



**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 29th of July 2025**

**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.

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### **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 12<sup>th</sup> of June, 2025 whereby it was decided that this Court will deliver judgment on the



nullity of the first three counts of the Bill of Indictment under section B which provide the following:

Considers the following.

## **B. Nullity of the indictment**

Narrative refers to accusations not attributable to the accused

19. That each count as presented by the Attorney General states the following in the descriptive part of the facts:

*"A large number of the rescued people reached the bridge of the ELHIBLU I 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 Chipapana, 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."*

20. The accused contest that the above description of facts forms part of the narrative of all the counts put forward against them. The facts as described in the above contested part, do not attribute any act committed by the accused and does not constitute the offence as stated in the indictment. Reference is made to a large number of people climbing up to the bridge and creating fear to the captain and his crew. The

Attorney General does not state that the accused form part of this group of people. The reason for this omission is simply since there is no evidence in the acts of the case linking the accused to such a situation. Although the Attorney General is fully aware of this, by inserting this narrative the accused are being linked to the acts attributed to third parties

21. Consequently, as a plea in terms of Article 449(1)(b) and/or Article 449(1)(g) the accused humbly request the Court to declare the Bill of Indictment as defective on the basis of the above.

### **Nullity of the First Count**

22. That the accusation of the First Count is based on Articles 328A(1)(b) and 328A(2)(e) of Chapter 9 of the Laws of Malta,

23. That, without prejudice to the below observations, neither of these sub-articles contain operative provisions of crimes but are merely stipulating definitions to be read in conjunction with other articles and sub-articles of the Criminal Code. In fact, Article 328A(1)(b) provides one of the possible aims necessary for an "act of terrorism" to subsist, but at no point renders criminal the aim itself: the crime is enunciated in Article 328A (3). Similarly, Article 328A(2)(e) provides one of the acts that could be classified as an "act of terrorism", but at no point renders criminal the act itself. Whether in haste or due to lack of certainty, the Attorney General has failed to provide a clear legal basis for these accusations and instead relied on defining articles.

24 That, based on the above this Honourable Court should declare the accusations under the Second Count as null and void.

25. That Article 328A(1)(b) states the following:

*"For the purposes of this Sub-title, "act of terrorism" means any act listed in sub-article (2), committed wilfully, **which may seriously damage a country** or an international organization were committed with the aim of*

*...*

*(b) unduly compelling a Government or international organization to perform or abstain from performing any act,*

*..."*

26. That Article 328A(2)(e)

*"The acts to which reference is made in sub-article (1) are the following:*

*...*

*seizure of aircraft, ships or other means of public or goods transport;*

*..."*

27. That one of the operative terms of this accusation is that the acts attributed to the accused may seriously damage a country. From the description of the facts in the first count, apart from the fact that all claimed acts happened outside the Maltese territorial waters, there is no attempt to describe how these may have seriously damaged the country.

28. That, as a premise to the arguments that will follow, it must be underlined that the law does not provide any definition of what constitutes an act of terrorism that causes **serious damage to the country**. Furthermore, in view of the rarity of these types of cases, based on provisions of European Union Directive (Directive 2013/33/EU) that were only introduced relatively recently in our law, there is no domestic or European

Union case law that sheds light on what terrorist acts could be considered as causing serious damage to the Maltese state.

29. That due to the seriousness of the charges, this is a very dangerous situation whereby the Attorney General, who acts on behalf of the Maltese state, is giving its own interpretation through the Bill of Indictment, which interpretation could be abused of. The interpretation being applied by the Attorney General should also be seen in parallel with the State's position vis-à-vis so called 'irregular migration', where it takes a very tough stand to prevent the entry into Malta of asylum-seekers and migrants.

30. That, on rescuing the migrants, the Captain of ELnHIBLU I had informed RCC Malta that he was heading to Valletta due to a lack of fuel (fol. 107, point 9), and that in the hours following that the Maltese authorities were insisting on disembarkation in Tripoli, Libya (fol. 108, fol. 2586-259). That this is the first time that the Maltese State, through these proceedings, claim that the disembarkation of 110 migrants "*may seriously damage a country*" and amount to terrorism.

31. That under international maritime and human rights law, Libya is not considered to be a safe port of disembarkation and such acts by a State could amount to an illegal pushback that breaches the legal principle of non-refoulment and violates search and rescue rules requiring disembarkation at a safe port. Based on the arguments that will follow, it is clear that the Attorney General is following the Maltese State's stand through its interpretation on the provisions quoted in the Bill of Indictment, in order for these proceedings to act as a deterrent to any migrants and asylum-seekers from entering into Maltese territorial waters to seek protection.

32. That in an analogous situation, the Italian Courts in the Vos Thalassa case in 2019 held that protests held on board the vessel Vos Thalassa amounted to self-defence in opposing orders to be disembarked in Libya. The Court held that the situation in Libya is characterised by serious and systematic violations of human rights and that if

disembarked in Libya the rights of the applicants, including their right to life and to not be exposed to inhuman or degrading treatment or torture, were at stake (Decision of Tribunal of Trapani, Preliminary Judge, 23 May 2019).

33. That the facts described by the Attorney General state:

*"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."*

34. That the Attorney General fails to describe exactly how and when the Maltese State faced the possibility of incurring serious damage. The evidence clearly shows that the ultimate intention of **all** migrants on board was to not be returned to Libya due to the danger, (fol. 1343, fol. 1385, fol. 1447, fol. 1774, fol. 1887) beatings (fol. 2380, fol. 2325), torture (fol. 2308) and rape (fol. 2300, fol. 2335-2336) suffered there, and to reach Europe, not Malta specifically. There is no evidence that points in the direction of the accused, that their intention was to cause any form of damage to the Maltese State. This is demonstrated by the evidence of Captain Papa Pasquale and Captain Matthew Agius, who confirmed on oath that the vessel followed instructions prior to and upon entry into Maltese territorial waters. The ship went to the exact rendezvous points communicated to it. Vide their testimony from fol. 669 to 705 of the acts of the case.

35. That the elements of acts "*which may seriously damage a country*" would constitute the possibility of destabilizing the state through, for example, potential loss of life directed at its population. This does not result from any of the evidence as presented during the compilation of evidence. One must always keep in mind that these elements had to be present at the point of entry into the Malta's territorial waters, that is at 12 nautical miles.

36. That, if the vessel was really diverted away from Libya and navigated towards Malta, as is being alleged by the Attorney General, this is not an act of terrorism. The elements would only have been satisfied if, whilst being in the territorial waters, certain demands would have been made to the state, which if not met would have resulted in serious damage to Malta.

37. That the only time one of the accused communicated with the Maltese authorities over the VHS, which was passed to him by the captain, no demands or threats were made when it was stated:

*"Please listen me carefully, listen to me carefully, we are not proceeding ... The ship to go to Malta but the situation is bad. We have children, they are not even talking anymore, three (3) days no food for all. Please we are not allowed to go back. Please three (3) days now. We do not have food. Please, please. No one gets. Please, please, for God's sake please not allowed to go back." (fol. 65, fol. 2575).*

38. That, without prejudice to the fact that accused deny all charges, the result of an arrival of approximately one hundred migrants within the territorial waters of Malta can in no way be considered serious damage to the state, also in view of the fact that Malta has procedures, institutions and legislation in order to deal with this very eventuality.

39. Consequently, as a plea in terms of Article 449(1)(b) and/or Article 449(1)(g), the accused humbly request the Court to declare the Bill of Indictment as null based on the above and as a result this Honourable Court is to reject this Count.

### **Nullity of the Second Count**

40. That for the purposes of this plea, it is hereby being submitted that the above arguments provided for the nullity of the First Count are to be also replicated in this

plea.

41. That by means of the Second Count the accused are charged in terms of Article 328A(2)(d) whereby they have committed an act of terrorism because they, as stated in the Indictment, *"threatened to cause extensive destruction to private property of the ship" and therefore "likely to endanger the life or to cause serious injury to the property of any other person or to result in serious economic loss."*

42. That, without prejudice to the below observations, this sub-article does not actually contain operative provisions of a crime but is merely stipulating a definition to be read in conjunction with other articles and sub-articles of the Criminal Code. As with observations made above in relation to the First Count, regarding Article 328A(2)(e), Article 328A(2)(d) provides one of the acts that could be classified as an *"act of terrorism"*, but at no point renders criminal the act itself.

43. That, as already raised hereabove, from the evidence at hand, the element of 'serious damage to the Maltese State', as provided in the definition of an act of terrorism, does not exist. Moreover, the provision of Article 328A(2)(d), as quoted below, has requisites that must be satisfied and that such requisites do not relate to the merits of the case.

44. That this sub-article stipulates that the act of terrorism may cause *"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."*

45. That the Attorney General is incorrectly applying the alleged facts to this specific charge when the operative elements of this provision of the law do not subsist. The sub-clause refers to infrastructure, meaning immovable property. The said provision goes on to give a list of what constitutes infrastructure and by no stretch of the imagination can a vessel such as the ELHIBLU I be an infrastructure facility within the meaning of this Article. It is purposely for this reason that there is an ad hoc provision, sub-article (e), that contemplates acts of terrorism against vessels, that is Article 328(2)(e) on which the First Count is based.

46. That, furthermore, and without prejudice to the lack of applicability of Article 328(2)(c), when one narrows down the alleged actions of the two accused themselves, there is no evidence that they had the means to cause the destruction of the vessel. Any alleged actions of third parties on the vessel should not be attributed to them. As results from the evidence, their only contribution was to act as interpreters and calm people down when they were in a state of distress.

47. That, moreover, the tools exhibited in the acts of the case, that were indicated collected and touched by the crew although instructed otherwise (fol. 2290. fol. 2297), cannot be considered to be of a nature that can possibly lead to the destruction of the vessel. In addition, although fingerprints and other marks were reported to have been elevated, none of these tools or glass fragments have the fingerprints of the accused, and therefore it is bewildering how the Attorney General may attempt to attribute their use to the accused.

48. Reference is also made to fol. 433 and fol. 434 of the acts of the case whereby the star witness of the prosecution, the First Officer, confirmed that the accused did not even have any of these tools in hand. This is corroborated by the testimony of the other rescued persons that were onboard the ELHIBLU 1.



49. Consequently, as a plea in terms of Article 449(1)(b) and/or Article 449(1)(g), the accused humbly request the Court to declare the Bill of Indictment as null based on the above and as a result this Honourable Court is to reject this Count

### **Nullity of Third Count**

50. That the Third Count accuses ABDALLA BARI and AMARA KRUMAK of having committed terrorist activities when it is claimed that they "unlawfully and intentionally seized or exercised control over the ship EL HIBLU I bearing registration number IMO-9753258 by use of force or threats thereof, or by any form of intimidation, in breach of Article 328A(4) (1) of the Criminal Code, Chapter 9 of the Laws of Malta."

51. That when the accused were initially charged before the Court of Magistrates (Malta) as a Court of Criminal Inquiry, the Prosecution issued one single charge which was based on this specific provision of the law, that is Article 328A(4)(i) of the Criminal Code, Chapter 9 of the Laws of Malta. Subsequently, on the 9th of April 2019, the Prosecution added new charges which also included the abovementioned single charge.

52. That the accused consider the legal basis of the Accusation in the Third Count as defective and consequently null. This is due to the following reasons:

a. Article 328A(4)(i) is found under Title IX (Of Crimes against Property and Public Safety) Sub-Title IV A (Of Acts of Terrorism, Funding of Terrorism and Ancillary Offences);

b. The purpose of this particular provision of the law is to define 'terrorist activities in relation to the whole Sub-Title and does not establish the criminal offence per se. In fact, Article 328A (4)(1) stipulates:

*"For the purposes of **this Sub-title**, "terrorist activities" means any of the following acts, whenever or wherever carried out:*

*...*

*the unlawful and intentional commission of any of the following acts:*

*i. the unlawful seizure or the exercise of control over a ship or fixed platform by the use of force or threat thereof, or by any other form of intimidation;*

*ii. the performance of an act of violence against a person on board a ship or a fixed platform, which is likely to endanger the safe navigation of that ship or the safety of that fixed platform;*

*iii. the destruction of a ship or a fixed platform or the causing of damage to a ship or its cargo, or a fixed platform which is likely to endanger the safe navigation of that ship, or the safety of that fixed platform;*

*iv. the placing or the causing to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship or to cause damage to such ship or to its cargo, which endangers or is likely to endanger the safe navigation of that ship;*

*v. the placing or the causing to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety:*

*vi. the destruction or the causing of serious damage to maritime navigational facilities or the serious interference with their operation, where such act is likely to endanger the safe navigation of a ship;*

*vii. the communication of information, which is known to be false, thereby endangering the safe navigation of a ship:*

*viii. the causing of bodily harm or the taking away of the life of a person in connection with the commission or attempted commission of any of the acts mentioned in sub-paragraphs (i) to (vii);"*

*c. This same sub-title also defines acts of terrorism under Article 328A(2), particularly sub-article (e) which stipulates "seizure of aircraft, ships or other means of public or goods transport".*

*d. The act which is punishable by law is an act of terrorism and this is punishable in terms of Article 328A(3) which states 'whosoever commits an act of terrorism shall be guilty of an offence and shall be liable on conviction to the punishment of imprisonment from seven years to life.'*

*e. The term terrorist activities is then utilised as a term in the operative prohibition laid down by Article 328C(2), which states that certain actions relating to terrorist activities are prohibited by the law:*

*"whosoever, knowingly –*

*a) publicly provokes the commission of **terrorist activities** by any means including but not limited to the distribution, or otherwise making available by any means, whether online or offline, of a message to the public, with the intent to incite the commission of a terrorist offence. where such conduct, directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed.*

*b) recruits or solicits another person to commit **terrorist activities** or to travel for purposes mentioned in paragraph (d);*

*c) trains or instructs another person or self-studies in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing **terrorist activities**;*

*(cc) receives training or instruction, from another person in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing or contributing to the commission of **terrorist activities**;*

*d) travels or attempts to travel within or outside the European Union, directly or by transiting through one or several Member States of the Union, for the purpose of the perpetration, planning, or preparation of, or participation in **terrorist activities** or participation in the activities of a terrorist group with knowledge of the fact that such participation will contribute to the criminal activities of such a group or the providing or receiving of training in **terrorist activities**;*

*e) finances, organizes or in any other manner facilitates travel for the purposes mentioned in paragraph (d);*

*f) produces, distributes, disseminates, imports, exports, offers, sells, supplies, transmits, makes available, procures for oneself or for another, or shows a publication likely to encourage or induce the commission of **terrorist activities** or to be useful in the commission of such activities, shall be liable to the same punishment laid down in article 3284(3)."*

53. According to the provisions of Chapter 9 of the Laws of Malta, terrorist activities are not stand-alone acts which are punishable in terms of Article 328A(3), since this provision relates to an act of terrorism. The prohibition of terrorist activities is linked to other acts as detailed in Article 328C(2).

54. The Facts of the Third Count of the Bill of Indictment state:

*"The accused Abdalla Bari, Amara Krumak and Koni Tiemoko Badulkader engaged in terrorist activities by unlawfully seizing and exercising 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".*

55. Even though the Attorney General is stating that the accused engaged in terrorist activities, it does not make any reference to any other act in terms of Article 328C(2). It fails to make this distinction and narrative of the facts of the third count simply relate to the claim of an act of terrorism. The wrong application of the law is also found in Accusation.

56. Consequently, as a plea in terms of Article 449(1)(b) and/or Article 449(1)(g), the accused humbly request the Court to declare the Bill of Indictment as null based on the above and as a result this Honourable Court is to reject this Count.

Considers,

**The first part of the preliminary plea marked with letter B relates to the nullity of the Bill of Indictment due to the fact that the narrative refers to accusations not attributable to the accused.**

The accused quote a paragraph from the Bill of Indictment and state that the facts in this part do not attribute any act committed by the accused and does not constitute the offence as stated in the indictment. The Attorney General referred to a number of people in this paragraph, who climbed up the bridge and created fear towards the captain and crew. However, the accused are stating that the Attorney General did not state that the accused were part of this group of people. Consequently, in terms of

Articles 449(1)(b) and/or Article 449(1)(g) the accused are requesting the Court to declare the Bill of Indictment as defective.

On the other hand, the Attorney General in his oral submissions stated that the judges of fact are not bound by the narrative of the Bill of Indictment, nor does that narrative in and of itself nullify the indictment.

This Court refers to the case decided by the Court of Appeal (Superior Jurisdiction) in the names **Ir-Repubblika ta' Malta vs Kevin Gatt Omissis**<sup>1</sup> where the following was stated:

*'25. Huwa ben risaput u kemm-il darba riaffermat fil-gurisprudenza tal-qradi tagħna illi l-liġi thalli fid-diskrezzjoni ta' l-Avukat Ġenerali biex ifassal l-Att ta' l-Akkuza u l-kapi rispettivi kontenenti l-akkużi imressqa fil-konfront tal-persuna akkużata. L-Avukat Ġenerali huwa marbut b'dak li jgħid l-artikolu 589 tal-Kapitolu 9 li jiddisponi hekk: "L-att tal-akkuza jsir fl-isem tar-Repubblika ta' Malta, u għandu –*

*(a) isemmi l-Qorti li jingieb quddiemha;*

*(b) jagħti ċar il-partikularitajiet tal-akkużat;*

*(ċ) ifisser il-fatt li jikkostitwixxi r-reat, bil-partikularitajiet li jkunu jistgħu jingħataw dwar iż-żmien u l-lok li fihom ikun sar il-fatt u dwar il-persuna li kontra tagħha r-reat ikun sar, flimkien maċ-ċirkostanzi kollha li, skont il-liġi u fil-fehma tal-Avukat Ġenerali, jistgħu jkabbru jew inaqqsu l-piena; u*

*(d) jispiċċa b'gabra fil-qosor li fiha l-imputat jiġi akkużat tar-reat kif miġjub jew imfisser fil-liġi, u bit-talba sabiex jitmexxa kontra l-akkużat*

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<sup>1</sup> Decided on the 27<sup>th</sup> October, 2022.

skont il-liġi, u sabiex l-istess akkużat jiġi ikkundannat għall-piena stabbilita mil-liġi jew għal kull piena oħra li skont il-liġi tista' tinghata skont kif jiġi iddikjarat ħati l-akkużat."

26. Illi allura daww il-fatti li l-Avukat Ġenerali jislet mill-atti kkompilatorji sabiex fuqhom jibni l-parti narrattiva ta' l-Att ta' l-Akkuża bl-ebda mod ma jorbtu lil min hu imsejjaħ biex jiġġudika, u l-ġurija popolari dejjem tiġi imwissija f'dan is-sens mill-Imħallef togat. Lanqas ma jista' l-appellant jallega illi b'tali esposizzjoni tal-fatti mill-Avukat Ġenerali jista' jiġi ppreġudikat il-jedd tiegħu għal smiġħ xieraq ladarba huwa ser iġġaddi proċess ġudizzjarju fejn il-Prosekuzzjoni għandha tressaq il-provi li jsostnu l-akkużi kif dedotti fl-Att ta' l-Akkuża, bid-dritt ta' l-akkużat li jressaq difiża xierqa u adegwata fejn ikollu kull opportunità jipprova ixejjen il-provi li ġġib il-Prosekuzzjoni.

27. Issa jekk huwiex minnu illi l-appellant irċeva id-droga minn għand Ciantar fil-vettura tiegħu o meno, huwa fatt li jrid jiġi determinat mill-ġurati matul iċ-ċelebrazzjoni tal-ġuri u mhux minn din il-Qorti, u jekk allura l-appellant għandux jinsab ħati tar-reat li dwaru jinsab mixli f'dan il-Kap. Il-liġi ma tagħtix setgħa lil din il-Qorti illi tiddeċiedi jekk l-Avukat Ġenerali kellux raġun meta fil-parti narrattiva tas-Sitt Kap ta' l-Akkuża abbina daww il-fatti li jemerġu mill-atti kkompilati, kif minnu interpretati, mar-reat li bih huwa akkuża lill-appellant f'dan il-Kap.

.../.....

*Dan il-kompitu ċertament ma jispettax lil din il-Qorti u lanqas lil Qorti Kriminali qabilha. Għaldaqstant, għal dawn il-motivi, dan it-tieni aggravju qed jiġi miċhud'*

In a very recent judgment in the names **Ir-Repubblika ta' Malta vs Casey Anthony Vella**<sup>2</sup> the following was stated with regards to the narrative of the Bill of Indictment:

*'Illi n-narrattiva kif esposta mill-Avukat Ġenerali ma tikkostitwixxix xi stat ta' fatt jew prova, la favur u lanqas kontra l-akkużata f'dawn il-proċeduri. Il-fatti kif esposti fl-att tal-akkuża ma jorbtux lill-ġurati; m'għandhom l-ebda valur probatorju. Huma biss daww il-fatti li jemerġu mill-provi mismugħa matul iċ-ċelebrazzjoni tal-ġuri li jkun jistgħu jittiehdu bħala prova favur jew kontra l-akkużat. Tant huwa hekk, illi għad jistgħu jirriżultaw fatti waqt is-smiegi tal-ġuri li ma jkunux riflessi f'dik in-narrattiva kif esposta mill-Avukat Ġenerali fl-att tal-akkuża.'*

This Court notes that it is left to the Attorney General's discretion as to what facts he chooses to refer to in the narrative part of the Bill of Indictment **even though these, in some cases, might not reflect the results of the evidence collected in the compilation of evidence.** It is then up to the jurors as directed by the presiding judge to sift the wheat from the chaff and see what facts alleged have in fact been proved and how these proven facts relate to the actual charge or accusation proffered in the Bill of Indictment and whether they should lead to a conviction on that charge or not. It is important to emphasise that even if the Attorney General is not accurate or omits certain facts from the narrative of the bill of indictment, this does not render the indictment null. Hence, this Court is rejecting **this part of the preliminary plea marked with the letter B.**

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<sup>2</sup> Decided on the 28<sup>th</sup> May, 2025.



**The next part of the preliminary plea marked with the letter B relates to the nullity of the First Count of the Bill of Indictment.** The accused are stating that with regard to the first count, the charges are basically based on Article 328A(1)(b) and 328A(2)(e) of the Criminal Code. They emphasise that the Attorney General does not make reference to an offence, but to a definition in the law and the offence is provided for in 328A(3) of the Criminal Code. The facts of the narrative of the Bill of Indictment, do not correspond to an act of terrorism which may seriously damage a country.

On the other hand, the Attorney General states that Article 328A(1)(b) and 328A(2)(e) of the Criminal Code establish the legal basis of the accusation, and the operative provision of the crime as provided in Article 328A(3) of the Criminal Code is provided in the punishment section of the First Count of the Bill of Indictment. Acts which give rise to terrorism, include that of unduly compelling a government or international organisation to perform or abstain from performing any act, as well as the seizure of an aircraft, ships or other means of public or goods transport. These acts are defined as acts of terrorism triable in Malta and liable to a conviction, to a punishment of imprisonment of seven years to life in prison which is exactly the punishment prescribed and demanded by the Attorney General.

That primarilly, the law does not expressly indicate the manner in which the Attorney General is to draft the narrative part in the Bill of Indictment and this is let completly to the discretion of the Attorney General. However, this should be in line with Article 589 of the Criminal Code which stipulates the following:

*“The indictment shall be made in the name of the Republic of Malta  
and shall –*

*(a) specify the court before which it is preferred;*

*(b) contain a clear indication of the person accused;*

*(c) state the facts constituting the offence with such particulars as can be given relating to the time and place in which the facts took place and to the person against whom the offence was committed, together with all such circumstances as, according to law and in the opinion of the Attorney General, may increase or diminish the punishment for the offence; and*

*(d) end with a summary in which the accused shall be charged with the offence as specified or described by the law, and with the demand that the accused be proceeded against according to law, and that he be sentenced to the punishment prescribed by law (quoting the article of the law creating the offence) or to any other punishment applicable according to law to the declaration of guilty of the accused."*

The Court refers to a judgment in the names **Ir-Repubblika ta' Malta vs Kenneth Caruana**<sup>3</sup> where the Court of Appeal held as follows:

*'L-Artikolu 589 tal-Kodici Kriminali, li jitratta x'ghandu jkun fih l-Att ta'Akkuza, u specifikatament is-subinciz (d) tieghu, jghid li l-parti akkuzatorja trid tispecifika r-reat migjub kontra l-akkuzat, kif ukoll talba ghall-kundanna ta' l-akkuzat ghall-piena stabbilita mill-ligi, u dan ukoll billi jissemma l-Artikolu tal-ligi li jikkontempla r-reat, jew kull piena ohra li skond il-ligi tista' tinghata.*

*Barra minn hekk, is-subinciz ( c ) ta'dan l-Artikolu 589 jghid ukoll li l-paragrafi ta'qabel l-akkuza w il-piena hekk specifikati skond is-subinciz (d) imsemmi, u allura fil-parti espositiva ta'kull Kap, l-Avukat Generali ghandu jfisser il-fatt li jikkostitwixxi r-reat, bil-partikularitajiet li jkunu jistghu jinghataw dwar iz-zmien u l-lok li fihom ikun sar il-fatt u dwar il-persuna li kontra taghha jkun sar ir-*

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<sup>3</sup> Decided by the Court of Appeal (Superior Jurisdiction) on the 19<sup>th</sup> April, 2001.

*reat, jekk ikun il-kaz, flimkien mac-cirkostanzi kollha li, skond il-ligi, u fil-fehma ta' l-Avukat Generali, jistghu jkabbru jew inaqqsu l-piena.'*

This Court as diversely presided in the case in the names **The Republic of Malta vs Jesper Gejl Kristiansen**<sup>4</sup> clearly declared that:

*'... the annulment of a bill of indictment can take place only if the bill of indictment contains a substantial defect of form which cannot be cured by an amendment. The cause of nullity of the bill of indictment must appear from the face of the bill of indictment itself. Where any such plea of nullity is raised, the Court examines the bill of indictment itself independently of the evidence and of the merits of the case.'*

The facts as recounted by the Attorney General are in line with the requirements contained in the law as the Bill of Indictment is carefully structured stating and describing the offence as described in Article 328A(1)(b) and 328A(2)(e) of the Criminal Code. Furthermore, the punishment is stipulated in Article 328A(3) of the Criminal Code and the Attorney General made reference to it in the 'punishment' section of the Bill of Indictment. In light of the wording and the structure of Article 328A of the Criminal Code, the Bill of Indictment is written according to law and aligned with the requirements of Article 589 of the Criminal Code.

Moreover, whether the facts as recounted by the Attorney General in the First Count of this Bill of Indictment will be sufficiently supported by the evidence during the trial by jury is a question of fact that will have to be tackled by the jurors during the trial by jury itself. The Court of Criminal Appeal (Superior Jurisdiction) in the judgment **Ir-Repubblika ta' Malta vs. Grazio Azzopardi** was clear on this matter:

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<sup>4</sup> Decided on the 16<sup>th</sup> February, 2023.

*'Issa jekk daww il-fatti humiex ippruvati o meno, jew jekk il-prova li fuqha huma bażati daww il-fatti għandhiex valur probatorju o meno, hija kwistjoni li trid tiġi determinata biss mill-ġurati fil-kors tal-ġuri.'*

In view of the above, this part of the preliminary plea, regarding the nullity of the First Count of the Bill of Indictment, is also being dismissed.

**The next part of the preliminary plea marked with the letter B relates to the nullity of the Second Count of the Bill of Indictment.** The accused state that all the arguments made with regards to the first preliminary plea also applies to this preliminary plea. The defence argued during the oral submissions that the charges against the accused do not align with the established narrative. Article 328A(2)(d) provides one of the acts that could be classified as an 'act of terrorism', but at no point renders criminal the act itself. They emphasise that the serious damage to the Maltese State does not exist and that there is no evidence that the accused had the means to cause the destruction of the vessel. The Attorney General, under the same line of argumentation as the previous plea, argued that this Count is valid at law as it fully respects the dictates of Article 589(d) of the Criminal Code. The operative part also stems from Article 328A(3) of the Criminal Code. The Attorney General continued to state that the final decision and appreciation of the evidence and of the facts is within the sole, and unfeathered prerogative of the jurors, who are yet to be enpanelled in this case.

That what was explained in the previous plea regarding the nullity of the First Count of the Bill of Indictment, applies also to this preliminary plea. The Court states that even if the Attorney General omitted something or drafted the indictment imperfectly, that alone is not tantamount to nullity. It results that the Attorney General drafted the Second Count pursuant to Article 589 of the Criminal Code. Furthermore, the Court emphasizes that the requisites required to constitute the offence, the adequacy of the

evidence and the overall merits of the case, must be determined exclusively by the jurors during the trial. Hence, this part of the preliminary plea is also being rejected.

**The accused are also asking this Court to declare the Third Count of the Bill of Indictment as null and void.** They support their claim by stating that Article 328A(4)(i) of the Criminal Code refers to a definition and as such terrorist activities on their own do not constitute an offence. In this count, the accused are being charged of having committed terrorist activities and this by unlawfully and intentionally seizing or exercising control over a ship, El Hiblu 1, by use of force or threats thereof or by any form of intimidation in breach of Article 328A(4)(i). They emphasise that they are being charged twice for the same offence, that is seizing a ship. Article 328C(1) of the Criminal Code creates an offence in relation to terrorist activities but the terrorist activities must not be seen in isolation. Reference was also made to Article 328C(2) of the Criminal Code which basically provides for the offence.

The Attorney General rebutted this argument by stating that the accused erroneously states that the Attorney General is postulating that the accused engaged in terrorist activities and yet failed to make reference to any other act in terms of Article 328C(2). It is pertinent to note that Article 328A(4)(i), refers to the unlawful and intentional commission of a considerable number of actions, including the unlawful seizure or the exercise of control over a ship. Moreover, sub-article 4 explicitly states that for the purposes of that sub-title, a terrorist activity is any of the following acts whenever or wherever they are carried out. He also said that the crime was listed in the operative part of the bill of indictment only after the Attorney General elicited those facts from the acts, the compilation, which in their very substance constitute the crime which emerge from the accusatory part. The accused referred to Article 328C(2) of the Criminal Code, an Article which is not mentioned in this Count and not referred to in the Bill of Indictment.

At this point it is crucial to distinguish between Article 328A(2)(e) of the Criminal Code, under which the accused are charged under the First Count of the Bill of

Indictment and Article 328A(4)(i) under which the accused are charged in the Third Count. For Article 328A(2)(e) to result, that is, the seizure of a ship, it must be committed **wilfully, capable of significantly damaging a country or an international organization with one of the following aims:**

- a) seriously intimidating a population, or
- b) unduly compelling a Government or international organization to perform or abstain from performing any act, or
- c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.<sup>5</sup>

On the other hand, Article 328A(4)(i) provides a broader definition of terrorist activities and includes, among other acts, the unlawful seizure or the exercise of control over a ship.

While under Article 328A(2)(e) it must be proved that the accused willfully committed the terrorist act capable of significantly damaging a country or an international organization with one of the three abovementioned intents, the same does not apply for Article 328A(4)(i). The latter gives a broader list of actions that qualify as terrorist activities, including the unlawful seizure or exercise of control over a ship, without requiring the specific intent stipulated in Article 328A(2)(e).

Considering the preceding, both charges under the First and Third Count can coexist, contrary to the defence's assertion that the accused are being charged twice for the same offence. As explained above, the two offences differ, while one requires proof of a specific intent, the other does not. Furthermore, this Court does not believe that Article 328C of the Criminal Code should have been included in the 'Punishment' section of the Third Count of the Bill of Indictment as Article 328A(3) is applicable instead.

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<sup>5</sup> Reference is made to Article 328A(1) of the Criminal Code.

In view of the above, this Court is hereby rejecting the preliminary pleas brought forward by the accused under section 'B' entitled 'Nullity of the Indictment' and which include 'Narrative refers to accusations not attributable to the accused'; 'Nullity of the First Count'; 'Nullity of the Second Count' and 'Nullity of the Third Count'.

The Court orders the continuation of the case.

Dr Consuelo Scerri Herrera

Hon. Madame Justice

Maria Grech

Deputy Registrar