BENCH MEMORANDUM FOR JUDGES

THE CASE CONCERNING THE MALACHI GAP

Version 2.0

28 March 2014

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2014 Philip C. Jessup Competition

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TABLE OF CONTENTS

PURPOSE OF THE BENCH MEMORANDUM 5

I. SUMMARY OF THE CASE 6

II. LEGAL ANALYSIS 8

A. Question Presented 1: Maritime Development, Environmental Harm, and Damages 8
1. Breach of the Malachi Gap Treaty 8
2. Sic Utere Tuo and the Scope of an Appropriate EIA 9
3. Evidence of Substantial Risk 10
4. Damages 11
5. Other Non-Critical Topics 12

B. Question Presented 2: Salvage of Underwater Cultural Heritage 13
1. Is the Cargast a State-Owned Vessel? 13
2. The Cargast's Flag 14
3. Ownership Rights 14
4. Intertemporal Law 15
5. Law of Finds 16
6. Ritania's Military Patrols 16

C. Question Presented 3: Naval Pursuit and Arrest of Oscar de Luz 17
1. Hot Pursuit 18
2. Piracy 19
3. Other Issues 20

D. Question Presented 4: Luz's Trial and the Request for Extradition 21
1. Male Captus, Bene Detentus 21
2. Jurisdiction Over Luz 21
3. Extradition 23

III. APPENDIX A: INTRODUCTION TO INTERNATIONAL LAW 25

A. General 25

B. Treaties 25

C. Customary International Law 26

D. General Principles of Law 27

E. Decisions and Publicists 27

F. Burdens of Proof 27

IV. APPENDIX B: TIMELINE OF EVENTS 28

V. APPENDIX C: GUIDE TO PEOPLE, PLACES, AND ACRONYMS 30

VI. APPENDIX D: SUGGESTED QUESTIONS FOR THE ORAL ROUNDS 33

A. International Law Generally 33

B. Question Presented 1 33

C. Question Presented 2 34

D. Question Presented 3 34

E. Question Presented 4 35

PURPOSE OF THE BENCH MEMORANDUM

The purpose of the Bench Memorandum is to provide judges in the Jessup Competition with basic factual and legal information to enable evaluation of the written and oral performances of participating teams. This Bench Memorandum should be read in conjunction with the 2014 Jessup Problem (the "*Compromis*") and the Corrections and Clarifications to the *Compromis*.

The *Compromis* was designed to present the competitors with a balanced problem such that each side has both strengths and weaknesses. Jessup teams should be able to construct good arguments as both the Applicant and as the Respondent. As a judge, your task is to evaluate the quality of each team's analysis, their knowledge of international law, and their advocacy skills. Please make sure not to confuse this task with your own personal evaluation of the merits of the case.

Please note that this memorandum is not meant to be an exhaustive treatise on the legal issues raised in the *Compromis*. In particular, judges should be aware that this Bench Memorandum has been condensed as much as possible, and does not purport to cover all relevant issues in detail. In many instances, relevant case law is not discussed here, but should be addressed by the participants. The state practice and legal authorities cited herein are illustrative and not intended to be a comprehensive review of all relevant sources of law. As such, judges should not be surprised when participants present arguments or authorities that may not be discussed in this memorandum. This does not suggest that such arguments are not relevant or credible. Judges are encouraged to engage in their own independent research on the issues if they wish to do so.

I. SUMMARY OF THE CASE

The *Compromis* raises four primary issues: 1) cross-border environmental harms at sea; 2) salvage of underwater cultural heritage; 3) hot pursuit and extra-territorial jurisdiction to arrest; and 4) jurisdiction to try and convict an individual arrested extra-territorially.

Amalea and Ritania are two States, separated by the Strait of Malachi, a large channel connecting two seas. Amalea is a developing, newly industrialized island state with an historical reliance on a large fishing industry, while Ritania is a developed, industrialized peninsular state without a commercially significant fishing industry.

Amalea and Ritania have overlapping Exclusive Economic Zone (EEZ) claims over an area within the Strait of Malachi, known as the Malachi Gap. In the 1993 Malachi Gap Treaty, the countries agreed that Amalea would maintain rights over the water column and Ritania would maintain rights over the seabed and subsoil. The treaty was hailed by both sides as an historic achievement that would allow Amalea to protect vital fisheries resources while allowing Ritania to develop a subsea natural gas field, which was discovered years earlier but had not previously been feasible to develop.

In late 2006, a Ritanian billionaire, Esmeralda Kali, announced plans to finance the construction of Excelsior Island, a large donut-shaped artificial island, to be reclaimed from oceanic sand and rock dredged from the Malachi Gap. The Island would be used as a facility for the production of liquefied natural gas (LNG), using an undersea pipeline, and would be powered by an offshore wind farm. Excess energy from the wind farm would be used to pump water from the hollowed center of the Island, acting as an energy storage device to ensure a constant supply of power to the gas facility. The island would be constructed just outside the Malachi Gap, within Ritania's exclusive EEZ, but close to the only known breeding ground of the Dorian wrasse, the most significant fish species in Amalea. The wrasse is prized by Amaleans, is consumed on important holidays and has an important history in Amalea. Domestic and foreign sales of the wrasse generated approximately USD 160 million annually by 2000, and exporters regularly projected higher returns in coming decades.

Ritanian authorities approved plans for construction of Excelsior Island, over the objections of Amalean authorities, who claimed that Ritania had no right to dredge within the Malachi Gap or, at least, no right to do so without a full environmental impact assessment (EIA). Ritania contended that the Island itself would be built entirely outside of the Gap, within Ritania's uncontested EEZ. As such, Ritania contended it was in full compliance with the Gap Treaty and international law. A report by a non-governmental agency concluded that any major dredging activity in the Malachi Gap could potentially prove catastrophic for native species and ecosystems. Amalea sought provisional measures from the International Court of Justice, but its request was denied, without prejudice to Amalea making another request on new facts at a later date.

About 3 months after dredging began, in late 2009, a significant underwater landslide took place, caused by the over-steepening of the slope in a geologically weak part of the Sirius Plateau as a result of the dredging activity. The landslide caused high levels of dissolved gases to spread through the shallow waters of the Sirius Plateau. Early results of an emergency monitoring program instituted by a non-governmental agency indicated that the landslide significantly damaged the Dorian wrasse population. The total catch of Dorian wrasse noticeably decreased over the coming years and, in 2012, the wrasse was declared to be an endangered species. Projections indicated that commercial exploitation of the

Dorian wrasse would have amounted to at least USD 250 million annually over the next five years had the population not been affected.

In early 2010, a Ritanian oil and gas exploration vessel conducting solar mapping operations discovered within the Malachi Gap the wreck of the *Cargast*, the ship of Baldric Verdigris, a famous Amalean explorer and folk hero from the 16th Century. In Ritania, Verdigris is widely reviled as a ruthless Amalean pirate, known mostly for the plunder and destruction of the Ritanian capital city of Helios. Contemporary records indicated that, upon the ship's return from a successful trading mission to recently discovered overseas territories, Verdigris and his crew laid siege to Helios, killing hundreds and stealing the city's prized religious and cultural icons. Among the objects stolen was the Sacred Helian Coronet. The Coronet acquired mythical importance in Ritanian iconography and a stylized image of the Coronet appears on the Ritanian flag. Historians assumed that the cargo that went down with Verdigris' ship contained not only the Coronet but a vast array of other valuable stones, coins and artifacts obtained not only during the siege of Helios but during the trading mission that preceded it.

Media reports indicated that a number of internationally known divers experienced in recovering treasure lost at sea began to arrive at Amalea's main airport. Amalea acquired a handful of objects from one such well-known deep sea treasure hunter, including an object that appeared to be the Sacred Helian Coronet. The diver persuaded Amalea that the wreck was at risk of collapse, and Amalea therefore contracted with the diver, Milo Bellezza, to explore the wreck and recover more items. Ritania strongly objected, demanding that Amalea hand over the items stolen by the diver. Amalea contended that the wreck and all artifacts found therein were recovered in good faith and that Amalea remains the owner of the wreck and its cargo. Ritania's Navy began to patrol the area of the wreck, although there were no violent confrontations.

In February 2011, the *Rosehill*, an Amalean-registered cruise ship carrying 556 passengers, departed from Amalea headed towards Ritania. The ship obtained permission to navigate close to Excelsior Island, as construction was then complete and it was of interest to passengers aboard the ship. As the ship approached the Island, a stolen Ritanian-flagged yacht, the *Daedalus*, commandeered by Oscar de Luz, a Ritanian citizen, sped towards the Island. The captain of the *Rosehill* was forced to veer toward Excelsior Island to avoid colliding with the yacht. The ship struck the Island with significant force, causing ruptures to fuel tanks, killing workers on the Island and causing fires that spread through the ship. By nightfall, 127 passengers and crew of the *Rosehill* died.

Luz then sped the *Daedalus* from the Island towards Amalea. Coast Guard officers issued an alert, which was received by an Amalean Navy vessel, the *Icarus*, stating that the "yacht is stolen and persons on board are suspected of human trafficking." The *Icarus* set out to intercept the yacht. Luz steered his yacht directly towards *Icarus*, and the ships collided. Luz leapt overboard into a dinghy, where he was arrested by Amalean naval officers. Luz was charged in Amalea with 127 counts of murder, was tried and convicted and the conviction upheld through appeals to Amalea's highest court.

Ritania protested the arrest and prosecution of Luz, claiming it had exclusive jurisdiction over the alleged offenses, and demanded that Luz be returned to Ritania for it to investigate whether there was a basis to prosecute him for the *Rosehill* accident. The parties, being unable to resolve their differences regarding the Dorian wrasse, the wreck of the *Cargast*, and the arrest and prosecution of Luz, submitted the case to the ICJ.

II. LEGAL ANALYSIS

A. Question Presented 1: Maritime Development, Environmental Harm, and Damages

Amalea's Prayer for Relief	Ritania's Prayer for Relief
Ritania's acts and omissions with respect to the development of Excelsior Island violated international law, and Amalea is therefore entitled to seek compensation from Ritania for economic losses caused by the landslide.	Ritania's conduct with respect to the Excelsior Island project complied in all respects with its obligations under international law and the terms of the Malachi Gap Treaty, and Ritania has no obligation to compensate Amalea for any loss or damage allegedly caused by the 2009 landslide.

1. Breach of the Malachi Gap Treaty

Article 12(c) of the Malachi Gap Treaty stipulates that neither Party can exercise its rights "in a manner which unduly inhibits" the exercise of rights of the other Party. Article 12(d) requires the Parties "cooperate" and give "due regard to each Party's unique interests in the Malachi Gap."[1] The question here is not strictly one of consent (which is not required by the Gap Treaty or custom[2]) but whether by approving EIGP's Environmental Impact Assessment (which did not specifically address dredging in the Gap), Ritania breached its own treaty obligations. There is no question that Ritania had the right to authorize construction of Excelsior Island and to approve dredging in general.[3] Agents should focus on the Parties' overlapping treaty rights and obligations not to ***unduly*** inhibit, to cooperate, and give due regard to the others' interests.

Development projects in shared waterways are often the subject of international disputes. In the *Gabčíkovo–Nagymaros* case,[4] the ICJ held that a balance of interests cannot be struck if only one party can exercise its right in a shared natural resource, while the other party's right is encroached upon as a result.[5] In the *Lake Lanoux* arbitration,[6] the tribunal held that, generally, the State initiating the project has the responsibility to cooperate with and accommodate the concerns of any State whose interests will be affected by the project during and after the course of the project.[7] However, as Respondent will point out, an obligation to cooperate does not impose a strict duty to obtain consent from the other party before authorizing a project in shared resources.[8] In *Lake Lanoux*, the tribunal stated that a duty to

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1 Malachi Gap Treaty Art. 12(c) and (d).

2 By implication, from *Pulp Mills Case*, ¶¶ 153-157; UNCLOS Art. 56(1)(b)(iii)

3 UNCLOS Arts. 56, 58, 60.

4 *Gabčíkovo–Nagymaros (Hungary/Slovakia),* [1997] ICJ Rep 7 ["Gabčíkovo–Nagymaros"].

5 *Id.* at ¶ 53.

6 *Lake Lanoux, (France v. Spain)*, [1957] 12 RIAA 281 ["Lake Lanoux"].

7 *Id.* at 314.

8 *Lake Lanoux*, at 306; International Law Commission, *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities*, 2001 UNGA Res. A/56/10, ["ILC Draft Prevention"], p.160; *Cooperation between States in the field of Environment*, GA Res 2995(XXVII), U.N. GAOR 27th Sess., UN Doc. A/2995 (1972) 42 at 1,2.

obtain consent must be derived from an explicit stipulation within a treaty.[9] There, the treaty contained such an explicit stipulation and France offered several alternative schemes to try to accommodate Spain's concerns over power plant construction. Here, the Malachi Gap Treaty's terms are somewhat vague. Both teams should reference the Vienna Convention on the Law of Treaties[10] for how to interpret these terms. Amalea cannot rely on consent as a requirement under custom or a general principle.[11] However, the fact that Amalea may not have a veto right over the construction of Excelsior Island does *not* mean that Ritania can avoid notifying and negotiating in good faith with Amalea.[12] Though a year of negotiations occurred, no agreement was reached. There also is no indication that Ritania considered Amalea's concerns or investigated other possible dredging sites. Given the facts in the *Compromis*, the Court may be able to draw an inference that Ritania did not actually consider Amalea's request or consider alternative dredging sites.[13]

Amalea's main argument is that Ritania's approval of the dredging breached the Gap Treaty.[14] As a sovereign State, Ritania can generally do as it pleases so long as it does not infringe upon or unjustifiably interfere with Amalea's rights.[15] Within the Malachi Gap, both Amalea and Ritania are considered "coastal states" for purposes of UNCLOS Part V (the Malachi Gap Treaty simply splits some of their rights as a coastal State). Ritania will argue that the sand and rock used to create Excelsior Island come within the intended meaning of "natural resources" within Ritania's continental shelf and EEZ rights (including its rights under Art. 12(b) of the Malachi Gap Treaty). However, UNCLOS Art. 56(1)(b)(iii) grants jurisdiction over the protection and preservation of the marine environment to the "coastal state" which, in this particular case, includes both Amalea and Ritania, though Article 12(a) of the Treaty gives water column rights to Amalea. The court may well conclude, given the wording of the Malachi Gap Treaty and the very nature of an Environmental Impact Assessment (which normally requires all relevant impacts to be considered, whether on the living resources of the superjacent waters or the seabed and subsoil) that Ritania should have at least required that the EIA address the dredging, and its failure to do so is a breach of the Gap Treaty. Ritania will likely argue that, although it may have inhibited Amalea's rights, it did not *unduly* inhibit them. Teams may refer to a balancing of the interests of each state at stake in this respect.

2. Sic Utere Tuo *and the Scope of an Appropriate EIA*

Ritania must address the well-established body of law and international principles holding a State liable for transboundary harms emanating from its territory.[16] Often articulated as *sic utere tuo, ut alienum non laedas* ("use your own, in order not to injure another"), the treaties and custom preventing

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[9] *Lake Lanoux,* at 301.

[10] Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S.

[11] Philippe Sands, *Principles of International Environmental Law* (Cambridge: Cambridge University Press), 2003, ["Sands"] at 464; Eyal Benvenisti, *Sharing Transboundary Resources: International Law and Optimal Resource Use* (Cambridge: Cambridge University Press), 2009 at. 209-210.

[12] *Pulp Mills Case*, ¶¶ 153-157; *Gabcikovo-Nagymaros Project Case*, ¶ 142; Malachi Gap Treaty Art. 12(c) and (d).

[13] *Corfu Channel Case*, p. 18.

[14] Malachi Gap Treaty Art. 12(a), (c) and (d); Amalea's Coastal Fisheries Protection Act.

[15] *Malachi Gap Treaty Art. 12(b); UNCLOS Art. 76-78; 1958 Continental Shelf Convention, Art. 5(1); by implication from Lotus Case.*

[16] *Trail Smelter*; *Pulp Mills*; *Rio Declaration*; *Stockholm Declaration*.

transboundary harm apply even if Ritania can convince the court that there was no breach of the Malachi Gap Treaty. Ritania should acknowledge this obligation but point out that the obligation is fulfilled by a State's due diligence; a State is not required to *guarantee* there will be no damage in any and all situations. [17] In *Pulp Mills,* the ICJ ruled that States have a duty to require the submission of an EIA for any project that has risk of significant transboundary harm.[18] Doing so is necessary for a State to fulfill its due diligence obligations.[19] Some Respondents may argue there was no transboundary harm. The traditional context for transboundary harm involves territorial borders that, in fact, are not crossed here. However, the division between the seabed and the superjacent water column and their respective sovereign rights described in UNCLOS Art. 56 and divided between Amalea and Ritania in the Malachi Gap Treaty satisfy the transboundary requirement.

Amalea will argue that, prior to authorizing dredging activities that could affect Amalea's rights, Ritania was required to review a complete EIA that included the proposed dredging program.[20] Ritania may counter that its authorities reviewed EIGP's EIA for the project and the fact that the scope of the EIA did not specifically cover the dredging program does not constitute a violation of Ritania's obligations. While Ritania might try to argue that it satisfied its basic due diligence obligations by reviewing the EIA, it will be difficult for Ritania to explain why the dredging program was not included within the scope of the EIA, or why it did not accede to Amalea's request to evaluate the likely impact of the dredging program or take into account the possible risks identified in the ILSA report. Ritania may argue that there was no significant risk of environmental harm. The ILSA report indicated that damage could be significant, but made no comment on the likelihood of occurrence. Though Ritania's own domestic laws do not apply in the Gap, Ritania cannot use its domestic laws to excuse an international obligation if Amalea establishes that further evaluation was part of Ritania's international obligations.

3. *Evidence of Substantial Risk*

Ritania should point out that the obligation to require a transboundary EIA arises only when there is "risk of causing significant transboundary harm."[21] The risk of causing significant harm encompasses two cumulative elements: the harm must be (1) likely to occur and (2) significant if it occurs.[22] Here, it should be noted that there will always be some level of risk to resources in the context of a development project. The only facts lending weight to Amalea's argument on the likelihood of significant harm come from the ILSA report. In the *Genocide Case,*[23] this Court ruled that the reliability of a document is

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[17] ILC Draft Prevention, *supra* n. 2, art. 3; *United States, Restatement (Third)* sect. 601(1)(b); Xue Hanqin, *Transboundary Damage in International Law,* (Cambridge: Cambridge University Press, 2003) ["Hanqin"], at 133; International Law Commission, *Second report on international liability for injurious consequences arising out of acts not prohibited by international law by J. Barboza*, UN Doc. A/CN.4/402, YILC 1986, Vol. II, pp. 146-147.

[18] *Pulp Mills in the River of Uruguay (Argentina v Uruguay),* [2010] ICJ Rep 14 at ¶ 204.

[19] *Id.*; Rep. of Int'l L. Comm'n 54d Sess., [2002] Y.B. Int'l L. Comm'n, para. 432, U.N. GAOR Supp.

[20] *Pulp Mills Case*, ¶ 204; by implication, *Corfu Channel Case*, page 22 (sic utere principle); Amalea's Coastal Fisheries Protection Act; Rio Declaration, Principle 17; Stockholm Declaration, Principle 21; ILC Draft articles on Prevention of Transboundary Harm from Hazardous Activities, Articles 3 and 7; See also: UNCLOS Art. 192-193

[21] *Pulp Mills* at 204.

[22] ILC Draft Prevention, art. 2(a), at 152; Economic Commission for Europe, *Code of Conduct on Accidental Pollution of Transboundary Inland Waters*, 45th Sess., E/ECE/1225-ECE/ENVWA/16 (1990) art. 1 para. (f).

[23] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro),* [2007] ICJ Rep 43 ["Genocide"].

measured from its source, method of production, and character.[24] As evident in *Armed Activities,*[25] this Court treats a document that originates from a single source with great caution, particularly if it is not corroborated by other documents.[26] In *Pulp Mills*,[27] the weight of the document is determined by the independence of the author and the clarity and accuracy of the data provided.[28] Here, the ILSA Report is one created by an international non-governmental organization, whose members include prominent marine scientists from around the world.

Though Ritania may challenge its reliability, the ILSA Report was intended to be reliable on its face. Although the report warns of the potential for serious harm, it makes no mention of the likelihood of that harm. The Corrections and Clarifications establish that no prior landslides had occurred in the Gap, possibly allowing Ritania to rely on a very low level of foreseeability. However, given the scale of the dredging (2 billion cubic meters, significantly larger than the Palm Islands in Dubai) it is also safe to infer that the likelihood of harm may have been commensurate with the scale of the project.

Respondent may also argue that this Court's denial of Amalea's request for provisional measures prior to dredging activities is evidence that there was no significant risk of environmental harm. In *Pulp Mills,* despite having a virtually unanimous decision rejecting Argentina's request of provisional measures to halt Uruguay's project, the Court still recognized the risk of significant transboundary harm posed by the project.[29] This is possible because the Court adopts a more stringent standard of risk when issuing provisional measures as indicated in *Construction of Road Along the San Juan River*.[30] It does not follow that the rejection of a request for provisional measures waives a State's obligation to conduct an EIA, though Ritania may argue that it should be considered in the context of this argument.

4. Damages

If Ritania had conducted an entirely proper and thorough EIA and reasonably concluded the risk was small, but the dredging activities still resulted in significant environmental harm, it is not at all clear that Ritania could (or should) be held accountable under international law for any harm. The ILC has considered this issue for decades and has thus far been unable to formulate any draft articles because of the absence of consistent State practice. The key issue, then, will be in determining the proper measure of damages from the failure to conduct an EIA, and this may not be commensurate with the damages that actually resulted from the dredging activities.

The concept of compensable damage is firmly entrenched in international law and covers economic losses, which may include both "loss of earnings" and "loss of earnings potential."[31] The ICJ has clearly

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[24] *Id.* at ¶ 227.

[25] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, [2005] ICJ Rep 168.

[26] *Id.* at 61.

[27] Pulp Mills, *supra*.

[28] *Id.* at 166-167.

[29] *Pulp Mills*, at ¶ 204.

[30] *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica),* Order of 13 December 2013, [2013] ICJ Rep 1 at ¶¶20,25.

[31] International Law Commission, *Draft Article on Responsibility of States for Internationally Wrongful Act*, Supp No. 10 UN Doc A/56/10 (2001), art. 36 commentary (1).

articulated the requirement for an injuring State to make full reparations to the injured State for any damage resulting from its violations of international law.[32] Teams need not go into detail regarding the measure of damages; it is enough that they are seeking a finding of liability and a general entitlement to seek damages, and the precise quantum may be determined in a later phase.

In *Trail Smelter*,[33] in order to obtain compensation, the United States had to prove with clear and convincing evidence that the damage or loss sustained was a result of a smelting company in Canada.[34] In that case, the U.S. supported its claim of environmental damage with various reports and abundant scientific evidence.[35] Here, Amalea may not be able to show a causal link between Ritania's acts or omissions and Amalea's loss, but will likely argue that Ritania failed to prevent the landslide which, ultimately, can be said to have caused damage to the population of Dorian wrasse. Ritania is also likely to argue that damage must be foreseeable[36] and, here, it will say it was not. Ritania may also argue that Amalea contributed to the harm because Amaleans permitted the continuation of commercial fishing until 2012.[37]

5. *Other Non-Critical Topics*

a) The Precautionary Principle

The Precautionary Principle is an established standard of international environmental law.[38] As phrased in the Rio Declaration, the principle states that, "in order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."[39] The Precautionary Principle is not itself a binding obligation with a clear minimum standard.[40] In practice, unless it applies according to a specific treaty, the Precautionary Principle is best equated with a State's due diligence obligations. The International Tribunal for the Law of the Sea (ITLOS) has mentioned the Principle without strictly applying it in *Southern Bluefin Tuna,*[41] and *MOX Plant*.[42] Though at least one ICJ judge has invoked the Principle in a dissenting opinion,[43] the Court has never applied the Principle. Most

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32 Gabčíkovo–Nagymaros, *supra*, at ¶152; *Chorzow Factory Case (Germany v Poland)* (1928), PCIJ (Ser A) no. 17 at 27 ["Chorzow"].

33 *Trail Smelter (United States v. Canada)*, 3 U.N. Rep. Int'l Arb. Awards 1905 (1941) at 1965.

34 *Id.* at 1964-1965.

35 *Id.* at 1966.

36 *See Portugese Colonies Case (Port. v. Ger.),* II R.I.A.A. 1011, 1031 (1928).

37 Clarification 4.

38 World Charter for Nature, GA/RES/37/7 (1982); Rio Declaration.

39 Rio Declaration, Principle 15.

40 Philippe Sands, *Principles of International Environmental Law* (Cambridge: Cambridge University Press), 2003 at 272, 1050; *Japan – Measures Affecting Agricultural Products*, [1999] Report of WTO Appellate Body, WT/DS76/AB/R, at 81-84, 113-14.

41 *Southern Blue Fin Tuna, (New Zealand v. Japan; Australia v. Japan)*, [1999], ITLOS Cases No. 3/4 , 117 I.L.R. 71 at 76.

42 *MOX Plant, (Ireland v. United Kingdom),* [2001] ITLOS Case No. 10, 126 I.L.R. 257, p. 269 at 75.

43 *Nuclear Tests* (N.Z. v. Fr.), 1995 I.C.J. at 343 (Weeramantry, J., dissenting).

recently, when provided the opportunity to do so in *Pulp Mills*, the Court instead applied a traditional standard of evidence.[44]

b) State Responsibility for EIGP

Applicants should focus on Ritania's independent obligations as a State, not on State responsibility for actions of EIGP, a private entity. If Applicants choose to pursue this argument, they must establish Ritania's direction and control of EIGP and the dredging.[45] As of this writing, we are not aware of any international body that has found merely granting a permit on facts such as these sufficient to trigger State responsibility for private actions.

B. Question Presented 2: Salvage of Underwater Cultural Heritage

Amalea's Prayer for Relief	**Ritania's Prayer for Relief**
Amalea has exclusive ownership of the wreck of the Cargast and all artifacts recovered from it, and Ritania's deployment of patrol vessels to the site of the Cargast violated international law.	Amalea's salvage of the *Cargast* is unlawful, and the cargo and artifacts of Ritanian origin recovered from the wreck properly belong to Ritania, which has the right to protect them.

1. Is the Cargast a State-Owned Vessel?

At the outset, Amalea may argue that the *Cargast* is a State-owned vessel belonging to Amalea, while Ritania may counter that the *Cargast* was the private vessel of Baldric Verdigris. Though Ritania is not concerned with the vessel itself, the private or State-owned nature of the *Cargast* is relevant. If it is an Amalean vessel and, therefore, immune, the Court has no jurisdiction; if it is Amalean and the cargo is not separable from the ship itself, then Ritania has no claim to the cargo, including the Helian Coronet.

The fact that the *Cargast* was privately provisioned and financed (*Compromis*, ¶ 32) weighs against a finding of State ownership. Conversely, the fact that Amalea's royal treasury paid to equip the *Cargast* with state-of-the-art weaponry (*Compromis,* ¶ 32) weighs in favor of Amalea. The existence of the escutcheon and letter of marque provide, at best, ambiguous evidence of Amalean ownership of the vessel itself. However, the letter of marque may indicate that Verdigris was a privateer, and that ownership of any objects seized by Verdigris would therefore be considered property of the crew rather than property of Amalea (an argument that could potentially be used by Ritania to show that Amalea has no valid claim of ownership over the objects taken from Helios). To conclusively establish either argument, the Court must look to the practice of States at the time, *i.e.*, in 1510. To this end, it is worth noting that the modern concepts of Statehood and sovereignty largely developed from the Peace of Westphalia in 1648 and the concepts may not apply directly to the events of 1510. Teams may also cite to examples such as Sir Francis Drake, who was active about 60 years later than Verdigris. Concepts of intertemporal law are also addressed in more detail below.

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[44] *Pulp Mills* at ¶ 265.

[45] Articles on State Responsibility, Art. 8.

2. The Cargast's Flag

Amalea will argue that even if the Cargast cannot be considered a State-owned vessel, it remains an Amalean flagged vessel, which gives Amalea a bona fide claim to the wreck and its contents. Ritania will counter that the fact that the Cargast is an Amalean flagged vessel does not mean that Amalea can claim ownership of the wreck or its contents. The jurisdiction of the flag State over the wreck is at best unclear. During UNCLOS 3, the USSR proposed an amendment to the convention that would have granted exclusive authority to the flag State to conduct salvage operations on sunken ships and their cargos, but the proposed amendment was rejected.

Amalea will argue that if the ship belongs to it, then so does the cargo. In the case concerning the wreck of the *Nuestra Senora de las Mercedes,* although the U.S. Court of Appeals noted that some artifacts recovered from the Mercedes were of Peruvian origin, the court still granted the ownership of all the artifacts to Spain, the owner of *Mercedes,* because the court deemed that the artifacts and *Mercedes* were inseparable and interlinked.[46] Amalea can argue that this is custom, as affirmed by ITLOS in *M/V Saiga (No. 2),*[47] though, there, the court specifically referred to "persons" and the case did not involve cultural heritage. Ritania can counter that the inseparability of vessel and cargo in the *Mercedes* case turned on State immunity, and not ownership in the sense of legal title.[48]

3. Ownership Rights

Amalea and Ritania may each claim that the other has no rights to the *Cargast* under the terms of the Malachi Gap Treaty or UNCLOS. Both sides would be correct on this point, as both the Malachi Gap Treaty and UNCLOS are more or less irrelevant to the issues in QP2. The wreck and its contents are not "natural resources" within the meaning of the Malachi Gap Treaty or UNCLOS, so neither party can claim the wreck as part of its continental shelf rights. Notably, Article 303(3) of UNCLOS leaves intact "the rights of identifiable owners" of archeological and historical objects found at sea.

Amalea can argue that, as the State on whose continental shelf the *Cargast* was found, Amalea has the right to prohibit or authorize any activity directed at the *Cargast.*[49] Ritania may argue that, as the State of origin of the artifacts taken from Helios, Ritania has a verifiable link to such property and, therefore, an interest in ensuring its effective protection under the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage.[50] However, Ritania has not ratified the UNESCO Convention; it is only a signatory. Additionally, the UNESCO Convention does not regulate ownership rights over underwater cultural property, but instructs only how best to preserve such property for the benefit of humanity.

Article 10(3) of the UNESCO Convention imposes an obligation to consult with "States parties" declaring their interest in the protection of underwater cultural heritage in question.[51] This obligation is

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[46] *Odyssey Marine Exploration, Inc. v The Unidentified Shipwrecked Vessel, Kingdom of Spain, Republic of Peru, et. al.*, 10-10269 at. 43 (11th Cir., 2011); Francesco Francioni and James Gordley, *Enforcing International Cultural Heritage Law*, (Oxford: Oxford University Press, 2013) at 9.

[47] *M/V Saiga (No.2) Case (St. Vincent and the Grenadines v. Guinea),* ITLOS 1999, at ¶106 ["M/V Saiga"].

[48] *Odyssey Marine Exploration, Inc. v. The Unidentified Shipwrecked Vessel, Kingdom of Spain, Republic of Peru, et. al.*, 10-10269 at. 43 (11th Cir 2011).

[49] *See* 2001 UNESCO Convention, Article 10(2).

[50] *See* 2001 UNESCO Convention, Article 9(5).

[51] *United Nationas Educational Scientific & Cultural Convention on the Protection of Underwater Cultural Heritage*, 2 November 2001, 41 ILM 40, Art. 10(3) ["UNESCO Convention"].

in accordance with Article 26 of VCLT, which stipulates that a State party to a certain treaty does not owe a non-State party any treaty obligation therein.[52] Article 10(4) of the UNESCO Convention also entitles every State Party to take all necessary measures to prevent immediate danger against its underwater cultural heritage.[53] This right can be exercised without prior consultation with any State that may have declared an interest in the underwater cultural heritage.[54] Amalea has no obligation to consult with Ritania, nor may Ritania rely on the Convention to assert particular rights. Ritania may nonetheless attempt to apply the UNESCO Convention as custom, though it is not clear that it is such.

Ritania may argue that international law protects the country of origin's claims of ownership to looted cultural objects and thus the Helian Coronet and other artifacts taken from Helios must be returned.[55] The repatriation of cultural property is widely supported by UN General Assembly Resolutions,[56] but Amalea can argue these do not create binding law requiring repatriation. Looking to current State practice for any example of returned property, Amalea can likely find many more examples of property that has ***not*** been returned. Moreover, legal title to "looted" artifacts may have passed centuries ago under the law at the time.

4. *Intertemporal Law*

The Parties may also raise the question concerning which party had legal rights to the *Cargast's* cargo at the time it sank. This requires application of the law at the time of the event, as found by the Permanent Court of Arbitration in *Island of Palmas,*[57] and has been consistently observed by the ICJ in *Certain Property,*[58] and *Jurisdictional Immunities of State.*[59] The Hague Convention in 1907[60] prohibited the acquisition of cultural property during war. During the sixteenth century, international law permitted a nation to lawfully acquire another nation's property in a just war.[61]

Ritania may claim the Sack of Helios was an internationally wrongful act in 1510 and, therefore, the artifacts stolen from Helios properly belong to Ritania. Amalea can counter that the *Cargast'*s expedition to Helios in 1510 was not unlawful and, therefore, the ownership of the cargo must follow the ownership of the vessel itself. For Grotius, moveable objects seized in the course of a raid by a

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52 VCLT, art. 26.

53 UNESCO Convention, Art. 10(4).

54 *Id.*

55 *Return or Restitution of Cultural Property to the Countries of Origin*, GA Res 3026A (XXVII), UNGAOR, 34th Sess, UNGA A/RES/3026 A, (1972); *Return or Restitution of Cultural Property to the Countries of Origin,* GA Res 56/97 ,GA Res 56/97, UNGAOR, 56th Sess, UNGA A/RES/56/97 (2001).

56 *See e.g.*, G.A. Res. 67/80, *supra* note 66; G. A. Res. 64/78, U.N. Doc. A/RES/64/78 (Dec. 7, 2009); G.A. Res. 61/52, U.N. Doc. A/RES/61/52 (Dec. 4, 2006); G.A. Res. 58/17 (Dec. 3, 2003); G.A. Res. 56/97, U.N. Doc. A/56/97 (Dec. 14, 2001); G.A. Res. 54/190, U.N. Doc. A/RES/54/190 (Dec. 17, 1999); G.A. Res. 52/24, U.N. Doc. A/RES/52/24 (Nov. 25, 1991) *etc.*

57 *Island of Palmas (Netherlands/US)*, [1928] 2 RIAA 829 at 845.

58 *Case Concerning Certain Property (Liechtenstein v Germany),* [2005] ICJ Rep 6 at ¶48.

59 *Case Concerning Jurisdiction Immunities of State (Germany v Italy: Greece Intervening),* [2012] ICJ Rep 1 at ¶18.

60 *Hague Convention (IV) Respecting the Laws and Customs of War on Land*, 18 October 1907, 36 Stat. 2277, 3 Martens Nouveau Recueil (ser. 3) 461.

61 Hugo Grotius, *De Iure Pradae Commentarius Vol. I* (Oxford: Clarendon Press, 1950) Chapter V at 89 ["Grotius"]; Emmerich Vattel, *The Law of Nations,* by Joseph Citty and Edward Duncan Ingraham (Philadelphia: T. & J.W. Johnson, 1883) at 164 ["Vattel"].

marauding band belong to the persons who seized them (which is consistent with the view that Verdigris was a privateer). Thus, the question of whether the sack of Helios was lawful would hinge on whether Amalea (or Verdigris personally) was justified in waging war against Ritania. Ritania may argue the Sack of Helios was not a just war because, in the sixteenth century, a war was only considered just for: self-defense, debt recovery, defense of property, or punishment for wrongdoing.[62] Though an interesting question, the *Compromis* is silent on the underlying reasons for the Sack of Helios. Teams may present other arguments under the law at the time or prior State practice based on other scholars. Cicero addressed the concept of "just war" in 70 BCE; St. Augustin further developed the concept in the late 4th and early 5th centuries; St. Thomas Aquinas addressed "just war" in the late 13th century; Francisco de Vitoria's works were recorded in the 1530s; and Alberico Gentili's works come from the end of the 16th century. Grotius was writing in the 17th century and Vattel in the 18th.

5. Law of Finds

In many common law States, there exists a "law of finds" according to which whomever finds the object first becomes the owner.[63] Ritania can argue that, as the finder of the *Cargast*, it has the right to oversee the salvage operation. Amalea will counter that the fact that a Ritanian vessel happened to discover the *Cargast* does not confer actual rights upon Ritania. The law of finds is not really relevant unless there is no identifiable owner of the *Cargast* or its contents, or unless it is clear that the rightful owner of the wreck has abandoned it. In this case, Amalea has some interest over the wreck either as its owner or (at minimum) as the flag State of the vessel, while Ritania is clearly the State of origin of the artifacts taken from Helios in 1510.

Also, for the law of finds to be favorable to Ritania specifically, Ritania would need to show that the exploration vessel that found the *Cargast* was owned by the Ritanian government (and not merely Ritanian flagged). The *Compromis* ambiguously states that the exploration vessel was a "Ritanian vessel," so it is unclear whether Ritania can argue that the vessel was in fact owned by Ritania. Finally, the law of finds seems fundamentally incompatible with Article 2(3) of the 2001 UNESCO Convention, which requires member States to protect underwater cultural property "for the benefit of humanity."

6. Ritania's Military Patrols

Amalea will also argue that Ritania had no right to send navy patrol boats to the site of the *Cargast*.[64] Ritania will counter that it had the right to send navy patrol boats to prevent any further desecration of its sacred cultural heritage and Amalea has no authority, as a coastal State, to prohibit the presence of Ritanian navy patrol boats in the Malachi Gap area.[65] The right to conduct military activities within the EEZ remains one of the many unanswered questions within the UNCLOS framework. Amalea may point to Article 300, which imposes a good faith obligation on States, along with Article 59, which

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[62] Grotius, *supra* n. 71, Chapter V at 70; Emmerich Vattel, The Law of Nations, by Joseph Citty and Edward Duncan Ingraham (Philadelphia: T. & J.W. Johnson, 1883) ["Vattel"] at 33.

[63] United Nations Conference on the Law of the Sea III, U.N. Doc. A/CONF.62/L.58, (Aug. 22, 1980) *reprinted in* 14 the Official Records of the Third Nations Conference on the Law of the Sea 128, 128 (2009); DROMGOOLE, *supra* note 58, at 171; M. A. Wilder, *Application of Salvage Law and the Law of Finds to Sunken Shipwreck Discovereies*, *in* 67 DEF. COUNSEL J. 92, 93 (2000).

[64] *See* UNCLOS Art. 88 and 58(2); *See also* UNCLOS Art. 300.

[65] *See* UNCLOS Art. 58(1).

provides that conflicts are to be resolved on the basis of equity. A right to conduct military activities, however, is not clearly attributed to either party.

Amalea may argue that Ritania's deployment of military vessels violates UNCLOS's limited grants of power in EEZ's that are otherwise high seas,[66] as it indicates Ritania's treatment of the EEZ as its own sovereign territory.[67] If teams present arguments along these lines, China's current attempts to expand its territorial sovereignty in the South China Sea and its new East China Sea Air Defense Identification Zone may be relevant points of discussion. Notably, the United States has conducted multiple military exercises using B-52 and B-2 bombers in the zone with little complaint and no allegations of a use of force.

Ritania should concede that deployment of patrol vessels *can* be considered a military activity; however military activity is not precluded in the EEZ. Many States in East Asia,[68] Africa,[69] Europe, the Caribbean and Pacific Islands regions[70] do not prohibit other States' military activity in their EEZs. Furthermore, although a very few States restrict other States' military activity in their EEZs, such restrictions have been continuously protested by many States.[71] States have the right to the lawful use of their EEZs,[72] which includes peaceful military exercise.[73] Ritania should acknowledge that its exercise of this right must pay due regard to Amalea's rights,[74] and maintain a peaceful use of the EEZ.[75]

If Amalea presents the argument in terms of "threat or use of force" under Article 2(4) of the UN Charter, then Amalea must show how this alleged threat of the use of force is directed "against the territorial integrity or political independence of any state."[76]

C. Question Presented 3: Naval Pursuit and Arrest of Oscar de Luz

Amalea's Prayer for Relief	Ritania's Prayer for Relief
The Amalean Navy's pursuit of Oscar de Luz into Ritania's EEZ, and his subsequent arrest, were in compliance with international law.	The Amalean Navy's pursuit of Oscar de Luz into Ritania's EEZ, and his subsequent arrest, were illegal.

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66 UNCLOS, Art 55.

67 John Robert Victor Prescot, *Maritime Jusrisdiction in East Asian Seas* (Honolulu: East-West Environment and Policy Institute, 1987) at 64-69; George V. Galdorisi and Alan G. Kaufman, "Military Activies in the Exclusive Economic Zone: Preventing Uncertainty and Defusing Conflict" (2002) 32 Cal. W. Int'l L.J. 253 at 293.

68 Jon M. Van Dyke et al., *Governing Ocean Resources, New Challenges and Regimes, a tribute to Judge Choon Ho-Park*, (Leiden: Martinus Nijhoff Publishers, 2013), at 298.

69 *Id.* at 304

70 *Id.* at 301.

71 UNCLOS, Art. 58(1).

72 *Id.*.

73 *Id.*.

74 UNCLOS, Art. 56(3).

75 *Id.,* Art. 88.

76 United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Art. 2(4).

Preliminary Note: Ritania has ratified UNCLOS but Amalea is only a signatory. However, both States are bound by the four 1958 Geneva Conventions. Thus, under VCLT Article 30(4)(b), the Geneva Conventions govern and any arguments presented under UNCLOS may be challenged as inapplicable. Many provisions of UNCLOS will still apply to both Amalea and Ritania as custom, but not all 320 Articles and nine Annexes are custom. Teams must be ready to answer questions as to why a particular treaty, convention or provision is or is not applicable.

1. Hot Pursuit

Amalea will argue it had the right to pursue the *Daedalus* into Ritania's uncontested EEZ under the doctrine of hot pursuit.[77] Hot pursuit is an exception to the principle of exclusive flag-state jurisdiction. Article 23 of the 1958 Convention on the High Seas provides that the hot pursuit of a foreign ship may be undertaken when competent authorities of a coastal state "have good reason to believe that the ship has violated the laws and regulations of that State."[78] Moreover, Article 33 of UNCLOS (and Article 24 of the 1958 Territorial Sea and Contiguous Zone Convention) allows a coastal state to exercise control over foreign ships in the contiguous zone "for violation of customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea." Two elements of hot pursuit are primarily at issue: (1) the good reason to believe, and (2) the requirement that "pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship."[79]

First, Amalea will argue that it had a right to pursue the *Daedalus* because Amalean authorities had a "good reason to believe" that the *Daedalus* was involved with human trafficking, which would violate Amalea's immigration regulations.[80] A "good reason to believe" does not mean Amalea needs to have had actual knowledge, though it is something more than a mere suspicion.[81] Pursuit of the *Daedalus* in this case was premised on the alerts issued by the Amalean Coastal Protection Service, indicating that a stolen Ritanian-flagged ship had persons on board suspected of human trafficking.[82] No further facts or information was provided in the alert. Ritania may argue that any suspicion of human trafficking does not constitute a reasonable belief, where it is tenuous and not connected to known facts.[83]

Here, the events that occurred in Ritania's uncontested EEZ – including alleged reckless conduct and resulting collision between the *Rosehill* and Excelsior Island – cannot be said to have violated Amalean laws. Though piloting a stolen vessel into Amalea's contiguous zone arguably may be a breach of Amalea's customs laws, the possible immigration violation for human trafficking is the only violation supported by the facts. Aside from setting forth that a "good reason to believe" is more than a mere

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77 *UNCLOS,* Art. 111 and 58(2)*; 1958 High Seas Convention,* Art. 23.

78 Article 23 goes on to state that, "Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea of the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted."

79 1958 High Season Convention, art. 23(3).

80 *See* UNCLOS Arts. 111 and 33; *Compromis* ¶ 47 (with respect to the scope of Amalean penal laws); 1958 Territorial Sea and Contiguous Zone Convention, Art. 24.

81 *See M/V Saiga*, at 139.

82 *See Clarifications,* at ¶ 12.

83 *See M/V Saiga* (Separate Opinion of Judge Anderson).

suspicion,[84], ITLOS did not expand specifically on what is required to elevate a belief beyond a mere suspicion. Ritania should point out that Amalea bears the burden of establishing a good reason to believe. Here, the language used in the alert – "suspected of human trafficking" – combined with there being no facts indicating that any human trafficking actually occurred may fall short. Allowing hot pursuit under these facts could be a drastic over-broadening of the concept. Conversely, requiring more definite facts to pursue a suspicion of a potentially egregious offense could be a drastic narrowing of a State's police powers.

Second, Amalea must establish that Captain Haddock issued a proper signal to stop. Though the High Seas Convention is silent on what the "visual or auditory signal" must be, the ILC has stated that to prevent abuses "the words 'visual or auditory signal' exclude signals given at a great distance and transmitted by wireless."[85] In *M/V Saiga*, ITLOS did not find radio transmissions sufficient. In *R. v. Mills and Others*, the Crown Court found the United Kingdom properly signaled a ship under hot pursuit with radio transmissions and helicopters.[86] At this time, we are not aware of any case where hot pursuit was determined valid with only a radio signal. However, Amalea may argue that Luz seemingly turned around and fled immediately after the radio signals were sent, indicating they may have been received and were therefore effective. Amalea may also argue that the *Icarus* changing course to pursue is itself a visual signal that, when combined with the radio signals, satisfied this requirement.

Neither Amalea nor Ritania are expected to present substantial argument on the other elements of hot pursuit, namely that the pursuit was immediate and timely, that it was conducted by a clearly marked and identifiable military vessel, and that it began when the *Daedalus* was within Amalea's contiguous zone.[87]

2. *Piracy*

Preliminary Note: Some Applicant teams have argued that Luz was a pirate, giving Amalea jurisdiction to arrest Luz regardless of hot pursuit. Piracy was not intended to be an issue and the facts were not intended to make a claim of piracy possible. However, the grant of universal jurisdiction that comes with piracy is very attractive to Applicants and if the Applicant raises piracy, the Respondent should address the argument.

Amalea bears the burden to show that Luz's actions on board the *Daedalus* meet the definition of piracy under Article 15 of the 1958 High Seas Convention or UNCLOS Article 101. Piracy on the high seas involves an illegal act of violence committed voluntarily for 'private ends,' a private vessel committing the act, targeted at another vessel.[88] The *Daedalus* was a stolen yacht and, given the lack of an explicit statement that it was a State vessel (which would significantly improve Ritania's position), it is safe to infer that is was a private vessel. Articles 105 and 107 of UNCLOS (coupled with Article 58, paragraph 2), and Article 19 of the 1958 High Seas Convention, would give the *Icarus* the right to arrest the *Daedalus* and persons found on board (including Luz) if the ship is considered to be a pirate ship.

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[84] *See M/V Saiga*, at 139.

[85] UNCLOS Commentary, comment 111.9(e).

[86] *R. v. Mills and Others*, 1995 (unreported ruling on jurisdiction and abuse of process issues delivered by His Honour Judge Devonshire at Croydon Crown Court).

[87] *See High Seas Convention,* Art. 23*; UNCLOS,* Art. 111.

[88] *High Seas Convention,* Art. 15.

Ritania may point out that neither Luz nor anyone else associated with the *Daedalus* was in fact charged with piracy; instead, there was at the time knowledge of the *Rosehill* collision and a suspicion of human trafficking, though no one was charged with that either. However Amalea should point out that prosecuting States have discretion and need not try pirates specifically for the crime of piracy.

The primary weaknesses in Amalea's piracy argument are the act of violence and the private ends elements. Neither term is defined in either the High Seas Convention or UNCLOS. First, Amalea will argue for a broad definition under which Luz piloting the *Daedalus* towards the *Rosehill* is an "act of violence." Ritania will contest this broadening of the traditional approach, which was equated to robbery on the high seas. Though the requisite act of violence may encompass actions less specific than the classic examples, we are not aware of any case where driving towards a ship, absent any expressed intention to ram the ship, was held to be a piratical act of violence.

Amalea's second hurdle is the "private ends" requirement, which traditionally equated to personal financial gain. Applicants are likely to cite to sources suggesting that anything not public is private, even if there is no personal financial gain, such as the 2013 United States 9th Circuit Court of Appeals decision in the *Sea Shepherd* case.[89] Ritania will argue that there must be some articulable private goal. Even if the *Sea Shepherd* case is persuasive (which it very well may not be) there are many easily distinguishable facts. We are not aware of any case before an international tribunal that has found piracy on facts similar to those in the *Compromis*.

3. Other Issues

Amalea might argue that Luz in his dinghy was a "person in danger of being lost at sea" within the meaning of the 1989 Salvage Convention or Article 98 of UNCLOS, giving rise to a duty to render assistance. This will depend on facts about the dinghy (how large was it, did it have a working propulsion system, how far was Luz from the nearest shore, was Luz in any real danger as a result of being in the dinghy, and the like). Moreover, Amalea must be able to deny responsibility for the collision with the *Icarus* (which is not an airtight argument, as the facts show that neither the *Icarus* nor the *Daedalus* followed COLREGs Rule 14[90]). Even if Captain Haddock would have been fulfilling an obligation by collecting Luz and any other individuals found and bringing them back to port, neither the Salvage Convention nor UNCLOS Article 98 make any mention of arrest. Importantly, the arrest itself happened on the dinghy, not the *Icarus*, so Amalea cannot argue that it exercised its duty to render aid, then made the arrest when Luz was in Amalean territory.

There may be discussion of the collision between the *Icarus* and *Daedalus*. As stated above, neither ship followed the proper procedure. Amalea will need to show that Captain Haddock's failure to avoid the collision either was not a use of force to make an arrest or, if it was, that the force used to arrest Luz was both necessary and reasonable. Force used as a matter of international law must not exceed what is reasonable under the circumstances.[91] Even if hot pursuit is justified, deliberate force used to sink a foreign vessel is unlawful.[92]

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[89] *Institute of Cetacean Research v. Sea Shepherd Conservation Society*, 708 F.3d 109 (9th Cir. 2013).

[90] *International Regulations for Preventing Collisions at Sea.*

[91] *M/V Saiga*, at 158.

[92] *M/V Saiga*, at 153.

UNCLOS Article 110 grants warships a right of visit on other vessels on the high seas when the ship to be visited is engaged in, *inter alia*, piracy or the slave trade.[93] However, this right of visit does not provide much help for Amalea because it only allows the warship to verify the ship's flag and, if suspicions remain, examine the ship in a reasonable manner.[94] If the suspicions prove to be unfounded, and if the ship has not committed any act justifying the suspicions, compensation shall be made for any loss or damage.[95] Here, though the *Icarus* had at least a suspicion of human trafficking, which is inextricably related to slavery, on these facts it does not appear that it properly exercised a right of visit.

D. Question Presented 4: Luz's Trial and the Request for Extradition

Amalea's Prayer for Relief	Ritania's Prayer for Relief
Amalea had jurisdiction to try and convict Luz for criminal actions related to the *Rosehill* incident, and has no obligation to return him to Ritania.	Amalea was without jurisdiction to try Luz in connection with the *Rosehill* collision, and must return him to Ritania immediately.

1. Male Captus, Bene Detentus

Amalea may argue that even if the arrest of Luz was improper under international law, his detention and prosecution can still be justified under the doctrine of *male captus, bene detentus*, and Ritania's only remedy is a claim for reparations.[96] Ritania will claim Luz's arrest was unjustified under international law, and therefore his continued detention in Amalea is also illegal. The theory of *male captus, bene detentus* or wrongly arrested, properly detained, is supported by some State practice but does not have the widespread and nearly uniform application necessary to create a custom and is not backed by *opinio juris*.[97] When the concept is applied, it tends to be for cases of terrorism, torture, war crimes, and similar offenses.

2. Jurisdiction Over Luz

a) Subjective and Objective Territorial Jurisdiction

These related theories grant criminal jurisdiction to 1) the State where criminal conduct commences on its territory, even though the crime has effects in the territory of another State (subjective); or 2) the State in whose territory the effects were felt. The underlying concepts of these principles were applied in the *Lotus* case to grant Turkey jurisdiction over a French officer on a French ship because the effects of

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[93] UNCLOS art. 110(1).

[94] UNCLOS art. 110(2).

[95] UNCLOS art. 110(3).

[96] *Ker-Frisbie-Alvarez Doctrine (US Supreme Court)*; *Argoud Case (French Cassation)*; *Eichmann Case (District Court of Jerusalem).*

[97] *Compare Attorney-General v. Eichmann*, 36 I.L.R. 5 (1961) (Israel 1961); *United States v. Alvarez-Machain*, 504 U.S. 655 (1992) (United States 1992) (applying *male captus*) and *State v. Ebrahim*, 21 I.L.M. 888 (South Africa 1992); *United States v. Verdugo-Urquidez*, 939 F.2d 1341 (1990) (United States 1990) (not applying *male captus*).

his acts were felt in Turkey and there was no law of exclusive flag state jurisdiction.[98] That decision was widely unpopular and Article 11 of the High Seas Convention and Article 97 of UNCLOS were both created specifically to grant exclusive jurisdiction to the flag state.

b) Flag State Jurisdiction

Ritania will argue that even if there had been a legal basis under Amalean law to prosecute Luz, such prosecution would have been barred by Article 97 of UNCLOS and Article 11 of the 1958 High Seas Convention.[99] Amalea will argue that exclusive flag state jurisdiction does not apply because the *Daedalus* was not involved in any collision with the *Rosehill*, and Luz's alleged misconduct is not related to any "incident of navigation." Moreover, Amalea will argue that the *Daedalus* was stolen, thus Luz cannot be considered the master or a person "in the service of the ship."

Amalea will likely have a difficult time arguing that the *Daedalus*, in its encounter with the *Rosehill*, was not involved in a "collision or other incident of navigation." Although the *Daedalus* did not collide with the *Rosehill,* the fact that it caused the *Rosehill* to collide with Excelsior Island appears to fall within the broader concept of "incident of navigation." The fact that Luz was charged, *inter alia*, with negligent operation of a seagoing vessel under Amalean law (*Compromis*, ¶ 47) reinforces this view and will make it difficult for Amalea to claim that the *Daedalus* was not involved in an incident of navigation.

However, exclusive flag state jurisdiction prohibits only the commencement of penal or administrative proceedings against the master or any other person "in the service of the ship." Though UNCLOS does not define "master," the term historically refers to naval rank and its current lay usage is often interchangeable with captain. UNCLOS contains references to a State's duties to ensure the master is competent[100] and to a State issuing a "master's certificate"[101] indicating master or person in service of a ship is a formalized position, not merely whomever currently controls the ship. If Ritania claims that Luz is the master, it opens itself to potential liability under UNCLOS Article 94. Because the *Daedalus* was stolen, Amalea will likely argue that Luz was not its rightful master or a person in the service of the ship. Ritania may claim that a person in service of the ship is anyone assisting in the operation of a vessel. We are not aware of any cases before international tribunals that have accepted such a broad interpretation and none that have applied the master or person in service of the ship language to a potential thief piloting a stolen vessel.

c) Nationality or Active Personality Principle

There is an inherent right for a country to prosecute and punish its own nationals on the basis of their nationality.[102] The nationality principle grants States jurisdiction over their nationals for crimes

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[98] *S.S. Lotus* (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7).

[99] Article 97 of UNCLOS provides, in relevant part, that: "In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national." Article 11 of the High Seas Convention uses the same language.

[100] UNCLOS, Art. 94(4)(c).

[101] UNCLOS, Art. 97(2).

[102] *See Nottebohm (Liechtenstein v. Guatemala) (Second Phase)* (1955) ICJ REP 4.

committed abroad within that State's criminal legislation. If Ritania fails on its argument of exclusive jurisdiction over Luz based on flag state jurisdiction, it may argue that it nonetheless has nationality-based jurisdiction over Luz. However, this jurisdiction would not be exclusive if Amalea established it also has jurisdiction over Luz under some other theory. Moreover, it is unclear whether Luz could be prosecuted for his actions committed outside of Ritania's territorial waters.[103]

d) Passive Personality Principle

The passive personality principle grants jurisdiction to the State of nationality of the victims of a crime. Amalea will argue that even if the collision and the events immediately preceding it occurred within Ritania's uncontested EEZ, the 127 deaths for which Luz is being prosecuted occurred on the *Rosehill*, which is part of Amalea's territory by virtue of being an Amalean flagged vessel. In any event, Amalean citizens suffered harm and, thus, Amalea has jurisdiction to prosecute Luz. Passive personality was widely rejected prior to its modern application to terrorism cases. In that context, many States, even those traditionally opposed to passive personality, have espoused the principle.[104] Passive personality is included in many international treaties related to terrorism and other international crimes.[105]

e) Universal Jurisdiction

If Amalea can establish that Luz was a pirate or conducting human trafficking, then Amalea would have jurisdiction over Luz for these offenses.

3. Extradition

Ritania is expected to argue that because Amalea had no jurisdiction to try Luz, it must return him to Ritania. Amalea will argue that, in the absence of an extradition treaty between Amalea and Ritania, Amalea has no obligation under international law to extradite Luz to Ritania. Although QP4 is framed in such a way as to suggest a question relating to extradition, the issue of extradition is really a red herring because (a) there is no extradition treaty between the parties (*Compromis,* at ¶ 52), and (b) the *Compromis* (at ¶ 49) suggests that there would be no basis under Ritanian law to prosecute Luz in Ritania (though the claims of Amalean authorities on this point appear questionable, as Ritania presumably has jurisdiction over offenses committed on board one of its vessels).

If Ritania succeeds in convincing the court that Amalea has no jurisdiction over the alleged crimes committed by Luz, then Luz's detention could be qualified as being without basis under international law and, as a matter of human rights, Luz should be released. Whether Luz should then be repatriated to Ritania is corollary to the human rights issue: if Amalea unlawfully brought Luz there to stand trial, then Amalea should not only release Luz, but also repatriate him to Ritania as a matter of course (as part of the compensation for the unlawful detention).

NB: The complexity of this issue for Ritania will depend on whether there is at least a theoretical basis for Amalea to exercise criminal jurisdiction over Luz. If the prosecution of Luz is found to violate Article 97 of UNCLOS, for instance, then Amalea has committed an internationally wrongful act and should release and repatriate Luz. On the other hand, if Amalea did not violate international law by

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[103] *Compromis*, ¶ 49.

[104] *See, e.g*. for the United States, *United States v. Yunis*, 681 F. Supp 896 (D.D.C. 1988).

[105] *See, e.g*. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc A/RES/39/46, 1465 UNTS 85, Art.5(1)(c).

prosecuting Luz, but instead committed a jurisdictional error because no valid basis existed *under domestic law* to prosecute Luz, then the question of whether Luz should be released and repatriated will turn upon whether Luz's detention is arbitrary under international law. As mentioned previously, however, is it unclear whether such an argument would succeed where basic requirements of due process have been met (e.g., Luz was duly charged, prosecuted and convicted of various crimes, apparently without procedural irregularity) but a fundamental jurisdictional error may have gone uncorrected.

III. Appendix A: Introduction to International Law

This section is an introduction to public international law for judges who might not have professional experience or training in the field. There are important distinctions between international law and most domestic legal systems. The most significant for the moot judge is the rigid definition of what sources of law are acceptable before the Court.

A. General

The conduct and rules of the International Court of Justice (ICJ) are governed by the Statute of the Court. Under Article 38(1) of the ICJ Statute, the ICJ may consider the following sources of international law in order to decide disputes before it:

(a) treaties or conventions to which the contesting States are parties;
(b) international custom, as evidence of a general practice accepted as law;
(c) general principles of law recognized by civilized nations;
(d) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Commentators disagree as to whether the first three sources are listed in order of importance.

Judges from common-law systems should note the status of precedent. Article 59 of the ICJ Statute states that decisions of the Court are binding *only on the parties to the case*, and are without formal effect as precedent. In practice, the ICJ often cites its prior decisions, and those of its predecessor, the Permanent Court of International Justice, as persuasive authority, pursuant to Article 38(1)(d). Additionally, the Court frequently evaluates rules of customary international law in its opinions and subsequently relies upon those evaluations in later decisions.

Resolutions of the United Nations General Assembly are not, of themselves, binding upon the Court. Although Resolutions may be evidence of customary international law, the General Assembly is not analogous to a domestic legislature.

B. Treaties

Treaties are agreements between and among States, by which parties obligate themselves to act, or refrain from acting, according to the terms of the treaty. Rules regarding treaty procedure and interpretation are defined in the Vienna Convention on the Law of Treaties (VCLT).

Article 26 of the VCLT sets out the fundamental principle relating to treaties, *pacta sunt servanda*, which provides, "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." Once a State becomes a party to a treaty, it is bound by that treaty.

Article 34 of the VCLT adds that a treaty does not create rights or obligations for State that are not parties to the treaty. However, even if a State is not party to a treaty, the treaty may serve as evidence of customary international law. Article 38 of the VCLT recognizes this "back-door" means by which a treaty may become binding on non-parties. The ICJ has also recognized this possibility in the *Federal Republic of Germany v. Denmark, North Sea Continental Shelf Cases*, 1969. Judges should be aware,

however, that situations arise where some provisions of a treaty – for example, many provisions of the International Covenant on Civil and Political Rights – may reflect or codify customary international law, while other parts do not.

Article 31 of the VCLT states that "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." The article further provides that the context of a treaty can be taken from a variety of sources including the treaty's preamble and annexes, any prior or subsequent agreements between the parties related to the treaty, and any relevant rules of international law. Article 32 states that when interpretation methods under Article 31 would lead to an ambiguous or unreasonable result, supplementary methods of interpretation can be used, including reference to the preparatory work of the treaty and the circumstances of its conclusion.

C. Customary International Law

The second source of international law is customary international law. A rule of customary international law is one that, whether or not it has been codified in a treaty, has binding force of law because the community of states treats it and views it as a rule of law. In contrast to treaty law, a rule of customary international law is binding upon a state whether or not it has affirmatively assented to that rule.

In order to prove that a given rule has become a rule of customary international law, one must prove two elements: widespread state practice and *opinio juris* – the mutual conviction that the recurrence (of state practice) is the result of a compulsory rule.

"State practice" is the objective element, and simply means a sufficient number of states behaving in a regular and repeated manner consistent with the customary norm. Evidence of state practice may include a codifying treaty, if a sufficient number of states sign, ratify, and accede. There is some dispute among commentators as to whether the practice of a small number of states in a particular region can create "regional customary international law" or whether the practice of particularly affected states, *e.g.* in the area of space law, can create custom that binds other states, although the ICJ has acknowledged the possibility.

Opinio juris is the psychological or subjective element of customary international law. It requires that the state action in question be taken out of a sense of legal obligation, as opposed to mere expediency. Put another way, *opinio juris*, is the "conviction of a State that it is following a certain practice as a matter of law and that, were it to depart from the practice, some form of sanction would, or ought to, fall on it." MARK E. VILLIGER, CUSTOMARY INTERNATIONAL LAW AND TREATIES 4 (1985).

Customary international law is shown by reference to treaties, decisions of national and international courts, national legislation, diplomatic correspondence, opinions of national legal advisers, and the practice of international organizations. Each of these items might be employed as evidence of state practice, *opinio juris*, or both. In the *North Sea Continental Shelf Cases*, the ICJ stated that the party asserting a rule of customary international law bears the burden of proving it meets both requirements.

D. General Principles of Law

The third source of international law consists of "general principles of law." Such principles are gap-filler provisions, utilized by the ICJ in reference to rules typically found in domestic courts and domestic legal systems in order to address procedural and other issues.

The bulk of recognized general principles are procedural in nature (e.g., burden of proof and admissibility of evidence). Many others, such as waiver, estoppel, unclean hands, necessity, and *force majeure,* may sound familiar to a common-law practitioner as equitable doctrines. The principle of general equity in the interpretation of legal documents and relationships is one of the most widely cited general principles of international law.

It is important to note, however, that "equity" in this sense is a source of international law, brought before the court under Article 38(1)(c) of the Statute of the ICJ. It is an *inter legem* (within the case) application of equitable principles, and not a power of the Court to decide the merits of the case *ex aequo et bono* (that is, to simply decide the case based upon a balancing of the equities), a separate matter treated under Article 38(2) of the Statute.

E. Decisions and Publicists

The final source of international law is judicial decisions and teachings of scholars. This category is described as "a subsidiary means of finding the law." Judicial decisions and scholarly writings are, in essence, research aids for the Court, used for example to support or refute the existence of a customary norm, to clarify the bounds of a general principle or customary rule, or to demonstrate state practice under a treaty.

Judicial decisions, whether from international tribunals or from domestic courts, are useful to the extent they address international law directly or demonstrate a general principle.

"Teachings" refers simply to the writings of learned scholars. Many student competitors make the mistake of believing that every single published article constitutes an Article 38(1)(d) "teaching." However, the provision is expressly limited to teachings of "the most highly qualified publicists." For international law generally, this is a very short list, and includes names like Grotius, Lauterpacht, and Brownlie. Within the context of a specific field, there are additional scholars who would be regarded as "highly qualified publicists."

F. Burdens of Proof

In the *Corfu Channel Case* (*U.K. v. Albania*, 1949), the ICJ set out the burdens of proof applicable to cases before it. The Applicant normally carries the burden of proof with respect to factual allegations contained in its claim by a preponderance of the evidence. The burden falls on the Respondent with respect to factual allegations contained in a cross-claim. However, the Court may draw an adverse inference if evidence is solely in the control of one party that refuses to produce it.

IV. Appendix B: Timeline of Events

4 March 1510	Sack of Helios by Baldric Verdigris captain of the *Cargast*.
10 March 1510	Baldric Verdigris and the *Cargast* are lost at sea in the Strait of Malachi.
Early 1940s	Ritanian geologists discover petroleum and natural gas in the Strait of Malachi.
1946	Amalea and Ritania begin discussions on control the resources beyond their respective territorial waters.
19 September 1956	Ritanian proclamation claiming all rights to the natural resources of the subsoil and sea bed of the continental shelf contiguous to the coasts of Ritania.
29 October 1957	Amalea establishes fisheries conservation zones.
1958	Amalea and Ritania sign the four Geneva Conventions on the Law of the Sea. Amalea claims a 12-mile contiguous zone.
February 1961	Ritania ratifies the four Geneva Conventions on the Law of the Sea.
September 1962	Amalea ratifies the four Geneva Conventions on the Law of the Sea.
1973 -1982	Amalea and Ritania participate in the Third United Nations Conference on the Law of the Sea.
April 1983	Ritania signs and ratifies UNCLOS and claims 200 nautical mile EEZ.
June 1983	Amalea signs UNCLOS.
13 June 1984	Amalea claims 200 nautical mile EEZ.
1986	Amalea enacts its Coastal Fisheries Protection Act; Ritania objects to Coastal Fisheries Protection Act's potential application in its EEZ.
1988	Ritania discovers Erebus gas fields in the Strait of Malachi.
1988 – 1992	Amalea and Ritania negotiate their respective EEZ claims.
30 March 1992	Amalea and Ritania sign the Malachi Gap Treaty.
1993	Amalea and Ritania ratify the Malachi Gap Treaty.
1995	Amalea's Penal Code amended to include offenses committed in Amalea's uncontested EEZ and the Malachi Gap.
2000	Sales of Dorian wrasse generate USD 160 annually for Amalea.
2006	Esmeralda Kali announces intended construction of Excelsior Island on the Sirius Plateau.
2008	EIGP submits its EIA for Excelsior Island to Ritanian authorities.
2008	Amalean Environmental Protection Agency publishes a report prepared by ILSA concerning dredging in the Malachi Gap.
Mid-2008 – July 2009	Amalea and Ritania negotiate over dredging and EIA issues.

1 August 2009	EIGP received permit to construct Excelsior Island.
Mid-late 2009	Amalea seeks provisional measures from the ICJ to halt the dredging.
10 September 2009	ICJ denied provisional measures 8-7.
10 December 2009	A significant underwater landslide occurs near the Sirius Plateau; Amalean authorities subsequently begin an emergency monitoring program.
January 2010	Ritanian oil and gas exploration discovers the wreck of the schooner *Cargast*; Amalea claims the wreck and its cargo; Ritania expresses concern over Amalea's claim.
February 2010	Early monitoring results show the landslide had an immediate and significant negative impact on the Dorian wrasse; Amalea holds Ritania responsible.
4 March 2010	Ritanian Minister of Cultural Affairs interview discussing the *Cargast* and Sacred Helian Coronet published.
End 2010	Total catch of Dorian wrasse falls to 25% of year 2000 catch.
January 2011	Amalean Cultural Affairs Ministry announced acquisition of five objects recovered from the *Cargast* by Milo Bellezza, including the Sacred Helian Coronet; Ritania objects to this "looting" and demands return of items.
13 February 2011	The *Rosehill* avoids collision with the *Daedalus* but crashes into Excelsior Island. 5 workers on the island 127 passengers and crew are killed. *Daedalus* flees towards Amalea and is chased by then collies with the *Icarus*. Oscar de Luz is arrested and brought to Amalea. Ritania protests de Luz's arrest.
February 2011 – 2013	Oscar de Luz is tried for murder, convicted and the conviction is upheld on appeal to Amalea's Court of Appeals and Supreme Court.
June 2011	Amalean Cultural Affairs Ministry names Milo Bellezza agent of Amalea and salvor of the *Cargast*; Ritania denounces this appointment.
June - September 2011	Milo Bellezza conducts additional salvage dives recovering cannons, crowns, and jewelry.
End 2011	Total catch of Dorian wrasse falls to 15% of year 2000 catch; Ritanian navy patrols waters above the *Cargast*.
February 2012	Dorian wrasse declared endangered.
March 2012	Amalea halts commercial fishing of the Dorian wrasse.
February 2013	Amalea's Ministry of Fisheries concludes commercial exploitation of the Dorian wrasse would have amounted to no less than USD 250 million annually over the next five years. Amalea demands reparations from Ritania.

V. Appendix C: Guide to People, Places, and Acronyms

ACPS
The Amalean Coastal Protection Service

Amalea
A developing, newly industrialized island state; the Applicant

Amalean Trench
A deep sea trench in the Strait of Malachi dividing Amalea's continental shelf from Ritania's

Baldric Verdigris
A 16th century Amalean explorer and cartographer and captain of the *Cargast*. Blamed for the 1510 sack of Helios

Cargast
The schooner captained by Baldric Verdigris, lost at sea 10 March 1510, the wreck was found in 2010

CFPA
Amalea's Coastal Fisheries Protection Act

Chapel of Saint Nicolas
Chapel in Helios that housed the Sacred Helian Coronet until 1510

Daedalus
A Ritanian flagged yacht stolen by Oscar de Luz

Dorian Sea
Body of water at the north end of the Start of Malachi

Dorian wrasse
A nonmigratory reef fish that lives in shallow waters in and around the area of the Sirius Plateau, a valuable and culturally important dish in Amalea

EEZ
Exclusive Economic Zone

EIA
Environmental Impact Assessment

EIGP
Excelsior Island Gas & Power Limited, a Ritanian company wholly owned by Esmeralda Kali

Erebus Gas Field
A large natural gas deposit located in the seabed of Ritania's EEZ

Esmeralda Kali
A Ritanian billionaire financing the construction of Excelsior Island

Excelsior Island
An artificial island constructed in Ritania's EEZ to serve as a LNG processing plant and wind farm

Gloria de Sousa
Ritanian Minister of Cultural Affairs

Helios
The capital of Ritania

Icarus
An Amalean Navy Fast Response Cutter

ICJ
The International Court of Justice

ILSA
The International League for Sustainable Aquaculture

IMO
The International Maritime Organization

LNG
Liquefied Natural Gas

Malachi Gap
An area in the Strait of Malachi where Amalea and Ritanian EEZ claims overlap. Governed by the Malachi Gap Treaty

Malachi Gap Treaty
Treaty between Amalea and Ritania governing their overlapping EEZ claims

Milo Bellezza
A well-known deep sea treasure hunter of Swiss nationality hired by Amalea

Occitan Ocean
Body of water at the south end of the Start of Malachi

Oscar de Luz
A Ritanian who stole the *Daedalus*

President Lipman
President of Ritania

Prime Minister Beesley
Prime Minister of Amalea

Ritania
A developed, industrialized peninsular state; the Respondent

Rosehill
An Amalean flagged cruise ship

Sacred Helian Coronet
Crown placed on the heads of Ritanian monarchs during their coronation ceremonies

Sirius Plateau
An underwater plateau spanning Ritania's EEZ and the Malachi Gap, geomorphically part of Ritania's continental shelf. The breeding grounds of the Dorian wrasse are nearby.

Strait of Malachi
A sea channel with a major shipping lane separating Amalea and Ritania

UNCLOS
The United Nations Convention on the Law of the Sea (1982)

UNESCO
United Nations Educational, Scientific, and Cultural Organization

VCLT
The Vienna Convention on the Law of Treaties

Walter Haddock
Captain of the *Icarus*

VI. Appendix D: Suggested Questions for the Oral Rounds

A. International Law Generally

1. Is there any priority or hierarchy of the sources of international law mentioned in Art. 38 of the ICJ Statute?
2. What is customary international law? What are the elements of customary international law?
3. When asserting a state's obligations under customary international law:
    a. Where can we find evidence of relevant State practice?
    b. What is *opinio juris*? How is it proven?
4. Is the ICJ bound by its prior decisions?
5. What specific remedies is the Applicant/Respondent seeking? Is the ICJ permitted by its Statute to grant those remedies?
6. What is the basis of standing for the party seeking relief?
7. What is the standard of proof with respect to this issue? Which party bears the burden of proof?
8. If this Court determines that the lack of factual certainty allows multiple, conflicting inferences, what should this Court do then?
9. If a state has conflicting obligations under two treaties (or a treaty on the one hand and customary international law on the other), which obligation controls? What principle does the Court use to determine which obligation controls?
10. What is the Court to do if it finds there is a lacuna in the law?
11. What is the definition of "territory?"
12. When two States are Parties to an earlier treaty, and one is a Party to a later treaty but the other is only a signatory, what law governs a conflict between those two States?

B. Question Presented 1

1. What is the no-harm principle, and did Ritania violate it in connection with the dredging work in the Malachi Gap?
2. Does this Court need to deem Ritania responsible for the acts of EIGP in order to hold it responsible in connection with this claim?
3. Was Ritania itself obligated to perform due diligence in connection with the dredging work in the Gap and, if so, under what authority does that obligation exist? If EIGP had the obligation of due diligence, on what basis can this Court hold Ritania responsible in connection with the failure of EIGP to meet that obligation?
4. Is the obligation to conduct an EIA customary international law? Authority?
5. Why doesn't Ritania have an obligation to conduct an EIA in the Gap when it has sovereign rights over the continental shelf where the dredging took place?
6. Does Amalea have an obligation to conduct an EIA because it has sovereign rights over the water column in the Gap?
7. Of what evidentiary significance, if any, is the ILSA Report in this case?
8. What is the precautionary principle and does it apply in this case? If so, on what basis? Is it custom under international law? How or why/why not?

9. What is Amalea seeking in terms of damages concerning the development of Excelsior Island? How does this Court come up with an appropriate damages award, if we find Ritania to have violated international law?
10. What is the causal link between the landslide and the harm alleged by Amalea?
11. By what standard is the likelihood of environmental harm determined? How high must the risk be to preclude development?
12. Won't there always be some level of risk to resources in the context of development?
13. Did Amalea have a duty to mitigate its damages? If so, did it satisfy that duty?
14. How do we assess damages for a failure of due diligence when the project may have gone ahead if even the due diligence was adequate?

C. Question Presented 2

1. Is Amalea responsible for the actions of Milo Bellezza?
2. Is the *Cargast* an Amalean warship? What is the significance to your arguments if this Court concludes that it is?
3. Are the artifacts discovered in the *Cargast* "cultural heritage"? Why/why not?
4. What is the "law of finds" and does it apply in this case? Why/why not?
5. Is cultural heritage law custom?
6. Is there a customary requirement to return stolen cultural property? What if the property (regardless of whether it was originally stolen) was lost and then found?
7. In the 16th century, was a declaration of war required to start a war or could a belligerent act serve as a declaration of war?
8. Where there preconditions to a just or legitimate war in the 16th Century? If so, how would those preconditions affect this case?
9. If Ritania ultimately recovers any of the artifacts, does it have an obligation to pay either Amalea or Milo Bellezza for the salvage?
10. What is the difference between lawful salvage and wrecking (unlawful salvage)?
11. Did Ritania's deployment of naval patrol vessels to the site of the *Cargast* violate the prohibition on military maneuvers in the EEZ?
12. Is it of any relevance that Bellezza said the *Cargast* was in immediate danger of collapse?

D. Question Presented 3

1. What is the law of "hot pursuit" and why was it legal/illegal in this case?
2. Are the elements of hot pursuit cumulative or separable?
3. Were the signals sent by the *Icarus* sufficient under UNCLOS?
4. On what factual basis did Amalean authorities believe the *Daedalus* was violating Amalean laws? Which laws? Must the laws he was suspected of violating have been laws established for the purposes of the EEZ?
5. What is the significance, if any, of the fact that Luz was not in fact charged with violation of any of the laws Amalean authorities claim to have suspected him of violating?

6. Is the customary definition of piracy applicable to Luz's acts concerning the *Daedalus*? Why/why not?
7. What is the legal significance if this Court were to conclude that Luz meets the definition of "pirate"?
8. What is an appurtenant craft?
9. Was the dinghy in which Luz was arrested Ritanian "territory"? What is the significance of this fact, assuming it was?
10. What is the doctrine of *male captus, bene detentus*? Does it apply in this case?
11. Can a State object to a situation of *male captus* diplomatically or judicially or both? Are there any restrictions or requirements?
12. Was Amalea's arrest of Oscar de Luz a violation of the principle of non-interference or was it an act of aggression?

E. Question Presented 4

1. What is the passive personality principle? Does it apply here? Why/why not?
2. What is the active personality principle? Does it apply here? Why/why not?
3. Does Ritania have exclusive jurisdiction over Luz because Luz is a Ritanian national?
4. Are there any exceptions to exclusive flag State jurisdiction?
5. Should Ritania be given the opportunity to try Luz for these crimes?
6. Is there any basis under international law for this Court to order Luz to be returned to Ritania? Customary or otherwise?
7. What is the doctrine of *male captus, bene detentus*? Does it apply in this case?
8. Even if Amalea's arrest and conviction of Oscar de Luz were lawful, could Amalea still have an obligation to repatriate de Luz? If so, under what theory?