

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

M/T “HEROIC IDUN”

**THE REPUBLIC OF THE MARSHALL ISLANDS v. THE REPUBLIC OF
EQUATORIAL GUINEA**

**APPLICATION FOR THE PROMPT RELEASE OF A VESSEL
AND HER CREW**

9 NOVEMBER 2022

**Note by the Registry: Reproduced is a redacted version submitted by the Marshall Islands
on 11 November 2022.**

APPLICATION OF THE REPUBLIC OF THE MARSHALL ISLANDS PURSUANT TO ARTICLE 292 OF THE CONVENTION

I. INTRODUCTION

1. This is an urgent application by the Republic of the Marshall Islands (the “**Marshall Islands**” or the “**Applicant**”) under Article 292 of the United Nations Convention on the Law of the Sea (“**UNCLOS**” or the “**Convention**”) for the prompt release of the M/T “*Heroic Idun*” (“*Heroic Idun*” or “**Vessel**”) and her crew (“**this Application**” or “**the Prompt Release Application**”) currently detained by the Republic of Equatorial Guinea (“**Equatorial Guinea**” or the “**Respondent**”).

2. Given the extreme urgency of the developing situation, as described below, this Application is submitted in advance of, but intended to be in parallel with, a separate Notice of Arbitration and Statement of Claim instituting arbitral proceedings against Equatorial Guinea under UNCLOS Annex VII (“**Notice of Arbitration**”), and, as appropriate, a separate Request for Provisional Measures to the International Tribunal for the Law of the Sea (“**the Tribunal**”) pursuant to UNCLOS Article 290(5) (“**Request for Provisional Measures**”). It is the Applicant’s intention to transmit the Notice of Arbitration to Equatorial Guinea within 48 hours of the submission of this Application, and thereafter to submit to the Tribunal the proposed Request for Provisional Measures in the event that the Respondent fails to agree to the provisional measures requested in the Notice of Arbitration.

3. Given the urgency that dictates both this Application and the additional steps just described, and having regard to Article 112(1) of the Rules of the Tribunal (“**Tribunal Rules**”), while the Applicant would be content for the Prompt Release Application and the intended Request for Provisional Measures to be addressed by the Tribunal at the same time, the Applicant requests that the Tribunal adopt the necessary measures to ensure that the Prompt Release Application and the intended Provisional Measures Application be dealt with without delay. Above all, the Applicant requests the Tribunal and its President to give the most urgent priority to calling upon the Respondent to take all necessary steps to ensure that any Order that the Tribunal may make in due course on the Prompt Release Application and/or Provisional Measures Application will be able to have appropriate effects.

4. In particular, the Applicant requests that the President of the Tribunal, relying on the Tribunal’s inherent competence and *proprio motu* powers, exemplified but not confined by Article 90(4) of the Tribunal’s Rules, calls upon the Respondent to refrain from taking any steps that would aggravate the situation and risk prejudice to the safety, security and wellbeing of the crew and the safety and security of the Vessel. More specifically, the Applicant requests the President of the Tribunal to call upon Equatorial Guinea not to transfer, or to cause the Vessel and/or its crew and/or any member or members of its crew to be transferred, into the custody and/or control of Nigerian Authorities. The Applicant further requests that the President of the Tribunal calls upon the Respondent to ensure that any communication from the Tribunal in this regard is drawn to the immediate attention of the

Government and authorities of the Republic of Nigeria, which appears to be intent on securing the rendition from Equatorial Guinea to Nigeria of the Vessel and its crew in the absence of any lawful process.

5. By this Application, the Applicant requests that the Tribunal:
 - (a) Declares that it has jurisdiction in accordance with Article 292 of the Convention to entertain the Prompt Release Application and that the Prompt Release Application is admissible.
 - (b) Takes note of the payment of the sum of €2,000,132 paid by the owners of the Vessel to the Respondent in fulfilment of an agreement to release the Vessel and its crew, and declares, insofar as the Tribunal considers it necessary and appropriate to do so, that the payment of this sum may properly be deemed to be a reasonable bond or other financial security that has already been posted for purposes of securing the prompt release of the Vessel and her crew in accordance with Article 292(4) of the Convention.
 - (c) Decides and orders the Respondent to immediately release the “*Heroic Idun*” and her crew and take such steps as are necessary to facilitate their safe and orderly departure from Equatorial Guinea.

6. As is addressed below and in the accompanying Witness Statements by, respectively, Mr. Stephen Askins and Mr. Eivind Kulblik, as well as the documents and evidence annexed to this Application, at the point at which this Application is submitted, **there is a real and imminent risk that the Respondent will forcibly and unlawfully render or otherwise transfer the Vessel and her crew into the custody and control of the Nigerian authorities.** Such action would both frustrate the Applicant’s rights under the Convention and, more materially, would place in jeopardy the safety, security and wellbeing of the crew, and the safety and security of the Vessel, thereby denying appropriate effects of any Order that the Tribunal may make in this regard in due course. **The information available to the Applicant leads the Applicant to believe that such unlawful rendition or other transfer may take place as early as today, i.e., as this Prompt Release Application is being submitted, the real risk thereof requiring the most urgent action by the Tribunal and its President in the terms described above.**

7. Pursuant to Article 56(2) of the Tribunal Rules, Ms. Meredith Kirby is appointed by the Marshall Islands as Agent for the purpose of all proceedings in connection with this Application. The Agent’s contact details are as follows International Registries, Inc., 11495 Commerce Park Drive, Reston, VA, 20191, USA, telephone +1-703 620 4880, facsimile +1 703 476 8522.

8. The address for service to which all communications concerning the case are to be sent in accordance with Article 56(1) of the Tribunal Rules is as follows International Registries GmbH, Am Kaiserkai 13, 2nd Floor, 20457 Hamburg, Germany, telephone +49 40 361 6681 30, facsimile +49 40 361 6681 39, email mkirby@register-iri.com.

II. STATEMENT OF FACTS

9. The “*Heroic Idun*” (IMO number: 9858058) is a very large crude carrier (VLCC). It was built in 2020 and has a gross tonnage of 156237 metric tons. It is flagged in the Marshall Islands.¹ The Vessel is currently detained by authorities of the Respondent in Malabo at the Luba anchorage, along the coast on Bioko Island. The crew is currently detained on the “*Heroic Idun*” and ashore.

10. The Vessel is owned by Idun Maritime Limited, an Isle of Man company (“**the Owner**”), and is managed by OSM Ship Management, a Norwegian company (“**the Manager**”).² At the time of its interception and detention on 12 and 13 August 2022 by Equatorial Guinea, the Vessel was chartered to Mercuria in Switzerland (“**the Charterers**”),³ at a daily hire rate of US\$49,000 per day, and sub-chartered to BP (“**the Sub-charterers**” or “**BP**”).⁴ It was carrying a crew of 26 of various nationalities (Indian, Sri Lankan, Filipino and Polish).⁵

A. Events leading up to the interception and detention of the Vessel and crew

11. In what follows, and given the extreme urgency and fast-moving nature of the situation, the Marshall Islands is relying on the best information available to it from those on the ground in Equatorial Guinea, as well as from publicly available information from social media sources. The Applicant undertakes to inform the Tribunal immediately should any of the information on which it herein relies proves to be inaccurate – and takes its responsibilities to the Tribunal to this effect with the utmost seriousness.

12. Relevant events concerning the Vessel started on 7 August 2022. The Vessel had been ordered by BP to sail to Akpo Offshore Terminal, Nigeria (“**Akpo**” or “**Terminal**”) to load a consignment of oil with a laycan of 8 August 2022.⁶ The Vessel had tendered its Notice of Readiness but was asked to move away (some 10-12 nm) from the Terminal and drift because the Terminal had not yet received all of the required loading documentation, including the Nigerian National Petroleum Corporation (“**NNPC**”) clearance.⁷ The Master was very concerned about drifting there, as it put the Vessel outside the purview of Terminal security,

¹ Description of the “*Heroic Idun*” (**Annex PR/RMI-1**).

² Witness statement of Stephen Askins dated 9 November 2022, para.5: **Annex PR/RMI-2 (referred to hereafter as ‘Askins’)**.

³ Time Charter Party dated 20 January 2022: **Annex PR/RMI-3**. The charterparty was entered into in January 2022 with the Vessel’s then owners, Hunter Tankers. The vessel was purchased by the current owners, Idun Maritime Limited, and the charter with Mercuria novated (Askins, para.5 (**Annex PR/RMI-2**)). However, nothing turns on this.

⁴ Askins, para.5 (**PR/RMI-2**).

⁵ Witness statement of Eivind Kulblik dated 9 November 2022, para.1: **Annex PR/RMI-4** (hereafter referred to as ‘**Kulblik**’).

⁶ Askins, paras.5-6 (**Annex PR/RMI-2**).

⁷ Email exchange between the Master and Akpo Terminal dated 7 August 2022 (**Annex PR/RMI-5**).

which is extremely high risk. It was therefore agreed that he would move to a safe drifting position, 300 nm from the Akpo Terminal.⁸

13. At around 21:09 local time (“LT”), while it was 10-15 nm from Akpo and moving away from the piracy high risk area to a safe drifting area 300 nm away, the Vessel received a VHF call from the Terminal telling it a Nigerian naval vessel was approaching it. The approaching vessel consequently contacted the “*Heroic Idun*” by VHF at around 21:16 LT. The vessel told the Master to stop the Vessel and follow it to the Bonny Fairway Buoy, some 130 nm away to await loading documentation. It could not be verified it was a navy ship. It could not be seen in the conditions of darkness. No one the Master contacted, the owners or the agents onshore, could verify the vessel approaching was a Nigerian naval vessel. It did not have its AIS on. The Master was also instructed by agents onshore that under no circumstances was he to stop or to follow the vessel’s instructions. The Master informed the vessel that he needed slightly more time to confirm the situation with the owners and agents onshore. In response, the vessel threatened to use “*maximum force*” and “*open fire*” if the Vessel did not immediately alter its course and stop its engines.⁹

14. In these circumstances and given the high risk of piracy in the area, the Master decided the approach should be treated as suspicious. He activated the ship’s security plan, declared an emergency onboard and sent the crew to the citadel. He also issued multiple distress alerts and SSAS alerts and repeated the distress call verbally on the VHF Ch 16. The vessel was repeatedly asked to turn its AIS on so she could be identified but would not. After several failed attempts to board the “*Heroic Idun*”, the unidentified vessel left at around 23:12 LT. The “*Heroic Idun*” then cancelled its distress alert and it proceeded to a safe area. In the morning of 9 August, it was confirmed that the unidentified vessel was the Nigerian Navy.

15. Two days later, on 11 August 2022, the Terminal confirmed to the “*Heroic Idun*” that it had received the relevant NNPC clearances, and the laycan was rescheduled for 17 August 2022.¹⁰

16. The next day, on 12 August 2022, three days after the incident, the “*Heroic Idun*” was approached by the Equatorial Guinean Navy vessel, the “*Capitan David*”, at around 13:38 LT, on 12 August 2022 at 01 00.1N 004 02.5E, in the EEZ of São Tomé and Príncipe.¹¹ The location of this approach, and the assertion of control over and detention of the Vessel that followed (as described further below), in the EEZ of a third State, is highly material, and a matter to which the Applicant returns below.

17. At the time of the approach, the Vessel was ‘drifting’, meaning making minimum way with the engines on.¹² The Vessel was drifting at that location because it was considered

⁸ Askins, para.8 (Annex PR/RMI-2).

⁹ For an account of the events, see Askins, paras.9-13 (Annex PR/RMI-2) and the VDR transcript annexed to his statement at Annex SA-4.

¹⁰ Email from Total Energies EP Nigeria Limited to the Heroic Idun and others, dated 11 August 2022, 21:41 (Annex PR/RMI-6).

¹¹ Illustration of the location of the “*Heroic Idun*” at the time of interception by the “*Capitan David*” (Annex PR/RMI-7).

¹² Askins, para.11 (Annex PR/RMI-2).

outside the high-risk areas for piracy in the Gulf of Guinea and therefore a safe drifting location.¹³

18. The “*Heroic Idun*” was called on VHF by the “*Capitan David*” and asked to stop its engine. The Master verified the identity of the vessel, *i.e.*, that it was the “*Capitan David*” and a naval vessel of Equatorial Guinea, and said he would stop its engines and asked for the reason of the same. The Master received no answer to his question. Instead he was asked by the “*Capitan David*” where he was going or coming from. The Master explained the Vessel was drifting in the location awaiting a cargo laycan. The “*Capitan David*” asked the Master again to stop the engine and said it was approaching the Vessel’s port side. The Master asked whether they would want to board the Vessel or whether it was just for investigation. He was told “only for investigation”. The Master replied that he was stopping his engines now, but it would take some time for the Vessel to stop.¹⁴

19. At 14:48 LT, the “*Capitan David*” contacted the Vessel again by VHF. The “*Capitan David*” said it had orders to escort the ship back to Malabo. It also said it had “orders to shoot” if there was any “suspect operation”. The Vessel was then told to follow its route into Malabo. There was little choice but to comply, which the Master immediately did. The Master was not told why the Vessel was being investigated or ordered to Malabo at gunpoint.¹⁵

20. On arrival in Malabo the Vessel was directed to the Luba anchorage, along the coast on Bioko Island. It has been detained there ever since, under armed guard.¹⁶

21. It is now understood that the Vessel was detained at the behest of Nigeria.¹⁷ This seemed to be confirmed by a press release issued by the Nigerian Navy on 20 August 2022.¹⁸ The same was understood from ongoing enquiries by the Owners and their lawyers on the ground in Equatorial Guinea. This was not, however, communicated by the Nigerian authorities to the Marshall Islands, as flag State, or to Owners or anyone else with an interest in the Vessel, despite formal correspondence from the Marshall Islands to the Nigerian authorities.¹⁹

B. Events since the detention of the Vessel and crew

22. On 14 August 2022, 15 of the 26 crew members, including the Master, were disembarked onshore under armed guard. Eight armed guards came onboard, with 2 media camera crews, 2 customs officers and 5 inspectors. The crew members that were disembarked

¹³ Askins, para.8 (**Annex PR/RMI-2**).

¹⁴ Askins, para.19 (**Annex PR/RMI-2**). See also the transcript of the recording of the first exchange between the Master and the “*Capitan David*” annexed at **Annex SA-7**.

¹⁵ Askins, para.19 (**Annex PR/RMI-2**). See also the transcript of the recording of the second exchange between the Master and the “*Capitan David*” annexed at **Annex SA-7**.

¹⁶ Askins, para.22 (**Annex PR/RMI-2**).

¹⁷ Askins, para.21 (**Annex PR/RMI-2**).

¹⁸ Nigerian Navy Press Release dated 20 August 2022, ‘Navy: No Drop of Crude Oil Stolen by MT Heroic Idun’ (**Annex PR/RMI-8**).

¹⁹ Askins, para.21 (**Annex PR/RMI-2**).

were taken to, Malabo, the Equatorial Guinean capital, approximately an hour away, first to the Malabo Police Station and then to a government-owned facility on the edge of the city (“**the Detention Facility**”). There was no formal arrest.²⁰

23. The Detention Facility had no furniture or beds, and no food or water was provided. The local agents of the Manager provided the crew with mattresses to sleep and sit on.²¹

24. The remaining 11 crew members were detained on the Vessel, also under armed guard. This is below the Safe Manning Requirements for the Vessel under the International Convention for the Safety of Life at Sea 1974 (“**SOLAS**”).²²

25. Upon learning of the events, the Marshall Islands Maritime Administration immediately wrote to the Respondent’s authorities in Luba on 16 August 2022, expressing concern regarding the detention of the Vessel and its crew, protesting the legality of the actions under UNCLOS and demanding their immediate release.²³ As set out below, the Marshall Islands’ authorities, as well as representatives of the Vessel Owners and Manager, have made repeated representations to the Equatorial Guinean authorities since then concerning the treatment of the Vessel and crew and demanding their immediate release.

26. Tests were carried out on the Vessel’s cargo tanks.²⁴ These were in ballast, *i.e.*, not carrying any cargo, because it was on a voyage ready to load oil. On 17 August 2022, the Master was interrogated at length, reportedly for nearly 11 hours, by the local prosecutor, as were other members of the crew.²⁵

27. The release of the Vessel and crew was not pursued in the local courts because of the concern, based on local information, that the courts would not act without a clear signal from the Equatorial Guinean Vice-President, Teodoro Nguema Obiang Mangue, who, it was believed, would ultimately authorise release. Given this belief, there was a real and reasonable concern that initiating proceedings through the local courts would risk provoking the prosecutors into bringing unwarranted charges against the crew.²⁶

28. [REDACTED]

²⁰ Kulblik, paras.4-7 (**Annex PR/RMI-4**).

²¹ Kulblik, paras.6-7 (**Annex PR/RMI-4**).

²² Kulblik, para.6 (**Annex PR/RMI-4**).

²³ Letter from the Deputy Commissioner of Maritime Affairs of the Marshall Islands to the Governor of Luba, dated 16 August 2022 (**Annex PR/RMI-9**).

²⁴ Kulblik, para.4 (**Annex PR/RMI-4**).

²⁵ Kulblik, para.11 (**Annex PR/RMI-4**).

²⁶ Askins, para.28 (**Annex PR/RMI-2**).

²⁷ Askins, para.25 (**Annex PR/RMI-2**).

²⁸ Askins, para.25 (**Annex PR/RMI-2**).

[REDACTED]

29. Following these developments, it was understood by both the Marshall Islands and the Vessel’s commercial operators that the Vessel and crew would be quickly released. This did not happen, however. Instead, on 15 September 2022, reports indicate that the Equatorial Guinean authorities gave the Nigerian Naval attaché posted at the Nigerian Embassy in Malabo access to the Master to question him, which he did on three separate occasions. Three other crew members were also interviewed by officials from the Nigerian Embassy. Each time a request for attendance of a lawyer during questioning was made, it was refused.³⁰ No formal communications or correspondence was received by the Marshall Islands or the Vessel’s Owner or agents from the Equatorial Guinean or Nigerian authorities seeking permission for Nigerian officials to interview the crew and investigate the Vessel.³¹

C. The payment of €2,000,132 for release of the Vessel

30. As noted in paragraph 3(b) above, the Owners of the Vessel have already paid to the Respondent an amount of €2,000,132 in fulfilment of an agreement to release the Vessel and its crew. The circumstances surrounding this development are as follows.

31. On or about 28 September 2022, the Equatorial Guinea authorities indicated that they would release the Vessel upon payment of a sum of 1,312,000,000 Central African Francs – approximately €2 million. The payment of this sum was linked to what was said to be the alleged infringements of illegal entry into the jurisdictional waters of Equatorial Guinea “without flying any flag as well as sailing and remaining in the Exclusive Economic Zone of Annobón Island, from August 9, 2002 and around 2:58pm and leaving on the 10th of the same month and around 10:53, without authorization granted by the national Maritime Authority”, as well as the expenses incurred during the detention operation as well as its custody in Luba.³²

32. The Marshall Islands and Owners considered this demand for payment to be both unjustified and extortionate. However, in the interests of the safety, security and wellbeing of the crew, and of the safety and security of the Vessel, the decision was taken to pay the required sum, the primary and overriding concern being to get the crew and the Vessel out of an increasingly precarious, insecure and uncertain situation.³³

²⁹ Kulblik, para.29 (Annex PR/RMI-4).
³⁰ Kulblik, para.29 (Annex PR/RMI-4).
³¹ Askins, para.29 (Annex PR/RMI-2).
³² Askins, para.31 (Annex PR/RMI-2).
³³ Askins, para.31 (Annex PR/RMI-2).

33. The sum of €2,000,132 was paid on 5 October 2022.³⁴ Assurances were given that payment would see the crew returned to the Vessel and allowed to go.³⁵

34. Notwithstanding receipt of the money, the Equatorial Guinean authorities failed to release the Vessel or crew.³⁶

35. The Marshall Islands continued to protest Equatorial Guinea's actions and to seek the release of the Vessel and crew, as did the Owners and others with an interest in the Vessel. It was anticipated that proceedings might need to be brought under UNCLOS and before the Tribunal. By a Note Verbale dated 28 October 2022, the Marshall Islands sought again to resolve the dispute diplomatically but also informed Equatorial Guinea that, if no diplomatic resolution could be reached very shortly, the Marshall Islands would have to consider submitting the dispute to the dispute settlement procedures under the Convention.³⁷

36. Equatorial Guinea did not respond.

D. The imminent risk of rendition of the Vessel and crew to Nigeria

37. Whilst the events described above were ongoing, the situation was deteriorating.

38. Various crew members succumbed to illnesses. One crew member had a seizure and was diagnosed with malaria and a suspected cyst in his head. Another crew member was diagnosed with acute gastroenteritis. A third crew member and the Master, both detained in the Detention Facility, caught malaria. The Owners asked for preventative medical treatment to be provided to the rest of the crew detained in the facility. This was refused, however, with the result that a further three crew members also succumbed to malaria. A crew member onboard the Vessel succumbed to typhoid fever, in part as a result of a lack of appropriate medical treatment. A crew member taken offboard for medical treatment was put back on the Vessel without being retested. Another crew member was misdiagnosed by the doctor provided by the Equatorial Guinean navy. The Master, along with others, has been to hospital on multiple occasions. The Applicant has been informed that several crew members have expressed suicidal thoughts.³⁸

³⁴ Askins, para.32 (**Annex PR/RMI-2**) and signed proof of payment dated 5 October 2022 (**Annex PR/RMI-10**).

³⁵ Askins, para.31 (**Annex PR/RMI-2**).

³⁶ Kulblik, paras.50, 59 (**Annex PR/RMI-4**).

³⁷ Note Verbale EQ/01-22, from the Ministry of Foreign Affairs of the Republic of the Marshall Islands to the Ministry of Foreign Affairs, International Cooperation and Francophone Affairs, Republic of Equatorial Guinea, dated 28 October 2022 (**Annex NOT/RMI-11**) and Note Verbale MI/22/EQ-1, from the Permanent Mission of the Republic of the Marshall Islands to the United Nations, New York, to the Permanent Mission of the Republic of Equatorial Guinea to the United Nations, New York, dated 31 October 2022 (**Annex PR/RMI-12**).

³⁸ Kulblik, paras. 8, 16, 24, 25, 28, 32, 34, 40, 43, 52, 54, 56, 58 (**Annex PR/RMI-4**).

39. On or about 4 November 2022, the Applicant learned that Equatorial Guinea, rather than releasing the Vessel and crew, had decided to hand the Vessel and crew to the Nigerian authorities.³⁹

40. On the afternoon of 5 November 2022, with the notable exception of the Chief Engineer who was in hospital with chest pains, some or all of the remaining crew onshore were forcibly put onto the Vessel and told that they would be sailing on the morning of 6 November to Nigeria. They were made aware that a Nigerian Naval vessel was waiting – and apparently still is – off the coast of Equatorial Guinea, just outside Equatorial Guinean territorial waters, waiting to escort the Vessel and crew to Nigerian waters.⁴⁰

41. The Applicant understands that the Nigerian authorities were informed that the Vessel could not sail on 6 November 2022 and could not be safely moved because of technical issues that had arisen (including, the Applicant understands, issues with the anchor because it has not been moved for 11 weeks) and because the SOLAS safe manning requirements could not be met with crew members still in hospital.⁴¹

42. The Applicant understands that the Nigerian Naval attaché went to the hospital on 6 November to direct that the Chief Engineer should board the Vessel, and tried to compel him to leave the hospital, notwithstanding that he was informed by the doctors that the Chief Engineer was unwell and could not be moved. The Nigerian Naval attaché then spoke to the Owners, who told him that the Vessel could not sail without the Chief Engineer because of safe manning requirements. The Naval attaché reportedly asked whether these requirements could be waived and was told (correctly) that they could not be waived. The Naval attaché reportedly responded with the threat that if the Vessel was not moved, Nigeria would tow the Vessel back to Nigeria, at Owners' expense.⁴²

43. On 7 November, at around 17:00 local time, the Applicant learned the Chief Engineer was being sent back to the Vessel but the Equatorial Guinean Navy had ordered that he and one other crew member were to be placed on an Equatorial Guinean naval ship as hostages to be handed over at the border to the Nigerian Navy. The Applicant understands that the Master refused to agree to the order, in response to which the Port Captain said that people would be sent onboard to beat the crew up.⁴³

44. Several hours later, around 23:30 local time, the Applicant was informed that the 15 crew that had been ashore but ordered onto the Vessel over the weekend were told that they had to go back onshore. It is not known why.⁴⁴

³⁹ Askins, para.37 (**Annex PR/RMI-2**).

⁴⁰ Askins, paras.41, (**Annex PR/RMI-2**).

⁴¹ Askins, paras. 40, 42 (**Annex PR/RMI-2**). See also Kulblik, para.26 (**Annex PR/RMI-4**).

⁴² Kulblik, para.57 (**Annex PR/RMI-4**).

⁴³ Kulblik, para.58 (**Annex PR/RMI-4**).

⁴⁴ Askins, para.46. (**Annex PR/RMI-2**).

45. **As at the point of the filing of this Prompt Release Application, the Applicant understands that the Vessel and crew are still in Equatorial Guinea, or Equatorial Guinean territorial waters.**

46. The Applicant understands that the Equatorial Guinean authorities may take the position that they have released the Vessel and crew. This is patently not the case. The Vessel and the crew are unquestionably in Equatorial Guinea, either onshore or onboard the Vessel in its internal waters or territorial sea, and under the jurisdiction and subject to the control of Equatorial Guinea.⁴⁵

47. The condition and wellbeing of the “*Heroic Idun*” crew continues to deteriorate, and have been exacerbated by the imminent possibility of rendition to Nigeria in the absence of any lawful process. As set out above, and detailed in the Witness Statement of Mr Kulblik, there have been ongoing and serious concerns about the physical and mental health of the crew throughout their detention. The Managers are terrified as to what could happen next to the crew.⁴⁶

E. The Marshall Islands’ attempts to have the Vessel and crew released

48. As described above and detailed further below, from 16 August 2022, the Marshall Islands has made regular and repeated attempts, through a range of channels and at various levels, to seek the prompt release of the Vessel and the crew.

49. The interventions to Equatorial Guinea include the following:

- (a) By letter of 16 August 2022, the Deputy Commissioner of Maritime Affairs of the Marshall Islands (“**Deputy Commissioner**”) wrote to the Governor of Luba expressing concern regarding the detention of the “*Heroic Idun*” and giving an account of the events which took place on 8/9 August. The letter recorded the suspicion that the events occurring on 8 and 12 August might be directly linked and further requested, “as it appears that the actions taken are in violation of the United Nations Convention on the Law of the Sea, in particular Articles 97 and 110... an explanation of the actions taken by both Nigeria and Equatorial Guinea” and the immediate return of the crew to the Vessel and immediate release of the Vessel.⁴⁷
- (b) By letter dated 26 August 2022, the Deputy Commissioner wrote to the Attorney General of Equatorial Guinea attaching the letter of 16 August, the Nigerian Navy Press Release of 20 August 2022 and correspondence from Akpo Terminal owner (Total) demonstrating that the NNPC clearances had been issued by 11 August 2022. Concerns were expressed about the “*Heroic Idun*”, including the questioning of the Master, Chief Engineer and Second

⁴⁵ Askins, para.48 (**Annex PR/RMI-2**).

⁴⁶ Kulblik, para.56 (**Annex PR/RMI-4**).

⁴⁷ Letter from the Deputy Commissioner of Maritime Affairs of the Marshall Islands to the Governor of Luba, dated 16 August 2022 (**Annex PR/RMI-9**).

Officer, the detention of the crew and Vessel without formal charge, and the threat to the Vessel posed by the absence of the crew and failure to meet safe manning requirements under SOLAS. It also protested any the suggestion the Vessel might be transferred to Nigeria and stated that the actions taken “interfered with the Vessel’s right of innocent passage as set out in the United Nations Convention on the Law of the Sea, in particular Articles 97 and 110, and that the flag State Administration was not informed by either country of the actions being taken”. The Deputy Commissioner requested again the return of the crew to the Vessel and freeing of the Vessel.⁴⁸

- (c) On 13 September 2022, the Deputy Commissioner wrote again to the Attorney-General of Equatorial Guinea, in furtherance of the letter of 26 August 2022, which was also attached. The Administrator once again expressed serious concern about the “*Heroic Idun*” and its crew. It noted its understanding that any investigation had been completed, but there had been no steps taken to return the crew to the Vessel or permit the Vessel to sail. The Deputy Commissioner reiterated concerns in respect of safe manning requirements. He also expressed concern about access given to consulate staff from the Nigerian Embassy to question the Master, who was not allowed legal representation, and the Nigerian Naval attaché’s request to access the Vessel’s Ship Security Plan (“**SPP**”) and other security documents, in contravention of the confidentiality of the SPP governed by the ISPS Code. The unfounded allegations against the Vessel by Nigeria were noted and the Deputy Commissioner strongly opposed any attempt to transfer the Vessel to Nigeria. The return of the crew to the Vessel and freeing of the Vessel without further delay was again requested.⁴⁹
- (d) On 18 October 2022, the Deputy Commissioner wrote again to the Attorney-General of Equatorial Guinea, in furtherance of the letters of 26 August and 13 September, which were also attached. The Administrator once again expressed serious concern about the “*Heroic Idun*” and the welfare of its crew. It noted the crew’s ongoing detention, in breach of their human rights, was now having a serious impact on their physical and mental wellbeing, and that at least 4 crew members had caught malaria and there was a typhoid outbreak onboard. It again expressed concern about access being granted to Nigerian embassy staff without allowing crew to have legal representation, in breach of their human rights was repeated. It also referred to the fine levied against the master and the Vessel, which owners felt they had no choice but to pay to protect the wellbeing of the crew and avoid deterioration of the Vessel. The Deputy Commissioner noted that, despite assurances by the Chief of the Staff of the Navy, the Vessel was not released as promised upon payment of the funds. It repeated its concern about moving the Vessel and crew to Nigeria and stated

⁴⁸ Letter from Deputy Commissioner of Maritime Affairs, Republic of the Marshall Islands to the Honorable Anatolio Nzang Nguema, Attorney-General, Republic of Equatorial Guinea, dated 26 August 2022 (**Annex PR/RMI-13**).

⁴⁹ Letter from Deputy Commissioner of Maritime Affairs of the Marshall Islands to the Attorney-General of Equatorial Guinea, dated 13 September 2022 (**Annex PR/RMI-14**).

that such a transfer would amount to an unlawful rendition of the crew and would be strongly resisted. The return of the crew to the Vessel and freeing of the Vessel without further delay was again requested.⁵⁰

- (e) By Note Verbale dated 28 October 2022, conveyed by cover of Note Verbale dated 31 October 2022, the Ministry of Foreign Affairs of the Marshall Islands referred to and repeated the serious concerns expressed in the letters dated 26 August, 13 September and 18 October, including that the actions taken in both the 8th and 12th of August interfere with rights under the Convention, including Articles 58(1)-(2), 87, 97 and 110, and customary international law. It noted that the flag State was not informed of any actions taken, that the Equatoguinean authorities had no jurisdiction under international law to intercept and detain the “*Heroic Idun*” and its crew, and that its actions breached the crew’s human rights and the SOLAS requirements for safe operation of the Vessel and the requirements of the International Ship and Port Facility Code. It noted that the efforts to date to resolve the dispute diplomatically had been unsuccessful, and 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.⁵¹
- (f) On 4 November 2022, the Deputy Commissioner wrote again to the Attorney-General of Equatorial Guinea, in furtherance of the letters of 26 August, 13 September and 18 October. He once again expressed his serious concern about the Vessel and its crew. Noting that it had come to the Administrator’s attention that Equatorial Guinea had signalled to Nigeria that it might be willing to transfer the Vessel and crew into the custody of Nigeria, he repeated that this would be regarded as an unlawful rendition with no basis in international law. He noted it would be unprecedented in the experience of the Marshall Islands, particularly where there was no suggestion or evidence of any criminal activity committed by the Vessel in Nigeria or elsewhere. The request to immediately release the Vessel and crew was repeated. It noted that in the absence of any positive response, the Marshall Islands has been forced to commence proceedings under UNCLOS.⁵²

50. In addition to the interventions by the Marshall Islands, the Manager has also written to the Equatorial Guinean Attorney General, on 18 September 2022 expressing, *inter alia*,

⁵⁰ Letter from Deputy Commissioner of Maritime Affairs of the Marshall Islands to the Attorney-General of Equatorial Guinea, dated 18 October 2022 (**Annex PR/RMI-15**).

⁵¹ Note Verbale EQ/01-22, from the Ministry of Foreign Affairs of the Republic of the Marshall Islands to the Ministry of Foreign Affairs, International Cooperation and Francophone Affairs, Republic of Equatorial Guinea, dated 28 October 2022 (**Annex PR/RMI-11**) and Note Verbale MI/22/EQ-1, from the Permanent Mission of the Republic of the Marshall Islands to the United Nations, New York, to the Permanent Mission of the Republic of Equatorial Guinea to the United Nations, New York, dated 31 October 2022 (**Annex PR/RMI-12**).

⁵² Letter from Deputy Commissioner of Maritime Affairs of the Marshall Islands to the Attorney-General of Equatorial Guinea, dated 4 November 2022 (**Annex PR/RMI-16**)

concern about the conditions of the crew and the questioning by Nigerian authorities without legal representation.⁵³

III. THE TRIBUNAL'S JURISDICTION AND THE ADMISSIBILITY OF THE PROMPT RELEASE APPLICATION

A. Jurisdiction of the Tribunal

51. The Marshall Islands acceded to UNCLOS on 9 August 1991. Equatorial Guinea became a party to UNCLOS on the same date, having ratified the Convention on 21 July 1997. The Convention was therefore in force in respect of both Parties at all material times from the date of the arrest of the Vessel on 12 August 2022 to the date of this Application.

52. Article 292 of the Convention provides:

“1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.

2. The application for release may be made only by or on behalf of the flag State of the vessel.

3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.

4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.”

53. The Vessel was detained on 12 August 2022 and has now been detained for almost 3 months. The Applicant has requested the immediate release of the Vessel and crew on a number of occasions. The Applicant has also informed the Respondent that the question of the release of the Vessel and her crew could be submitted to ITLOS at any point. In its Note Verbale dated 28 October 2022, the Applicant indicated that it was prepared to submit the dispute to adjudication under the Convention.

⁵³ Letter from OSM to the Equatorial Guinean Attorney General, dated 18 September 2022 (**Annex PR/RMI-17**).

54. No response was received from the Respondent to the above-mentioned requests and Note Verbale, and no agreement was reached between the Parties to submit the question of the release of the vessel to another court or tribunal. The 10-day requirement in Article 292(1) is therefore satisfied.

55. The Marshall Islands has at all material times been, and continues to be, at the date of this Application, the flag State of the Vessel.

56. Accordingly, the Tribunal has jurisdiction under Article 292 of UNCLOS to entertain this Application.

B. Admissibility of the Prompt Release Application

57. For the reasons set out below, this Application is also admissible.

1. Exhaustion of Local Remedies is not Required

58. The exhaustion of local remedies does not constitute a condition for the admissibility of a prompt release application (The “*Camouco*” Case (Panama v. France), Prompt Release, ITLOS Case No. 5, Judgment of 7 February 2000, para. 57). Accordingly, the fact proceedings have not been pursued before the domestic courts of Equatorial Guinea has no bearing on the admissibility of this Application.

2. Prompt Release is not limited to the application of Articles 73, 220 and/or 226 of the Convention

59. Article 292(1) refers to “the provision of this Convention for the prompt release of the vessel or its crew”. It is commonly accepted that such provisions include Articles 73, 220 and/or 226 of the Convention, addressing circumstances in which the arrest and detention of a vessel and/or crew is in principle possible under the Convention. Given the paucity of information available to the Applicant at this point, in the absence of any meaningful engagement by Equatorial Guinea in response to the diplomatic and other initiatives by the Applicant, this Application does not rest on an asserted breach by the Respondent of Articles 73, 220 or 226 of the Convention. The Applicant reserves the right, however, to amend and supplement this Application, including in the course of a hearing on the matter, to include reference to Article 73, 220 and/or 226 in the event that this is warranted by information that comes to light in the course of these proceedings, whether in the form of claims and submissions by the Respondent or from elsewhere. The relevance to this Application of the Article 73, 220 and 226 contravention of the Convention framework is addressed further below.

60. This said, the Applicant submits that authoritative opinion supports what has been described as a “non-restrictive interpretation” of the Tribunal’s prompt release competence,

i.e., beyond the circumstances addressed in Article 73, 220 and 226 of the Convention.⁵⁴ For example, former ITLOS Judge Treves, speaking extra-judicially, has observed:

“Even though the above-mentioned three articles of the Convention [73, 220 and 226] are the only ones in which the Convention sets out an obligation of prompt release upon the posting of a reasonable bond or other financial security, it would seem possible to resort to the prompt release procedure in other cases also. These are cases in which the Convention prohibits detention of ships and crews. If a vessel or its crew has been detained in contravention of a provision of the Convention which prohibits detention, it seems reasonable to hold that the most expeditious procedure available should be resorted to in order to ensure the release of the vessel or crew, independently of the question of international responsibility for the violation of the Convention. It would seem absurd to me that the prompt release procedure should be available in cases in which detention is permitted by the Convention, such as those of articles 73, 220 and 226, and not the cases in which it is not permitted by it”.⁵⁵

61. Counsel for Saint Vincent in “*The M/V Saiga*” addressed the view expressed by Judge Treves in respect of a scenario entirely comparable to the present one: the arrest of a vessel by a State in the EEZ of a third State:

“... If the flag State has done something wrong and it contravenes articles 73, 220 or 226, it may yet be able to rely on the jurisdiction of the Tribunal to ensure the prompt release of the vessel. However, if the flag state has done absolutely nothing wrong, as we submit is the case here with M/V SAIGA, and it is purely that the coastal State of their own volition decide to come into the exclusive economic zone of another state – in this case Sierra Leone – with guns and force the vessel back into its port at gunpoint, clearly there is a very strong case to be made out that the provisions of the Convention for ordering the prompt release of a vessel should be more applicable to that situation than the situation in which the vessel had actually done something wrong”.⁵⁶

62. As these submissions clearly highlight, if prompt release is available in circumstances in which a vessel and crew are *lawfully* detained (pursuant to, for example, UNCLOS Articles 73, 220 and 226) it must follow that such a remedy – which has the imperative purpose of ensuring the safety, security and wellbeing of a detained crew, and the safety and security of a detained vessel – is also available in circumstances in which the arrest and detention of a vessel and crew are prohibited by the Convention, as is the case here with regard to the “*Heroic Idun*” and its crew. If prompt release is available in circumstances in which the arrest and detention of a ship is possible in accordance with the Convention it must, *a fortiori*, be available when a State has no rights under the Convention to detain vessel and crew, and

⁵⁴ The “*M/V Saiga*” Case (Saint Vincent and the Grenadines v. Guinea), Prompt Release, ITLOS Case No. 1, ITLOS/PV.97/1, Judgment of 4 December 1997, at para.53.

⁵⁵ The “*M/V Saiga*” Case (Saint Vincent and the Grenadines v. Guinea), Prompt Release, ITLOS Case No. 1, ITLOS/PV.97/1 - 27 November 1997 p.m., p.37.

⁵⁶ Tullio Treves, ‘The Proceedings concerning Prompt Release of Vessels and Crews before the International Tribunal for the Law of the Sea’, 11 *Int'l J. Marine & Coastal L.* 179 (1996), p.186 (**Annex PR/RMI-19**).

when it does not even purport to claim such action was to ensure compliance with its laws and regulations under Articles 73, 220 and/or 226.

63. In the Marshall Islands' contention, this is a compelling and correct interpretation of the scope of the Tribunal's prompt release competence under Article 292 of the Convention. Such an interpretation is at the very least readily acknowledged and reasonably arguable.⁵⁷ Having regard to the context and the urgency of the present case, and the Tribunal's settled jurisprudence on a plausibility threshold for purposes of prompt release applications, the Marshall Islands contends that the Tribunal should proceed on the basis of a non-restrictive interpretation of Article 292 in respect of this Application.

64. In further support of this approach, the Marshall Islands notes that Article 292 was intended to strike a balance between the interests of the flag State and those of the coastal State. This was expressly recognised by the Tribunal in the "*Monte Confurco*" case in the following terms:

“[T]he object of article 292 of the Convention is to reconcile the interest of the flag State to have its vessel and its crew released promptly with the interest of the detaining State to secure appearance in its court of the Master and the payment of penalties.”⁵⁸

65. In this case, the Respondent (the detaining State) has already secured the payment of the sizeable amount of money it required in connection with the arrest and detention of, and undertaking to release, the Vessel and its crew. The Respondent's interests have accordingly been both addressed and remain fully safeguarded. The Marshall Islands' interests as flag-State, however, continue to be gravely prejudiced by the Respondent's continuing conduct, to say nothing of the ongoing material harm being caused to the safety, security and wellbeing of the crew and the safety and security of the Vessel.

66. As noted above, the crew of the "*Heroic Idun*" are at present detained in very precarious humanitarian conditions. As Judge Laing observed in his Declaration in the "*Camouco*":

“It seems to me, too, that there cannot be any gainsaying that prompt release is also reinforced by its significant humanitarian underpinnings, ranging from the economic rights or concerns of ship owners to the civil rights or concerns of detained crews.”⁵⁹

67. This appreciation was reinforced by the Tribunal in the "*Juno Trader*":

⁵⁷ Kittichaisaree, K., *The International Tribunal for the Law of the Sea* (OUP, 2021), at pp.138-139 (**Annex PR/RMI-18**).

⁵⁸ The "*Monte Confurco*" Case (Seychelles v. France), Prompt Release, ITLOS Case No. 6, Judgment of 18 December 2000, para.71.

⁵⁹ The "*Camouco*" Case (Panama v. France), Prompt Release, ITLOS Case No. 5, Declaration of Judge Laing of 17 January 2000, p.42.

“[t]he obligation of prompt release of vessels and crews includes elementary considerations of humanity and due process of law.”⁶⁰

68. It is also material that the arrest and detention of the Vessel is presumptively in breach of two of the most fundamental principles underpinning the law of the sea and reflected in the Convention, namely, freedom of navigation in Articles 58(1) and 87, and exclusive flag State jurisdiction in Article 92, of the Convention.

69. In this regard, for purposes of the application of Article 292 of the Convention in the circumstances of this case, the Marshall Islands submits that the Tribunal is not precluded from looking at the merits of the case, even if, as it indicated in “*M/V Saiga*”, it must do so “with restraint”, meaning that it must consider sufficient that claims be “arguable”, or “sufficiently plausible”.⁶¹

70. It is not simply arguable or plausible, but appears to be undeniable, that there was no basis in international law for Equatorial Guinea to exercise enforcement jurisdiction against the Vessel and her crew in the EEZ of a third State, São Tomé and Príncipe, or in any other EEZ, including its own. There is no suggestion that the Respondent was purporting to exercise a right of hot pursuit. Nor had the “*Heroic Idun*” engaged in any activity that would, under UNCLOS, have permitted Equatorial Guinea to intervene against a foreign-flagged vessel in the EEZ of a third State. Even if there were a basis in international law for Nigeria’s actions, which there was not, that could not have provided a basis in international law for Equatorial Guinea’s actions against the Vessel and crew. Furthermore, at no time did Equatorial Guinea seek the consent of the flag State, the Marshall Islands, to the interception and detention of the Vessel and her crew.

IV. STATEMENT OF LEGAL GROUNDS

A. Detention of the Vessel and crew

71. In order to meet the requirement of a ‘detention’ for the purposes of Article 292 it is well-settled and sufficient to establish that the Vessel and crew are still within the territory of the State and subject to its jurisdiction.⁶²

72. It is indisputable that the Vessel has been in detention since 12 August 2022 and that it has been unable to leave Equatorial Guinea of its own volition. The crew is equally unable to freely leave Equatorial Guinea. It has apparently been indicated by Equatorial Guinea in recent days through the Secretary-General of the Maritime Organisation for West and Central

⁶⁰ The “*Juno Trader*” Case (Saint Vincent and the Grenadines v. Guinea-Bissau), Prompt Release, ITLOS Case No. 13, Judgment of 18 December 2004, para.77.

⁶¹ The “*M/V Saiga*” Case (Saint Vincent and the Grenadines v. Guinea), ITLOS Case No. 1, Judgment of 4 December 1997, paras 50 - 51.

⁶² The “*Juno Trader*” Case (Saint Vincent and the Grenadines v. Guinea-Bissau), Prompt Release, ITLOS Case No. 13, Judgment of 18 December 2004, paras.78 – 80; The “*Hoshinmaru*” Case (Japan v. Russian Federation), Prompt Release, ITLOS Case No. 14, Judgment of 6 August 2007, para.77.

Africa and to the Vessel's agents, that it regards itself as having released the Vessel and crew already, to Nigeria. This is both incorrect and irrelevant. The Vessel and crew are still in the territory of the Respondent and under its jurisdiction and control. The restrictions on their free movement have not been lifted.

B. 'Reasonable bond' for the purpose of Article 292(4)

73. As has already been addressed, Equatorial Guinea required the Vessel's owners to pay €2,000,132 a following the payment of which it committed to release the Vessel and crew. The sum in question was paid, notwithstanding the appreciation that this penalty was both unwarranted and extortionate. Notwithstanding receipt of the funds, the Respondent refused to release the Vessel and crew.

74. However the amount paid might have been, or be, described, there is no doubt that it would readily meet the criterion of "a reasonable bond or other financial security" addressed in Article 292. In the Applicant's contention, if it is necessary to do so in the circumstances of this case, the Tribunal should deem the payment made to have constituted "the posting of [a] bond or other financial security" as determined by the Respondent State for purposes of prompt release under Article 292(4).

75. This appreciation is supported by the underlying purpose of the requirement to pay a bond or other financial security, namely, to ensure the payment in due course of any lawful penalty that may be imposed or to secure the presence of the Master or crew before the local court in criminal proceedings. In this case, the penalty imposed by the Respondent has already been paid, and there are no pending criminal proceedings against the Master.

76. As to the reasonableness of the amount already paid for purposes of a "deemed bond", this must follow from the fact that this is the amount that was required by the Respondent itself. In any event, as the Tribunal observed in the "*Hoshinmaru*" and other cases

"...a number of factors are relevant in an assessment of the reasonableness of bonds or other financial security. They include the gravity of the alleged offences, the penalties imposed or imposable under the laws of the detaining State, the value of the detained vessel and of the cargo seized, the amount of the bond imposed by the detaining State and its form"⁶³

77. The Tribunal stated further, in the same case, that:

"... the amount of a bond should be proportionate to the gravity of the alleged offences".⁶⁴

⁶³ *Ibid.*, para.82.

⁶⁴ *Ibid.*, para.87.

78. In the circumstances of the present case, the penalty having been imposed by the Respondent, there can be no doubt about the adequacy of the sum paid for purposes of constituting the deemed posting of a bond or other financial security.

79. Despite the payment of this sum in question, demanded by Equatorial Guinea, Equatorial Guinea failed to release the Vessel and the crew.

80. Accordingly, in all the circumstances, in the event that the Tribunal considers that an order for prompt release is warranted in this case, the Marshall Islands contends that the condition of the posting of a bond or other financial security for the purposes of prompt release under Article 292(4) of the Convention has already taken place.

V. ARTICLE 292(4) AS AN INDEPENDENT GROUND FOR PROMPT RELEASE

81. In addition or in the alternative to the preceding, and having regard to the submissions above about the “non-restrictive interpretation” of Article 292 on which the Marshall Islands primarily relies, the Applicant contends that Article 292(4) provides an independent basis – constituting a “provision of the Convention” for purposes of Article 292(1) – on which the Tribunal’s competence to order prompt release can be engaged.

82. Article 292(4) provides that “[u]pon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.”

83. The Applicant accepts that Article 292(4) has in express contemplation prompt release following a determination by, for present purposes, the Tribunal. This said, having regard to the issues addressed above, including the fact of the posting of what may, for these purposes, be properly deemed to constitute a bond or other financial payment, the Marshall Islands contends that Equatorial Guinea is in breach of Article 292(4). This breach constitutes a failure by Equatorial Guinea to comply with a provision of the Convention for the prompt release of the vessel and its crew for purposes of Article 292(1) of the Convention.

VI. RESERVATION OF RIGHTS IN RESPECT OF STATE RESPONSIBILITY AND AMENDMENT OF THE PROMPT RELEASE APPLICATION

84. This Application only concerns the prompt release of the Vessel and, in accordance with Article 292(4) of the Convention, the Tribunal “shall deal only with the question of release”.

85. This Application is therefore without prejudice to the rights of the Applicant to have Equatorial Guinea's international responsibility for the arrest and detention of the Vessel ascertained, including in accordance with Annex VII arbitral proceedings that will shortly be commenced. The Applicant reserves all its rights in this regard.

86. The Applicant also reserves all its rights in respect of amending and supplementing this Prompt Release Application as may be necessary on the basis of the rapidly unfolding events on the ground and new available information.

VII. SUBMISSIONS

87. For the reasons set out above, the Applicant respectfully requests that the Tribunal:

- (a) Declares that it has jurisdiction in accordance with Article 292 of the Convention to entertain the Prompt Release Application and that the Prompt Release Application is admissible.
- (b) Takes note of the payment of the sum of €2,000,132 paid by the owners of the Vessel to the Respondent in fulfilment of an agreement to release the Vessel and its crew and declares, insofar as the Tribunal considers it necessary and appropriate to do so, that the payment of this sum may properly be deemed to be a reasonable bond or other financial security that has already been posted for purposes of securing the prompt release of the Vessel and her crew in accordance with Article 292(4) of the Convention.
- (c) Decides and orders the Respondent to immediately release the "*Heroic Idun*" and her crew and take such steps as are necessary to facilitate their safe and orderly departure from Equatorial Guinea.

88. Further, the Applicant requests the President of the Tribunal, relying on the Tribunal's inherent competence and *proprio motu* powers, exemplified but not confined by Article 90(4) of the Tribunal's Rules, to:

- (a) call upon the Respondent to refrain from taking any steps that would aggravate the situation and risk prejudice to safety, security and wellbeing of the crew and the safety and security of the Vessel;
- (b) call upon Equatorial Guinea not to transfer, or to cause the Vessel and/or its crew and/or any member and/or members of its crew to be transferred, into the custody and/or control of Nigerian Authorities;
- (c) call upon the Respondent to ensure that any communication from the Tribunal in this regard is drawn to the immediate attention to the Government and authorities of the Republic of Nigeria, which appears to be intent on securing the

rendition from Equatorial Guinea to Nigeria of the Vessel and its crew in the absence of any lawful process.

9 November 2022

A handwritten signature in blue ink, appearing to read 'M. Kirby', is written over a horizontal line.

Ms. Meredith Kirby

Agent of the Republic of the Marshall Islands

CERTIFICATION

Pursuant to Articles 63(1) and 64(3) of the Rules of the Tribunal, I hereby certify, in my capacity as Agent of the Republic of the Marshall Islands in the present proceedings, that the copies of the present Application for Prompt Release, including the documents attached to this Application as Annexes, are true copies and conform to the original documents, and that the translations into English provided by the Republic of the Marshall Islands of any document not originally in the English language are accurate translations.



Ms. Meredith Kirby
Agent of the Republic of the Marshall Islands

09 November 2022

VIII. ANNEXES TO THE APPLICATION OF THE REPUBLIC OF THE MARSHALL ISLANDS PURSUANT TO ARTICLE 292 OF THE CONVENTION

The Agent of the Republic of the Marshall Islands certifies that Annexes PR/RMI-1 to PR/RMI-19, where relevant, are true copies and accurate translations of the originals.

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* Annexes to the witness statement of Stephen Askins are set out below.

Annexes to the Witness Statement of Stephen Askins dated 9 November 2022

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