

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



YEAR 2023

27 April 2023

THE M/T “HEROIC IDUN” (No. 2) CASE

(MARSHALL ISLANDS/EQUATORIAL GUINEA)

Constitution of chamber

ORDER

Present: *President* HOFFMANN; *Vice-President* HEIDAR; *Judges* JESUS, PAWLAK, YANAI, KATEKA, BOUGUETAIA, PAIK, ATTARD, KULYK, GÓMEZ-ROBLEDO, CABELLO, CHADHA, KITTICHAISAREE, KOLODKIN, LIJNZAAD, INFANTE CAFFI, DUAN, BROWN, CARACCILOLO, KAMGA; *Registrar* HINRICHS OYARCE.

THE TRIBUNAL,

composed as above,

after deliberation,

Having regard to articles 15, paragraphs 2 and 4, 17, 24 and 27 of the Statute of the Tribunal (hereinafter “the Statute”),

Having regard to articles 19, 30, 31, 45 and 55 of the Rules of the Tribunal (hereinafter “the Rules”),

Makes the following Order:

1. Whereas, further to consultations held by the President of the Tribunal with representatives of the Republic of 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 18 April 2023 to submit to a special chamber of the Tribunal, to be formed pursuant to article 15, paragraph 2, of the Statute, “the dispute concerning the *M/T “Heroic Idun”* and her crew”;
2. Whereas 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:

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.

Pursuant to article 56, paragraph 3, of the Rules, the Republic of the Marshall Islands and the Republic of Equatorial Guinea have the honour to notify the Tribunal that the Government of the Marshall Islands has appointed H.E. Ms Meredith Kirby, Deputy Commissioner of Maritime Affairs, as its Agent and the Government of the Republic of Equatorial

Guinea has appointed H.E. Mr Carmelo Nvono-Ncă, Ambassador, as its Agent, for the purpose of all proceedings in connection with said dispute.

The address[es] for service to which all communications concerning the case are to be sent in accordance with article 56, paragraph 1, of the Rules are as follows:

For the Government of the Republic of the Marshall Islands:
International Registries GmbH
Am Kaiserkai 13, 2nd Floor
20457 Hamburg
Germany
...

For the Government of the Republic of Equatorial Guinea:
Embassy of the Republic of Equatorial Guinea
Rohlfstraße 17-19
14195 Berlin
Germany
...

Dated: 18 April 2023

[signed]
H.E. Ms Meredith Kirby
For the Government of the Republic
of the Marshall Islands

[signed]
H.E. Mr Carmelo Nvono-Ncă
For the Government of the
Republic of Equatorial
Guinea

3. Whereas the minutes of consultations agreed between the Marshall Islands and Equatorial Guinea on 18 April 2023 and attached to the Special Agreement read:

**Consultations by the President of the Tribunal
with representatives of
the Republic of the Marshall Islands
and the Republic of Equatorial Guinea,
under article 3 of annex VII
to the United Nations Convention on the Law of the Sea**

Minutes of consultations

1. At the invitation of the President of the International Tribunal for the Law of the Sea, delegations from the Republic of the Marshall Islands (hereinafter “the Marshall Islands”) and the Republic of Equatorial Guinea (hereinafter “Equatorial Guinea”) participated in consultations with the President under Annex VII to the Convention, held on 18 April 2023, at the premises of the Tribunal in Hamburg, Germany, on matters relating to the arbitration 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, including the possible transfer of the

dispute to a special chamber of the Tribunal under article 15, paragraph 2, of the Statute of the Tribunal.

2. The composition of the delegations was as follows:

For the Marshall Islands:

H.E. Ms Meredith Kirby, Deputy Commissioner of Maritime Affairs, Agent;
Ms Joanne Moody, Solicitor, Tatham & Co;
Ms Penelope Nevill, Counsel, Twenty Essex Chambers;
Mr Paolo Busco, Counsel, Twenty Essex Chambers.

For Equatorial Guinea:

H.E. Mr Carmelo Nvono-Ncá, Ambassador, Agent;
H.E. Mr Juan Olo, Counselor;
Sir Michael Wood, Counsel, Twenty Essex Chambers;
Mr Jean-Charles Tchikaya, State Attorney;
Mr Adalberto Ncogo, State Attorney.

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. Whereas the Special Agreement provides that delivery on 18 April 2023 of an original of the Special Agreement and Notification to the Registry of the Tribunal shall constitute the notification contemplated in article 55 of the Rules; and whereas

an original copy of the Special Agreement was delivered to Registrar of the Tribunal on that day;

5. Whereas the Special Agreement states that the Marshall Islands has appointed H.E. Ms Meredith Kirby as Agent and Equatorial Guinea has appointed H.E. Mr Carmelo Nvono-Ncá as Agent;

6. Whereas the Marshall Islands and Equatorial Guinea are States Parties to the United Nations Convention on the Law of the Sea;

7. Whereas the Tribunal has before it a request by the two States Parties that “the dispute concerning the *M/T “Heroic Idun”* and her crew” be heard and determined by a special chamber to be formed under article 15, paragraph 2, of the Statute;

8. Whereas, in the Special Agreement, the Parties conveyed their views regarding the composition of the special chamber of the Tribunal;

9. Whereas, in the Special Agreement, the Marshall Islands notified the Tribunal of its choice of Mr Gudmundur Eiriksson to sit as judge *ad hoc* in the special chamber, and Equatorial Guinea notified the Tribunal of its choice of Mr Philippe Couvreur to sit as judge *ad hoc* in the special chamber; and whereas no objection to these choices appears to the Tribunal;

THE TRIBUNAL,

Unanimously,

1. *Decides* 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”;
2. *Determines*, with the approval of the Parties, the composition of the Special Chamber formed to deal with this case as follows:

President	Hoffmann
Judges	Infante Caffi Brown
Judges <i>ad hoc</i>	Eiriksson Couvreur

3. *Declares* that the Special Chamber as composed above is duly constituted;
4. *Decides* that the proceedings before the Special Chamber shall be governed by the provisions contained in the Statute and the Rules;
5. *Decides* that the quorum required for meetings of the Special Chamber is three members of the Special Chamber;
6. *Reserves* the subsequent procedure for further decision by the Special Chamber.

Done in English and in French, both texts being equally authoritative, in the Free and Hanseatic City of Hamburg, this twenty-seventh day of April, two thousand and twenty-three, 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.



Albert HOFFMANN,
President



Ximena HINRICHS OYARCE,
Registrar
