



In the Criminal Court

Onor. Madame Justice Consuelo Scerri Herrera, LL.D., Ph.D.

Bill of Indictment number: 49/2023

The Republic of Malta

Vs

Abdalla Bari

Amara Krumak

Today, the 30th of May 2024

The Court,

Having seen the bill of indictment number forty nine of the year two thousand and twenty three brought against **Abdalla Bari** of twenty-four (24) years, son of Ahmad and Majmuna nee' Bari, born in Guinea on the fourteenth (14th) April of the year 1999, residing at Good Shepherd Convent, 26, Triq Idmejda, Balzan, holder of Police Immigration number 19C-097; and **Amara Krumak** of nineteen (19) years, son of Ratan and Kiatia nee' Krumak born in Guinea on the twenty fourth (24th) December of the year 2003, residing at 433, Ivy Apartments, Flat 2, Triq San Tumas, Fgura, **wherein the Attorney General in the bill of indictment premised:**

FIRST (1) COUNT

Acts of terrorism and terrorist activities

FACTS:

In March of the year two thousand and nine (2019), a ship with the registered name ELHIBLU 1 bearing registration number IMO-9753258, was sailing from Turkey to Libya with six (6) crew personnel on board. The Captain of the ship received information from a military aircraft that a rubber boat with a number of people was stranded in the middle of the sea and the Captain was asked to assist them. The military aircraft gave the Captain of the ELHIBLU 1 the coordinates of where the stranded rubber boat was located. The military aircraft further informed the Captain of the ELHIBLU 1 with other coordinates of a rendezvous point where they should take the people rescued in order to be picked up by another boat.

When the ship ELHIBLU 1 reached the rubber boat, they found over a hundred people on board which were all rescued except six (6) men who decided not to board the ELHIBLU 1 and to make their own way. Because the other boat never arrived at the rendezvous point, the Captain decided to sail to Libya at night when most of the rescued persons were sleeping. When the ELHIBLU 1 was a few nautical miles off the coast of Libya, and the rescued people realised of their whereabouts, a commotion started.

A large number of the rescued people reached the bridge of the ELHIBLU 1 and started to bang on the cabin glass with tools and other materials which they had picked up from the ship. They were shouting at the Captain and at the ship's crew to change direction. This situation created fear in the Captain of the ship Mr Turgut Mahno, holder of Turkish Passport number S00214995, and in the Chief Officer Mr Nader Ali Mohammed Alhiblu, holder of Libyan passport number JZJ202Y6 and the crew members Mr Ramanan Ramanathan, holder of Indian passport number L5170359, Mr Bhaskara Behera Gaya, holder of Indian passport number N9541760, Mr

Raja Babu Chidapana, holder of Indian passport number N7492780 and Mr Arfin Ansari, holder of Indian passport number R3420940. In order to remain safe, the Captain and crew locked themselves inside the cabin.

Three (3) of the rescued persons, namely, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, were allowed in the cabin on the instructions of the Captain. When inside the cabin, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader threatened the Captain to change direction and sail to Malta at full speed, and the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader made it clear that if the Captain and crew were not going to follow their instructions, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader were going to cause damage to the ship and set fire to the tank. The accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, also threatened the crew to keep the direction of the ship to Malta or otherwise, they will instruct the other rescued people on board the ship to damage and destroy the ship.

When the ELHIBLU 1 was close to the territorial waters of Malta, the Captain and the Chief Officer of the ship got in touch with the Maltese Authorities. Since the ship ELHIBLU 1 did not have any authorisation to enter the territorial waters of Malta, the Maltese authorities asked the Captain of ELHIBLU 1 to keep position and call the Libyan coast guards for help. At that stage, the Captain informed the Maltese authorities that they had lost control of the ship and that he was being threatened by the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader to keep on sailing to Malta at full throttle.

The accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader wilfully seized the ship ELHIBLU 1, which act could seriously damage a country or an international organization, and committed same with the aim of unduly compelling a Government or international organization to perform or abstain from performing any act.

The Chief Officer of the ELHIBLU 1 ship repeated several times to the Maltese authorities that the ship ELHIBLU 1 was under attack, that the ship was seized by the accused and that the Captain and crew lost control of the ship. Subsequently, the Maltese authorities intervened, and asked the Chief Officer of the ELHIBLU 1 ship to sail slowly to the coast of Malta.

CONSEQUENCES:

By committing the abovementioned acts with criminal intent, the accused ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER rendered themselves guilty of committing the offence of terrorism, when with the aim to unduly compel the Government or an International Organisation to perform or abstain from performing any act by seizing the ELHIBLU 1 ship bearing registration number IMO-9753258, in breach of Articles 328A(1)(b) and 328A(2)(e) of the Criminal Code, Chapter 9 of the Laws of Malta.

ACCUSATION:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER, of being guilty of having on the 28th of March 2019, on board the ship ELHIBLU 1 bearing registration number IMO-9753258, while in the territorial waters of Malta, wilfully, which may seriously damage a country or an international organization, committed an act of terrorism, when with the aim to unduly compel the Government or an International Organisation to perform or abstain from performing any act, seized the ELHIBLU 1 ship bearing registration number IMO-9753258, in breach of Articles 328A(1)(b) and 328A(2)(e) of the Criminal Code, Chapter 9 of the Laws of Malta.

PUNISHMENT:

Consequently, the Attorney General demands that the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader be proceeded against according to law, and that they are sentenced to the punishment of not less than seven (7) years imprisonment and to the maximum punishment of life imprisonment and to any other consequences as stipulated in Articles 17, 18, 23, 23A, 23B, 23C, 30, 31, 48A, 328A (1) (b), 328 (2) (e), 328A (3) and 533 of the Criminal Code, Chapter 9 of the Laws of Malta, or to any other punishment applicable according to law to the declaration of guilt of the accused.

SECOND (2) COUNT:

Acts of terrorism and terrorist activities

FACTS:

In March of the year two thousand and nineteen (2019), a ship with the registered name ELHIBLU 1 bearing registration number IMO-9753258 was sailing from Turkey to Libya with six (6) crew personnel on board. The captain of the ship received information from a military aircraft that a rubber boat with a number of people was stranded in the middle of the sea and the military aircraft asked the Captain of the ELHIBLU 1 to assist the persons in distress. The military aircraft gave the Captain of the ELHIBLU 1 the coordinates of where the stranded rubber boat was. The military aircraft also provided the Captain of the ELHIBLU 1 with other coordinates of a rendezvous point where the ELHIBLU 1 should take the people rescued in order to be picked up by another boat.

When the ELHIBLU 1 reached the rubber boat, the Captain and crew of the ELHIBLU 1 found over a hundred people on board which were all rescued except six (6) men who decided not to board the ELHIBLU 1 and to continue to make their own way.

Because the other boat never arrived at the rendezvous point, the Captain of the ELHIBLU 1 decided to sail to Libya at night when most of the rescued persons were sleeping. When the ELHIBLU 1 was a few nautical miles off the coast of Libya, and the rescued people realised of their whereabouts, a commotion on board the ship started.

A large number of the rescued people reached the bridge and started to bang on the cabin glass with tools and other materials which they had picked up from the ELHIBLU 1. They were shouting at the captain and at the ship's crew to change direction. This situation created fear in the Captain of the ship Mr Turgut Mahno, holder of Turkish passport number S00214995, and in the Chief Officer Mr Nader Ali Mohammed Alhiblu, holder of Libyan passport number JZJ202Y6 and the crew members Mr Ramanan Ramanathan, holder of Indian passport number L5170359, Mr Bhaskara Behera Gaya, holder of Indian passport number N9541760, Mr Raja Babu Chidapana, holder of Indian passport number N7492780 and Mr Arfin Ansari, holder of Indian passport number R3420940. Consequently, fearing for their security, the Captain and crew of the ELHIBLU 1 locked themselves inside the cabin.

Three (3) of the rescued persons, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, were allowed in the cabin on the instructions of the Captain. When inside the cabin, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader threatened the Captain to change direction and sail to Malta at full speed, and that if the Captain did not follow their instructions, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader threatened to cause damage to the ship and set fire to the tank. The accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader also threatened the crew to keep the direction of the ship to Malta or otherwise, they will instruct the other rescued people on board the ship to damage and destroy the ship.

When the ship ELHIBLU 1 was close to the territorial waters of Malta, the Captain and the Chief Officer of the ship got in touch with the Maltese Authorities. Since the ship

ELHIBLU 1 did not have any authorisation to enter the territorial waters of Malta, the Maltese authorities asked the Captain of ELHIBLU 1 to keep position and call the Libyan coast guards for help. At that stage, the Captain informed the Maltese authorities that they had lost control of the ship and that the Captain and crew were being threatened by the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, and were being told to keep on sailing to Malta at full throttle, otherwise damage would be inflicted.

The accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader wilfully seized the ship ELHIBLU 1 which act could seriously damage a country or an international organization, and committed same with the aim of unduly compelling a Government or international organization to perform or abstain from performing any act.

The Chief Officer of the ELHIBLU 1 ship repeated several times to the Maltese authorities that the ship was under attack, the ship was seized by the accused and that the Captain and crew lost control of the ship. Subsequently, the Maltese authorities intervened, and asked the Chief Officer of the ELHIBLU 1 ship to sail slowly to the coast of Malta..

CONSEQUENCES:

By committing the abovementioned acts with criminal intent, the accused ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER rendered themselves guilty of committing an act of terrorism, when with the aim to unduly compel the Government or an International Organisation to perform or abstain from performing any act, threatened to cause extensive destruction to private property of the ship ELHIBLU 1 bearing registration number IMO-9753258, likely to endanger the life or to cause serious injury to the property of any other person or to result in serious economic loss in breach of Articles 328A(1)(b) and 328A(2)(d) of the Criminal Code, Chapter 9 of the Laws of Malta.

ACCUSATION:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER, of being guilty of having on the 28th of March 2019, on board the ship ELHIBLU 1 bearing registration number IMO-9753258, while in the territorial waters of Malta, wilfully, committed an act of terrorism, when with the aim of unduly compelling the Government or an International Organisation to perform or abstain from performing any act, threatened to cause extensive destruction to private property of the ship ELHIBLU 1 bearing registration number IMO-9753258, likely to endanger the life or to cause serious injury to the property of any other person or to result in serious economic loss in breach of Articles 328A(1)(b) and 328A(2)(d) of the Criminal Code, Chapter 9 of the Laws of Malta.

PUNISHMENT:

Consequently, the Attorney General demands that the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader be proceeded against according to law, and that they are sentenced to the punishment of not less than seven (7) years imprisonment and to the maximum punishment of life imprisonment and to any other consequences as stipulated in Articles 17, 18, 23, 23A, 23B, 23C, 30, 31, 48A, 328A (1) (b), 328A (2) (d), 328A (3) and 533 of the Criminal Code, Chapter 9 of the Laws of Malta or to any other punishment applicable according to law to the declaration of guilt of the accused.

THIRD (3) COUNT:

Acts of terrorism and terrorist activities

FACTS:

In March of the year two thousand and nineteen (2019), a ship with the registered name ELHIBLU 1 bearing registration number IMO-9753258, was sailing from Turkey to Libya with six (6) crew personnel on board. The Captain of the ship received information from a military aircraft that a rubber boat with a number of people was stranded in the middle of the sea and the military aircraft asked the Captain of the ELHIBLU 1 to assist the persons in distress. The military aircraft gave the Captain of ELHIBLU 1 the coordinates of where the stranded rubber boat was. The military aircraft also provided the Captain of the ELHIBLU 1 with other coordinates of a rendezvous point where the ELHIBLU 1 should take the people rescued in order to be picked up by another boat.

When the ELHIBLU 1 reached the rubber boat, the Captain and crew of the ELHIBLU 1 found over a hundred people on board which were all rescued except six (6) men who decided not to board the ELHIBLU 1 and to continue to make their own way. Because the other boat never arrived at the rendezvous point, the Captain of the ELHIBLU 1 decided to sail to Libya at night when most of the rescued persons were sleeping. When the ELHIBLU 1 was a few nautical miles off the coast of Libya, and the rescued people realised of their whereabouts, a commotion on board the ship started.

A large number of the rescued people reached the bridge and started to bang on the cabin glass with tools and other materials which they had picked up from the ELHIBLU 1. They were shouting at the Captain and at the ship's crew to change direction. This situation created fear in the Captain of the ship Mr Turgut Mahno, holder of Turkish passport number S00214995, and in the Chief Officer Mr Nader Ali Mohammed Alhiblu, holder of Libyan passport number JZJ202Y6 and the crew members Mr Ramanan Ramanathan, holder of Indian passport number L5170359, Mr

Bhaskara Behera Gaya, holder of Indian passport number N9541760, Mr Raja Babu Chidapana, holder of Indian passport number N7492780 and Mr Arfin Ansari, holder of Indian passport number R3420940. Consequently, fearing for their security, the Captain and crew of the ELHIBLU 1 locked themselves inside the cabin.

Three (3) of the rescued persons, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, were allowed in the cabin on the instructions of the Captain. When inside the cabin, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader threatened the Captain to change direction and sail to Malta at full speed, and that if the Captain did not follow their instructions, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, threatened to cause damage to the ship and set fire to the tank. The accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, also threatened the crew to keep the direction of the ship to Malta or otherwise, they will instruct the other rescued people on board the ship to damage and destroy the ship.

When the ship ELHIBLU 1 was close to the territorial waters of Malta, the Captain and the Chief Officer of the ship got in touch with the Maltese Authorities. Since the ship ELHIBLU 1 did not have any authorisation to enter the territorial waters of Malta, the Maltese authorities asked the Captain of ELHIBLU 1 to keep position and call the Libyan coast guards for help. At that stage, the Captain informed the Maltese authorities that they had lost control of the ship and that the Captain and crew were being threatened by the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, and were being told to keep on sailing to Malta at full throttle, otherwise damage would be inflicted.

The accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader engaged in terrorist activities by unlawfully seizing and exercising control over a ship and by threatening the use of force and other forms of intimidation over the Captain and the crew of the ship ELHIBLU 1.

The Chief Officer of the ELHIBLU 1 ship repeated several times to the Maltese authorities that the ship was under attack, the ship was seized by the accused and that the Captain and crew lost control of the ship. Subsequently, the Maltese authorities intervened, and asked the Chief Officer of the ELHIBLU 1 ship to sail slowly to the coast of Malta.

CONSEQUENCES:

By committing the abovementioned acts with criminal intent, the accused ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER rendered themselves guilty of committing the offence of terrorism, when they unlawfully and intentionally seized or exercised control over the ship ELHIBLU 1 bearing registration number IMO-9753258, by use of force or threats thereof, or by any form of intimidation, in breach of Articles 328A(4)(i) of the Criminal Code, Chapter 9 of the Laws of Malta.

ACCUSATION:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER, of being guilty of having on the 28th of March 2019, on board the ship ELHIBLU 1 bearing registration number IMO-9753258, while in the territorial waters of Malta, wilfully, committed terrorist activities, when unlawfully and intentionally seized or exercised control over the ship ELHIBLU 1 bearing registration number IMO-9753258 by use of force or threats thereof, or by any form of intimidation, in breach of Article 328A(4)(i) of the Criminal Code, Chapter 9 of the Laws of Malta.

PUNISHMENT:

Consequently, the Attorney General demands that the accused be proceeded against according to law, and that they are sentenced to the punishment of not less than seven (7) years imprisonment and to the maximum punishment of life imprisonment and to any other consequences as stipulated in Articles 17, 18, 23, 23A, 23B, 23C, 30, 31, 48A, 328A (4) (i), 328A (3) and 533 of the Criminal Code, Chapter 9 of the Laws of Malta or to any other punishment applicable according to law to the declaration of guilt of the accused.

FOURTH (4) COUNT:

Illegal arrest, detention and confinement

FACTS:

In March of the year two thousand and nineteen (2019), a ship with the registered name ELHIBLU 1 bearing registration number IMO-9753258, was sailing from Turkey to Libya with six (6) crew personnel on board. The Captain of the ship received information from a military aircraft that a rubber boat with a number of people was stranded in the middle of the sea and the military aircraft asked the Captain of the ELHIBLU 1 to assist the persons in distress. The military aircraft gave the Captain of ELHIBLU 1 the coordinates of where the stranded rubber boat was. The military aircraft also provided the Captain of the ELHIBLU 1 with other coordinates of a rendezvous point where the ELHIBLU 1 should take the people rescued in order to be picked up by another boat.

When the ELHIBLU 1 reached the rubber boat, the Captain and crew of the ELHIBLU 1 found over a hundred people on board which were all rescued except six (6) men who decided not to board the ELHIBLU 1 and to continue to make their own way. Because the other boat never arrived at the rendezvous point, the Captain of the ELHIBLU 1 decided to sail to Libya at night when most of the rescued persons were

sleeping. When the ELHIBLU 1 was a few nautical miles off the coast of Libya, and the rescued people realised of their whereabouts, a commotion on board the ship started.

A large number of the rescued people reached the bridge and started to bang on the cabin glass with tools and other materials which they had picked up from the ELHIBLU 1. They were shouting at the Captain and at the ship's crew to change direction. This situation created fear in the Captain of the ship Mr Turgut Mahno, holder of Turkish passport number S00214995, and in the Chief Officer Mr Nader Ali Mohammed Alhiblu, holder of Libyan passport number JZJ202Y6 and the crew members Mr Ramanan Ramanathan, holder of Indian passport number L5170359, Mr Bhaskara Behera Gaya, holder of Indian passport number N9541760, Mr Raja Babu Chidapana, holder of Indian passport number N7492780 and Mr Arfin Ansari, holder of Indian passport number R3420940. Consequently, fearing for their security, the Captain and crew of the ELHIBLU 1 locked themselves inside the cabin.

Three (3) of the rescued persons, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, were allowed in the cabin on the instructions of the Captain. When inside the cabin, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader threatened the Captain to change direction and sail to Malta at full speed, and that if the Captain did not follow their instructions, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, threatened to cause damage to the ship and set fire to the tank. The accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, also threatened the crew to keep the direction of the ship to Malta or otherwise, they will instruct the other rescued people on board the ship to damage and destroy the ship.

Throughout this time, the three accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader stayed on the bridge and kept control over the Captain and the other crew members to keep sailing towards Malta. The accused monitored the direction and did not allow the crew members to go near the electronic equipment.

They also controlled the Chief Officer when speaking on VHF to the Maltese authorities without the necessary permission.

When the ship ELHIBLU 1 was close to the territorial waters of Malta, the Captain and the Chief Officer of the ship got in touch with the Maltese Authorities. Since the ship ELHIBLU 1 did not have any authorisation to enter the territorial waters of Malta, the Maltese authorities asked the Captain of ELHIBLU 1 to keep position and call the Libyan coast guards for help. At that stage, the Captain informed the Maltese authorities that they had lost control of the ship and that the Captain and crew were being threatened by the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader and were being told to keep on sailing to Malta at full throttle, otherwise damage would be inflicted.

The Chief Officer of the ELHIBLU 1 ship repeated several times to the Maltese authorities that the ship was under attack, the ship was seized by the accused and that the Captain and crew lost control of the ship. Subsequently, the Maltese authorities intervened, and asked the Chief Officer of the ELHIBLU 1 ship to sail slowly to the coast of Malta.

The accused, without a lawful order from the competent authorities detained and confined the Captain and crew of ELHIBLU 1 against their will threatening the Captain and crew of the ELHIBLU 1 to injure or continue to detain or confine them with the object of compelling a state, an international governmental organisation or person to do or to abstain from doing an act.

CONSEQUENCES:

By committing the abovementioned acts with criminal intent, the accused ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER rendered themselves guilty of committing the offence of illegal arrest, detention and confinement, when without a lawful order from the competent authorities, and saving

the cases where the law authorises private individuals to apprehend offenders, arrested, detained or confined private persons, with the aim to unduly compel the Government or an International Organisation to perform or abstain from performing any act, in breach of Articles 86 and 87(2) of the Criminal Code, Chapter 9 of the Laws of Malta.

ACCUSATION:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER, of being guilty of having on the 28th of March 2019, on board the ship ELHIBLU 1 bearing registration number IMO-9753258, while in the territorial waters of Malta, wilfully, committed the offence of illegal arrest, detention and confinement, when without a lawful order from the competent authorities, and saving the cases where the law authorises private individuals to apprehend offenders, arrested, detained or confined the Captain of the ship ELHIBLU 1 bearing registration number IMO-9753258, Mr Turgut Mahno, holder of Turkish passport number S00214995, Chief Officer Mr. Nader Ali Mohammed Alhiblu, holder of Libyan passport number JZJ202Y6 and the crew Mr Ramanan Ramanathan, holder of Indian passport number L5170359, Mr Bhaskara Behera Gaya, holder of Indian passport number N9541760, Mr Raja Babu Chidapana, holder of Indian passport number N7492780 and Mr Arfin Ansari, holder of Indian passport number R3420940 against their will with the objective of compelling a state, an international organisation or person to do or to abstain from doing an act in breach of Articles 86 and 87(2) of the Criminal Code, Chapter 9 of the Laws of Malta

PUNISHMENT:

Consequently, the Attorney General demands that the accused be proceeded against according to law, and that they are sentenced to a period of imprisonment of not less than seven (7) years and maximum punishment of life imprisonment and to any other

consequences as stipulated in Articles 17, 18, 23, 23A, 23B, 23C, 30, 31, 48A, 86, 87 (2) and 533 of the Criminal Code, Chapter 9 of the laws of Malta or to any other punishment applicable according to law to the declaration of guilt of the accused.

FIFTH (5) COUNT:

Illegal arrest, detention and confinement

FACTS:

In March of the year two thousand and nineteen (2019), a ship with the registered name ELHIBLU 1 bearing registration number IMO-9753258 was sailing from Turkey to Libya with six (6) crew personnel on board. The Captain of the ship received information from a military aircraft that a rubber boat with a number of people was stranded in the middle of the sea and the military aircraft asked the Captain of the ELHIBLU 1 to assist the persons in distress. The military aircraft gave the Captain of ELHIBLU 1 the coordinates of where the stranded rubber boat was. The military aircraft also provided the Captain of the ELHIBLU 1 with other coordinates of a rendezvous point where the ELHIBLU 1 should take the people rescued in order to be picked up by another boat.

When the ELHIBLU 1 reached the rubber boat, the Captain and crew of the ELHIBLU 1 found over a hundred people on board which were all rescued except six (6) men who decided not to board the ELHIBLU 1 and to continue to make their own way. Because the other boat never arrived at the rendezvous point, the Captain of the ELHIBLU 1 decided to sail to Libya at night when most of the rescued persons were sleeping. When the ELHIBLU 1 was a few nautical miles off the coast of Libya, and the rescued people realised of their whereabouts, a commotion on board the ship started.

A large number of the rescued people reached the bridge and started to bang on the cabin glass with tools and other materials which they had picked up from the

ELHIBLU 1. They were shouting at the Captain and at the ship's crew to change direction. This situation created fear in the Captain of the ship Mr Turgut Mahno, holder of Turkish passport number S00214995, and in the Chief Officer Mr Nader Ali Mohammed Alhiblu, holder of Libyan passport number JZJ202Y6 and the crew members Mr Ramanan Ramanathan, holder of Indian passport number L5170359, Mr Bhaskara Behera Gaya, holder of Indian passport number N9541760, Mr Raja Babu Chidapana, holder of Indian passport number N7492780 and Mr Arfin Ansari, holder of Indian passport number R3420940. Consequently, fearing for their security, the Captain and crew of the ELHIBLU 1 locked themselves inside the cabin.

Three (3) of the rescued persons, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, were allowed in the cabin on the instructions of the Captain. When inside the cabin, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader threatened the Captain to change direction and sail to Malta at full speed, and that if the Captain did not follow their instructions, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader threatened to cause damage to the ship and set fire to the tank. The accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader also threatened the crew to keep the direction of the ship to Malta or otherwise, they will instruct the other rescued people on board the ship to damage and destroy the ship.

Throughout this time the three accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader stayed on the bridge and kept control over the Captain and the other crew members to keep sailing towards Malta. The accused monitored the direction and did not allow the crew members to go near the electronic equipment. They also controlled the Chief officer when speaking on VHF to the Maltese authorities without the necessary permission.

When the ship ELHIBLU 1 was close to the territorial waters of Malta, the Captain and the Chief Officer of the ship got in touch with the Maltese Authorities. Since the ship ELHIBLU 1 did not have any authorisation to enter the territorial waters of Malta, the

Maltese authorities asked the Captain of ELHIBLU 1 to keep position and call the Libyan coast guards for help. At that stage, the Captain informed the Maltese authorities that they had lost control of the ship and that the Captain and crew were being threatened by the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader and were being told to keep on sailing to Malta at full throttle, otherwise damage would be inflicted.

The Chief Officer of the ELHIBLU 1 ship repeated several times to the Maltese authorities that the ship was under attack the ship was seized by the accused and that the Captain and crew lost control of the ship. Subsequently, the Maltese authorities intervened, and asked the Chief Officer of the ELHIBLU 1 ship to sail slowly to the coast of Malta.

The accused, without a lawful order from the competent authorities detained and confined the Captain and crew of ELHIBLU 1 against their will threatening the Captain and crew of the ELHIBLU 1 for the purpose of forcing another person to do or to omit an act, which, if voluntary done or omitted, would be a crime.

CONSEQUENCES:

By committing the abovementioned acts with criminal intent, the accused ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER rendered themselves guilty of committing the offence of illegal arrest, detention and confinement, when without a lawful order from the competent authorities, and saving the cases where the law authorises private individuals to apprehend offenders, arrested, detained or confined private persons, with the purpose of forcing them to do or to omit an act, which if voluntary done or omitted, would be a crime, in breach of Articles 86 and 87(1)(f) of the Criminal Code, Chapter 9 of the Laws of Malta.

ACCUSATION:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER, of being guilty of having on the 28th of March 2019, on board the ship ELHIBLU 1 bearing registration number IMO-9753258, while in the territorial waters of Malta, wilfully, committed the offence of illegal arrest, detention and confinement, when without a lawful order from the competent authorities, and saving the cases where the law authorises private individuals to apprehend offenders, arrested, detained or confined of the ship ELHIBLU 1 bearing registration number IMO-9753258, Mr Turgut Mahno, holder of Turkish passport number S00214995, Chief Officer Mr. Nader Ali Mohammed Alhiblu, holder of Libyan Passport number JZJ202Y6 and the crew Mr Ramanan Ramanathan, holder of Indian passport number L5170359, Mr Bhaskara Behera Gaya, holder of Indian passport number N9541760, Mr Raja Babu Chidapana, holder of Indian passport number N7492780 and Mr Arfin Ansari, holder of Indian passport number R3420940 against their will with the purpose of forcing them to do or to omit an act, which if voluntary done or omitted, would be a crime, in breach of Articles 86 and 87(1)(f) of the Criminal Code, Chapter 9 of the Laws of Malta.

PUNISHMENT:

Consequently, the Attorney General demands that the accused be proceeded against according to law, and that they are sentenced to the punishment of not less than thirteen (13) months imprisonment and to a maximum of three (3) years imprisonment and to any other consequences as stipulated in Articles 17, 18, 23, 23A, 23B, 23C, 30, 31, 48A, 86, 87 (1) (f) and 533 of the Criminal Code, Chapter 9 of the laws of Malta or to any other punishment applicable according to law to the declaration of guilt of the accused.

SIXTH (6) COUNT:

Unlawful removal of persons to a foreign country or unlawful confinement

FACTS:

In March of the year two thousand and nineteen (2019), a ship with the registered name ELHIBLU 1 bearing registration number IMO-9753258 was sailing from Turkey to Libya with six (6) crew personnel on board. The Captain of the ship received information from a military aircraft that a rubber boat with a number of people was stranded in the middle of the sea and the military aircraft asked the Captain of the ELHIBLU 1 to assist the persons in distress. The military aircraft gave the Captain of ELHIBLU 1 the coordinates of where the stranded rubber boat was. The military aircraft also provided the Captain of the ELHIBLU 1 with other coordinates of a rendezvous point where the ELHIBLU 1 should take the people rescued in order to be picked up by another boat.

When the ELHIBLU 1 reached the rubber boat, the Captain and crew of the ELHIBLU 1 found over a hundred people on board which were all rescued except six (6) men who decided not to board the ELHIBLU 1 and to continue to make their own way. Because the other boat never arrived at the rendezvous point, the Captain of the ELHIBLU 1 decided to sail to Libya at night when most of the rescued persons were sleeping. When the ELHIBLU 1 was a few nautical miles off the coast of Libya, and the rescued people realised of their whereabouts, a commotion on board the ship started.

A large number of the rescued people reached the bridge and started to bang on the cabin glass with tools and other materials which they had picked up from the ELHIBLU 1. They were shouting at the Captain and at the ship's crew to change direction. This situation created fear in the Captain of the ship Mr Turgut Mahno, holder of Turkish passport number S00214995, and in the Chief Officer Mr Nader Ali Mohammed Alhiblu, holder of Libyan passport number JZJ202Y6 and the crew

members Mr Ramanan Ramanathan, holder of Indian passport number L5170359, Mr Bhaskara Behera Gaya, holder of Indian passport number N9541760, Mr Raja Babu Chidapana, holder of Indian passport number N7492780 and Mr Arfin Ansari, holder of Indian passport number R3420940. Consequently, fearing for their security, the Captain and crew of the ELHIBLU 1 locked themselves inside the cabin.

Three (3) of the rescued persons, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, were allowed in the cabin on the instructions of the Captain. When inside the cabin, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader threatened the Captain to change direction and sail to Malta at full speed, and that if the Captain did not follow their instructions, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader threatened to cause damage to the ship and set fire to the tank. The accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader also threatened the crew to keep the direction of the ship to Malta or otherwise, they will instruct the other rescued people on board the ship to damage and destroy the ship.

Throughout this time the three accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader stayed on the bridge and kept control over the Captain and the other crew members to keep sailing towards Malta. The accused monitored the direction and did not allow the crew members to go near the electronic equipment. They also controlled the Chief Officer when speaking on VHF to the Maltese authorities.

The Captain and the crew had no other way but to sail to Malta and therefore, they had to leave the territorial waters of Libya where the ship and its crew were to berth the ship and instead sail to Malta against their wish and without any permission to enter the territorial waters of Malta.

When the ship ELHIBLU 1 was close to the territorial waters of Malta, the Captain and the Chief Officer of the ship got in touch with the Maltese Authorities. Since the ship

ELHIBLU 1 did not have any authorisation to enter the territorial waters of Malta, the Maltese authorities asked the Captain of ELHIBLU 1 to keep position and call the Libyan coast guards for help. At that stage, the Captain informed the Maltese authorities that they had lost control of the ship and that the Captain and crew were being threatened by the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader and were being told to keep on sailing to Malta at full throttle, otherwise damage would be inflicted.

The Chief Officer of the ELHIBLU 1 ship repeated several times to the Maltese authorities that the ship was under attack the ship was seized by the accused and that the Captain and crew lost control of the ship. Subsequently, the Maltese authorities intervened, and asked the Chief Officer of the ELHIBLU 1 ship to sail slowly to the coast of Malta.

CONSEQUENCES:

By committing the abovementioned acts with criminal intent, the accused ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER rendered themselves guilty of committing the offence of unlawful removal of persons to a foreign country or unlawful confinement in breach of Article 90 of the Criminal Code, Chapter 9 of the Laws of Malta.

ACCUSATION:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER, of being guilty of having on the 28th of March 2019, on board the ship ELHIBLU 1 bearing registration number IMO-9753258, while in the territorial waters of Malta, wilfully, committed the offence of unlawful and forcibly remove a person to any other country, when they unlawfully and forcibly removed the Captain of the ship ELHIBLU 1 bearing registration number

IMO-9753258, Mr Turgut Mahno, holder of Turkish passport number S00214995, Chief Officer Mr Nader Ali Mohammed Alhiblu, holder of Libyan passport number JZJ202Y6 and the crew Mr Ramanan Ramanathan, holder of Indian passport number L5170359, Mr Bhaskara Behera Gaya, holder of Indian passport number N9541760, Mr Raja Babu Chidapana, holder of Indian passport number N7492780 and Mr Arfin Ansari, holder of Indian passport number R3420940 in breach of article 90 of the Criminal Code, Chapter 9 of the Laws of Malta.

PUNISHMENT:

Consequently, the Attorney General demands that the accused be proceeded against according to law, and that they are sentenced to the punishment of not less than thirteen (13) months imprisonment and to a maximum punishment of three (3) years imprisonment and to any other consequences as stipulated in Articles 17, 18, 23, 23A, 23B, 23C, 30, 31, 48A, 87, 90 and 533 of the Criminal Code, Chapter 9 of the laws of Malta or to any other punishment applicable according to law to the declaration of guilt of the accused.

SEVENTH (7) COUNT:

Private violence

FACTS:

In March of the year two thousand and nineteen (2019), a ship with the registered name ELHIBLU 1 bearing registration number IMO-9753258 was sailing from Turkey to Libya with six (6) crew personnel on board. The Captain of the ship received information from a military aircraft that a rubber boat with a number of people was stranded in the middle of the sea and the military aircraft asked the Captain of the ELHIBLU 1 to assist the persons in distress. The military aircraft gave the Captain of ELHIBLU 1 the coordinates of where the stranded rubber boat was. The military aircraft also provided the Captain of the ELHIBLU 1 with other coordinates of a

rendezvous point where the ELHIBLU 1 should take the people rescued in order to be picked up by another boat.

When the ELHIBLU 1 reached the rubber boat, the Captain and crew of the ELHIBLU 1 found over a hundred people on board which were all rescued except six (6) men who decided not to board the ELHIBLU 1 and to continue to make their own way. Because the other boat never arrived at the rendezvous point, the Captain of the ELHIBLU 1 decided to sail to Libya at night when most of the rescued persons were sleeping. When the ELHIBLU 1 was a few nautical miles off the coast of Libya, and the rescued people realised of their whereabouts, a commotion on board the ship started.

A large number of the rescued people reached the bridge and started to bang on the cabin glass with tools and other materials which they had picked up from the ELHIBLU 1. They were shouting at the Captain and at the ship's crew to change direction. This situation created fear in the Captain of the ship Mr Turgut Mahno, holder of Turkish passport number S00214995, and in the Chief Officer Mr Nader Ali Mohammed Alhiblu, holder of Libyan passport number JZJ202Y6 and the crew members Mr Ramanan Ramanathan, holder of Indian passport number L5170359, Mr Bhaskara Behera Gaya, holder of Indian passport number N9541760, Mr Raja Babu Chidapana, holder of Indian passport number N7492780 and Mr Arfin Ansari, holder of Indian passport number R3420940. Consequently, fearing for their security, the Captain and crew of the ELHIBLU 1 locked themselves inside the cabin.

Three (3) of the rescued persons, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, were allowed in the cabin on the instructions of the Captain. When inside the cabin, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader threatened the Captain to change direction and sail to Malta at full speed, and that if the Captain did not follow their instructions, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader threatened to cause damage to the ship and set fire to the tank. The accused Abdalla Bari, Amara Krumak and Koni

Tiemoko Badulkader also threatened the crew to keep the direction of the ship to Malta or otherwise, they will instruct the other rescued people on board the ship to damage and destroy the ship.

When the ship ELHIBLU 1 was close to the territorial waters of Malta, the Captain and the Chief Officer of the ship got in touch with the Maltese Authorities. Since the ship ELHIBLU 1 did not have any authorisation to enter the territorial waters of Malta, the Maltese authorities asked the Captain of ELHIBLU 1 to keep position and call the Libyan coast guards for help. At that stage, the Captain informed the Maltese authorities that they had lost control of the ship and that the Captain and crew were being threatened by the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader and were being told to keep on sailing to Malta at full throttle, otherwise damage would be inflicted.

CONSEQUENCES:

By committing the abovementioned acts with criminal intent, the accused ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER rendered themselves guilty of committing the offence of private violence, when they used violence including moral, and/or psychological violence, and/or coercion, in order to compel private persons to do, suffer or omit anything or to diminish their abilities or to isolate the in breach of Articles 251(1)(2), 250(1)(2) of the Criminal Code, Chapter 9 of the Laws of Malta.

ACCUSATION:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER, of being guilty of having on the 28th of March 2019, on board the ship ELHIBLU 1 bearing registration number IMO-9753258, while in the territorial waters of Malta, wilfully committed the offence of

private violence, when they used violence including moral, and/or psychological violence, and/or coercion, in order to compel the Captain of the ship ELHIBLU 1 bearing registration number IMO-9753258, Mr Turgut Mahno, holder of Turkish passport number S00214995, Chief Officer Mr Nader Ali Mohammed Alhiblu, holder of Libyan Passport number JZJ202Y6 and the crew Mr Ramanan Ramanathan, holder of Indian passport number L5170359, Mr Bhaskara Behera Gaya, holder of Indian passport number N9541760, Mr Chidapana Raja Babu, holder of Indian passport number N7492780 and Mr Arfin Ansari, holder of Indian passport number R3420940, to do, suffer or omit anything or to diminish their abilities or to isolate the in breach of Articles 251(1)(2), 250(1)(2) of the Criminal Code, Chapter 9 of the Laws of Malta.

PUNISHMENT:

Consequently, the Attorney General demands that the accused be proceeded against according to law, and that they are sentenced to the punishment of imprisonment for a term from eighteen (18) months to five (5) years and to any other consequences as stipulated in Articles 17, 18, 23, 23A, 23B, 23C, 30, 31, 48A, 250, 251 and 533 of the Criminal Code, Chapter 9 of the laws of Malta or to any other punishment applicable according to law to the declaration of guilt of the accused.

EIGHTH (8) COUNT:

Private violence

FACTS:

In March of the year two thousand and nineteen (2019), a ship with the registered name ELHIBLU 1 bearing registration number IMO-9753258 was sailing from Turkey to Libya with six (6) crew personnel on board. The Captain of the ship received information from a military aircraft that a rubber boat with a number of people was stranded in the middle of the sea and the military aircraft asked the Captain of the ELHIBLU 1 to assist the persons in distress. The military aircraft gave the Captain of

ELHIBLU 1 the coordinates of where the stranded rubber boat was. The military aircraft also provided the Captain of the ELHIBLU 1 with other coordinates of a rendezvous point where the ELHIBLU 1 should take the people rescued in order to be picked up by another boat.

When the ELHIBLU 1 reached the rubber boat, the Captain and crew of the ELHIBLU 1 found over a hundred people on board which were all rescued except six (6) men who decided not to board the ELHIBLU 1 and to continue to make their own way. Because the other boat never arrived at the rendezvous point, the Captain of the ELHIBLU 1 decided to sail to Libya at night when most of the rescued persons were sleeping. When the ELHIBLU 1 was a few nautical miles off the coast of Libya, and the rescued people realised of their whereabouts, a commotion on board the ship started.

A large number of the rescued people reached the bridge and started to bang on the cabin glass with tools and other materials which they had picked up from the ELHIBLU 1. They were shouting at the Captain and at the ship's crew to change direction. This situation created fear in the Captain of the ship Mr Turgut Mahno, holder of Turkish passport number S00214995, and in the Chief Officer Mr Nader Ali Mohammed Alhiblu, holder of Libyan passport number JZJ202Y6 and the crew members Mr Ramanan Ramanathan, holder of Indian passport number L5170359, Mr Bhaskara Behera Gaya, holder of Indian passport number N9541760, Mr Raja Babu Chidapana, holder of Indian passport number N7492780 and Mr Arfin Ansari, holder of Indian passport number R3420940. Consequently, fearing for their security, the Captain and crew of the ELHIBLU 1 locked themselves inside the cabin.

Three (3) of the rescued persons, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, were allowed in the cabin on the instructions of the Captain. When inside the cabin, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader threatened the Captain to change direction and sail to Malta at full speed, and that if the Captain did not follow their instructions, the accused Abdalla Bari,

Amara Krumak and Koni Tiemoko Badulkader threatened to cause damage to the ship and set fire to the tank. The accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader also threatened the crew to keep the direction of the ship to Malta or otherwise, they will instruct the other rescued people on board the ship to damage and destroy the ship.

When the ship ELHIBLU 1 was close to the territorial waters of Malta, the Captain and the Chief Officer of the ship got in touch with the Maltese Authorities. Since the ship ELHIBLU 1 did not have any authorisation to enter the territorial waters of Malta, the Maltese authorities asked the Captain of ELHIBLU 1 to keep position and call the Libyan coast guards for help. At that stage, the Captain informed the Maltese authorities that they had lost control of the ship and that the Captain and crew were being threatened by the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader and were being told to keep on sailing to Malta at full throttle, otherwise damage would be inflicted.

CONSEQUENCES:

By committing the abovementioned acts with criminal intent, the accused ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER rendered themselves guilty of causing fear to other persons that violence will be used on their property or against the person or property of any of the ascendants, descendants, brothers and sisters, in breach of Articles 251(3) and 250(1)(2) of the Criminal Code, Chapter 9 of the Laws of Malta.

ACCUSATION:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER, of being guilty of having on the 28th of March 2019, on board the ship ELHIBLU 1 bearing registration number IMO-

9753258, while in the territorial waters of Malta, caused fear that violence will be used against the Captain of the Ship Captain of the ship ELHIBLU 1 bearing registration number IMO-9753258, Mr Turgut Mahno, holder of Turkish passport number S00214995, Chief Officer Mr Nader Ali Mohammed Alhiblu, holder of Libyan passport number JZJ202Y6 and the crew Mr Ramanan Ramanathan, holder of Indian passport number L5170359, Mr Bhaskara Behera Gaya, holder of Indian passport number N9541760, Mr Raja Babu Chidapana, holder of Indian passport number N7492780 and Mr Arfin Ansari, holder of Indian passport number R3420940, or their property or against the person or property of any of their ascendants, descendants, brothers and sisters, in breach of Articles 251(3) and 250(1)(2) of the Criminal Code, Chapter 9 of the Laws of Malta.

PUNISHMENT:

Consequently, the Attorney General demands that the accused be proceeded against according to law, and that they are sentenced to the punishment of imprisonment for a term from one (1) year to four (4) years and to any other consequences as stipulated in Articles 17, 18, 23, 23A, 23B, 23C, 30, 31, 48A, 250, 251 (3) u 533 of the Criminal Code, Chapter 9 of the laws of Malta or to any other punishment applicable according to law to the declaration of guilt of the accused.

NINTH (9) COUNT:

Private violence

FACTS:

In March of the year two thousand and nineteen (2019), a ship with the registered name ELHIBLU 1 bearing registration number IMO-9753258, was sailing from Turkey to Libya with six (6) crew personnel on board. The Captain of the ship received information from a military aircraft that a rubber boat with a number of people was stranded in the middle of the sea and the military aircraft asked the Captain of the

ELHIBLU 1 to assist the persons in distress. The military aircraft gave the Captain of ELHIBLU 1 the coordinates of where the stranded rubber boat was. The military aircraft also provided the Captain of the ELHIBLU 1 with other coordinates of a rendezvous point where the ELHIBLU 1 should take the people rescued in order to be picked up by another boat.

When the ELHIBLU 1 reached the rubber boat, the Captain and crew of the ELHIBLU 1 found over a hundred people on board which were all rescued except six (6) men who decided not to board the ELHIBLU 1 and to continue to make their own way. Because the other boat never arrived at the rendezvous point, the Captain of the ELHIBLU 1 decided to sail to Libya at night when most of the rescued persons were sleeping. When the ELHIBLU 1 was a few nautical miles off the coast of Libya, and the rescued people realised of their whereabouts, a commotion on board the ship started.

A large number of the rescued people reached the bridge and started to bang on the cabin glass with tools and other materials which they had picked up from the ELHIBLU 1. They were shouting at the Captain and at the ship's crew to change direction. This situation created fear in the Captain of the ship Mr Turgut Mahno, holder of Turkish passport number S00214995, and in the Chief Officer Mr Nader Ali Mohammed Alhiblu, holder of Libyan passport number JZJ202Y6 and the crew members Mr Ramanan Ramanathan, holder of Indian passport number L5170359, Mr Bhaskara Behera Gaya, holder of Indian passport number N9541760, Mr Raja Babu Chidapana, holder of Indian passport number N7492780 and Mr Arfin Ansari, holder of Indian passport number R3420940. Consequently, fearing for their security, the Captain and crew of the ELHIBLU 1 locked themselves inside the cabin.

Three (3) of the rescued persons, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, were allowed in the cabin on the instructions of the Captain. When inside the cabin, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader threatened the Captain to change direction and sail to Malta at full speed,

and that if the Captain did not follow their instructions, the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, threatened to cause damage to the ship and set fire to the tank. The accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader, also threatened the crew to keep the direction of the ship to Malta or otherwise, they will instruct the other rescued people on board the ship to damage and destroy the ship.

When the ship ELHIBLU 1 was close to the territorial waters of Malta, the Captain and the Chief Officer of the ship got in touch with the Maltese Authorities. Since the ship ELHIBLU 1 did not have any authorisation to enter the territorial waters of Malta, the Maltese authorities asked the Captain of ELHIBLU 1 to keep position and call the Libyan coast guards for help. At that stage, the Captain informed the Maltese authorities that they had lost control of the ship and that the Captain and crew were being threatened by the accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader and were being told to keep on sailing to Malta at full throttle, otherwise damage would be inflicted.

CONSEQUENCES:

By committing the abovementioned acts with criminal intent, the accused ABDALLA BARI, AMARA KRUMAK, and KONI TIEMOKO BADULKADER with their course of conduct caused to other persons fear that violence will be used against them or their property or against the person or property of any of their ascendants, descendants, brothers and sisters, when they knew that their course of conduct will cause the other to fear on each of those occasions, in breach of Article 251B of the Criminal Code, Chapter 9 of the Laws of Malta.

ACCUSATION:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses ABDALLA BARI, AMARA

KRUMAK, and KONI TIEMOKO BADULKADER, of being guilty of having on the 28th of March 2019, on board the ship ELHIBLU 1 bearing registration number IMO-9753258, while in the territorial waters of Malta, with their course of conduct caused fear and/or knew or ought to know that their course of conduct will cause fear that violence will be used against the Captain of the Ship ELHIBLU 1 bearing registration number IMO-9753258, Mr Turgut Mahno, holder of Turkish passport number S00214995, Chief Officer Mr Nader Ali Mohammed Alhiblu, holder of Libyan passport number JZJ202Y6 and the crew Mr Ramanan Ramanathan, holder of Indian passport number L5170359, Mr Bhaskara Behera Gaya, holder of Indian passport number N9541760, Mr Raja Babu Chidapana, holder of Indian passport number N7492780 and Mr Arfin Ansari, holder of Indian passport number R3420940, or their property or against the person or property of any of their ascendants, descendants, brothers and sisters, when they knew that their course of conduct will cause the other to fear on each of those occasions, in breach of Article 251B of the Criminal Code, Chapter 9 of the Laws of Malta.

PUNISHMENT:

Consequently, the Attorney General demands that the accused be proceeded against according to law, and that they are sentenced to the punishment of three (3) months to six (6) months imprisonment and to a fine (multa) not less than four thousand, six hundred and fifty eight Euros and seventy five cents (€4,658.75) and not more than eleven thousand six hundred and forty six Euros and eighty seven cents (€11,646.87), or both such fines and imprisonment, and to any other consequences as stipulated in Articles 17, 18, 23, 23A, 23B, 23C, 30, 31, 48A, 251B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.

Having seen the acts of the case.

Having heard the submissions put forward by the prosecution and the defence on the 13th of March 2024 limitedly in regard to the first plea of defence relating to lack of jurisdiction of this court.

Having seen that both parties agreed that this Court is to give its preliminary judgement only on the plea of lack of jurisdiction as raised by the defence.

This Court emphasises the fact that this preliminary plea is specifically related to jurisdiction and thus, will only pronounce itself on this matter and not on the merits of the case as to whether the alleged acts of terrorism result or not.

Considers,

In International Law, jurisdiction may be defined as the power of a State to exercise authority over its property, persons, or events. This reflects the basic principles of State sovereignty and non-interference in domestic affairs.¹ The principle of territoriality is the principle by which a nation may claim jurisdiction over an alleged crime if it is committed within its territory. On the other hand, universal jurisdiction is when a nation claims jurisdiction over a criminal case without regard to where it is supposed to have taken place or the nationality of either the alleged perpetrator or the victim of the crime. In other words, a nation may claim jurisdiction solely on the nature of the crime.² Terrorism is not one of the seven serious crimes under international law recognized by the Princeton Project for the purposes of the Princeton Principles on Universal Jurisdiction.³ Hence, unlike crimes like genocide and war crimes, universal jurisdiction does not apply to terrorism.

¹ Shaw, International Law, 5111 Edition, p. 572

² Lee Win-chiat, Terrorism and Universal Jurisdiction, Chapter from the book ' Intervention, Terrorism, and Torture, 2007, p. 203.

³ The Princeton Principles on Universal Jurisdiction (Principles) are a progressive restatement of international law on the subject of universal jurisdiction. Leading scholars and jurists gathered twice at Princeton University to help clarify this important area of law. 2 The Principles contain elements of both *lex lata* (the law as it is) and *de lege ferenda* (the law as it ought to be), but they should not be understood to limit the future evolution of universal jurisdiction. The Principles are intended to help guide national legislative bodies seeking to enact implementing legislation; judges who may be required to construe universal jurisdiction in applying domestic law or in making extradition decisions; governments that must decide whether to prosecute or extradite, or otherwise to assist in promoting international criminal accountability; and all those in civil society concerned with bringing to justice perpetrators of serious international crime.

For the Purpose of these Principles, Serious Crimes under International Law include: include: (1) piracy; (2) slavery; (3) war crimes; (4) crimes against peace; (5) crimes against humanity; (6) genocide; and (7) torture.

This Court is of the opinion that it would be opportune at this stage to make reference to what was said in the Maltese Parliament over the years, and which paved way for laws related to terrorism to be introduced to our Criminal Code. Reference will also be made to Article 5 and Article 328M of the Criminal Code which specifically speak of jurisdiction.

In the parliamentary debate dated the 8th of March 2005 it was stated that the Government was proposing a bill to amend the Criminal Code in order to comply with the Framework Decision of the European Union of the 13th of June 2002 against terrorism. Prior to this, Malta did not have a law defining a terrorist act and the framework decision provided this definition which was practically copied into our legislation word for word.

The Attorney General in his final submissions before this Court made reference to what was said in Parliament by Onor. Dr Gavin Gulia where in the abovementioned debate he stated the following:

'Pero` huwa fatt ukoll li t-terrorizmu li huwa palk - terrorism is theatre - għandu bżonn l-ispettatur, inkella l-effett tat-terrorizmu ma jasalx. It-terrorizmu jrid ibeżża' lil xi hadd, irid ibeżża lill-pubbliku, allura t-terrorizmu huwa teatru. U huwa irrelevanti fejn ikun it-teatru, l-importanti li qiegħed hemm halli n-nies jarawh.'

In the same parliamentary debate referred to *supra*, Onor. Dr Tonio Borg referred to Article 328L⁴ of the Criminal Code and stated the following with regards to terrorism and jurisdiction:

'Mr Speaker, introduċejna artikolu ġdid 328L dwar il-ġurisdizzjoni. Dan bilfors kellna nagħmluh - u sewwa li għamilnieh - minħabba d-

⁴ Presently renumbered as Article 328M of the Criminal Code.

deċiżjoni qafas, fejn il-qrati Maltin se jkollhom ġurisdizzjoni mhux biss fuq reati li jsiru f'Malta imma anke kontra reat terroristiku, isir fejn isir, meta l-hati jkun ċittadin ta' Malta jew resident permanenti f'Malta. Ikollna ġurisdizzjoni wkoll meta r-reat terroristiku jsir barra minn Malta, imma jsir għall-benefiċċju ta' persuna ġuridika stabbilita f'Malta. Għandna ġurisdizzjoni fuq gruppi terroristiċi anke meta jkunu bbażati jew wettqu l-attività` kriminali tagħhom barra minn Malta. U fl-aħħarnett, jekk reat isir kontra istituzzjoni tal-poplu Malti jew ta' Malta, per eżempju wiehed jattakka ambaxxata Maltija f'Londra, jew inkella kontra xi istituzzjoni ta' l-UE jew xi korp imwaqqaf skond it-trattati u li jkun bbażat f'Malta, dak jitqies bħala reat li jkun sar f'Malta, minkejja li hemm ir-regola ta' l-extra-territorjalita`, u allura jkollna ġurisdizzjoni fuqu.'

Onor Dr Mario DeMarco, in the same parliamentary discussion, stated the following:

Għalhekk hemm rakkomandazzjonijiet differenti li se jiġu kkonsidrati waqt seminar li se jsir il-ġimgħa d-dieħla ġewwa Brussell li għalih se jattendi l-kollega tiegħi l-Onor. Anġlu Farrugia u x'aktarx jiena wkoll, fejn wiehed se jistudja iktar miżuri li jistgħu jittieħdu biex wiehed jikkumbatti din ir-realta` tat-terroriżmu. Ir-rakkomandazzjonijiet jinkludu li r-reat tat-terroriżmu jiġi inkluż fost reati oħra internazzjonali li jaqgħu that il-kompetenza tal-qorti internazzjonali kriminali. Rakkomandazzjoni oħra hija li wiehed jistituzzjonalizza r-rwol tal-vittmi u tiġi kkreati fondazzjoni għalihom. Hemm rakkomandazzjoni li jitwaqqaf uffiċċju ta' prosekutur pubbliku Ewropew responsabli mill-investigazzjoni u prosekuzzjoni ta' cross border crimes, fosthom ir-reat tat-terroriżmu. Huwa rakkomandat ukoll li nsahħu arrangamenti għall-informazzjoni preventiva u koperazzjoni bejn l-intelligent services tal-pajjiżi membri u l-Europol, li nwaqqfu qorti tal-ġustizzja b' ġurisdizzjoni penali fuq cross border crimes serji fosthom it-terroriżmu. Qed jiġu rakkomandati wkoll

programmi edukattivi fuq il-media biex neliminaw l-ambjent li jipprova jilleġittima t-terrorizmu

Moreover, Onor Dr Anglu Farrugia expressed his opinion by stating that the then proposed Article 328L should be amended to include the words "*jew kontra membru ta' l-Unjoni Ewropea*":

Jien xtaqt nikkummenta wkoll dwar it-trattati msemmijin fil-klawsola dwar il-ġurisdiżżjoni, u għandi domanda li hija iktar ta' interess legali milli politiku. Paragrafu (f) fl-artikolu 328L jgħid li meta:

"ir-reat isir kontra l-istituzzjonijiet jew il-poplu ta' Malta jew kontra xi istituzzjoni ta' l-Unjoni Ewropea ..."

m'hemmx inkluz "jew kontra membru ta' l-Unjoni Ewropea". Allura niġbed l-attenzjoni tal-Ministru li biex inkunu qed nissalvagwardjaw il-jurisdiction clause, wara l-kliem "ir-reat isir kontra l-istituzzjonijiet jew il-poplu ta' Malta jew kontra xi istituzzjoni ta' l-Unjoni Ewropea" għandhom jidhlu l-kliem "jew kontra membru ta' l-Unjoni Ewropea". B'hekk inkunu qegħdin nagħlqu din il-liġi b'mod u manjiera li nagħmluha foolproof, u tkun tista' tiffaddem b'mod miftuħ imma b'koperazzjoni sħiħa bejn il-membri kollha ta' l-Unjoni Ewropea. Grazzi, Mr Speaker.

The Consideration of Bills Committee during meeting 43 dated the 2nd of March 2015 discussed Article 5 of the Criminal Code. The Attorney General at the time, Dr Peter Grech, clarified the fact that if something is not specifically stated in this article, it does not mean that the Maltese Courts do not enjoy jurisdiction because article 5 itself saves the jurisdiction of the Maltese Courts in the event that you have a special provision both in the Criminal Code as well as in another law which gives that jurisdiction:

'DR PETER GRECH (Avukat Ġenerali): Il-kwestjoni li nqalgħet hija dwar jekk id-definizzjoni tal-ġurisdizzjoni tal-Qrati Maltin, jiġifieri kontra min tista' titmexxa l-azzjoni kriminali, li nsibu fl-artikolu 5 hijiex waħda esklużiva, fis-sens li jekk l-artikolu 5 ma jagħtikx ġurisdizzjoni allura kwalunkwe artikolu ieħor irid jinqara flimkien mal-artikolu 5. Allura jista' jinqala' l-każ, skont din id-diffikultà li nqalgħet, li jkollok reati fil-Kodiċi li dwarhom m'hemmx ġurisdizzjoni, fis-sens li dawn ir-reati jirreferu għal residenti permanenti. U fl-artikolu 5(1)(d) il-ġurisdizzjoni fuq ir-residenti permanenti hija limitata għal ċertu tip ta' reati. **Però ngħid li l-artikolu 5 jibda bil-kliem: "Bla ħsara għal kull dispożizzjoni speċjali oħra ta' dan il-Kodiċi jew ta' kull liġi oħra li tagħti ġurisdizzjoni lill-Qrati f'Malta biex jiġġudikaw reati ..."** Jiġifieri l-artikolu 5 ma jinkludix lista esklużiva. Il-fatt li xi haġa mhijiex koperta bl-artikolu 5, ma jfissirx li taqa' barra mill-ġurisdizzjoni tal-qrati Maltin għax l-artikolu 5 stess isalva l-ġurisdizzjoni tal-Qrati Maltin fil-każ li jkollok dispożizzjoni speċjali kemm f'dan il-Kodiċi kif ukoll f'liġi oħra li tagħti dik il-ġurisdizzjoni. Din hija l-ispejgazzjoni li xtaqt nagħti.'

Hon. Owen Bonnici during the Consideration of Bills Committee, meeting 11 and dated the 11th of December 2018 stated that new crimes were being introduced to reproduce that being stated in the Directive 2017/541/EU replacing the Framework Decision:

ONOR. OWEN BONNICI: *Hawnhekk qegħdin noħolqu reati godda. Naturalment mhu qed nivvintaw xejn ġdid imma qegħdin sempliċement nirriproduċu dak li tgħid id-Direttiva 2017/541/UE tal-Parlament Ewropew u tal-Kunsill dwar il-ġlieda kontra t-terroriżmu, liema Direttiva se tkun qed tissostitwixxi d-Deciżjoni Kwadru tal-*

Kunsill 2002/475/ĠAI u temenda d-Deciżjoni tal-Kunsill 2005/671/ĠAI tal-15 ta' Marzu 2017.

Considers,

The defence, in its first preliminary plea and oral submissions constantly made reference to Article 5 of the Criminal Code and stated that the Maltese Courts do not enjoy jurisdiction since the alleged acts took place outside of Malta's territorial waters. The abovementioned article provides the following:

'5. (1) Saving any other special provision of this Code or of any other law conferring jurisdiction upon the courts in Malta to try offences, a criminal action may be prosecuted in Malta –

(a) against any person who commits an offence in Malta, or on the sea in any place within the territorial jurisdiction of Malta;

(b) against any person who commits an offence on the sea beyond such limits on board any ship or vessel belonging to Malta;

(c) against any person who commits an offence on board any aircraft while it is within the air space of Malta or on board any aircraft belonging to Malta wherever it may be;

For the purposes of this paragraph the expression "air space" means the air space above the land areas and territorial waters of Malta;

(d) without prejudice to the preceding paragraphs of this sub-article, against any citizen of Malta or permanent resident in Malta who in any place or on board any ship or vessel or on board any aircraft wherever it may be shall have become guilty of the offences

mentioned in article 54A or of an offence against the safety of the Government or of the offences mentioned in articles 133, 139A, or of the offences mentioned in articles 188B, 188C, 188D, or of the offences mentioned in articles 311 to 318 and in article 320 when these are committed or are directed against or on a state or government facility, an infrastructure facility, a public place or a place accessible to the public, a public transportation system, or of forgery of any of the Government debentures referred to in article 166 or of any of the documents referred to in article 167, or of the offence mentioned in article 196, or of any other offence against the person of a citizen of Malta or of any permanent resident in Malta;

For the purposes of this paragraph:

"permanent resident" means a person in favour of whom a permit of residence has been issued in accordance with the provisions contained in article 7 of the of the Immigration Act;

"offence against the person" includes the offences mentioned in articles 86 to 90 and in articles 198 to 205;

the expressions "state or government facility", "infrastructure facility" and "public transportation system" shall have the same meaning assigned to them respectively by article 314A(4);

(e) against any person who being in Malta –

(i) shall have become guilty of any offence under article 87(2) or articles 198, 199, 211, 214 to 218, 220, 249 to 251, 311, 312, 314A, 314B, 314C, 316 or 317 when committed or directed on or against the person of a protected person or to the prejudice or injury of such person or likely to endanger the life or to cause serious injury to the property, life

*or health of such a person, or in connection with an attack on any relevant premises or on any vehicle ordinarily used by a protected person or when a protected person is on or in the premises or vehicle;
or*

(ii) shall have committed any act which if committed in Malta would constitute an offence and such act involved the use of a bomb, grenade, rocket, automatic firearm, letter bomb or parcel bomb which endangered persons; or

(iii) shall have committed any of the offences under articles 188B to 188D,

although the offences referred to in this paragraph shall have been committed outside Malta:

Provided that for the purposes of sub-paragraph (i) of this paragraph it shall be immaterial whether the offender knew that the person was a protected person;

(f) against any person who –

(i) commits any offence in premises or in a building outside Malta having diplomatic immunity due to the fact that it is being used as an embassy, a residence or for such other purpose connected with the diplomatic service of Malta; or

(ii) commits an offence in a place outside Malta when such person enjoys diplomatic immunity by virtue of such service;

(g) against any person who being in Malta, shall be a principal or an accomplice in any of the crimes referred to in article 87(2), or in articles 139A, 198, 199, 211, 214 to 218, 220, 249 to 251, 298, or

in articles 311 to 318 or in article 320 when these are committed in the circumstances mentioned in paragraph (d) or (e) of this sub-article, or in a crime which is committed by any act as is mentioned in paragraph (e)(ii) of this sub-article, or conspires with one or more persons for the purpose of committing any of the said crimes, although the crimes shall have been committed outside Malta;

- (h) against any person in respect of whom an authority to proceed, or an order for his return, following a request by a country for his extradition from Malta, is not issued or made by the Minister responsible for justice on the ground that the said person is a Maltese citizen or that the offence for which his return was requested is subject to the death penalty in the country which made the request, even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person;*
- (i) against any person who commits an offence which, by express provision of law, constitutes an offence even when committed outside Malta:*

Provided that no criminal action shall be prosecuted against Exception. the President of Malta in respect of acts done in the exercise of the functions of his office.

(2) For the purposes of sub-article (1)(b) and (c), a ship or vessel or an aircraft shall be deemed to belong to Malta if it is registered in Malta or, if it is not registered anywhere, is owned wholly by persons habitually resident in Malta or by bodies corporate established under and subject to the laws of Malta and having their principal place of business in Malta.

(3) For the purposes of sub-article (1)(e):

"a protected person" means, in relation to an alleged offence, any of the following:

- (a) a person who at the time of the alleged offence is a Head of State, a member of a body which performs the functions of Head of State under the constitution of the State, a Head of Government or a Minister for Foreign Affairs and is outside the territory of the State in which he holds office;
- (b) a person who at the time of the alleged offence is a representative or an official of a State or an official or agent of an international organisation of an intergovernmental character, is entitled under international law to special protection from attack on his person, freedom or dignity and does not fall within the preceding paragraph;
- (c) a person who at the time of the alleged offence is a member of the family of another person mentioned in either of the preceding paragraphs and
 -
 - (i) if the other person is mentioned in paragraph (a) above, is accompanying him,
 - (ii) if the other person is mentioned in paragraph (b) above, is a member of his household;

"relevant premises" means premises at which a protected person resides or is staying or which a protected person uses for the purpose of carrying out his functions as such a person; and

"vehicle" includes any means of conveyance;

and if in any proceedings a question arises as to whether a person is or was a protected person, a certificate issued by or under the authority of the Minister responsible for foreign affairs and stating any fact relating to the question shall be conclusive evidence of that fact.

On the other hand, the Attorney General stated that the defence did not make reference to Article 328M of the Criminal Code entitled ‘*jurisdiction*’ and emphasised the fact that the Maltese Courts enjoyed jurisdiction in terms of Article 328M(a) and (f). Article 328M provides the following:

328M. Without prejudice to the provisions of article 5, the courts in Malta shall also have jurisdiction over the offences laid down in this Sub-title where –

(a) the offence is committed even if only in part in the territory of Malta or on the sea in any place within the territorial jurisdiction of Malta;

(b) the offender is a Maltese national or permanent resident within the meaning of article 5(1)(d) in Malta;

(c) the offender is a person suspected or convicted of an offence laid down in this Sub-title and whose surrender or extradition to another country for such an offence is refused by Malta even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person;

(d) the offence is committed for the benefit of a legal person established in Malta;

(e) the offence is an offence under article 328B or an offence under article 328D which involves a terrorist group even if the terrorist group is based or pursues its criminal activities outside Malta;

(f) the offence is committed against the institutions or people of Malta or against an institution of the European Union or a body set up in accordance with the Treaties and based in Malta:

Provided that for the purposes of this paragraph:

"the European Union" shall have the same meaning assigned to it by article 2(1) of the European Union Act;

"the Treaties" means the Treaty establishing the European Community done at Rome on the 25th March, 1957 and the Treaty on European Union done at Maastricht on the 7th February, 1992, and the Protocols annexed thereto.

(g) Where the offence falls within the jurisdiction of Malta and any other Member State of the European Union and where such Member States can validly prosecute on the basis of the same facts, the said Member States shall cooperate in order to decide which one of them shall prosecute the offenders, having regard to the following factors:

(i) the Member State shall be that in the territory of which the offence was committed;

(ii) the Member State shall be that of which the offender is a national or resident;

(iii) the Member State shall be the country of origin of the victims;

(iv) the Member State shall be that in the territory of which the offender was found: Provided that for the purposes of this paragraph cooperation between Member States of the European Union may be facilitated through recourse to Eurojust;

'Eurojust' shall have the same meaning assigned to it by Council Decision 2002/187/JHA of 28 February 2002 of the European Union.'

It is not contested that the alleged incident commenced outside Maltese territorial waters. The defence on behalf of the accused is claiming that when the Maltese authorities took over the vessel, it was clearly visible that there was no sign of a hijack or an act of terrorism. In fact, on the bridge of the vessel there were only crew members and no migrants. The defence continued to argue that if a crime was committed, it was committed outside of the Maltese territorial waters and hence Malta does not enjoy jurisdiction. To support their view, the defence also made reference to what was stated by Captain Reuben Lanfranco, where in his report he also gave his opinion on jurisdiction. On the other hand, the Attorney General emphasised on the commencement, continuation and completion of the criminal act and stated that part of the alleged crimes took place within Maltese territorial waters. The Attorney General continued by stating that the vessel made it to Malta because of the unilateral will of the accused. If the accused did not have their way, the ship would not have made it to Maltese territorial waters. Furthermore, he stated that the vessel was *de facto* seized by the migrants with the intention to compel the government or the Maltese authorities to admit the vessel and aid those on board.

The crux of everything, around which this preliminary plea revolves, is where these alleged crimes, including the crime of terrorism, begin and end. Before progressing any further, this Court would like to point out that apart from the fact that it is not obliged to rely on an expert's opinion, in this present case Captain Reuben Lanfranco was appointed by the Inquiring Magistrate as a technical expert and not as a legal expert to express himself on jurisdiction.

Furthermore, this Court would like to refer to Professor Anthony Mamo's Notes on Criminal Law,⁵ where he highlights the difference between an instantaneous and a continuing offence:

*'An offence is **instantaneous** if the violation of the right or interest protected by the law is entirely completed so soon as all the elements constituting the offence actually concur. The effects of the offence may or may not continue after the perpetration of the act or omission constituting the offence: but if they continue, it is not because of any further act or omission on the part of the offender or of the permanence of his original act or omission, but merely as a result of such original act or omission: in other words, the continuance of the effects is not occasioned by the repetition or the continuance of the wrongful act or omission which gave rise to the violation of the right or interest protected by law. Instances of instantaneous offences are homicide, bodily harm, defamation, rape, theft, wilful damage, etc.*

*A **continuing offence**, on the other hand, is one which consists in a state of things subjectively and objectively and uniformly contrary to law in every moment of its duration. Here the injury or the violation of the right or interest protected by the law continues and is repeated uninterruptedly even after the completion of the act or omission giving rise to the offence, so long as the said state of things continues. Thus, the ingredients of a continuing offence are two. -*

(a) A wrongful conduct (that is, act or omission) protracted uninterruptedly and without any change in its constituent elements for a length of time;

and

⁵ Fol. 12 et seq.

(b) A state of things contrary to law or the violation of a right or duty likewise continuing without interruption and uniformly, co-extensively with the continuance of such wrongful conduct.

Instances of continuing offences are illegal arrest or detention (Section 86), certain contraventions against the laws relating to the erection of buildings, etc.

In order to determine in a particular case whether an offence is an instantaneous or a continuing one 'the soundest criterion' as Mr. Justice Harding puts it "is that of adverting to the fact which the law intends to repress and of deciding the issue according to the nature (instantaneous or continuing) of that fact". (V. 'Recent Criminal Cases Annotated' p. 91; V. also *ibid.* 83, and the precedents therein quoted).'

The Court of Criminal Appeal in its judgment **Il-Pulzija vs Emanuel Spiteri**⁶ distinguished between instantaneous and continuing offences and stated the following:

"Fuq il-kriterji li joffru d-dottrina u l-ġurisprudenza, fin-nuqqas ta' definizzjoni filliġi, fir-reat istantanew, fil-mument stess li jikkonkorru l-elementi kostituttivi tiegħu r-reat huwa konsumat u eżawrit, allavolja jibqgħu l-effetti tal-vojolazzjoni tal-liġi, bħal l-każ ta' omicidju, leżjonijiet personali, serq. Fir-reat permanenti, għalkemm ir-reat jiġi konsumat meta jkunu realizzati l-elementi essenzjali tiegħu, l-istess reat ma jiġix eżawrit imma jibqa' stat ta' konsumazzjoni sa kemm jibqa' fil-poter tal-aġent li jwaqqaf, b'mod effikaċi quddiem il-liġi, l-istat antiġuridiku kreat bl-att inizzjali posittiv jew negattiv, bħal każ ta' sekwestru tal-persuna, pussess illegali ta' armi."

⁶ Decided on the 28th March, 1960

This Court makes reference once again to what was stated regarding terrorism, way back in 2005 by Hon. Dr Gavin Gulia, that is terrorism is theatre which requires a spectator and terrorism scares the latter. Terrorism can take many different forms but in this case the accused are being charged with the seizing of a ship as stipulated under Article 328A(2)(e) of the Criminal Code and also of causing extensive destruction to a state or government facility, a public transportation system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger the life or to cause serious injury to the property of any other person or to result in serious economic loss.⁷ However, it is important to highlight that the accused are also being charged of other crimes which include illegal arrest, detention and confinement, and private violence.

This Court opines that the legislator wanted to impede crimes such as terrorism from their commencement, that is from when the aggressor initiates the criminal offence until the point that they are finally executed. Hence, the seizing of a ship cannot be considered as an instantaneous offence but rather a continuing one. The same goes for the crime of illegal arrest as specifically stated by Professor Anthony Mamo himself. Furthermore, if a crime as stipulated under Article 328A(2)(e) or Article 86 of the Criminal Code is to be considered as a continuing offence, then it can be stated that the criminal act partially took place in Maltese territorial waters. Moreover, if the criminal act partially took place in Maltese territorial waters, then Malta enjoys jurisdiction to try this case both under Article 5 and Article 328M of the Criminal Code.

In view of the above, this Court is hereby rejecting the first preliminary plea brought forward by the accused and orders the continuation of the case.

Consuelo Scerri Herrera

Judge

⁷ Article 328A(2)(d) of the Criminal Code