be applying directly or determining breaches of human rights treaties were it to have regard to rules of customary international law, including human rights standards, not incompatible with the Convention, in order to assist in the interpretation and application of the Convention.

418. The Special Chamber notes that while the Marshall Islands has referred to alleged violations of human rights in its written pleadings, it has not included claims with respect to such violations in its final submissions (see para. 144 above). The Special Chamber therefore does not find it necessary to examine further the Marshall Island's allegations of human rights violations.

419. Finally, the Special Chamber also considers that there is no need to address the contentions made by the Marshall Islands in its written pleadings regarding the application of the concept of "reasonableness" to enforcement measures, as they were not raised in its final submissions. Nevertheless, the Special Chamber wishes to note that the concept of reasonableness is not a freestanding rule. Rather, it serves to inform the interpretation and application of the Convention in specific circumstances.

X. Condition of the *M/T "Heroic Idun"*

420. The Special Chamber will now deal with the claims of the Marshall Islands regarding the condition of the *M/T "Heroic Idun"* while in detention.

421. The Marshall Islands submits that Equatorial Guinea failed to have due regard for and frustrated the exercise of "the rights, duties and responsibilities of the Marshall Islands as Flag State" of the *M/T "Heroic Idun"* under articles 94 and 217 of

the Convention. In this regard, according to the Marshall Islands, Equatorial Guinea breached articles 2, paragraph 3, and 87, paragraph 2, of the Convention, as well as article I(b) of SOLAS, article I(2) of the STCW and article I of the COLREGS.

422. In addition, with regard to the detention of the *M/T "Heroic Idun"*, the Marshall Islands makes claims in relation to article 225 of the Convention. It submits that,

> by, *inter alia*, requiring the *"Heroic Idun"* to be anchored in an unsuitable location where it was at significant risk of collision and by the unsafe manoeuvring of its naval vessel *"Wele Nzas"* on 26 September 2022, Equatorial Guinea breached Article 225 of UNCLOS.

423. The Marshall Islands argues that "Equatorial Guinea detained the vessel for over three months in an unsuitable location for a VLCC of its dimensions and caused the vessel to be unsafely manned." The Marshall Islands states that, as a result, "it was difficult to keep the Vessel running", "to carry out routine and necessary maintenance operations on the Vessel", and therefore the *M/T "Heroic Idun"* "suffered leaks and breakdowns". The Marshall Islands explains that the location was "an unsheltered anchorage or open roadstead" and that "[t]here was a high risk of the vessel dragging the anchor, which meant that it could have run aground or collided with another vessel, especially as it was undermanned". In this connection, the Marshall Islands contends that "at least two potentially serious accidents" occurred while the vessel was detained. In this context, the Marshall Islands maintains that "Equatorial Guinea exposed the Vessel, those onboard, and the marine environment to serious risks and breached its obligations under SOLAS, the STCW, the COLREGS, and the Convention."

424. The Marshall Islands contends that these IMO treaties are "incorporated by reference into various provisions of the Convention", including articles 94 and 217. It points out that article 94 of the Convention, which lays down duties of the flag State, provides, in paragraph 5, that "each State is required to conform to generally accepted international regulations, procedures and practices". The Marshall Islands also points out that article 217, paragraph 1, of the Convention requires the flag State to "ensure compliance … with applicable international rules and standards", and that such applicable rules and standards "include those concerning the manning

of vessels, demonstrating the link between safe manning requirements and the protection of the marine environment."

425. The Marshall Islands further submits that the Special Chamber "also has direct jurisdiction over the claims of breach of the IMO treaties under Article 297(1)(c) of the Convention". It argues that this provision allows determinations of breach by reference to external rules, or, in the present case, the three IMO treaties invoked.

426. The Marshall Islands argues that SOLAS requires Equatorial Guinea to take "all (…) steps which may be necessary to give the Convention full and complete effect, so as to ensure that, from the point of view of safety of life, a ship is fit for the service for which it is intended." It further argues that SOLAS and the STCW require, *inter alia*, "that vessels carry sufficient crew, with the necessary qualifications, to ensure the safety of life at sea and the marine environment."

427. The Marshall Islands points out that the Minimum Safe Manning Certificate for the *M/T "Heroic Idun"* at the time of the events "requires 16 crew on board at a minimum, and it stipulates the necessary grade and capacity of those crew members." It argues that

> [w]hen, on 14 August 2022, Equatorial Guinea took 15 of the 26 crew, including the Master and the Chief Engineer, off the vessel and detained them onshore in the detention facility, it left the vessel with 11 crew onboard, below the minimum 16, and without crew holding the necessary STCW certifications, and also without enough crew to ensure that the COLREGS could be complied with.

428. The Marshall Islands adds that the obligations under the three IMO treaties "plainly apply to all parties to the treaties, not only parties when they act in their capacity as flag State." In particular, according to the Marshall Islands, "[w]hen a State Party has detained a vessel under its custody and control, the prevention of the flag State's compliance with its safe manning obligations engages the former State Party's liability under SOLAS, the STCW and the COLREGS."

429. In this respect, the Marshall Islands submits that Equatorial Guinea "failed to have due regard to the interests of the Marshall Islands in meeting its obligations

under Articles 94 and 217 of the Convention", and, in doing so, Equatorial Guinea breached its obligations under article 87, paragraph 2, of the Convention. Moreover, according to the Marshall Islands, the *M/T "Heroic Idun"* "was detained in Equatorial Guinea's territorial sea". On that basis, the Marshall Islands claims that Equatorial Guinea breached its obligation under article 2, paragraph 3, of the Convention "to exercise its sovereignty over the territorial sea subject to the Convention, including Article 87(1), and to other rules of international law, including Article 1(b) of SOLAS, Article 1(2) of the STCW and Article 1 of the COLREGS."

430. For the Marshall Islands, article 94 of the Convention and the obligations under SOLAS, the COLREGS and the STCW are relevant for the interpretation of article 225 of the Convention. Moreover, it considers that "the same facts which go to Equatorial Guinea's breaches of SOLAS, the STCW, the COLREGS, and Articles 2(3), 87 and 94 of the Convention … also go to breach of Equatorial Guinea's obligations under Article 225."

431. The Marshall Islands contends that the obligation contained in article 225 of the Convention "extends to *all* enforcement measures taken against a foreign vessel, whether or not undertaken under the Convention and whether or not lawful under the Convention." It further contends that this obligation "may be breached when a party fails to undertake necessary measures or fails to refrain from measures that may have adverse consequences." In this regard, the Marshall Islands considers that article 225 "does not require physical damage to establish breach."

432. Finally, according to the Marshall Islands, on 26 September 2022, the Equatoguinean naval vessel *"Wele Nzas"* came dangerously close to the *M/T "Heroic Idun"* and then, in order to avoid collision, "performed a manoeuvre which was unnecessary and unsafe". With reference to this incident, the Marshall Islands claims that Equatorial Guinea breached Rules 2, 6, 7, and 8 of the COLREGS.

433. For its part, Equatorial Guinea submits that the Special Chamber does not have jurisdiction to make determinations regarding the alleged breaches of treaties or rules of international law outside of the Convention. In the alternative, it submits

that the obligations invoked by the Marshall Islands under the three IMO treaties invoked "are either not applicable as pleaded or they cannot have been breached in isolation, or, indeed, they were not breached in this instance" by Equatorial Guinea.

434. Equatorial Guinea maintains that article 297, paragraph 1(c), of the Convention "only relates to disputes concerning interpretation or application of the Convention". Equatorial Guinea accepts that "the Convention, and Article 297(1)(c) in particular, does allow for the application of certain external rules". However, it emphasizes that the provisions of the Convention that refer to external rules

> do not simply incorporate external rules into the body of the Convention "wholesale", so that those external rules may be invoked in a general manner without tying them back to the relevant provisions that refer to them, and irrespective of their actual text.

435. In this regard, Equatorial Guinea submits that articles 87 and 2, paragraph 3, of the Convention, apply, respectively, on the high seas and in the territorial sea. Therefore, in its view, "[w]ithout the conduct taking place within those zones or interfering with activity that takes place in those zones, Articles 87 and 2(3) simply do not apply." In particular, Equatorial Guinea points out that "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." With reference to article 2, paragraph 3, Equatorial Guinea considers that "[i]t is not logical to take the view that any breach of other rules of international law in the territorial sea is automatically a breach of Article 2(3)." It also points out that the Marshall Islands has "not explicitly argued or shown that any conduct, in fact, took place in the territorial sea of Equatorial Guinea, rather than in the internal waters of Luba Bay."

436. Furthermore, Equatorial Guinea is of the view that

> [n]either the text of Article 2(3) nor Article 87(1) give[s] 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.

Similarly, although Equatorial Guinea accepts that "the generally accepted international rules and standards are relevant" to article 94, paragraphs 1 and 3, it

considers that "these UNCLOS provisions simply do not apply to the conduct of Equatorial Guinea in our case, as it is not the flag State in relation to the vessel in question." Equatorial Guinea adds that article 217 also refers to the duties of the flag State.

437. Equatorial Guinea submits that both the Convention and the three IMO treaties make it clear that "these treaties are only applicable insofar as one is considering the duties of the flag State." In particular, Equatorial Guinea argues that "SOLAS mainly imposes obligations on flag States and there is no general obligation imposed on States because they have custody and control of the vessel." In addition, Equatorial Guinea considers that it "is under no obligation to ensure safe manning standards for a ship flying another State's flag". It states that, under the STCW, it falls upon the flag State "to ensure that seafarers are qualified and fit for duty", with "port States being limited, by virtue of Article X of the [STCW], to controlling certification or dispensation on board vessels in port." Thus, according to Equatorial Guinea, the "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."

438. Equatorial Guinea also disputes that the safe manning requirements were applicable to the *M/T "Heroic Idun"* while it was anchored in Luba Freeport. It considers that "[t]he minimum safe manning certificate of the *Heroic Idun* only applies when the Vessel 'proceeds at sea', and makes no mention of manning requirements while the Vessel is anchored at a port".

439. With reference to the incident of 26 September 2022, Equatorial Guinea submits that "there is no evidence that Equatorial Guinea had failed to give effect to the Rules [of the COLREGS], nor is there any evidence that any of those specific Rules were violated simply because a collision might have happened, but it did not".

440. Moreover, Equatorial Guinea argues that "the anchorage that was provided for the vessel was safe and appropriate for vessels of this type and size", and it points out that, even after the detention in Nigeria, "the vessel and its equipment were ultimately found … to be in good condition given its type and age." Equatorial Guinea

thus argues that it "acted at all times in accordance with its obligation under Article 225 UNCLOS".

441. Equatorial Guinea notes that, pursuant to article 225 of the Convention, when a State exercises enforcement powers, it "shall not create unreasonable risks to navigation, or to the vessel, or to the marine environment." According to Equatorial Guinea, such risks are those "that go beyond those that are normally inherent in the operation of a vessel while navigating or while in port, or with respect to the marine environment."

442. Equatorial Guinea accepts that article 225 "must … be interpreted in light of those measures and standards necessary to keep vessels, and the marine environment, safe and unharmed." However, Equatorial Guinea considers that "it is not the case that all obligations undertaken by the flag States in relation to their vessels flying their flag *ipso facto* become opposable to coastal States exercising enforcement powers generally."

443. Equatorial Guinea further contends that article 94 of the Convention does not form part of the context relevant for interpreting article 225 of the Convention. In its view, the enforcement measures of a coastal State must not be "assessed against those obligations imposed on flag States under Article 94 and applicable international standards."

* * *

444. The Special Chamber will examine whether Equatorial Guinea, by its conduct in relation to the condition of the *M/T "Heroic Idun"* while in detention, acted in violation of certain provisions of SOLAS, the STCW and the COLREGS and articles 2, paragraph 3, 87 and 225 of the Convention.

445. The Special Chamber notes the argument of the Marshall Islands that these IMO treaties are "incorporated by reference into various UNCLOS provisions", including articles 94 and 217 of the Convention, and that, by its conduct, Equatorial Guinea failed to have due regard for and frustrated the exercise of "the rights, duties

and responsibilities of … the Marshall Islands as Flag State" of the *M/T "Heroic Idun"* under articles 94 and 217 of the Convention.

446. The Special Chamber recalls that article 94 of the Convention provides the general rule regarding the duties of the flag State and that its paragraph 5 establishes that "[i]n taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance." Paragraphs 3 and 4 of article 94 deal with measures to ensure safety at sea, including the manning of ships and the prevention of collisions.

447. The Special Chamber also recalls that article 217, paragraph 1, of the Convention, dealing with enforcement by flag States, provides that

> States shall ensure compliance by vessels flying their flag or of their registry with applicable international rules and standards, established through the competent international organization or general diplomatic conference, and with their laws and regulations adopted in accordance with this Convention for the prevention, reduction and control of pollution of the marine environment from vessels and shall accordingly adopt laws and regulations and take other measures necessary for their implementation. Flag States shall provide for the effective enforcement of such rules, standards, laws and regulations, irrespective of where a violation occurs.

448. These provisions confirm the close interconnection between certain provisions of the Convention – also called rules of reference – that refer to external rules, and in particular "generally accepted international rules and standards" adopted by the "competent international organization", which is understood to refer to the IMO.

449. As the Tribunal has stated in its Advisory Opinion on Climate Change and International Law:

> The term "generally accepted international rules and standards" is not defined in the Convention. Such rules and standards may refer to those contained in international legal instruments that are accepted by a sufficiently large number of States. They must be established through the competent international organization or general diplomatic conference. The term "the competent international organization" in this context is understood to refer to the IMO.

(*Request for Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024, ITLOS Reports 2024*, p. 4, at p. 105, para. 280)

450. The Special Chamber notes that the IMO conventions mentioned above may qualify as "generally accepted rules and standards", which would inform the application of articles 94 and 217 of the Convention. It further notes that the COLREGS has been found to qualify as "generally accepted international regulations" (*The South China Sea Arbitration between the Republic of the Philippines and the People's Republic of China, Award on the Merits of 12 July 2016, RIAA, Vol. XXXIII*, p. 153, at p. 570, para. 1083). The Special Chamber observes, however, that its jurisdiction would not extend to include the determination of breaches of those IMO conventions in isolation. In this regard, the Special Chamber also recalls that, in paragraph 149 above, it found that article 297, paragraph 1(c), is not applicable to the circumstances of this case.

451. With regard to the Marshall Islands' allegation that the vessel was not sufficiently manned, the Special Chamber notes that the Minimum Safe Manning Certificate issued for the vessel requires the presence of a minimum of 16 crew members on board. The Special Chamber further notes that this minimum requirement could not be complied with because of Equatorial Guinea's transfer of a part of the crew from the vessel and its refusal to allow them back onto the vessel to meet the minimum safe manning requirements.

452. While Equatorial Guinea argues that these requirements are not applicable to situations of detention in the port of a coastal State, the Special Chamber observes that safe manning requirements are applicable to all navigable waters. Safe manning is a function of the number of qualified and experienced seafarers necessary for the safety and security of the ship, among others, and for the protection of the marine environment, and to ensure the well-being of seafarers through the avoidance of fatigue. As noted by the Marshall Islands, only two watchkeepers were left on board the vessel. This clearly exacerbated the strain upon them and impacted their performance and the safety of the vessel.

453. The Special Chamber is of the view that SOLAS and the STCW impose obligations mainly on the flag State. However, the Special Chamber notes that under SOLAS, as amended by its 1988 Protocol (Part B on Surveys and Certificates of Chapter I), when in a port of another State, a ship is subject to control by authorized officers of the port State who are entitled to verify the validity of the certificates held on board. Furthermore, SOLAS reflects a balance between flag State and port State duties when a ship is in a foreign port. In this regard, the Special Chamber wishes to highlight that a State which has detained a foreign-flagged vessel must not prevent the flag State from discharging its obligations under these instruments; if it did so, it would be acting contrary to its obligations under the Convention.

454. The Special Chamber notes that whether the *M/T "Heroic Idun"* was anchored in the territorial sea or the internal waters of Equatorial Guinea is not per se relevant to the application of the IMO conventions in the present case.

455. The Special Chamber notes that, at the hearing, Equatorial Guinea asserted that the Marshall Islands has "not explicitly argued or shown that any conduct, in fact, took place in the territorial sea of Equatorial Guinea, rather than in the internal waters of Luba Bay." At no time, however, has Equatorial Guinea clarified the status of the waters of Luba Bay, which does not appear to the Special Chamber to be a bay as defined in article 10 of the Convention.

456. In any event, the Special Chamber recalls that it has already found that Equatorial Guinea, by intercepting and apprehending the *M/T "Heroic Idun"* and its crew in the exclusive economic zone of São Tomé and Príncipe, violated articles 87, paragraph 1, 90 and 92, paragraph 1, of the Convention. It follows that all law enforcement measures taken by Equatorial Guinea vis-à-vis the *M/T "Heroic Idun"* with a causal connection subsequent to its interception and apprehension are unlawful. These measures include Equatorial Guinea's transfer of a part of the crew from the vessel and its refusal to allow them back onto the vessel to meet the minimum safe manning requirements.

457. In light of the findings above, the Special Chamber does not find it necessary to address the arguments of the Parties concerning article 2, paragraph 3, of the Convention.

458. As to the Marshall Islands' further allegation that the vessel was detained at an unsuitable location, the Special Chamber draws attention to the statement in the expert report adduced by the Marshall Islands that the vessel "was not in imminent peril during her detention" and that a security perimeter of half a mile was in place around the vessel throughout its detention. On the basis of the evidence before it, the Special Chamber concludes that the *M/T "Heroic Idun"* was not brought to an unsafe port or anchorage.

459. With regard to the incident of 26 September 2022, the Special Chamber observes that no collision occurred between the *M/T "Heroic Idun"* and the *"Wele Nzas"*, nor did any damage ensue from this incident. On the basis of the submissions made by the Parties, the Special Chamber finds there to be insufficient evidence to conclude that the *"Wele Nzas"* endangered the safety of navigation or otherwise created any hazard to the *M/T "Heroic Idun"* or exposed the marine environment to an unreasonable risk.

* * *

460. Finally, in relation to article 225 of the Convention, the Special Chamber recalls that the Tribunal, in the *M/V "Virginia G"* case, observed that "although article 225 of the Convention is found in Part XII of the Convention concerning protection and preservation of the marine environment, it has general application" (*M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 4, at p. 105, para. 373). The Special Chamber notes that Equatorial Guinea does not contest the applicability of article 225 to the circumstances of the present case but rather the interpretation of this provision as suggested by the Marshall Islands.

461. In light of its considerations in paragraphs 458 and 459 above, the Special Chamber concludes that Equatorial Guinea did not violate its obligation under article 225 of the Convention.

XI. Non-aggravation

462. The Marshall Islands claims that Equatorial Guinea "acted in breach of the general obligation not to aggravate the dispute with … the Marshall Islands." In the view of the Marshall Islands, there exists an obligation "under general international law and the Convention to preserve the rights of the parties and not [to] aggravate the dispute pending proceedings."

463. The Marshall Islands submits that Equatorial Guinea breached this obligation

> by repeatedly failing to engage with the Marshall Islands' communications raising a dispute under the Convention from 16 August 2022 onwards and by handing the vessel and crew over to Nigeria in the face of prompt release proceedings before this Tribunal.

In its view, it was "not reasonable, necessary, or proportionate to transfer control and custody of the Vessel and crew to Nigeria before the Prompt Release Proceedings brought by the Marshall Islands had been heard and determined." The Marshall Islands thus considers that "Equatorial Guinea disregarded and frustrated the dispute settlement procedure it had agreed to under the Convention, and seriously aggravated and extended the dispute."

464. In response to Equatorial Guinea's contention that the transfer took place in line with its obligations vis-à-vis Nigeria, the Marshall Islands considers that Equatorial Guinea "should have raised these arguments with the Marshall Islands from the outset, in response to the many letters and notes verbales sent by the Marshall Islands between 16 August 2022 and 4 November 2022."

465. For its part, Equatorial Guinea contends that the 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". In relation to that dispute, Equatorial Guinea submits that it "acted with respect for the judicial process and peaceful settlement of disputes." Furthermore, Equatorial Guinea considers that "the general

duty of non-aggravation, if it exists, does not exist as a trump card allowing one side to file proceedings and demand a standstill which has consequences for the rights and the obligations of the other party."

466. Equatorial Guinea submits that "[t]he transfer of the Vessel and crew to Nigeria was in line with, and responsive to, Nigeria's request under the Yaoundé Code" and Equatorial Guinea's duty of cooperation with Nigeria. It states that its "obligations to cooperate in the repression of piracy did not cease or become non-existent the day the Marshall Islands filed prompt release proceedings." Equatorial Guinea adds that the transfer "was not prohibited at the time by any particular international obligation" and therefore "it cannot be characterised as an act of aggravation of the dispute pending proceedings."

467. Equatorial Guinea also affirms that the vessel was transferred

> 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.

Equatorial Guinea therefore submits that "at all times [it] respected its obligation to preserve the rights of the Marshall Islands and not [to] aggravate the dispute pending proceedings."

* * *

468. The Special Chamber observes that the claim of the Marshall Islands concerns the alleged violation by Equatorial Guinea of a "general obligation not to aggravate the dispute" with the Marshall Islands rather than any specific provision of the Convention. According to the Marshall Islands, the alleged violation arises in two respects: first, by "failing to engage" with the Marshall Islands, and second, by transferring the *M/T "Heroic Idun"* and its crew to Nigeria on 11 November 2022. In this regard, the Special Chamber recalls that the first of these issues was already addressed in paragraph 102 above.

469. The Special Chamber notes that both the Permanent Court of International Justice (hereinafter "the PCIJ") and the ICJ have affirmed that there exists a

> principle universally accepted by international tribunals and likewise laid down in many conventions … to the effect that the parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given, and, in general, not allow any step of any kind to be taken which might aggravate or extend the dispute.
> (*Electricity Company of Sofia and Bulgaria, Order of 5 December 1939, P.C.I.J., Series A/B, No. 79*, p. 194, at p. 199; see also *LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 466, at p. 503, para. 103)

470. In addition, the Special Chamber notes that the Tribunal, in the exercise of its jurisdiction to prescribe provisional measures under article 290 of the Convention, has on several occasions ordered parties to "refrain from taking any action which might aggravate or extend the dispute submitted" to a court or tribunal pursuant to Part XV of the Convention (*M/T "San Padre Pio" (Switzerland* v. *Nigeria), Provisional Measures, Order of 6 July 2019, ITLOS Reports 2018–2019*, p. 375, at p. 410, para. 146(2); *Detention of three Ukrainian naval vessels (Ukraine* v. *Russian Federation), Provisional Measures, Order of 25 May 2019, ITLOS Reports 2018–2019*, p. 283, at p. 312, para. 124(c)).

471. With reference to the international jurisprudence, the Special Chamber considers that parties to a dispute that is pending before an international court or tribunal are bound by an obligation not to aggravate or extend that dispute.

472. The Special Chamber considers that the prompt release proceedings instituted by the Marshall Islands prior to the transfer by Equatorial Guinea of the *M/T "Heroic Idun"* and its crew to Nigeria on 11 November 2022 concerned a dispute that is distinct from the matters raised in the arbitral proceedings, which were instituted by the Marshall Islands and transferred to the Special Chamber by the notification of the Special Agreement of 18 April 2023 (see para. 1 above). The duty of non-aggravation only enjoins actions related to a specific dispute. Accordingly, Equatorial Guinea did not violate the obligation not to aggravate or extend the present dispute with the Marshall Islands. This conclusion is without prejudice to any obligations to cooperate that may have been incumbent upon Equatorial Guinea in

the prompt release proceedings in Case No. 30, which is at present definitively closed.

XII. Reparation

473. In light of the findings reached by the Special Chamber in paragraphs 306 and 359 above that Equatorial Guinea acted in violation of articles 87, 89, 90 and 92 of the Convention, the Special Chamber will now turn to the issue of reparation.

474. The Marshall Islands claims that it is entitled to reparation from Equatorial Guinea because of its internationally wrongful conduct in breach of the Convention. Therefore, Equatorial Guinea must, "as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed." Specifically, the Marshall Islands seeks restitution, compensation, including interest and costs, as well as satisfaction in the form of an acknowledgment of wrongdoing, together with an assurance and guarantee of non-repetition.

475. The Marshall Islands claims compensation under the following heads of damages:

(a) costs and expenses to assist the crew during their wrongful detention, including wages and costs for medical (including psychological) assistance;
(b) costs and expenses relating to the *M/T "Heroic Idun"* and crew while unlawfully detained, including bunkers (fuel), agency and port charges, and provisions;
(c) payments made to secure the release of the *M/T "Heroic Idun"* and crew, in particular, the fine paid to Equatoguinean authorities;
(d) costs and expenses to repatriate the crew following their release and put in place replacement crew;
(e) costs and expenses to repair the *M/T "Heroic Idun"* after its unlawful detention and resume the operation of the vessel;
(f) loss of hire;

(g) increased war risk premium levied by the insurers of the *M/T "Heroic Idun"*; and

(h) non-material damages for the injury suffered by the crew of the *M/T "Heroic Idun"*.

Claims for losses under other heads of damages argued by the Marshall Islands are not presented in its final submissions.

476. The Marshall Islands also indicates that, in light of the arguments presented by Equatorial Guinea, it wishes to emphasize that its claim for damages is based on its position that "loss, damage and injury caused by Nigeria cannot be the subject of reparations in these proceedings." The Marshall Islands therefore particularizes its claim for damages as either arising or becoming visible and quantifiable, or both, within three distinct periods of time: 12 August 2022 to 11 November 2022; 11 November 2022 to 27 May 2023; and 27 May 2023 to 24 July 2023.

477. In its final submissions (see para. 70 above), the Marshall Islands requests the Special Chamber,

> [h]aving regard to the preceding alleged breaches, … to order the payment of reparations by the Republic of Equatorial Guinea to the Republic of the Marshall Islands in the following amounts:
>
> a. Loss, damage and injury caused by the Republic of Equatorial Guinea that was visible and quantifiable within the period of 12 August 2022 to 11 November 2022 including:
>
> i. EUR 2,000,132.00, being the amount of the fine improperly levied by the Republic of Equatorial Guinea to release the *"Heroic Idun"* and her crew;
>
> ii. USD 7.628 million for material loss, damage or injury sustained by the *"Heroic Idun"* in the period 12 August 2022 to 11 November 2022;
>
> iii. USD 4.784 million for non-material loss, damage or injury sustained by the crew of *"Heroic Idun"* in the period 12 August 2022 to 11 November 2022.
>
> b. Loss, damage or injury that was a direct consequence of Equatorial Guinea's conduct within the period 12 August 2022 to 11 November 2022 but only crystallised after this period or only became quantifiable after this period, specifically: USD 3.339 million for material loss and damage to the *"Heroic Idun"* that was a direct consequence of Equatorial Guinea's conduct within the period 12 August 2022 to 11 November 2022 but was only quantifiable in the period 27 May 2023 to 24 July 2023, namely, loss

> of hire, cost and expenses to repatriate the crew, and costs and expenses to repair the Vessel.
>
> c. Loss, damage or injury to the *"Heroic Idun"* and her crew in the period 11 November 2022 to 27 May 2023 in consequence of the Republic of Equatorial Guinea's extra-judicial rendition of the *"Heroic Idun"* and her crew to the Federal Republic of Nigeria that is sufficiently proximate to that rendition and is properly traceable to Equatorial Guinea, in an amount to be determined by the Special Chamber.
>
> d. An award of interest on the sums specified above, as appropriate.
>
> e. An award of such other sums as the Special Chamber may consider appropriate.
>
> [It further requests the Special Chamber to:]
>
> f. Order the Republic of Equatorial Guinea to acknowledge its wrongful conduct in respect of the Republic of the Marshall Islands and provide an assurance and guarantee of non-repetition.

478. The Marshall Islands submits detailed written materials in support of its claims for reparation, including witness statements of the Master, crew and OSM Maritime Group managers of the *M/T "Heroic Idun"*, and expert reports prepared by Dr Lesley Perman-Kerr, counselling psychologist; Mr Tim Horne, consultant in managing tanker assets; and Ms Voirrey Blount, class 2 master mariner. The Marshall Islands also produces several volumes of invoices and receipts among other documentary evidence.

479. Equatorial Guinea denies that it is responsible for any damage caused to the Marshall Islands and further asserts that

> [t]he 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.

Equatorial Guinea also contends that "the evidence filed by the Marshall Islands in support of its claim is obscure, unreliable and deficient."

480. In this regard, Equatorial Guinea submits witness statements to attest to the conditions of treatment of the crew, including those of the Operations Director at Besora Marítima ("Besora") who acted as maritime agent in Equatorial Guinea for

the *M/T "Heroic Idun"*, the General Manager of Hotel Anda China, the Director of La Paz Hospital, and a lieutenant of the Equatoguinean Navy who was in contact with the crew of the *M/T "Heroic Idun"* between 7 and 10 November 2022. Receipts from Besora for provisions for the crew of the *M/T "Heroic Idun"* are also provided by Equatorial Guinea.

481. Equatorial Guinea in its final submissions (see para. 70 above) requests the Special Chamber to:

> a) dismiss all of the Marshall Islands' requests for payment of compensation for material and/or non-material damages;
> b) dismiss the Marshall Islands' request for satisfaction;
> c) dismiss all of the Marshall Islands' requests for payment of interest; …

* * *

482. The Special Chamber notes that article 304 of the Convention states:

> The provisions of this Convention regarding responsibility and liability for damage are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law.

483. In the *M/V "SAIGA" (No. 2)* case, the Tribunal expressed its view concerning the rules on reparation under international law as follows:

> It is a well-established rule of international law that a State which suffers damage as a result of an internationally wrongful act by another State is entitled to obtain reparation for the damage suffered from the State which committed the wrongful act and that "reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed" (*Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47).
> (*M/V "SAIGA" (No. 2), (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10, at p. 65, para. 170; see also *M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 4, at p. 116, para. 428; *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire), Judgment, ITLOS Reports 2017,* p. 4, at p. 151, para. 557; *M/V "Norstar" (Panama* v. *Italy), Judgment, ITLOS Reports 2018-2019,* p. 10, at p. 94, para. 316)

484. The Special Chamber notes in this regard article 1 of the Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (hereinafter "the ILC Articles on State Responsibility"), which states that "[e]very internationally wrongful act of a State entails the international responsibility of that State", and recalls the observation in the *M/V "Virginia G"* case that "article 1 of the ILC Draft Articles on State Responsibility also reflects customary international law" (*M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014,* p. 4, at p. 117, para. 430; *M/V "Norstar" (Panama* v. *Italy), Judgment, ITLOS Reports 2018–2019*, p. 10, at p. 94, para. 317; see also *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire), Judgment, ITLOS Reports 2017,* p. 4, at pp. 151-152, para. 558).

485. The ILC Articles on State Responsibility, in article 31, paragraph 1, also provides: "The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act." In this regard, the Special Chamber recalls that the Seabed Disputes Chamber of the Tribunal, in its Advisory Opinion of 1 February 2011, stated that article 31, paragraph 1, of the ILC Articles on State Responsibility is part of customary international law (see *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 10, at p. 62, para. 194; *M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014,* p. 4, at p. 117, para. 430).

486. In the *M/V "SAIGA" (No. 2)* case, the Tribunal noted that reparation may take various forms under international law:

> Reparation may be in the form of "restitution in kind, compensation, satisfaction and assurances and guarantees of non-repetition, either singly or in combination" … Reparation may take the form of monetary compensation for economically quantifiable damage as well as for non-material damage, depending on the circumstances of the case. The circumstances include such factors as the conduct of the State which committed the wrongful act and the manner in which the violation occurred. (*M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10, at p. 65, para. 171; see also *M/V "Norstar" (Panama* v. *Italy), Judgment, ITLOS Reports 2018-2019,* p. 10, at p. 95, para. 319)

487. The Special Chamber recalls its findings concerning the interception and apprehension of the *M/T "Heroic Idun"* and its crew (see para. 306 above) and the levying of the Fine in respect of their activities (see para. 359 above). The Special Chamber notes that the violation of articles 87, 89, 90 and 92 infringed the rights of the Marshall Islands. The above considerations are material to an assessment of the reparation claimed.

488. The Special Chamber will now consider the issue of entitlement to compensation for damage suffered. In the *M/V "SAIGA" (No. 2)* case, the Tribunal held:

> In the view of the Tribunal, Saint Vincent and the Grenadines is entitled to reparation for damage suffered directly by it as well as for damage or other loss suffered by the *Saiga*, including all persons involved or interested in its operation. Damage or other loss suffered by the *Saiga* and all persons involved or interested in its operation comprises injury to persons, unlawful arrest, detention or other forms of ill-treatment, damage to or seizure of property and other economic losses, including loss of profit.
> (*M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10, at p. 65, para. 172)

489. Similar findings were made by the Tribunal in the *M/V "Virginia G"* case and the *M/V "Norstar"* case (*M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 4, at p. 118, para. 434; *M/V "Norstar" (Panama* v. *Italy), Judgment, ITLOS Reports 2018–2019*, p. 10, at p. 96, para. 323).

490. In the present case, the Special Chamber follows the jurisprudence of the Tribunal. The Special Chamber finds that the Marshall Islands is entitled to reparation for the injury caused by Equatorial Guinea, including compensation for damage or other loss suffered by the *M/T "Heroic Idun"* and all persons involved or interested in its operation.

A. Causation

Causal link

491. The Marshall Islands claims that none of the damage that the *M/T "Heroic Idun"* and its crew suffered in Equatorial Guinea or in Nigeria would have happened were it not for Equatorial Guinea's internationally wrongful acts in unlawfully intercepting and detaining the *M/T "Heroic Idun"* and its crew. The damage was therefore "directly caused" by and "a result" of Equatorial Guinea's unlawful actions. The Marshall Islands also contends that the initial harm that the *M/T "Heroic Idun"* and its crew suffered during the 92-day period of detention in Equatorial Guinea was compounded when the Equatoguinean authorities handed over the vessel and crew to the control and custody of Nigeria instead of releasing them as they had promised to do upon payment of the Fine.

492. The Marshall Islands submits that the correct test to determine whether it is entitled to recover damages as the result of actions that took place when the *M/T "Heroic Idun"* and crew were unlawfully detained in Nigeria, is whether the damage suffered was "a result" of Equatorial Guinea's internationally wrongful acts.

493. Relying on the commentary to article 31 of the ILC Articles on State Responsibility, the Marshall Islands asserts that a relevant factor in the allocation of injury or loss to a wrongful act is "whether the harm caused was within the ambit of the rule which was breached, having regard to the purpose of that rule", and that "the requirement of a causal link is not necessarily the same in relation to every breach of an international obligation". In particular, the Marshall Islands submits that when considering the causal nexus required between the wrongful act and the injury suffered in relation to that primary rule, a relevant consideration is that the nature of the Marshall Islands' injuries is not only monetary and that one of the forms of reparation it seeks is satisfaction.

494. Equatorial Guinea claims that there are "multiple logical flaws in the position of the Marshall Islands" on causation and, relying on the decision of the ICJ in the *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v.

Uganda) case, asserts that “it falls to the party seeking compensation to prove the existence of the causal nexus”.

495. Equatorial Guinea submits that the first event in the chain of causation is not an action of Equatorial Guinea but rather of Nigeria. The chain starts with Nigeria’s request for assistance, which Equatorial Guinea maintains was the only reason it detained the *M/T “Heroic Idun”* and its crew. Moreover, a State is not responsible for any and all damages suffered by an injured State and its registered vessels but only “the injury *caused by* the internationally wrongful act”, as provided under article 31, paragraph 1, of the ILC Articles on State Responsibility. This requires establishing the existence of a “*sufficiently direct*”, “*certain*” and “*clear and unbroken*” causal link between an internationally wrongful act complained of and the injury suffered.

* * *

496. In its consideration of the question of the causal link between the wrongful act of Equatorial Guinea and damage suffered by the Marshall Islands, the Special Chamber recalls that article 31, paragraph 1, of the ILC Articles on State Responsibility refers to the obligation of the responsible State “to make full reparation for the injury caused by the internationally wrongful act.” The Special Chamber notes the consistent jurisprudence of the Tribunal in which it emphasized the requirement of “directness” of the causal link between the wrongful act committed and damage suffered (*M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10, at pp. 65–66, para. 172; *M/V “Virginia G” (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 4, at pp. 118–120, paras. 435, 439, 442; *M/V “Norstar” (Panama* v. *Italy), Judgment, ITLOS Reports 2018–2019*, p. 10, at p. 98, para. 333). The Special Chamber observes that both Parties refer to the previous jurisprudence of the Tribunal and to the ILC Articles on State Responsibility in defining the applicable standard of causation.

497. In the present case, the Special Chamber is guided by the jurisprudence of the Tribunal when examining the Marshall Islands’ claims for compensation for damage caused by the wrongful acts of Equatorial Guinea. It is, therefore, only the

damage directly caused to the Marshall Islands by the wrongful acts of Equatorial Guinea that is the subject of compensation.

498. The Special Chamber is of the view that care must be taken in distinguishing between factual causation and legal causation, in particular where multiple causes may contribute to the occurrence of an injury. The establishment of the responsibility for a wrongful act does not necessarily infer that all harm resulting therefrom is compensable from the State having committed the act. While it may be posited that none of the damage suffered by the *M/T "Heroic Idun"* and its crew would have happened were it not for Equatorial Guinea's internationally wrongful acts in unlawfully intercepting and detaining the *M/T "Heroic Idun"* and its crew on 12 August 2022, this does not establish the content of the responsibility or answerability of Equatorial Guinea for all the damage occasioned as a result.

499. The Special Chamber concluded in paragraphs 306 and 359 above that Equatorial Guinea breached articles 87, paragraph 1, 90 and 92, paragraph 1, of the Convention through intercepting and seizing the *M/T "Heroic Idun"* and its crew, and articles 87, 89 and 92 by levying the Fine on the Master of the *M/T "Heroic Idun"*. The causal link between each breach and the alleged harm must be considered, and the chain of causation must be examined in relation to the specific wrongful act in question.

Interruption of the causal link

500. Before proceeding to assess the claims made by the Marshall Islands for each category of damage, the Special Chamber will address the question whether the causal link between the wrongful acts of Equatorial Guinea and the injury suffered by the Marshall Islands, the *M/T "Heroic Idun"* and all persons involved or interested in its operation was interrupted at any point during the detention of the vessel and crew in Equatorial Guinea.

501. The Marshall Islands claims that

> Equatorial Guinea does not dispute that the requirements of causation are met for the immediate losses caused by its acts in the 92 days in the EEZ of São Tomé and Príncipe and in Equatorial Guinea, and in respect of, its territorial sea and EEZ.
>
> Its case on immediate losses is that the acts which caused those injuries were not wrongful or did not cause any loss, or it contests evidence of quantum. The key difference between the Parties lies in the treatment of loss after the 92 days.

502. The Marshall Islands asserts that Nigeria's detention of the *M/T "Heroic Idun"* is not an intervening factor that breaks the causal chain between Equatorial Guinea's conduct and the damage suffered by the Marshall Islands. Rather, the forced transfer of the vessel to Nigeria meant that the effects or consequences of the initial wrongful acts (the unlawful interception and detention of the *M/T "Heroic Idun"* and crew) continued. In the view of the Marshall Islands, the position would be very different had Equatorial Guinea released the vessel and crew as it was obliged and had promised to do, and they were subsequently detained by Nigeria. That would have broken the causal chain.

503. Equatorial Guinea, for its part, asserts that the Marshall Islands admits that much of the damage claimed by it was a result of actions which occurred in Nigeria. They were not direct, proximate or clearly consequential to the actions of Equatorial Guinea. The Marshall Islands' case is therefore contrary to 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", as reflected in article 16 of the ILC Articles on State Responsibility.

504. In this regard, Equatorial Guinea posits that the *M/T "Heroic Idun"* would in any event have had to return to Nigeria and address the situation caused by its evasion of the Nigerian Navy; "[a]ccordingly, whatever actions Nigeria has taken in the present case would have been taken irrespective of Equatorial Guinea's cooperation. As such, Equatorial Guinea's responsibility cannot be engaged".

505. The Marshall Islands contends that Equatorial Guinea is contesting a case that it is not making. The Marshall Islands is not relying on article 16 of the ILC Articles on State Responsibility and is not seeking to recover by way of compensation more than the damage that it has suffered. The Marshall Islands further observes that a

> State cannot say, when called to account for its conduct, that it was simply following orders. Equatorial Guinea, from the moment it received the WhatsApp request, had a choice to make in the exercise of its own sovereign conduct, both in the manner in which it responded to Nigeria's request and in its choice of whether to inform and engage with the Marshall Islands. Equatorial Guinea chose to act as it did. … With sovereign decision-making comes sovereign responsibility. Equatorial Guinea must be held to account for its own sovereign conduct.

506. Relying on the jurisprudence of the Eritrea-Ethiopia Claims Commission on the relevance of foreseeability in assessing the chain of causation, the Marshall Islands submits that all of the damage suffered by the *M/T "Heroic Idun"* and crew, both in Equatorial Guinea and in Nigeria, was foreseeable. This was evident, or should have been evident, given (i) the length of the detention and the conditions in which the *M/T "Heroic Idun"* and crew were detained in Equatorial Guinea, and (ii) the written exchanges between the Governments of Equatorial Guinea and Nigeria that indicated that the detention of the vessel and crew would continue. Particular reference is made to the "Official handing over of the tanker *MT Heroic Idun* between the governments, Addendum", "secur[ing] an undertaking from Nigeria that the Vessel's crew would be treated 'in accordance with the provisions of the International Convention of Civil and Political Rights'", in addition to a "guarantee [of] the safety of the vessel while under investigation in Nigeria".

507. Equatorial Guinea rejects the suggestion 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. Equatorial Guinea rejects this "deliberate misapplication of foreseeability, which seeks to transfer damage flowing from the acts of one sovereign State to another", and states that it was "neither aware of nor did it intend to facilitate alleged human rights abuses." In fact, "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."

* * *

508. In light of the evolving nature of the events characterizing the relationship between the Equatoguinean authorities and the *M/T "Heroic Idun"* and its crew during their detention in Equatorial Guinea, the Special Chamber will first consider whether the causal link was interrupted at any point prior to the forced transfer of the *M/T "Heroic Idun"* and crew to Nigeria on 11 November 2022.

509. The Special Chamber will proceed to examine the principal events that defined the relationship between the Parties during the detention of the *M/T "Heroic Idun"* in Equatorial Guinea.

510. The Special Chamber notes that once the *M/T "Heroic Idun"* arrived at Luba Freeport, Equatoguinean authorities commenced investigations seeking information on the vessel's activities during the brief period between 9 and 10 August 2022, when the *M/T "Heroic Idun"* sailed through the exclusive economic zone of Equatorial Guinea. These investigations continued until 23 August 2022. Equatorial Guinea asserts that once the Equatoguinean authorities had finished their investigation on 23 August 2022, "[t]he additional time the crew spent in Equatorial Guinea was due to Nigeria's continued investigation."

511. The Ministry of Defence of Equatorial Guinea, however, subsequently imposed the Fine of 1.312 billion West African francs (equivalent to EUR 2,000,132) on the Master of the *M/T "Heroic Idun"*. The Fine was issued on 23 September 2022 and notified on 28 September 2022. The Fine was paid in full on 4 October 2022, as evidenced by the SWIFT payment receipt signed by the Equatoguinean authorities and dated 5 October 2022. Even on 11 October 2022, discussions continued between the local lawyers of the owners of the *M/T "Heroic Idun"* and the Head of the Equatoguinean military on whether the bank confirmation had been brought to the attention of the relevant authorities. The completion of the investigations

therefore did not signify the conclusion of the enforcement proceedings against the *M/T "Heroic Idun"* and its crew.

512. In the view of the Special Chamber, the completion of the investigations conducted by the Equatoguinean authorities does not signal a break in the chain of causation. The continued presence of the *M/T "Heroic Idun"* in Luba Freeport after the completion of the investigations of the Equatoguinean authorities that led to the unlawful imposition of the Fine by Equatorial Guinea until the payment of the Fine by the Marshall Islands is directly attributable to this internationally wrongful act. The Special Chamber holds the view that the damage suffered by the *M/T "Heroic Idun"* and crew during this period was therefore directly caused by the unlawful actions of Equatorial Guinea.

513. The Special Chamber will now consider whether the actions of Nigerian officials in Equatorial Guinea may have interrupted the chain of causation at any time after the settlement of all matters related to the Fine and prior to the forced transfer of the *M/T "Heroic Idun"* and its crew to Nigeria.

514. The Special Chamber notes that after the payment of the Fine and the acknowledgement of the receipt thereof, the *M/T "Heroic Idun"* and its crew continued to be detained in Equatorial Guinea for another month. In this regard, Equatorial Guinea points to letters written by the Marshall Islands to Equatorial Guinea and Nigeria, separately, seeking the release of the *M/T "Heroic Idun"* during its detention at Luba Freeport and further questioning whether the events of 8 August 2022, which took place in the exclusive economic zone of Nigeria, and the subsequent apprehension of the vessel "may be directly linked". In these letters the Marshall Islands also requests an "explanation" from Nigeria "of the actions taken by both Nigeria and Equatorial Guinea, and that [Nigeria] facilitate the immediate release of the M/T HEROIC IDUN."

515. The Special Chamber is of the view that while these letters indicate a belief on the part of the Marshall Islands authorities that Nigeria's intervention could assist in resolving its dispute with Equatorial Guinea, they appear to stem from the failure of Equatorial Guinea to diplomatically engage with the Marshall Islands. The Special

Chamber notes that the Marshall Islands also raised its concerns regarding the detention of the *M/T "Heroic Idun"* and crew with the Maritime Organisation of West and Central Africa as well as with the IMO. Moreover, while the correspondence with Nigeria may be read to suggest that the Marshall Islands perceived both Equatorial Guinea and Nigeria as bearing some responsibility for the detention of the *M/T "Heroic Idun"* and its crew in Equatorial Guinea, there is no suggestion that Equatorial Guinea was perceived as being subject to the direction and control of Nigeria and thus as "lacking any real autonomy" (*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, at p. 206, para. 394). In this connection, the Special Chamber notes the commentary to article 17 of the ILC Articles on State Responsibility:

> As to the responsibility of the directed and controlled State, the mere fact that it was directed to carry out an internationally wrongful act does not constitute an excuse under chapter V of Part One. If the conduct in question would involve a breach of its international obligations, it is incumbent upon it to decline to comply with the direction. The defence of "superior orders" does not exist for States in international law.
> (Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 31, at p. 69, para. 9)

516. The Special Chamber notes that Nigerian officials began interrogating various members of the crew of the *M/T "Heroic Idun"* during their detention in Equatorial Guinea with respect to the events that occurred in Nigeria's exclusive economic zone on 8 August 2022. This was facilitated by the Equatoguinean authorities and includes interviews conducted on 31 August 2022, 9 September 2022, 15 September 2022 and 20 September 2022. An Equatoguinean naval officer was present during interviews with the Master of the *M/T "Heroic Idun"* on the aforementioned dates, whereas the local lawyers of the crew of the vessel were not allowed to attend.

517. The Special Chamber observes that the detention of the vessel and its crew in Equatorial Guinea could not have been possible without the interposition of the Equatoguinean authorities. Any suggestion that another State was in any way responsible for any of the damage suffered by the *M/T "Heroic Idun"* and its crew would have no effect on Equatorial Guinea's liability with respect to the period of

their detention in Equatorial Guinea. In analysing the causal nexus, the Special Chamber makes a distinction between the alleged actions and omissions that took place in Equatorial Guinea and those that occurred in areas subject to the sovereignty of another State. This position is reinforced by the recognition in customary international law of "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States" (*Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 4, at p. 22).

518. In light of the foregoing, the Special Chamber finds that the causal link was not interrupted during the detention of the *M/T "Heroic Idun"* and crew in Equatorial Guinea.

519. The Special Chamber will now consider whether the causal link was interrupted with the forced transfer of the *M/T "Heroic Idun"* and crew to Nigeria on 11 November 2022.

520. On 11 November 2022, the *M/T "Heroic Idun"* was forced to set sail, accompanied by the Equatoguinean naval vessel "*Wele Nzas"* and two Nigerian naval vessels. Armed guards from the Nigerian Navy Special Boat Service were on board the *M/T "Heroic Idun"* during the voyage. The Special Chamber recalls its finding that the forced transfer of the *M/T "Heroic Idun"* and its crew to Nigeria was an unlawful act for which Equatorial Guinea bears responsibility (see para. 414 above).

521. Equatorial Guinea states that upon the transfer of the *M/T "Heroic Idun"* to the Nigerian authorities "[o]n 11 November 2022, Equatorial Guinea's involvement assisting Nigeria in the matter of the *Heroic Idun* ended."

522. Equatorial Guinea refers to article 16 of the ILC Articles on State Responsibility in contesting responsibility for any damage suffered by the *M/T "Heroic Idun"* and its crew during their detention in Nigeria, arguing that the *Monetary Gold* principle is relevant, not merely as a preliminary objection to the jurisdiction of the Special Chamber or to the admissibility of the application but also

to the examination of all claims made by the Marshall Islands concerning the period after the departure of the *M/T "Heroic Idun"* from Luba Freeport.

523. The Special Chamber notes that article 16 of the ILC Articles on State Responsibility deals with the situation in which one State provides aid or assistance to another with a view to facilitating the commission of an internationally wrongful act by the latter, which then requires the examination of the conduct of more than one State. The Marshall Islands has consistently stated that it is not relying on article 16 of the ILC Articles on State Responsibility as "[i]t calibrated its submissions so that the Chamber is only required to ascertain the legal position of Equatorial Guinea."

524. The Special Chamber recalls its finding (in para. 133 above) that the submissions of the Marshall Islands do not call upon it to make findings on the lawfulness of Nigeria's conduct. The Marshall Islands had initially made extensive claims in this regard in its Memorial (see para. 63 above) and its Reply (see para. 65 above). In its final submissions (see para. 70 above), the Marshall Islands withdrew those claims which related to the presence of the *M/T "Heroic Idun"* in Nigeria after its transfer from Equatorial Guinea, save for the reference made in the amended claim set out in subparagraph 7(c) thereof, concerning the loss, damage or injury to the *M/T "Heroic Idun"* and its crew "that is sufficiently proximate to that rendition and is properly traceable to Equatorial Guinea, in an amount to be determined by the Special Chamber".

525. The Special Chamber is guided by the jurisprudence of the Tribunal when examining the Marshall Islands' claims for compensation for damage caused by the internationally wrongful actions of Equatorial Guinea. In the *M/V "Norstar"* case, the Tribunal considered that only the unconditional release of a seized vessel may correctly be considered to interrupt the causal link in a claim for damages due to an internationally wrongful act (see *M/V "Norstar" (Panama* v. *Italy), Judgment, ITLOS Reports 2018-2019*, p. 10, at p. 104, para. 365).

526. The Special Chamber holds the view that the forced transfer of the *M/T "Heroic Idun"* and the crew under the escort of an Equatoguinean naval vessel and two Nigerian naval vessels cannot be likened to an unconditional release from

detention. The events following the forced transfer of the *M/T "Heroic Idun"* and its crew in relation to the period of detention in Nigeria, however, introduce additional claims, many of which have been withdrawn by the Marshall Islands as noted above as they involve third parties not before the Special Chamber.

527. In accordance with well-established jurisprudence, "[a]s a general rule, it falls to the party seeking compensation to prove the existence of a causal nexus between the internationally wrongful act and the injury suffered" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I),* p. 13, at p. 58, para. 93).

528. The Special Chamber is of the view that while the effects of Equatorial Guinea's internationally wrongful act continued after the forced transfer to Nigeria of the *M/T "Heroic Idun"* and its crew, the Marshall Islands has failed to establish the continuation of a sufficiently direct causal link in support of its amended claim for compensation as set out in subparagraph 7(c) of its final submissions. Moreover, the unspecified claims of "loss, damage or injury" to the *M/T "Heroic Idun"* and its crew in the period from 11 November 2022 to 23 May 2023 after their "extra-judicial rendition" concern acts allegedly occurring in a third State.

529. In light of the above considerations, the Special Chamber finds that any damage that the Marshall Islands, the *M/T "Heroic Idun"* and all persons involved or interested in its operation may have suffered in the period from 11 November 2022 to 27 May 2023, during their detention in Nigeria, is not subject to compensation in the present case.

530. However, not all losses that are a direct consequence of Equatorial Guinea's internationally wrongful conduct within the period from 12 August 2022 to 11 November 2022 (hereinafter "the 92-day period") would necessarily have materialized within this time frame. The period of detention in Nigeria delayed the opportunity to take the necessary remedial actions to address any consequential damage, but in the view of the Special Chamber this does not diminish the responsibility of Equatorial Guinea to provide compensation for the injury incurred. The Special Chamber therefore finds that damage that became evident or could be

addressed, or both, only after the release of the *M/T "Heroic Idun"* and its crew from Nigeria may also be compensable where a causal link is demonstrated.

531. In light of the above, the Special Chamber will restrict its examination to those claims of the Marshall Islands which concern (i) loss, damage and injury caused by Equatorial Guinea that was evident and quantifiable within the period from 12 August 2022 to 11 November 2022, and (ii) loss, damage or injury that was a direct consequence of Equatorial Guinea's conduct within the period from 12 August 2022 to 11 November 2022 but became evident only after this period or became quantifiable in the period from 27 May 2023 to 24 July 2023, or both.

B. Compensation

532. The Special Chamber recalls that reparation may be in the form of "restitution in kind, compensation, satisfaction and assurances and guarantees of non-repetition, either singly or in combination" (*M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10, at p. 65, para. 171; see also *M/V "Norstar" (Panama* v. *Italy), Judgment, ITLOS Reports 2018-2019*, p. 10, at p. 95, para. 319). In certain instances, full reparation may be achieved only by the combination of different forms of reparation in order to wipe out all the consequences of the wrongful act.

533. As noted in paragraph 531 above, the Special Chamber will restrict its consideration of the Marshall Islands' claims as presented in its final submissions to the following:

> a. Loss, damage and injury caused by the Republic of Equatorial Guinea that was visible and quantifiable within the period of 12 August 2022 to 11 November 2022, including:
>
> i. EUR 2,000,132.00, being the amount of the fine improperly levied by the Republic of Equatorial Guinea to release … the *"Heroic Idun"* and her crew;
>
> ii. USD 7.628 million for material loss, damage or injury sustained by the *"Heroic Idun"* in the period 12 August 2022 to 11 November 2022;
>
> iii. USD 4.784 million for non-material loss, damage or injury sustained by the crew of the *"Heroic Idun"* in the period 12 August 2022 to 11 November 2022.

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

534. The liability of Equatorial Guinea for any damage caused by its internationally wrongful acts during the 92-day period, whether evident and quantifiable at the time or subsequently after the release of the *M/T "Heroic Idun"* and its crew from Nigeria, is dependent on the provision of sufficient evidence to substantiate that any amounts claimed as compensation are well founded in fact and law.

535 In this regard, Equatorial Guinea raises broad concerns with respect to, *inter alia*, the volume and presentation of the documents submitted by the Marshall Islands in support of its claims for compensation. Equatorial Guinea asserts that despite "the fifth iteration of the Marshall Islands' quantum case, resulting in a reduction on the last day of the Marshall Islands' submissions in these proceedings of 70 per cent …, irremediable flaws remain in the Marshall Islands' claims and documentation, which renders them unsafe."

536. Responding to these assertions, the Marshall Islands explains that the documents submitted "include raw, unprocessed data" that supports its claims:

> There are, in this raw batch, what we could call surplus documents. … Yet, the existence of surplus documents does not mean that we are claiming for all the invoices included in the documents we presented. That is not – and has never been – the case. Our position is that we are claiming for the specific heads of damages, as set out in our Reply in detail.

537. The Marshall Islands further clarifies that it withdrew some elements of its damages claim in response to assertions that it is seeking recompense for loss and damage caused by Nigeria, and that this is reflected in the revised claim for compensation set out in its final submissions.

538. During the hearing, the Marshall Islands sought to rectify any confusion resulting from the presentation of the materials contained in the annexes to its written submissions. To do so, it provided a summary of the documentary evidence that it claims supports each specific head of damages with the corresponding annex and page reference, save for two sub-items with a combined value of less than USD 2,000, for which it was not able to obtain supporting documents.

539. The Special Chamber takes due account of the concerns expressed and explanations provided with regard to the contents and presentation of the materials annexed to the Marshall Islands' written submissions. The Special Chamber is also mindful that certain items questioned by Equatorial Guinea were withdrawn in Marshall Islands' final submissions, or they concern bills in relation to the period between 11 November 2022 and 27 May 2023 when the *M/T "Heroic Idun"* and its crew were detained in Nigeria. These items are not under consideration by the Special Chamber in determining the amount of compensation due to the Marshall Islands.

* * *

540. The Special Chamber will now turn to consider the following heads of damages that the Marshall Islands claims it is entitled to recover, whether the loss, damage or injury was "visible and quantifiable within the period of 12 August 2022 to 11 November 2022", or "a direct consequence of Equatorial Guinea's conduct within the period 12 August 2022 to 11 November 2022 but was only quantifiable in the period 27 May 2023 to 24 July 2023":

1. payments made to secure the release of the *M/T "Heroic Idun"* and crew (the Fine);
2. costs and expenses to assist the crew during their wrongful detention, including wages and costs for medical (including psychological) assistance;
3. costs and expenses incurred relating to the crew and the *M/T "Heroic Idun"* while it was unlawfully detained, including bunkers (fuel), agency and port charges, and provisions;
4. increased war risk premium levied by the insurers of the *M/T "Heroic Idun"*;

5. loss of hire;
6. costs and expenses to repatriate the crew following their release and to put in place a replacement crew;
7. costs and expenses to repair the *M/T "Heroic Idun"* after its unlawful detention and to resume operations; and
8. non-material damages for the crew of the *M/T "Heroic Idun"*.

1. The Fine

541. The Marshall Islands refers to the Fine paid to the Equatoguinean authorities as "payments made to secure the release of the [*M/T "Heroic Idun"*] and her crew". The Special Chamber has already found that the imposition of the Fine by Equatorial Guinea was unlawful (see para. 359 above). In this regard, the Marshall Islands requests the Special Chamber to order Equatorial Guinea, "insofar as not already paid as compensation, to pay two million, one hundred and thirty-two Euros (€2,000,132) in restitution". At the hearing, the Marshall Islands reiterated that, "[a]s regards the fine of €2,000,132, the Marshall Islands recognizes that this could be awarded as either restitution or compensation." In its final submissions, the Marshall Islands requests the Special Chamber to order the payment of reparations by Equatorial Guinea of "EUR 2,000,132.00, being the amount of the fine improperly levied by the Republic of Equatorial Guinea to release the *"Heroic Idun"* and her crew."

542. In its consideration of the question of reparation for the wrongful imposition of the Fine by Equatorial Guinea, the Special Chamber recalls that the essential forms of reparation in customary international law were laid down by the PCIJ in the *Factory at Chorzów* case (*Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47; see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 136, at p. 198, para. 152). In this regard, the basic principles on restitution are set out in article 35 of the ILC Articles on State Responsibility, which states:

Article 35
Restitution

> A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:
> (a) is not materially impossible;
> (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

543. While restitution is the first form of reparation available to a State injured by an internationally wrongful act, an injured State may validly elect to receive compensation as the preferred form of reparation. In some cases, tribunals have inferred from the positions of the parties that the decision to award compensation rather than restitution was left to their discretion. In other instances, while ordering restitution, tribunals have provided flexibility for the responsible State to provide compensation instead, for reasons pertaining to matters of State.

544. The Special Chamber interprets the Marshall Islands' request for reparation, as stated above, as indicating little concern for the form in which it may be awarded. In this regard, the Special Chamber refers to article 36, paragraph 1, of the ILC Articles on State Responsibility, which provides that "[t]he State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution."

545. Equatorial Guinea does not dispute that the Fine of EUR 2,000,132, issued on 23 September 2022, was paid in full. The Special Chamber recalls that, in awarding compensation, tribunals have, in certain cases, inferred from the positions of the parties that the decision to award compensation rather than restitution was left to their discretion.

546. In light of the foregoing, the Special Chamber decides to award the Marshall Islands compensation in the amount of EUR 2,000,132 corresponding to the amount incurred by the owners of the *M/T "Heroic Idun"* in payment of the unlawful Fine imposed by Equatorial Guinea.

2. Costs and expenses to assist the crew of the *M/T "Heroic Idun"* during their wrongful detention, including wages and costs for medical (including psychological) assistance

547. The Marshall Islands claims costs and expenses of USD 656,345.70 to assist the crew, including wages and costs for medical assistance. The initial claim presented in the Marshall Islands' written submissions was adjusted downwards to address errors identified on review. This figure is further reduced by the exclusion of claims relating to the detention of the *M/T "Heroic Idun"* and its crew in Nigeria for reasons stated above. The Marshall Islands' request for compensation relevant to this head of damages covers: additional salary for the crew for the period from 12 August 2022 to 11 November 2022, amounting to USD 373,999; correspondent costs (in Equatorial Guinea only) of USD 114,940.90; travel costs of USD 5,683.21 for Mr Jens Frodesen's trip to West Africa; and medical costs, including psychological assistance, totalling USD 161,722.59.

(a) Additional salary

548. In distinguishing its claim for material damages to recover the crew's wages from that considered by the Tribunal in the *M/V "Norstar"* case, the Marshall Islands clarifies that its claim is not based on the crew's regular wages, and "the Tribunal in the *M/V "Norstar"* did not exclude the payments of bonuses or additional compensation caused by the crew's detention." The Marshall Islands points to the detailed breakdown it provided as demonstrating, in its view, that the additional payments that were made to the crew were not a "voluntary expense" as claimed by Equatorial Guinea but were due because the crew were detained and because of the conditions of that detention.

549. Equatorial Guinea asserts that the Marshall Islands "has failed to explain how these losses can be characterised as anything other than voluntary expenses" as it "has not provided any legal or contractual basis which would trigger such an obligation."

550. In this regard, the Marshall Islands points to the legal obligations arising under the applicable collective bargaining agreements requiring a bonus equal to 100 per cent of the daily basic wage when the vessel enters into high-risk or war-like operation areas. Other payments were negotiated to incentivize the crew who were despondent given the circumstances of their detention, and took into account the physical extra work required in manning the vessel, the mental stress, family suffering, medical status and uncertainty. However, the latter payments are not included in the revised claim for additional salary as they did not arise during the 92-day period for which the Special Chamber is awarding compensation.

(b) Correspondent costs

551. Equatorial Guinea does not dispute that all the provisions required by the crew of the *M/T "Heroic Idun"* during their detention in Equatorial Guinea were provided by agents of the OSM Maritime Group, manager of the *M/T "Heroic Idun".* Mr Hernández Martín, who worked for Besora, the maritime agent in Equatorial Guinea for the *M/T "Heroic Idun"*, was Equatorial Guinea's witness and attests to this. The witness statement of Mr Hernández Martín, submitted by Equatorial Guinea, includes two attachments totalling over 170 pages of receipts for purchases made for the crew.

552. Equatorial Guinea states that the owners of the *M/T "Heroic Idun"* "designated their local agent Besora to provide the crew members with all they needed. Equatorial Guinea therefore did not interfere in the process." It notes, however, that "the crew requested and was given non-essential items such as alcohol, cigarettes, cake, candy, sports clothing, and energy drinks."

553. In responding to questions raised by Equatorial Guinea about the amount spent on "beverages", in particular, the inclusion of various alcoholic drinks, the Marshall Islands notes that under the Overseas Ship Management (OSM) Group policy, those claims were a valid expense. The same applies to the travel expenses claimed which have been reduced. The claim includes costs by the OSM Maritime Group managers to travel to the Indian subcontinent to have discussions and

support meetings with the crew's families who were distressed. They also had discussions with the Indian authorities.

554. The Marshall Islands suggests to the Special Chamber, should it disagree with any of the claims based on the OSM policy and "is inclined to exclude them, it could do so, for example, by applying a percentual discount to each line item". The Marshall Islands points out, however, that its streamlined revised submission excludes many of the items that were originally claimed.

(c) Medical and psychological assistance

555. With regard to medical and psychological assistance, the Marshall Islands asserts that it is entitled to recover the costs of medical treatment during detention and also ongoing medical treatment at home as evidenced in the receipts annexed to its written submissions. Some conditions were initially "acute but then became chronic" and therefore required treatment at home.

556. Equatorial Guinea contests the payments to provide psychological support and states that "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." Noting the wide availability of psychiatric care and treatment through remote means as well as the crew's unimpeded access to communicate via mobile phone during their detention, Equatorial Guinea contends that

> [m]ental health care could have been provided by Dr Perman-Kerr at any time for any crew member through voice or video calls. 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.

557. The Marshall Islands asserts that Dr Perman-Kerr, Consultant Counselling Psychologist, spoke on the phone with some crew members while they were in Equatorial Guinea and could observe the "anxiety experienced by the crew." According to the evidence of Mr Kulblik, Fleet Director at OSM Maritime Group, the OSM continually tried to arrange psychological support but could not obtain the necessary permit for a psychiatrist to visit the crew in Equatorial Guinea. Mr Kulblik

also states that a psychiatrist and psychologist from Cameroon, who had arrived in Equatorial Guinea to consult with the crew, returned to Cameroon on or around 6 October 2022, without seeing the crew.

558. The Marshall Islands asserts that

> 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.

* * *

559. The Special Chamber is of the view that an examination of the receipts for expenses incurred for the crew during the 92-day period sufficiently substantiates the following claims submitted by the Marshall Islands.

Correspondent costs and medical costs

560. The Marshall Islands claims USD 114,574.40 for correspondent costs. This represents a reduction of USD 10,366.50 from the amount originally claimed in order to correct a clerical error caused by a duplication in the costs from the correspondents and insurers. An examination of the invoices submitted accords, in the view of the Special Chamber, with the corrected figure presented by the Marshall Islands.

561. The documentation submitted in support of this claim contains an invoice from the BUDD Group in Equatorial Guinea, the company with which Besora had a reporting relationship, for correspondents' fees, disbursements and fees to third parties. The invoice for fees provides a day-by-day account of services rendered by BUDD. Each entry lists the date, description of work performed, hourly rate (EUR 205/hour), hours worked and the corresponding fee amount. The disbursements made concern administrative and telecommunication costs, and third-party fees concern payments to "BUDD Equatorial Guinea" for the period from

14 August 2022 to 18 September 2022, and an invoice from “Cameroun Assistance Sanitaire”, dated 13 October 2022, for medical assistance (psychological care).

562. The Marshall Islands claims medical costs of USD 161,722.59. The relevant details of the quantum claim are sufficiently substantiated in invoices submitted by BUDD. The Special Chamber accepts the claim for compensation for the medical expenses incurred on behalf of the crew.

563. The Special Chamber finds that the amount of USD 276,296.99 is sufficiently substantiated by the relevant documentation as expenses incurred for correspondent costs and medical costs to assist the crew during the 92-day period of detention in Equatorial Guinea.

Additional salary for the crew of the M/T “Heroic Idun”

564. The Special Chamber accepts that the additional payments to the crew were not made “ex gratia” but were due because of the detention of the crew in Equatorial Guinea, on the basis of negotiations between representatives of the owners and crew in light of their collective bargaining agreements.

565. The “additional wages” for which compensation is awarded are those attributable to the 92-day period between the arrest of the *M/T “Heroic Idun”* and its crew and their handover to Nigeria. This requires pro-rating the August and November invoices and excluding the December invoice submitted by the Marshall Islands. The “High Risk Area (HRA) bonus” paid in December 2022 and the “Christmas bonus” are excluded.

566. The Special Chamber finds that the Marshall Islands is entitled to compensation in the amount of USD 265,973.47 for additional salary paid to the crew of the *M/T “Heroic Idun”* during the 92-day period of detention.

Travel costs

567. The Special Chamber awards USD 5,683.21 as compensation for Mr Jens Frodesen's trip to West Africa. The indicated cost of NOK 57,174.59 corresponds to the amount claimed.

3. Costs and expenses incurred relating to the *M/T "Heroic Idun"* and its crew while it was unlawfully detained, including bunkers (fuel), agency and port charges, and provisions

(a) Bunkers consumed

568. In support of the entry "Bunkers Consumed", the Marshall Islands relies on the Engine Room Logs which show the amount of bunkers (fuel oil) that was onboard the *M/T "Heroic Idun"* when the vessel arrived in and departed from Equatorial Guinea. As the bunkers were already on the vessel when it arrived in Equatorial Guinea, there are no invoices.

569. An examination of the engine room logs provides a basis for the calculation of the fuel oil consumption for the period between the arrest of the *M/T "Heroic Idun"* on 12 August 2022 and its transfer to Nigeria on 11 November 2022. An approximate reference price of those bunkers may be derived from the invoice, dated 10 February 2023, sent by the charterers to the owners of the *M/T "Heroic Idun".* The invoice displays the costs for "Low Sulphur Gas Oil" (LSGO) and "High Sulphur Fuel Oil" (HSFO). The *M/T "Heroic Idun"* was equipped with an approved exhaust gas cleaning system, commonly known as a "scrubber", allowing for the use of HSFO as well as LSGO in accordance with the relevant international rules.

570. The Marshall Islands claims compensation for bunkers consumed during the period from August to December 2022, in the amount of USD 1,029,409. Taking into account the fuel oil consumption based on the engine room logs, the price of oil which underlies the Marshall Islands' claim is below the estimated cost for LSGO and above that for HSFO. If this rate is then applied to the oil consumption for the

period from 12 August to 11 November 2002, the total cost of the fuel oil for this period would be USD 939,334.56.

571. The Special Chamber notes that where, in general, a claim for losses as a result of unlawful detention is cognizable as a component of compensation, an estimation may be appropriate where the amount of loss incurred cannot be calculated precisely (*Armed Activity in the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 13, at p. 57, para. 126). In the circumstances, the Special Chamber awards USD 939,334.56 as compensation for bunker expenses incurred by the *M/T "Heroic Idun"* during the 92-day period of detention.

(b) GAC Agency Invoice (Malabo)

572. The Special Chamber awards USD 75,295.88 as compensation for agency and port fees paid to GAC Hub Services DWC-LLC for the period from 13 August 2022 to 11 November 2022, as substantiated by the relevant invoice.

4. Increased war risk premium levied by the insurers of the *M/T "Heroic Idun"*

573. The Special Chamber accepts that the Marshall Islands' claim for an increased war risk premium applied by the insurers of the *M/T "Heroic Idun"* is based on Equatorial Guinea's location inside of a "high-risk area" as designated by maritime security groups and insurers. An additional premium at a daily rate therefore became payable for the full period that the *M/T "Heroic Idun"* remained in Luba Freeport. The unlawful detention of the vessel and crew was thus the direct cause for the payment of the increased war risk premium. The Special Chamber considers that the quantum claim made by the Marshall Islands is warranted in the circumstances and prorates this for the 92-day period.

574. The Special Chamber awards USD 54,000 as compensation for expenses incurred as a result of the increased war risk premium.

5. Loss of hire of the *M/T "Heroic Idun"*

575. The Marshall Islands claims USD 5.3 million for loss of hire which is attributable to the period of detention in Luba Freeport. The Marshall Islands asserts that "until December [2022], the amounts the vessel would have been able to earn are … easily ascertainable, because they can be calculated based on the applicable charter in place at that time. Those amounts are fixed. They were invoiced. We know them with complete certainty, so there is no speculation there." In support of its claim, the Marshall Islands submits an expert report prepared by Mr Tim Horne. Mr Horne's report uses the daily rate calculated pursuant to the hire clause of the time charter, expressed as a formula based on a variable index to reflect the prevailing market rate.

576. The Marshall Islands also claims USD 3,021,336 for loss of hire for the period from 27 May 2023 to 24 July 2023, which "was a direct consequence of Equatorial Guinea's conduct within the period 12 August 2022 to 11 November 2022".

577. The Marshall Islands asserts that it "should recover for the time the vessel took to sail for the crew change, the time the vessel took to get to the drydock and be repaired, and for the short time (less than a week) before it could start its new contract of employment". These steps were made necessary as a direct consequence of Equatorial Guinea's conduct, even if the vessel had not been detained for a further extended period in Nigeria. The Marshall Islands claims that "[t]he marine growth on the vessel's hull, the damage to the vessel's paint, the damage to the pumps caused by inactivity – all of that would have happened regardless of the time spent in detention in Nigeria. That period may have augmented that damage, but it did not cause it."

578. In explaining the calculation of the sum claimed, the Marshall Islands asserts that the expert report of Mr Horne demonstrates the "robust economic benchmarks … used to ascertain the applicable freight rates the *"Heroic Idun"* would have been able to obtain and the profits that the *M/T "Heroic Idun"* would have been able to obtain. All of this allows us to determine with specific precision the profits that the *"Heroic Idun"* would have been able to generate. We are in a case where we have

calculation, not speculation." The Marshall Islands states that "Mr Horne's report is based on hard economic data. It is derived from the vessel's own charter, as well as from market sources that are used daily throughout the shipping world."

579. Relying on the commentary to article 36 of the ILC Articles on State Responsibility, Equatorial Guinea notes that international adjudicative bodies have been cautious in approaching compensation for loss of profits owing to their "*inherently speculative*" nature, and it submits that the Special Chamber should dismiss this head of claim.

580. Equatorial Guinea questions the methodology used in the expert report of Mr Horne, in particular, the bunker adjustment, the treatment of "any expenses that would have naturally arisen in the course of operating the *Heroic Idun*, including expenses relating to the crew, provisions for operation, communication expenses, costs to ensure safety of the Vessel, and various taxes and duties." In support of its position, reference is made to the *M/V "Norstar"* case where "the Tribunal had similarly noted the absence of information or documents to demonstrate the possible expenses related to the operation of the Vessel, leading the Tribunal to reject the claim for loss of profits."

581. Equatorial Guinea also asserts that the Marshall Islands should have submitted a second report to justify certain choices made by Mr Horne in his report; rather, the Marshall Islands "purports to speak on behalf of its expert."

582. Responding to the questions raised, the Marshall Islands notes that the report of Mr Horne uses the Time Charter Equivalent figure, the TCE, which is "widely used in the shipping industry to calculate a vessel's daily revenue", and that this figure is already adjusted downwards to take account of "voyage costs (bunkers, port costs, fees, agency etc)." Mr Horne adds a bunker adjustment to the Time Charter Equivalent figure in calculating the daily rate based on the TD3C index (a primary benchmark for VLCC freight rates in the Middle East to China markets) for those periods as "the index is based on the earnings of a generic vessel. It means an older, less efficient vessel than the almost brand new, highly efficient *"Heroic Idun"*", in order to reflect the enhanced efficiency features of the *M/T "Heroic Idun*" vis-à-vis

a generic vessel on which the index is based. The efficiency features of the *M/T "Heroic Idun"* allow it to operate with less fuel, which is one of the main costs for a vessel, and lead to higher earnings.

583. The Marshall Islands also states that

> Equatorial Guinea has not produced a rebuttal report. Nor does it challenge the accuracy or reliability of Mr Horne's calculations. Nor does it challenge the accuracy or liability of his data. There are some criticisms made in legal submissions, which the Marshall Islands has answered in legal submissions, but there is no competing expert report challenging Mr Horne's findings.

* * *

584. The Special Chamber notes that article 36, paragraph 2, of the ILC Articles on State Responsibility provides: "The compensation shall cover any financially assessable damage including loss of profits insofar as it is established" (see also *M/V "Norstar" (Panama* v. *Italy), Judgment, ITLOS Reports 2018-2019*, p. 10, at p. 116, para. 431).

585. The Special Chamber recalls that in the *M/V "SAIGA" (No. 2)* case, the Tribunal stated that reparation for

> [d]amage or other loss suffered by the *Saiga* and all persons involved or interested in its operation comprises injury to persons, unlawful arrest, detention or other forms of ill-treatment, damage to or seizure of property and other economic losses, including loss of profit.
> (*M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10, at pp. 65-66, para. 172)

586. The Special Chamber further notes that the arbitral tribunal in the *Duzgit Integrity* case found that

> while wrongfully detained in São Tomé, the *Duzgit Integrity* was unavailable for service by any charterer, irrespective of whether or not Stena Oil elected to exercise its cancellation option. Malta is entitled to claim for the harm to its vessel that follows from this unavailability.
>
> With respect to the rate of hire available for the *Duzgit Integrity*, the Tribunal accepts that the rate actually agreed in the Charter Party Agreement with Stena Oil represents appropriate evidence of the value of lost hire to DS Tankers.

> (*The Duzgit Integrity Arbitration between the Republic of Malta and the Democratic Republic of São Tome and Principe, Award on Reparation of 18 December 2019*, para. 88*)*

The arbitral tribunal further stated that it "agrees with Malta that the time required to locate a new charter party after a long period off hire is causally linked to the detention of the vessel and would be compensable as loss of hire" (*The Duzgit Integrity Arbitration between the Republic of Malta and the Democratic Republic of São Tome and Principe, Award on Reparation of 18 December 2019*, para. 92(b)).

587. In the view of the Special Chamber, the Marshall Islands is entitled to be awarded damages for the economic losses suffered by the *M/T "Heroic Idun"*, including loss of hire that it would have earned were it not for the wrongful act of Equatorial Guinea.

588. The Special Chamber finds that the Marshall Islands is entitled to the sum of USD 5.3 million for loss of hire of the *M/T "Heroic Idun"* for the period of its detention in Luba Freeport, based on the daily rate calculated pursuant to the hire clause of the time charter that was applicable on 12 August 2022.

589. With respect to the period between 27 May 2023, when the *M/T "Heroic Idun"* was released from Nigeria, and 24 July 2023, when it re-entered operations under a new time charter, Mr Horne's report calculates the "Time Charter Equivalent" figure, the daily rate, based on the TD3C index for this period and adds a bunker adjustment to reflect the greater efficiency of the *M/T "Heroic Idun*". The technical specifications of the *M/T "Heroic Idun*", including efficiency and environmental features, merit appropriate adjustments as it is reasonable to assume that more efficiency in fuel use leads to higher earnings.

590. The Special Chamber accepts that the Time Charter Equivalent figure and indices used in Mr Horne's report take account of expenses that would have "naturally arisen in the course of operation", and generally accord with industry practices, and further notes that no specific reservations have been expressed with respect to the use of the TD3C index covering the Middle East to China route as an appropriate benchmark route for VLCC spot market earnings.

591. An acceptance of the methodology for calculating the daily rate for compensation addresses only one element of the equation in determining compensation for loss of profits. It is left for the Special Chamber to address the number of days for which it has been established that loss of profits are due. The expert report of Mr Horne calculates the applicable loss for the period of 58 days after the release of the *M/T "Heroic Idun"* and crew from their detention in Nigeria until the vessel's return to service, totalling USD 3,021,336. During this 58-day period the *M/T "Heroic Idun"* sailed to South Africa and then on to the United Arab Emirates for a crew change and drydocking and repairs, respectively.

592. The Marshall Islands asserts that these activities would have been necessary as a direct consequence of Equatorial Guinea's conduct even if the vessel had not been detained for a further extended period in Nigeria. In particular, the marine growth on the vessel's hull, the damage to the vessel's paint and the damage to the pumps caused by inactivity would have occurred in the first 92 days of detention; the period of detention in Nigeria merely augmented that damage, but it did not cause it.

593. The Special Chamber accepts that a crew change and drydocking and repairs would, in principle, be required for a vessel laid up for a 92-day period, even if not otherwise due in the ordinary course of business. The extent of the repairs that may be attributed to the period of detention in Equatorial Guinea vis-à-vis Nigeria is, however, a relevant consideration in addressing the claim of the Marshall Islands for compensation for drydocking and repairs, as set out below (see paras. 622 to 624 below).

594. The Special Chamber is mindful that sailing to South Africa and the United Arab Emirates extended the time claimed for loss of hire, but it notes that Equatorial Guinea at no time questioned whether South Africa and the United Arab Emirates could be considered the appropriate venues for undertaking the crew change and drydocking and repairs of the *M/T "Heroic Idun"*. The Special Chamber accepts that these could be considered routine business decisions and has no cause to challenge the validity of the choices made. The issue arises, nevertheless, as to whether the

full period of 58 days (from 27 May to 24 July 2023) claimed by the Marshall Islands has been sufficiently substantiated.

595. The statement of Mr Eivind Kulblik, Fleet Director at OSM Maritime Group, indicates that although the *M/T "Heroic Idun"* was released from detention in Nigeria on 27 May 2023, the vessel departed on the following day for Cape Town, South Africa, with the support of additional crew members (four officers and three engineers) who OSM had flown to Nigeria. The *M/T "Heroic Idun"* arrived in Cape Town on 7 June 2023, and after stopping in Port Elizabeth, South Africa, for refuelling, sailed to Sohar, Oman, arriving on 11 June 2023, to obtain permission to enter United Arab Emirates waters and obtain the necessary paperwork. The *M/T "Heroic Idun"* did not arrive in Fujairah, United Arab Emirates, until 28 June 2023. It entered dry dock at Drydocks World Dubai on 2 July 2023 and underwent inspections and repairs. The vessel departed the dry dock on 6 July 2023 and, on 12 July 2023, the *M/T "Heroic Idun"* was chartered to another party.

596. The Special Chamber is of the view that the Marshall Islands has not sufficiently established that the extended waiting periods and the full time spent for drydocking and repairs were unavoidable or wholly attributable to the period of detention in Equatorial Guinea. Only a portion of the 58 days claimed for loss of hire is therefore warranted, and a reasonable deduction is appropriate in the circumstances.

597. With regard to comparisons made with the *M/V "Norstar"* case, the Special Chamber observes that Panama, unlike the Marshall Islands in the present case, failed to provide information, documents or supplementary invoices relating to possible revenues and expenses of the shipowner associated with the operations of the *M/V "Norstar"* in order to substantiate its claim for loss of profits. Panama's claim for compensation under this category was therefore not upheld. Moreover, the *M/V "Norstar"* was a 32-year-old vessel that was not seaworthy when released and in questionable condition at the time of its seizure. The *M/T "Heroic Idun"*, built in 2020, was a relatively new vessel fixed under a time charterparty with approximately five months left to run at the time of its seizure. The Special Chamber is of the view

that the decision in the *M/V "Norstar"* case does not provide a basis for dismissing Marshall Islands' claim for loss of hire.

598. The Special Chamber concludes that the Marshall Islands has sufficiently substantiated that its claim for loss of hire by the owners of the *M/T "Heroic Idun"* for the period between the release of the vessel and crew from their detention in Nigeria and the vessel's return to service is warranted. The Special Chamber finds, however, that only a portion of the sum claimed is to be compensated for reasons already stated and accordingly awards compensation under this category in the amount of USD 600,000. The total amount awarded for loss of hire incurred by the *M/T "Heroic Idun"* is therefore USD 5,900,000.

6. Costs and expenses to repatriate the crew of the *M/T "Heroic Idun"* following their release and to put in place a replacement crew

599. The Marshall Islands claims the costs and expenses to repatriate the crew and for the call of the *M/T "Heroic Idun"* to Cape Town where the crew change occurred. In its final submissions, the Marshall Islands presents a claim for a reduced sum which is less than half of the amount initially presented in its Memorial. The Marshall Islands explains that certain claims were simply withdrawn given the complexity of the invoices which posed challenges in assessing the claim.

600. Equatorial Guinea finds fault with the Marshall Islands' shifting claims, asserting that "irremediable flaws remain in the Marshall Islands' claims and documentation, which renders them unsafe."

601. In defence of its actions, the Marshall Islands argues that "this is a complex case and we are just trying to be as careful and as responsible as possible."

602. The expenses claimed under this head of damages cover: (a) the cost for a security escort vessel and security guards to accompany the vessel after it sailed from Nigeria to Cape Town; (b) travel wages and standby payment for the on-signing of the replacement crew; and (c) the cost of the call of the *M/T "Heroic Idun"* to Cape Town, including the port call costs, hotel expenses for the crew and owners of the

M/T "Heroic Idun", and the flight expenses of the owners' representatives and the clinical psychologist, Dr Perman-Kerr, who flew to Cape Town to provide assistance and assess the crew.

(a) The costs for a security escort vessel and security guards

603. The Marshall Islands claims the cost for a security escort vessel and security guards to accompany the *M/T "Heroic Idun"* and crew on departing the Bonny area in Nigeria en route to Cape Town, South Africa, given the anxiety of the crew following the period of detention.

604. The Marshall Islands submits an invoice from Seagull Maritime for a security escort vessel for five days at USD 9,000 per day, totalling USD 45,000. This covers the period starting on 26 May 2023, the date on which the security escort vessel departed its base to link with the *M/T "Heroic Idun"* in the Bonny area so as to commence the outward journey on 28 May 2023, with the escort services terminating on 30 May 2023. The invoice states the "geographical scope of operation" as "GOG, Nigerian EEZ". An additional invoice from Seagull Maritime for a three-person security team, totalling USD 34,840, is also provided.

605. Equatorial Guinea observes that the Marshall Islands has failed to justify which direct action of Equatorial Guinea caused this alleged expense.

(b) Travel wages and the standby payment for the replacement crew

606. The Marshall Islands claims USD 59,607.70 in travel wages and standby payments for the on-signing crew. The need for seven additional crew members immediately after the release of the *M/T "Heroic Idun"* is attributed to the despondency of some members of the detained crew who "did not feel able to carry out their duties". The Marshall Islands points to the statements of the crew and the psychological report of Dr Perman-Kerr as confirmatory evidence. Dr Perman-Kerr explains that a replacement crew was needed "owing to the levels of exhaustion and volatility" of the crew given the prolonged detention. The statement of Mr Eivind Kulblik, Fleet Director at OSM Maritime Group, who handled the arrangements for

the change of crew, indicates that although the crew were desperate to leave the vessel and go home, it was decided that it would be safer for them to disembark somewhere other than Nigeria. As some of them said they did not feel able to carry out their duties during the voyage to Cape Town, arrangements were made for the additional crew members (four officers and three engineers had been flown to Nigeria) to fill those positions.

607. The Marshall Islands accepts that

> the Vessel would have had to change crew in normal circumstances. However, in normal circumstances, it would have been possible to properly plan how and when that change of crew would take place, which would generally allow the costs of doing so to be minimized.

The urgent need to provide a replacement crew was caused by the unlawful detention of the *M/T "Heroic Idun"* and its crew and is the cause of the costs incurred.

608. Equatorial Guinea contests the claim for compensation for a crew change but also argues that, "even if the Marshall Islands were correct in its contention that it incurred additional costs because of the circumstances, the Marshall Islands should have claimed for the difference between normal replacement costs and those incurred in so-called unusual circumstances."

(c) The cost of the call of the *M/T "Heroic Idun"* to Cape Town

609. The Marshall Islands claims three kinds of expenses in relation to the layover in Cape Town of the *M/T "Heroic Idun"* and its crew, namely, port call costs, hotel expenses for the crew and owners of the *M/T "Heroic Idun"* and the flight expenses of the owners' representatives and Dr Perman-Kerr, clinical psychologist, totalling USD 59,964.28. This excludes USD 190,000 in agency costs, withdrawn in the final arguments as "the invoices for this are a matter of some complexity". The Marshall Islands further indicates that the costs incurred for hotel and flight costs are a valid expense within the OSM policy. Nevertheless, its streamlined revised submission excludes many of the items that were originally claimed.

610. Equatorial Guinea argues that “the Marshall Islands has failed to demonstrate a causal link” between the costs and expenses of the call of the *M/T “Heroic Idun”* to Cape Town, including to replace and repatriate the crew on release, and the period of detention in Luba Freeport. Equatorial Guinea also contends that these expenses include a number of bonus items like extra leg room on flights and accommodation at 5-star hotels, which are characterized as “exorbitant” and “unreasonable”.

* * *

611. The Special Chamber considers that the reduced claim presented by the Marshall Islands for costs and expenses to repatriate the crew following their release and to put in place a replacement crew is not fully substantiated.

612. With regard to the cost for a security escort vessel and security guards to accompany the vessel after it sailed from Nigeria, the Special Chamber notes that the escort vessel and security guards were present upon the departure of the *M/T “Heroic Idun”* and crew from Nigeria and, according to the invoice provided, operated solely within the Nigerian exclusive economic zone. The Marshall Islands fails to establish the necessary causal link between the need for a security escort within Nigeria’s exclusive economic zone between 26 May 2023 and 30 May 2023 and the detention of the *M/T “Heroic Idun”* and crew in Equatorial Guinea some eight months earlier.

613. The Special Chamber finds that no sufficient justification has been provided for the expenses incurred for security escort services in the exclusive economic zone of Nigeria and therefore rejects this claim of the Marshall Islands.

614. As regards the claim for the crew change and the cost of the call of the *M/T “Heroic Idun”* to Cape Town, the Special Chamber accepts that, in normal circumstances, it would have been possible to properly plan how, when and where that change of crew would take place, which would generally allow for costs to be minimized. In the circumstances, only a portion of the expenses claimed is, in fact, attributable to the wrongful actions of Equatorial Guinea.

615. The Special Chamber recognizes that some uncertainty about the exact extent of the damage caused does not preclude it from determining the amount of compensation. Indeed, it may take into account equitable considerations where the evidence leaves no doubt that an internationally wrongful act has caused a substantiated injury but does not allow a precise evaluation based on the evidence that has been presented (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 13, at p. 52, para. 106; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, pp. 26-27, para. 35; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 334, para. 21, pp. 334-335, para. 24, and p. 337, para. 33).

616. The Special Chamber awards the Marshall Islands USD 100,000 in compensation for the costs of repatriating the crew of the *M/T "Heroic Idun"* following their release and putting in place a replacement crew; these costs also include the cost of the call of the *M/T "Heroic Idun"* to Cape Town.

7. Costs and expenses to repair the *M/T "Heroic Idun"* after its unlawful detention and to resume operations

617. The Marshall Islands claims costs and expenses to repair the *M/T "Heroic Idun"* for an "updated amount" of approximately USD 438,000, having withdrawn "out of an abundance of caution" some items that were originally included concerning the air conditioning, TV and pressure cooker on the *M/T "Heroic Idun"*. The three remaining items claimed are drydocking and deslopping costs, painting, and repair of the Scanjet machines for the vessel's pumps.

618. The Marshall Islands notes that the Tribunal has allowed claims for vessel repairs in cases when those claims have arisen because of the detention of a vessel and refers to the *M/V "Virginia G"* case in support.

619. In substantiation of its claim that it is entitled to recover the costs for repairs necessitated by the vessel's detention in Equatorial Guinea rather than by regular wear and tear, the Marshall Islands refers to a series of email exchanges between the OSM managers of the *M/T "Heroic Idun"* and their agents in Equatorial Guinea in the months of September and October of 2022. In these messages, the OSM managers express their growing concerns that the vessel was remaining in one position for an extended period of time when "it is not recommended to remain on same anchor for these types of vessels for more than seven days". The Marshall Islands also adduces a chart depicting how "the vessel was gyrating on its own axis, round and round, on its anchor. That caused damage to the vessel."

620. The Marshall Islands also asserts, as noted above, that damage resulted from marine growth, including barnacles, because the vessel was stationary for months, which would not occur in normal operations. As regards the additional period of detention in Nigeria, the Marshall Islands further asserts that the repairs would have been required regardless. "That period may have augmented that damage, but it did not cause it."

621. Equatorial Guinea contends that the Marshall Islands has failed to show that the repairs, including the costs of painting the vessel, repair of Scanjet machines, and drydocking and deslopping costs would not have been required in any event as part of standard maintenance. Therefore, the alleged costs and expenses claimed as repairs to the vessel are unsubstantiated as a matter of causation and quantification.

* * *

622. The Special Chamber considers that it is reasonable for the *M/T "Heroic Idun"*, having remained three months at anchor in Luba Freeport, to enter dry dock and undergo inspections and repairs. However, the extent to which the repairs were necessitated by the 92 days in Luba Freeport or the extended period of detention in Nigeria is unclear. The degree to which the damage may have been "augmented" as a result of the prolonged detention in Nigeria and delay in carrying out repairs is relevant in determining an appropriate level of compensation to be awarded. The

Special Chamber finds that only a portion of the claim for drydocking, deslopping and repairs warrants reparation.

623. The Special Chamber notes that drydocking costs alone were USD 205,000 and account for almost half of the "updated amount" now claimed. The *M/T "Heroic Idun"* was built in 2020, and therefore the equipment on the vessel was fairly new and would not likely have been damaged prior to its detention in Luba Freeport. As noted in paragraph 615 above, an award of compensation is not precluded where an internationally wrongful act has caused a substantiated injury that does not allow a precise evaluation.

624. In light of the foregoing, the Special Chamber decides to award the Marshall Islands compensation for drydocking and repairs incurred by the *M/T "Heroic Idun"* in the amount of USD 300,000.

* * *

625. The Special Chamber observes that, while the Marshall Islands, in the course of the written proceedings, had extensively argued its claim for "wasted costs" concerning the application made to the Tribunal for the prompt release of the *M/T "Heroic Idun"* and its crew from detention prior to the forced transfer of the vessel to Nigeria, it did not include this claim in its final submissions. The Special Chamber, therefore, is not required to address this claim.

8. Non-material damages for the crew of the *M/T "Heroic Idun"*

626. The Marshall Islands claims compensation for the moral injury suffered by the crew of the *M/T "Heroic Idun"* as non-material damages calculated at the rate of USD 2,000 per day, per crew member, for the entire period of their unlawful detention.

627. In arguing that the quoted daily rate is fair, the Marshall Islands draws attention to several factors, including the extended length of the crew's detention; the personal threats made to the crew that precipitated their forced departure to Nigeria;

the extended hours of work undertaken by the limited crew who were allowed to remain on the vessel; the illnesses contracted by the crew who were detained onshore and the conditions of their detention; the lack of adequate legal representation; the damage to the reputation of the Master and crew given the publicity and false statements in the press; the missed important life events, such as the births of children and deaths of family members; the psychological stress caused by the uncertainty surrounding the reasons for their detention and the prospects of their release; and the long-term psychiatric injury resulting from their detention, including suicidal thoughts and the damage to their "life plan" inasmuch as they no longer desire or their families will not allow them to sail again or pursue their long-held ambitions.

628. The Marshall Islands makes extensive comparisons to previous awards for non-material damages in the jurisprudence of the Tribunal, the ICJ and arbitral tribunals, suggesting that the situation faced by the crew of the *M/T "Heroic Idun"* was far worse.

629. Equatorial Guinea alludes to the same jurisprudence but draws the opposite conclusion. It disputes the Marshall Islands' claim for compensation for non-material damages, noting that the crew of the *M/T "Heroic Idun"* have a "vested interest in the success of this particular claim – they stand to gain USD 578,000 each." Equatorial Guinea points out that the local agents of the owners of the *M/T "Heroic Idun"* were allowed to meet all the requests of the crew. It also notes that the crew stayed "in a 4-star hotel and in a new and comfortable Accommodation Facility"; had a choice of different cuisines, alcohol and cigarettes; and were provided with local SIM cards, allowing them to freely communicate with their families abroad, and had medical care.

* * *

630. The Special Chamber recalls that the ICJ stated in the *Diallo* case that

> [q]uantification of compensation for non-material injury necessarily rests on equitable considerations. As the umpire noted in the *Lusitania* cases, non-material injuries "are very real, and the mere fact that they are difficult to

> measure or estimate by money standards makes them none the less real and affords no reason why the injured person should not be compensated therefore as compensatory damages".
> (*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 324, at pp. 334-335, para. 24)

631. Having examined the evidence concerning the length and conditions of the detention of the crew, whether on the vessel or onshore, their additional exposure to diseases, their lack of access to legal representation and the reputational and psychological harm inflicted on them, the Special Chamber finds that an award of non-material damages is appropriate in the circumstances of this case. In this regard, the Special Chamber notes that the forced transfer to Nigeria of the *M/T "Heroic Idun"* and its crew aggravated their distress and was an unlawful act for which Equatorial Guinea bears responsibility.

632. The Special Chamber is mindful that while crew members were affected differently, the Marshall Islands did not treat the claims of individual crew members differently. Indeed, the Master of the *M/T "Heroic Idun"* in his testimony before the Special Chamber demonstrated a similar approach in refusing to draw distinctions between his treatment and that of other crew members.

633. The Special Chamber considers it appropriate to award a lump sum for compensation for non-material damage suffered by the crew of the *M/T "Heroic Idun"*, to be divided equally among all members of the crew. The Special Chamber decides to award for the 92-day period from 12 August 2022 to 11 November 2022 reparations of USD 4,186,000 on the basis of USD 1,750 per day for each of the 26 members of the crew.

C. Interest

634. The Marshall Islands, in its final submissions, claims interest on all material and non-material damages "as appropriate". In its written submissions, the Marshall Islands argues that it is entitled to interest and that

> the appropriate rate of interest for all material and non-material damages claimed in US dollars is the US prime rate plus 1, compounded at quarterly

> intervals… As to the Fine, the appropriate rate of interest … is the EURIBOR six-month rate plus 5%, compounded at six monthly intervals.

635. The Marshall Islands argues that interest is considered a constitutive element of full reparation, referring to article 38 of the ILC Articles on State Responsibility. The Tribunal and arbitral tribunals constituted under Annex VII to the Convention have awarded interest, considering the "commercial conditions prevailing in the countries where the expenses were incurred", and accepted that compound interest can be applicable. Although the practice has been to award interest compounded annually, the Marshall Islands contends that semi-annual compounding reflects current market conditions. In this regard, the Marshall Islands cites the *Cyprus Popular Bank* v *Hellenic Republic* case (*Cyprus Popular Bank Public Co. Ltd* v *Hellenic Republic,* ICSID Case No. ARB/14/16, Award, at para. 426).

636. The Marshall Islands also submits that although the Tribunal in the *M/V "SAIGA" (No. 2)* case applied different rates for different types of damage, that is not the approach taken by more recent decisions. It argues that "the current more updated position" is that interest for compensation for non-material damages should run at commercial rates. As regards the date, or dates, from which interest should run, the Marshall Islands' position is that interest should start running either from the date of the commission of the wrongful act, or from the date the costs or expenses were incurred, and that they should run until compensation is paid.

637. Equatorial Guinea rejects the Marshall Islands' claim for interest. It notes that expenses were incurred in currencies other than in US dollars and outside the United States, and no authority has been cited to justify the Marshall Islands' approach "that expenses incurred in Norway, South Africa and the United Kingdom, among others, should be subject to US prime + 1 % interest rates."

638. Equatorial Guinea notes that the Marshall Islands relies on investment treaty case law in support of annual and semi-annual capitalization of unpaid interest. However, according to Equatorial Guinea, this does not justify the application of a six-month compound rate in the context of an inter-State dispute. Furthermore, it maintains that the reliance on ICJ cases and several decisions of human rights

courts to justify the application of the same type of interest to both material and non-material damages "is contrary to the practice of this Tribunal and should be disregarded accordingly."

* * *

639. The Special Chamber notes that the Tribunal has expressed its views on the award of interest on various occasions. In the *M/V "SAIGA" (No. 2)* case, the Tribunal considered that it is

> generally fair and reasonable that interest is paid in respect of monetary losses, property damage and other economic losses. However, it is not necessary to apply a uniform rate of interest in all instances. In the present case, the Tribunal has set an interest rate of 6% in respect of award of compensation. In determining this rate, account has been taken, *inter alia*, of commercial conditions prevailing in the countries where the expenses were incurred or the principal operations of the party being compensated are located. 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, payable from three months after the date of the Judgment.
> (*M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10, at p. 66, para. 173)

640. In the *M/V "Virginia G"* case, the Tribunal indicated that it would

> deal with the interest rates in the present case in light of its findings in the *M/V "SAIGA" (No. 2) Case*. As regards the value of the gas oil, the interest rate, in the view of the Tribunal, should be based on the average US Dollar LIBOR (London Interbank Offered Rate) interest rate of 0.862 per cent for the period 2010 to 2013 plus 2 per cent. In light of this finding and based on information obtained by the Tribunal, the interest rate is 2.862 per cent, compounded annually. It shall run from 20 November 2009, the date of the confiscation of the gas oil, until the date of the present Judgment.
>
> As regards the costs of repair, the interest rate should equally be based on the average Euro LIBOR (London Interbank Offered Rate) interest rate of 1.165 per cent for the period 2011 to 2013 plus 2 per cent. In light of this finding and based on the information obtained, the interest rate is 3.165 per cent, compounded annually. It shall run from 18 March 2011, the date of the last invoice on the list submitted by Panama, until the date of the present Judgment.
> (*M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 4, at pp. 120-121, paras. 444 and 445)

641. In the *M/V "Norstar"* case, the Tribunal expressed the view that

> the interest with regard to the amount of compensation for the loss of the *M/V "Norstar"* should be based on the average yearly US dollar LIBOR (London Interbank Offered Rate) rate of 2.7182 per cent, compounded annually and payable from 25 September 1998 until the date of the present Judgment.
> (*M/V "Norstar" (Panama* v. *Italy), Judgment, ITLOS Reports 2018–2019*, p. 10, at p. 122, para. 460)

642. The Special Chamber is cognizant that the United States Dollar London Interbank Offered Rate (LIBOR) was officially discontinued as of 30 September 2024. Instead, alternative, more transparent transaction-based rates such as the Secured Overnight Financing Rate (SOFR) are used.

643. The Special Chamber notes that interest is not an autonomous form of reparation nor is it a necessary part of compensation in every case (see *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 15, at p. 58, para. 151; Commentary to Article 38, Draft Articles on Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 31, at p. 107). Article 38 of the ILC Articles on State Responsibility states:

> 1. Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set as to achieve that result.
>
> 2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

644. In the view of the Special Chamber, an award of interest compensates for the loss of the time value of money and for the opportunity cost caused by the internationally wrongful act and serves to ensure full reparation.

645. As stated above, in the *M/V "SAIGA" (No. 2)* case, the Tribunal took account of, *inter alia*, commercial conditions prevailing in the countries in which the expenses were incurred, or in which the principal operations of the party being compensated are located, in determining the interest rate. The Special Chamber notes that, in this

case, expenses were incurred in a number of countries and not exclusively in Equatorial Guinea.

646. The Special Chamber is mindful that in global maritime trade, costs are usually calculated in USD, and it considers this approach to be appropriate in the circumstances of this case. The Marshall Islands has quoted the USD equivalent for all expenses claimed. The Special Chamber has not found the figures submitted by the Marshall Islands to differ substantially from the buying and selling rates prevailing at the relevant time in the relevant countries.

647. Although the Tribunal in *M/V "SAIGA" (No. 2)* case applied a different rate of interest to material and non-material damages, the Special Chamber notes that more recent decisions of international courts have applied the same interest rate to material and non-material damages.

648. The jurisprudence of the Tribunal also distinguishes the treatment of pre-judgment (compensatory) interest and post-judgment (moratory) interest. However, the distinct circumstances of each case belie generalization. In the *M/V "Norstar"* case, the Tribunal awarded interest "compounded annually and payable from 25 September 1998 until the date of the … Judgment", that is, 10 April 2019. Therefore, while post-judgment interest was not granted, over 20 years of interest compounded annually was awarded in pre-judgment interest.

649. It is well established that a tribunal has a margin of discretion to determine questions of interest (see *Arbitration regarding the Arctic Sunrise between the Kingdom of the Netherlands and the Russian Federation, Award on Compensation of 10 July 2017, RIAA, Vol. XXXII,* p. 315, at p. 350, para. 118). The commentary to article 38 of the ILC Articles on State Responsibility notes that "[t]here is no uniform approach, internationally, to questions of quantification and assessment of amounts of interest payable. In practice, the circumstances of each case and the conduct of the parties strongly affect the outcome" (Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 109, para. 10).

650. The Special Chamber is of the view that the award of moratory interest is acknowledged as being for the relevant court or tribunal to determine in the circumstances of a particular case. As the ICJ stated in the *Certain Activities (Costa Rica* v. *Nicaragua) Case*:

> With regard to Costa Rica's claim for post-judgment interest, the Court recalls that in the case concerning *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*, the Court awarded post-judgment interest, observing that "the award of post-judgment interest is consistent with the practice of other international courts and tribunals" (*Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 343, para. 56). The Court sees no reason in the current case to adopt a different approach.
>
> Thus, although it has every reason to expect timely payment by Nicaragua, the Court decides that, in the event of any delay in payment, post-judgment interest shall accrue on the total amount of compensation. This interest shall be paid at an annual rate of 6 per cent.
> *(Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 15, at p. 47, paras. 154, 155*)*

651. The Special Chamber considers that it is appropriate, in the present case, to follow the approach taken by the ICJ.

652. The Special Chamber decides that interest shall be awarded on the claims found to be compensable. In determining the rate of interest to be applied in the present case, the Special Chamber has been guided by the decisions of other international courts and tribunals. It notes reliance of such international courts and tribunals on, *inter alia*, the United States Dollar London Interbank Offered Rate, LIBOR, which was officially discontinued as of 30 September 2024; the 12-month Euro Interbank Offered Rate, EURIBOR, as published by the European Money Markets Institute; and the Secured Overnight Financing Rate, SOFR, as published by the Federal Reserve Bank of New York. These rates have generally been applied with spreads varying from 2 to 4 per cent. In the circumstances of the present case and bearing in mind the varied nature of the claims of the Marshall Islands, the Special Chamber decides to award interest at the uniform annual rate of 4.5 per cent.

653. The date from which interest is awarded is not uniform across all heads of claim. Interest on the sum of EUR 2,000,132 paid to discharge the Fine shall be

compounded annually and run from the date on which the sum was paid, that is, 4 October 2022, until the date of the present Judgment. Interest on the costs and expenses to assist the crew during their wrongful detention in the amount of USD 276,296.99 for correspondent costs and medical costs and USD 265,973.47 for additional salary shall be compounded annually and run from 11 November 2022, the date on which the *M/T "Heroic Idun"* was forced to sail to Nigeria, until the date of the present Judgment.

654. The Special Chamber decides not to award pre-judgment interest on any other heads of claim.

655. The Special Chamber anticipates that immediate steps will be taken by Equatorial Guinea to execute payment. However, in the event of any delay, post-judgment interest shall accrue at the annual rate of 6 per cent on the total amount of compensation awarded on all heads of claim included in the operative clauses (see para. 664 below) until the date of payment.

D. Satisfaction

656. The Marshall Islands requests assurances and guarantees of non-repetition from Equatorial Guinea and an acknowledgement that it has violated the Convention. In support of its claim, the Marshall Islands refers to articles 30 and 37, paragraph 2, of the ILC Articles on State Responsibility, which provide, respectively, for appropriate assurances and guarantees of non-repetition where the circumstances so require, and satisfaction in the form of "an acknowledgment of the breach, an expression of regret, a formal apology or another appropriate modality."

657. The Marshall Islands claims that satisfaction in the form of a judicial declaration as provided by the Tribunal in the *M/V "Virginia"* case is not sufficient given the seriousness of the breach and the character of the obligations breached. As the world's third largest ship registry, the Marshall Islands claims that it is specially affected by Equatorial Guinea's unlawful treatment of the *M/T "Heroic Idun"* and its crew as this case presents serious and wider implications for the Marshall Islands' fleet and those of other flag States operating off West Africa and elsewhere.

658. Equatorial Guinea submits that, were it to be found to have breached its obligations under the Convention and the Special Chamber were to find that satisfaction is warranted, in line with the Tribunal's jurisprudence, a judicial declaration would provide full and adequate satisfaction. Equatorial Guinea further asserts that the Marshall Islands' demands for additional assurances and guarantees presume a risk of future breach without substantiating that any such risk exists, as there is no evidence that Equatorial Guinea has engaged in a pattern of violations requiring preventative measures.

* * *

659. The Special Chamber notes that the ICJ, in the *Armed Activities on the Territory of the Congo* case, observed that "the forms of satisfaction listed in the second paragraph of [Article 37 of the ILC Articles on State Responsibility] are not exhaustive" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I),* p. 13, at p. 132, para. 389). The Special Chamber observes that satisfaction can take the form of a judicial declaration. The Special Chamber has declared in paragraphs 306, 312, 359 and 414 above that Equatorial Guinea acted wrongfully and violated the rights of the Marshall Islands by seizing the *M/T "Heroic Idun"* and detaining the vessel and its crew in Equatorial Guinea for a period of 92 days and unlawfully levying the Fine, and by forcibly transferring the *M/T "Heroic Idun"* and its crew to a third State without due process. The Special Chamber considers that the above declarations are adequate in the circumstances of this case.

XIII. Costs

660. In its final submissions, the Marshall Islands requests the Special Chamber "to adjudge and declare … [a]n award of the costs of the Republic of the Marshall Islands in these proceedings, subject to assessment in the case of dispute."

661. Equatorial Guinea submits that each party should bear its own costs as per article 34 of the Tribunal's Statute.

* * *

662. The rule in respect of costs in proceedings before the Tribunal, as set out in article 34 of its Statute, is that each party bears its own costs unless the Tribunal decides otherwise.

663. In the present case, the Special Chamber sees no need to depart from the general rule that each party shall bear its own costs.

XIV. Operative clauses

664. For these reasons,

THE SPECIAL CHAMBER,

(1) Unanimously,

Finds that it has jurisdiction over the dispute concerning the *M/T "Heroic Idun"* and its crew;

(2) By 4 votes to 1,

Finds that Nigeria is not an indispensable third party to the present proceedings and therefore rejects the objection raised by Equatorial Guinea;

IN FAVOUR: Judge HOFFMANN, *President of the Special Chamber*; *Judges* INFANTE CAFFI, BROWN; *Judge* ad hoc EIRIKSSON;

AGAINST: *Judge* ad hoc COUVREUR;

(3) Unanimously,

Rejects the objection raised by Equatorial Guinea, based on the non-exhaustion of local remedies, to the admissibility of the Marshall Islands' claims for damages in respect of injury to the crew of the *M/T "Heroic Idun"*;

(4) Unanimously,

Finds that by intercepting and apprehending the *M/T "Heroic Idun"* and its crew in the exclusive economic zone of São Tomé and Príncipe, Equatorial Guinea violated articles 87, paragraph 1, 90 and 92, paragraph 1, of the Convention;

(5) Unanimously,

Finds that Equatorial Guinea, by taking enforcement measures against the *M/T "Heroic Idun"*, in particular by levying a fine on the Master in respect of the activities of the vessel and its crew in the exclusive economic zone of Equatorial Guinea, violated articles 56, paragraph 1, 58, 87, 89 and 92, paragraph 1, of the Convention;

(6) Unanimously,

Finds that there is no general obligation under the Convention requiring a State to notify the flag State of enforcement measures taken in respect of a vessel flying its flag;

(7) By 4 votes to 1,

Finds that the treatment of the crew, by Equatoguinean authorities, during their detention, including their forced transfer to a third State, was in violation of the rights of the Marshall Islands under the Convention;

IN FAVOUR: Judge HOFFMANN, *President of the Special Chamber*; *Judges* INFANTE CAFFI, BROWN; *Judge* ad hoc EIRIKSSON;

AGAINST: *Judge* ad hoc COUVREUR;

(8) Unanimously,

Finds that Equatorial Guinea did not violate article 225 of the Convention;

(9) Unanimously,

Finds that Equatorial Guinea did not violate the obligation not to aggravate or extend the present dispute with the Marshall Islands;

(10) Unanimously,

Decides to award the Marshall Islands compensation in the amount of EUR 2,000,132 corresponding to the amount incurred by the owners of the *M/T "Heroic Idun"* in payment of the unlawful fine imposed by Equatorial Guinea, with interest as indicated in paragraphs 652, 653 and 655;

(11) By 4 votes to 1,

Decides to award the Marshall Islands compensation in the amount of USD 276,296.99 for correspondent costs and medical costs of the crew during the 92-day period of detention of the *M/T "Heroic Idun"* and its crew in Equatorial Guinea, with interest as indicated in paragraphs 652, 653 and 655;

IN FAVOUR: Judge HOFFMANN, *President of the Special Chamber*; *Judges* INFANTE CAFFI, BROWN; *Judge* ad hoc EIRIKSSON;

AGAINST: *Judge* ad hoc COUVREUR;

(12) By 4 votes to 1,

Decides to award the Marshall Islands compensation in the amount of USD 265,973.47 for additional salary paid to the crew of the *M/T "Heroic Idun"* during the 92-day period of detention, with interest as indicated in paragraphs 652, 653 and 655;

IN FAVOUR: Judge HOFFMANN, *President of the Special Chamber*; *Judges* INFANTE CAFFI, BROWN; *Judge* ad hoc EIRIKSSON;

AGAINST: *Judge* ad hoc COUVREUR;

(13) By 4 votes to 1,

Decides to award the Marshall Islands compensation in the amount of USD 5,683.21 for certain travel costs, with interest as indicated in paragraph 655;

IN FAVOUR: Judge HOFFMANN, *President of the Special Chamber*; *Judges* INFANTE CAFFI, BROWN; *Judge* ad hoc EIRIKSSON;

AGAINST: *Judge* ad hoc COUVREUR;

(14) By 4 votes to 1,

Decides to award the Marshall Islands compensation in the amount of USD 939,334.56 for bunker expenses incurred by the *M/T "Heroic Idun"* during the 92-day period of detention, with interest as indicated in paragraph 655;

IN FAVOUR: Judge HOFFMANN, *President of the Special Chamber*; *Judges* INFANTE CAFFI, BROWN; *Judge* ad hoc EIRIKSSON;

AGAINST: *Judge* ad hoc COUVREUR;

(15) By 4 votes to 1,

Decides to award the Marshall Islands compensation in the amount of USD 75,295.88 for agency and port fees incurred by the *M/T "Heroic Idun"* during the 92-day period of detention, with interest as indicated in paragraph 655;

IN FAVOUR: Judge HOFFMANN, *President of the Special Chamber*; *Judges* INFANTE CAFFI, BROWN; *Judge* ad hoc EIRIKSSON;

AGAINST: *Judge* ad hoc COUVREUR;

(16) By 4 votes to 1,

Decides to award the Marshall Islands compensation in the amount of USD 54,000 for expenses incurred as a result of the increased war risk premium levied by the insurers related to the operation of the *M/T "Heroic Idun"* in high-risk areas, with interest as indicated in paragraph 655;

IN FAVOUR: Judge HOFFMANN, *President of the Special Chamber*; *Judges* INFANTE CAFFI, BROWN; *Judge* ad hoc EIRIKSSON;

AGAINST: *Judge* ad hoc COUVREUR;

(17) By 4 votes to 1,

Decides to award the Marshall Islands compensation in the amount of USD 5,900,000 for loss of hire incurred by the *M/T "Heroic Idun"*, with interest as indicated in paragraph 655;

IN FAVOUR: Judge HOFFMANN, *President of the Special Chamber*; *Judges* INFANTE CAFFI, BROWN; *Judge* ad hoc EIRIKSSON;

AGAINST: *Judge* ad hoc COUVREUR;

(18) By 4 votes to 1,

Decides to award the Marshall Islands compensation in the amount of USD 100,000 for the costs of repatriating the crew of the *M/T "Heroic Idun"* and putting in place a replacement crew, with interest as indicated in paragraph 655;

IN FAVOUR: Judge HOFFMANN, *President of the Special Chamber*; *Judges* INFANTE CAFFI, BROWN; *Judge* ad hoc EIRIKSSON;

AGAINST: *Judge* ad hoc COUVREUR;

(19) By 4 votes to 1,

Decides to award the Marshall Islands compensation in the amount of USD 300,000 incurred by the *M/T "Heroic Idun"* for drydocking and repairs, with interest as indicated in paragraph 655;

IN FAVOUR: Judge HOFFMANN, *President of the Special Chamber*; *Judges* INFANTE CAFFI, BROWN; *Judge* ad hoc EIRIKSSON;

AGAINST: *Judge* ad hoc COUVREUR;

(20) By 4 votes to 1,

Decides to award the Marshall Islands compensation in the amount of USD 1,750 per day for each of the 26 crew members of the *M/T "Heroic Idun"* for non-material damages they suffered during the 92-day period of their detention, amounting to a total of USD 4,186,000, with interest as indicated in paragraph 655;

IN FAVOUR: Judge HOFFMANN, *President of the Special Chamber*; *Judges* INFANTE CAFFI, BROWN; *Judge* ad hoc EIRIKSSON;

AGAINST: *Judge* ad hoc COUVREUR;

(21) Unanimously,

Decides not to award the Marshall Islands compensation with respect to its claims for the expenses incurred for security escort services in the exclusive economic zone of Nigeria;

(22) Unanimously,

Decides that each Party shall bear its own costs.

Done in English and in French, both texts being equally authoritative, in the Free and Hanseatic City of Hamburg, this twenty-seventh day of May, two thousand and twenty-six, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to the Government of the Marshall Islands and to the Government of Equatorial Guinea, respectively.

(Signed)
Albert J. HOFFMANN,
President of the Special Chamber

(Signed)
Ximena HINRICHS OYARCE,
Registrar

Judge ad hoc *Couvreur*, availing himself of the right conferred on him by article 125, paragraph 2, of the Rules of the Tribunal, appends his declaration to the Judgment of the Special Chamber.

(Initialled) Ph.C.