

IN THE INTERNATIONAL COURT OF JUSTICE

**THE CASE CONCERNING
CERTAIN ACTIVITIES WITHIN
THE MALACHI GAP**

2014

Amalea
Applicant

v.

The Republic of Ritania
Respondent

MEMORIAL FOR THE APPLICANT

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STATEMENT OF JURISDICTION

Pursuant to the Compromis concluded on 17 September, 2013, including the Corrections and Clarifications agreed to therein, at The Hague, The Netherlands between the State of Amalea and the republic of Ritania (collectively “the Parties”) and in accordance with Article 40(1) of the Statute of the International Court of Justice, the Parties hereby submit to this Court its dispute concerning Certain Activities within the Malachi Gap and the differences arising between Amalea and Ritania.

In accordance with Article 4 of the Compromis, the Court is hereby requested to adjudge the dispute in accordance with the rules and principles of international law, including any applicable treaties.

QUESTIONS PRESENTED

The State of Amalea respectfully asks the Honorable Court:

- I. Whether Ritania's acts and omissions with respect to the development of Excelsior Island violated international law, and whether Amalea is therefore entitled to seek compensation from Ritania for economic losses caused by the landslide;
- II. Whether Amalea has exclusive ownership of the wreck of the *Cargast* and all artifacts recovered from it, and whether Ritania's deployment of patrol vessels to the site of the *Cargast* violated international law;
- III. Whether the Amalean Navy's pursuit of Oscar de Luz into Ritania's EEZ, and his subsequent arrest, were in compliance with international law; and
- IV. Whether Amalea had jurisdiction to try and convict Luz for criminal actions related to the *Rosehill* incident, and whether Amalea has an obligation to return him to Ritania.

STATEMENT OF FACTS

Background

Amalea is newly industrialized state separated from the developed state of Ritania by the Strait of Malachi (“Strait”) which ranges from 217-286 nautical miles (nmis) wide. Amaleans have a traditionally fished throughout the Strait and its current fishing exports generates USD 2.25 billion yearly. The industry employs more than 250,000 people and comprises 40% of protein in their diet. In contrast, Ritania’s fishing industry and seafood consumption have always remained commercially insignificant. (Compromis ¶¶1-4.)

After Ritania discovered petroleum underneath the Strait, Amalea and Ritania began negotiations over maritime natural resources but stalled over control of the Strait. In 1956, Ritania unilaterally claimed rights to the natural resources of the subsoil and seabed of its continental shelf. The following year, Amalea began regulating fishing in areas where it fished and also claimed a 12-mile contiguous zone to enforce its “customs, fiscal, immigration, and sanitary laws.” (Compromis ¶¶6-7, Clarifications ¶3.)

Both Amalea and Ritania signed the four Geneva Conventions on the Law of the Sea in 1958, ratifying them in 1961 and 1962, respectively. (Compromis ¶8.)

Ritania signed and ratified the 1982 Convention on the Law of the Sea (UNCLOS) in 1983 and claimed a 200 nmi exclusive economic zone (EEZ). (Compromis ¶10).

Amalea signed UNCLOS in 1983, also claiming a 200 nmi EEZ and extending the contiguous zone to 24 nmis with its maritime boundary with Ritania determined by equitable principles and due consideration of Amalea’s fishing tradition. (Compromis ¶11, Clarifications ¶3.)

As one of the first supporters of sustainable fishing, Amalea enacted Coastal Fisheries Protection Act (CFPA) in 1986 to cover fishing licensing and activities risky to fish stocks within its territorial waters and EEZ. Ritania objected to application of CFPA to the Strait. (Compromis ¶¶12-13.)

In 1992, Amalea and Ritania agreed to the Malachi Gap Treaty (“Treaty”) which resolved the two state’s EEZ claims to the Malachi Gap (“Gap”), a 1,200 square nmi area in the Strait. Under the Treaty, Amalea has the rights to the natural resources of the waters super-adjacent to the seabed while Ritania is granted identical rights to the seabed and subsoil. The Treaty emphasized cooperation in balancing each other’s interest in the “exploration, exploitation, and protection” of the area and to refrain from unduly inhibiting the other’s rights. (Compromis ¶¶15-16, Appendix B.)

Destruction of the Dorian Wrasse

After ratifying the Treaty, Amalea amended the CFPA to apply to the Gap and to require an environmental impact assessment (EIA) for all activities in the Strait “which could adversely affect Amalea’s sovereign rights under international law.” (Compromis ¶17.)

The Dorian wrasse (“Wrasse”) is a non-migratory fish that lives exclusively around the Sirius Plateau. The Wrasse is traditionally consumed on Amalean holidays and is an important Amalean staple. By 2000, Wrasse sales were at USD 160 million annually and growing. (Compromis ¶¶18-19, Clarifications ¶2.)

In 2006, Ritanian billionaire Esmeralda Kali proposed construction of an artificial island, Excelsior Island (“Island”) located in Ritania’s uncontested EEZ but using

material dredged entirely from the Gap. The Island would be used to exploit the Erebus gas field in the Gap. (Compromis ¶¶14, 20.)

Amalea reminded Ritania that pursuant to the Treaty, Amalea's consent is required for the Island project but Ritania disagreed. An EIA conducted for the project ignored the dredging program's impact on the fish or waters of the Gap. (Compromis ¶¶18-22.)

The Amalean EPA subsequently published a report by the International League for Sustainable Aquaculture (ILSA) that concluded that dredging in the Gap could cause an underwater landslide catastrophic for native species and ecosystems. The Ritanian Ambassador refused to submit the report for consideration of the Island project. (Compromis ¶¶24-25).

After bilateral negotiations between Amalea and Ritania failed, Ritania approved the Island project. Amalea sought provisional measures from this Court to halt the project in 2009 but was denied by a vote of eight to seven. (Compromis ¶27.)

After three months, the dredging caused a landslide in December 2009 which significantly altered the composition of the waters throughout the Sirius Plateau resulting in immediate and negative impact on the Wrasse population. In 2010 and 2011, Wrasse catch fell to 25% and 15% respectively of the 2000 level. By 2012, ILSA declared the Wrasse an endangered species and recommended indefinite suspension of commercial fishing. Experts doubt that the Wrasse population could recover before the end of the century. Wrasse sales were expected to more than USD 250 million annually over the next five years. (Compromis ¶¶28-30, 50.)

Salvage of the *Cargast*

In 2010, Ritanian detected the wreck of an Amalean schooner, the *Cargast*. The *Cargast* carried cannons provided by the Royal Treasury and was captained by Baldric Verdigris, who held a letter of marque from the Amalean King though the crew was privately funded. The *Cargast* sank in 1510 after attacking the Ritanian capital, Helios, during which some historical Ritanian artifacts—including a coronet—were captured. (Compromis ¶¶31-33.)

Amalea asserted ownership over the ship and its cargo to be held in trust for humankind. Ritanian objected, claiming ownership of the artifacts and threatening to send naval patrols to the wreck. In January 2011, Milo Bellezza, a Swiss diver recovered five artifacts—including a coronet—from the wreck during an exploratory dive and noted that the ship's hull was in danger of collapse. Fearing collapse, Amalea granted Bellezza agency for Amalea in June 2011 to salvage the wreck. Shortly thereafter, Ritanian sent naval patrols to the *Cargast* site, continuing to this day, despite Amalea's objections. (Compromis ¶¶35-39.)

The Rosehill Incident

In February 2011, the *Rosehill*, an Amalean cruise ship carrying 556 passengers—70% Amalean—and 215 crew members, passed by Excelsior Island on its way to its next port, Helios. 500 kms from the Island, the *Rosehill* spotted the *Daedalus*, a stolen Ritanian yacht controlled by Ritanian Oscar de Luz, on a collision course with itself and veered towards the Island. Despite heroic efforts, the *Rosehill* crashed onto the Island and suffered considerable damage. 127 on board died; 89 of them, Amalean. Another 150 were injured. After the collision, Luz sped towards Amalea and the *Rosehill* captain immediately radioed the Amalean authorities. (Compromis ¶¶41-44.)

The Amalean authorities issued an alert for the *Daedalus*, and stated there were suspected human traffickers onboard. After receiving the alert, Amalean naval ship *Icarus* picked up the *Daedalus* heading towards Amalea 23 miles off its coast. After coming within visual range, the *Icarus* issued an order over several commonly used radio frequencies for the *Daedalus* to stop. Instead, Luz turned east toward Ritania. The *Icarus* pursued the *Daedalus* into Ritanian EEZ when Luz abruptly turned the *Daedalus* around and the ships collided. Luz left the sinking *Daedalus* on a dinghy where he was captured and arrested. (Compromis ¶¶43-46, Clarifications ¶12).

Because Amalea's Penal Code explicitly extends to its EEZ and the Gap while Ritanian law does not, Amalea tried Luz for 127 counts of murder, reckless endangerment, and various other crimes. Luz was found guilty of most charges and his conviction was upheld by the Amalean Court of Criminal Appeals and Supreme Court. Amalea has refused to repatriate Luz, who is currently serving a life sentence in Amalea. (Compromis ¶¶47-49).

Submission to the International Court of Justice

After several months of negotiations, Amalea and Ritania agreed to refer their disputes regarding the *Wrasse*, the *Cargast*, and the *Rosehill* to this court. (Compromis ¶51.)

SUMMARY OF PLEADINGS

- I. Ritania violated its international obligations in permitting the dredging project to proceed, and is liable to compensate Amalea for economic losses caused by the ensuing landslide. The dredging activity posed a risk of significant harm to the environment of the Gap and the rights of Amalea therein. Despite this, Ritania failed to conduct an EIA on the dredging's potential impact, while protecting its own interests by requiring an EIA on the rest of the Island project. Ritania permitted the dredging in willful ignorance of scientific evidence presented on the potential for a landslide, and failed to incorporate measures to account for Amalea's dependence on the fisheries. Even if technically compliant with international law, Ritania's conduct unduly inhibited Amalea's rights and constitutes an abuse of right. The Court's decision not to grant provisional measures has no bearing on Ritania's responsibility for economic losses caused by the landslide.

Amalea and its nationals suffered direct injury from the landslide and Amalea may sue for Ritania's breach of state responsibility, irrespective of local remedies. Restitution is not possible and Ritania must compensate Amalea for economic harm, including consequential loss of projected income.

Alternatively, Ritania must compensate Amalea under strict liability under the polluter pays principle.

II. Amalea has exclusive ownership of the *Cargast* and all salvaged artifacts. Ritania's deployment of military vessels to the site violates international law. The *Cargast* was an Amalean warship and Amalea may exercise sovereign immunity over the wreck and artifacts, which were lawfully obtained as spoils of war in accordance with contemporary custom. Absent abandonment, Amalea's property right therein continues. As the owner of wreck and cargo subject to sovereign immunity, Amalea performed lawful salvage on the wreck and its cargo. Amalea may lawfully hold the artifacts in trust for all humankind.

Ritania's deployment of military vessels is not permitted in international law. Ritania's military patrols cannot be conducted in Amalea's EEZ without Amalea's consent. Ritania's military vessels are belligerent and not of the limited type that has been tolerated to a limited extent. The military activity is not made lawful by any cultural significance of the artifacts.

III. Amalea's pursuit and subsequent arrest of Oscar de Luz complied with international law. The *Icarus* conducted a lawful hot pursuit of Luz, commencing within Amalea's contiguous zone with sufficient warning and a reasonable suspicion of a violation of Amalea's immigration laws. The subsequent arrest of Luz was a lawful consummation of this hot pursuit. The arrest was lawful as an execution of universal jurisdiction over crimes of

human trafficking and piracy.

IV. Amalea has jurisdiction to try and convict Luz for criminal actions related to the Rosehill incident and Amalea has no obligation to return Luz to Ritania. Amalea is not prohibited from exercising jurisdiction over an individual who damages one of its vessels, and the right to do so has been specifically recognized in recent international instruments. Amalea's exercise of extraterritorial jurisdiction was not unreasonable in the circumstances; as it was the only jurisdiction with the laws required to conduct the trial. Luz's criminal activity had significant effects on Amalea, including the deaths of its nationals, thereby giving rise to jurisdiction under the effects doctrine and passive personality principle respectively. Luz committed acts of piracy, and the High Seas Convention specifically confers upon Amalea the right to decide the penalties to be imposed. As a grave violation of the law of nations, piracy also confers upon all states the capacity to try as a matter of universal jurisdiction. The longstanding principle of *male captus, bene detentus* ensures that allegation of illegality in the means of arrest is not a bar to Amalea's lawful trial of Luz.

As the state with custody of Luz, all that is required of Amalea is to conduct a trial or extradition, under the maxim *aut dedere aut judicare*. Regardless of whether Ritania has concurrent jurisdiction, Amalea has conducted a trial and fulfilled its obligations under international law. Absent an extradition treaty

inter se, Amalea is under no obligation to extradite Luz to Ritania. For Amalea to return Luz to Ritania would violate the protection international law affords individuals from multiple prosecutions for the same offence.

PLEADINGS

I. RITANIA'S ACTS AND OMISSIONS CONCERNING DREDGING WITHIN THE MALACHI GAP VIOLATED INTERNATIONAL LAW AND RITANIA IS LIABLE TO COMPENSATE AMALEA FOR THE ECONOMIC LOSSES CAUSED BY THE LANDSLIDE

A. Ritania's acts and omissions violate international law

1. Ritania was required to conduct an Environmental Impact Assessment on the dredging project

- a) *Ritania had an obligation to perform an EIA on the dredging project to abide by the precautionary principle under customary international law*

The dredging that Ritania authorized in the shallows of the Malachi Gap posed a risk of a serious underwater landslide with catastrophic harm to native species, and grave consequences for the survival of Amalea's interests in the region. In accordance with the precautionary principle, States must act with due diligence to prevent activities within their control from causing significant harm to the environment beyond their national territory.¹ Where an activity carries a risk of "significant adverse impact in a

¹ Trail Smelter (U.S. v. Can.), 3 R.I.A.A. 1905; Legality of the Threat of Use of Nuclear Weapons, advisory opinion, 1996 I.C.J. 226, 241-42; Case Concerning Land Reclamation By Singapore In and Around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, Order of Sep. 10, 2003, ITLOS 12, ¶199; Gabčíkovo-Nagymaros Project (Hung. V. Slov.), 1997 I.C.J. 7, 55; UN Conference on the Human Environment, Stockholm Declaration, June 16, 1972, UN Doc. A/CONF.48/14, princ. 21, 11 ILM 1416 (1972).

transboundary context, in particular, on a shared resource,” customary international law requires the activity be assessed under an EIA.²

At a minimum, an EIA must cover “the possible effects on people, property and the environment of other States likely to be affected.”³ Further, in exploiting the natural resources of its continental shelf, Ritania had a duty to refrain from unjustifiable interference with fishing or conservation of the living resources in the superjacent waters.⁴

Amalea furnished Ritania with authoritative scientific evidence that the dredging posed a risk of significant harm and unjustifiable interference with fishing and conservation of the Dorian wrasse. The Ritanian Ambassador’s compliance with internal regulations in refusing to submit the report for consideration does not absolve Ritania of its international state responsibility.⁵

² Pulp Mills on the River Uruguay (Arg. v. Ur.), 2010 I.C.J. 14, ¶204; *See also* Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court’s Judgment of 20 December 1974 in the Nuclear Tests (N.Z. v. Fr) Case (N.Z. v. Fr.), 1995 I.C.J. 288, 1995, ¶187 (Palmer, J., dissenting); Rio Declaration, Principle 17, U.N. Doc. A/CONF.151/26 (1992).

³ Alan Boyle, *Developments in International Law of EIA and their Relation to the Espoo Convention*, 20(3) RECIEL 227, 231 (2011).

⁴ Convention on the Continental Shelf, art. 5, Apr. 29, 1958, 499 U.N.T.S. 311.

⁵ Legal Status of Eastern Greenland (Den. v. Nor.), 1933 P.C.I.J. (SER. A/b) No. 53 (Apr. 5).

b) Ritania had an obligation to conduct an EIA under the Malachi Gap Treaty

The dredging occurred entirely within the area covered by the Treaty's regime of co-management, the explicit objective of which was to balance each party's interest in the area. Amalea had a right *inter alia* to protect the natural resources of the water superjacent to the seabed, and Ritania had a duty to not unduly inhibit this right. To fulfill this duty, as a matter of necessity Ritania was obligated to assess the dredging's impacts on Amalea's rights before proceeding.⁶

The Dorian wrasse was of great economic and cultural importance to Amalea, who took substantial measures to ensure its sustainable exploitation and conservation. In amending the Coastal Fisheries Protection Act to require an EIA for matters concerning Amalea's rights, Amalea adopted lawful measures to ensure the protection of its legal interests in the waters of the Gap and thereby give effect to the Treaty. By not assessing the dredging's impact on Amalea's rights, Ritania violated its duties under the Treaty.

c) Ritania had an obligation to conduct an EIA on the dredging to abide by the general principle of non-discrimination

Ritania willfully ignored the dredging's potential impact on Amalea, while complying with Ritanian law to assess the effect of the project on its own interests. In discriminately applying its own legal regime to prevent internal environmental harm in disregard of effects on Amalea, Ritania failed to abide by the equitable principle of non-

⁶ John Knox, *The Myth and Reality of Environmental Impact Assessment* 96 Am. J Int'l L. 291, 296 (2002).

discrimination.⁷ This principle mandates that the transboundary impact of activity that affects external interests must be afforded the same legal protections as internal interests under municipal law, and has increasingly been reflected in domestic and regional practice.⁸

2. Ritania issued the permit for the dredging activity in violation of its duty to cooperate under international law

Ritania refused to adapt the dredging project in response to Amalea's reasonable concerns.⁹ States are under an obligation to use shared waters in an equitable and reasonable manner.¹⁰ In conducting activities in coastal waters, a state must allow for the rights of other states and act in accordance with the needs of conservation.¹¹ The duty to cooperate requires more than mere negotiation; Ritania had an obligation to genuinely

⁷ *Id.* at 300; NEIL CRAIK, THE INTERNATIONAL LAW OF ENVIRONMENTAL IMPACT ASSESSMENT 50 (2008).

⁸ Knox, *supra* note 6, at 300; Craik, *supra* note 7, at 50; *See, e.g.* 1974 Nordic Environmental Protection Convention art. 2, Feb. 19, 1974, 13 ILM 591; OECD Council, Implementation of a Regime of Equal Right of Access and Non-Discrimination in Relation to Transfrontier Pollution, Recommendation C(77)28(Final), annex, princ. 3(a) (May 17, 1977), *reprinted in* OECD, OECD AND THE ENVIRONMENT 150, 152 (1986); Convention on Environmental Impact in a Transboundary Context, Feb. 25, 1991, 30 ILM 800 (1991).

⁹ *Cf.* Lake Lanoux Arbitration (Fr. v. Sp.) 1957 24 I.L.R. 101, ¶24.

¹⁰ Pulp Mills, *supra* note 2, ¶177; Lake Lanoux, *supra* note 9, ¶17.

¹¹ Fisheries Jurisdiction (U.K. v. Ice.), 1974 I.C.J. 3 (July 25), ¶71.

attempt to reconcile these opposing interests with pursuit of its own.¹² The Treaty regime enshrines this obligation, mandating cooperation so as to balance each party's respective rights.

Ritania's duty to cooperate was heightened by Amalea's exceptional dependence on the fisheries of the Gap, which it had historically exploited for its cultural and economic livelihood. This affords Amalea preferential fishing rights "to the extent of the special dependence of its people upon the fisheries."¹³

Ritania was therefore obligated to "take full account" of Amalea's rights, as well as any measures necessary for the conservation of the fishery.¹⁴ It is incumbent upon all States "not to allow knowingly its territory to be used for acts contrary to the rights of other States."¹⁵ In dismissing Amalean objections and the ILSA report concerning the impact of the dredging, Ritania granted the permit in disregard of Amalea's preferential fishing rights and therefore violated international law.

3. *Arguendo*, Ritania was in technical compliance with its international obligations, Ritania's course of conduct amounts to an abuse of right

If Ritania's individual acts and omissions were not *prima facie* prohibited under international law, Ritania may nonetheless be responsible under the general principle of

¹² Lake Lanoux *supra* note 9, ¶¶22, 24.

¹³ Fisheries Jurisdiction, *supra* note 11, ¶¶52, 79(4)(a).

¹⁴ Fisheries Jurisdiction, *supra* note 11, ¶72.

¹⁵ *Corfu Channel* (U.K. v. Alb.) Merits, 1949 I.C.J. 4, 22.

abuse of right.¹⁶ Under this principle, the otherwise lawful conduct of a state may become wrongful when recklessly or willfully pursued in a manner that inhibits the ability of other states to enjoy their own rights.¹⁷ The existence of the general principle is recognized in a number of municipal jurisdictions¹⁸ and finds support from the early jurisprudence of this Court and that of its predecessor.¹⁹ In its codification of the law of the sea, UNCLOS provides that States must exercise any rights, jurisdiction, and freedoms pertaining to the sea so as not to commit an abuse of right.²⁰ This doctrine was enshrined in the Gap Treaty's requirement that states not exercise their rights in a manner that unduly inhibits the exercise of the rights of the other. Ritania conducted its exploitation of natural resources in the seabed of the Malachi Gap in a way which virtually destroyed Amalea's ability to exercise its rights.

¹⁶ ANTONIO CASSESE, *INTERNATIONAL LAW IN A DIVIDED WORLD* 157 (1986); HERSCH LAUTERPACHT, *THE FUNCTION OF LAW IN THE INTERNATIONAL COMMUNITY* 296 (2011).

¹⁷ LAUTERPACHT, *supra* note 16; Alexandre Kiss, 'Abuse of Rights', in R. BERNHARDT (ED.), *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, VOL. 1, 1992, p.4.

¹⁸ HELMUT AUST, *COMPLICITY AND THE LAW OF STATE RESPONSIBILITY* 73 (2011).

¹⁹ *Free Zones of Upper Savoy and the District of Gex (Fr. v. Switz)*, 1932 P.C.I.J. (ser.A/B) No. 46. At 167; *Fisheries Jurisdiction (U.K. v. Ice.)* 1997 I.C.J. 7, 95 (Weeramantry, J., sep. op.).

²⁰ United Nations Convention on the Law of the Sea art. 300, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

4. The Court’s decision that provisional measures were not required has no bearing on Ritania’s liability to compensate Amalea

The Court’s eight-seven decision that, prior to the dredging, the circumstances did not require the exercise of provisional measures bears no relevance to the issue of Ritania’s liability for subsequent harm. The Court’s practice of requiring an urgent risk of irreparable harm when considering provisional measures²¹ poses a much higher threshold than that for establishing *ex post facto* state responsibility, and is inapplicable.

B. Ritania’s acts and omissions render it liable to compensate Amalea for economic losses caused by landslide

1. Amalea has *jus standi* to bring this claim

a) Amalea suffered a direct injury and therefore has standing

Ritania’s acts and omissions concerning dredging in the Gap have caused significant and direct harm to Amalea’s rights under the treaty and customary international law. The dredging has effectively destroyed Amalea’s rights to exploit and protect the Dorian wrasse in the Gap. Amalea can no longer exercise its preferential historic fishing rights that arise from its economic and cultural dependence on the Dorian wrasse.²² Amalea has thereby suffered direct harm to its legal interests and has standing.

b) Amalea may exercise diplomatic protection and the exhaustion of local remedies is not required

²¹ SHABTAI ROSENNE, PROVISIONAL MEASURES IN INTERNATIONAL LAW: THE INTERNATIONAL COURT OF JUSTICE AND THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA 135 (2005).

²² Fisheries Jurisdiction (Spain. v. Can.), 1998 I.C.J. 432 (Dec. 4).

Amalea may exercise *parens patriae* to protect its nationals in the fishing industry who have suffered injury through Ritania's unlawful acts and omissions.²³ The exhaustion of local remedies in Ritania would be futile, and is therefore not required.²⁴ The acts complained of were governmental, not commercial, in nature, and sovereign immunity would likely bar suit in Ritanian courts.²⁵ Furthermore, official statements made over the course of the dispute indicate that it is Ritania's position that the acts complied with both municipal and international law. Even if a Ritanian court found in favor of the Amalean nationals, it is unlikely that the award would be enforced.

Irrespective of any claim of diplomatic protection, Amalea has suffered direct harm to its interests as a state under international law and is not required to pursue local remedies.²⁶

2. Amalea suffered ascertainable harm, and compensation is the appropriate and only remedy

a) Compensation is the appropriate remedy

²³ Nottebohm Case (Liech. v. Guat.) 1955 I.C.J. 4, 13 (Apr. 6).

²⁴ Interhandel Case (Switz. v. U.S.) 1959 I.C.J. 6, 27. (Mar. 21).

²⁵ H. Fox, *Jurisdiction and Immunities*, in V. LOWE, M. FITZMAURICE (EDS.), FIFTY YEARS OF THE INTERNATIONAL COURT OF JUSTICE (1996), 210 *et seq.*

²⁶ AMERASINGHE, LOCAL REMEDIES IN INTERNATIONAL LAW 150 (2nd ed. 2004); Case Concerning the Arrest Warrant of 11 April 2000 (D.R.C. v. Belg.) 2002 I.C.J. 3, ¶40 (Feb. 14). *See also* Theodor Meron, *The Incidence of the Rule of Exhaustion of Local Remedies*, 35 BRIT Y'BOOK INT'L L 84-88 (1959).

The population of the Dorian wrasse was decimated by the dredging and Amalea has suffered drastic economic losses. A state found to be in violation of international law must “wipe out all the consequences of the illegal act and re-establish the situation which would ... have existed if that act had not been committed.”²⁷ Restitution is materially impossible; the appropriate remedy is compensation in the value of the financially ascertainable damage of both Amalea and its nationals.²⁸ This Court has jurisdiction to determine the amount of compensation, once the duty to pay compensation has been established.²⁹

b) Consequential losses resulting from the dredging are ascertainable and thus compensable

The specific damage caused by the dredging activity is well documented, substantial and ongoing. Amalea may recover compensation for loss of profits to the extent that they are ascertainable.³⁰ This includes loss of future profits where the “anticipated income stream has attained sufficient attributes to be considered a legally

²⁷ *Factory at Chorzów (Germ. v. Pol.)*, Claim for Indemnity, 1928 P.C.I.J. (Ser.A) No. 17, 29; Draft Articles on State Responsibility, art. 31.

²⁸ ILC, *Commentary on Draft Articles on State Responsibility*. art 36(2), ¶(4).

²⁹ *Corfu Channel*, *supra* note 15, at 26.

³⁰ ILC, *Commentary on Draft Articles on State Responsibility*. art 36(2). *See, e.g. Cape Horn Pigeon Case (U.S.A. v. Russia)*, RIAA 1902, 63; *Sapphire International Petroleum Ltd. v. National Iranian Oil Company* 35 I.L.R. 136 (1963).

protected interest of sufficient certainty to be compensable.”³¹ This may be evidenced through “contractual arrangements or ... a well-established history of dealings.”³²

The significant income derived from the domestic and foreign market for the Dorian wrasse was well-established and quantifiable, as evidenced by the profits of the last decade. This financial harm consequent to Ritania’s acts and omissions may therefore form the basis of compensation.

3. Ritania is liable to compensate Amalea under the principle of strict liability

It is a general principle of international law that those responsible for significant pollution are strictly liable under a “polluter pays” scheme.³³ The application of strict liability in the present case is justified on the grounds that a State such as Amalea should not be made to incur the costs of activities for which another State has received the sole

³¹ Commentary on Draft Articles on State Responsibility, *supra* note 28, art 36(2), ¶27.

³² *Id.*

³³ XUE HANQUIN, TRANSBOUNDARY DAMAGE IN INTERNATIONAL LAW 304 (2004); *See e.g.*, Cass. civ., 15 Jun. 1972, D. 1973 312, note Michael Despax (Fr.); General Principles of the Civil Law of the People’s Republic of China, art. 124; RS 814, 8 Oct. 1971, arts. 36(1), 36(4) (Switz).

economic benefit.³⁴ Ritania, as the State set to profit from the Excelsior Island project, should pay compensation as a means of “internalizing” such costs.³⁵

II. AMALEA HAS EXCLUSIVE OWNERSHIP OF THE CARGAST AND ALL RECOVERED ARTIFACTS, AND RITANIA’S DEPLOYMENT OF MILITARY VESSELS TO THE SITE VIOLATES INTERNATIONAL LAW

A. Amalea is the owner of the *Cargast* and its cargo and thus could salvage the cargo

1. As an Amalean warship, the *Cargast* and its contents are cloaked with sovereign immunity

According to the general principle of intertemporal law, any fact or situation “must be ascertained in light of the rules of law that are contemporaneous with it.”³⁶ The *Cargast* is an Amalean warship according to the custom of the era.³⁷ Seafaring nations

³⁴ *First Report on International Liability for Injurious Consequences Arising Out of Acts not Prohibited by International Law*, ¶154, U.N. Doc. A/CN.4/402 (1986).

³⁵ *Id.*; Handl, G., *State Liability for Accidental Transnational Environmental Damage By Private Persons*, 74 Am. J. Int’l L. 525, 557 (1980).

³⁶ Resolution I: The Intertemporal Problem in Public International Law, 56 ANNUAIRE INSTITUTION DE DROIT INTERNATIONAL 537 (1975).

³⁷ Natalino Ronzitti, *The Legal Regime of Wrecks and Other State-owned Ships in International Law* 74 Y.B. INT’L L. 133, 157 (2012); Report of the ILC covering the work of its eighth session (A/3159), article 32 *Commentary*, II YB ILC (1956), at 253, 280; Nordquist H. M., *United Nations Convention on the law of the Sea 1982, a Commentary*, vol. II, Martinus Nijhoff Publishers 249, ¶129.2 (1994) [hereinafter UNCLOS commentaries].

frequently commissioned private citizens under letters of marque to conduct legitimate naval warfare on behalf of the sovereign,³⁸ in lieu of fully functional naval forces.³⁹ Armed with formidable weaponry and a letter of marque, the *Cargast* was equipped and duly commissioned to “bring glory to the Kingdom of Amalea” through warfare, as evinced by the destruction of Helios in March 1510. Trade with Amalean territories merely financed the voyage in service of the sovereign, consistent with contemporaneous custom.⁴⁰ The International Tribunal for the Law of the Sea recently adopted a broad and

³⁸ HUGO GROTIUS, *DE JURE BELLI AC PACIS*, Chapter 6: on The Acquisition of Territory and Property by Right of Conquest, ¶XXIV.

³⁹ Nicholas Parrillo, *The De-Privatization of American Warfare: How the U.S. Government Used, Regulated, and Ultimately Abandoned Privateering in the Nineteenth Century* 19 *YALE J.L. & HUMAN.* 1, 2; Michael Kempe, *Globalized Piracy and International Law 1500 – 1930*, 5(3) *Journal of Global History* 353, 359 (2010); *See, e.g.*, United States Congress, *Instructions to the Commanders of Private Ships or vessels of War, which shall have Commissions of Letters of Marque and Reprisal, authorizing them to make Captures of British Vessels and Cargoes*, Bill signed by President John Hancock, April 3, 1776.

⁴⁰ *See, e.g.* *Odyssey Marine Exploration, Inc. v. Unidentified Shipwrecked Vessel*, 657 F.3d 1159 (11th Cir. 2011), *cert. denied*, 132 S. Ct. 2379 (2012), where the 11th Circuit held that the fact that a warship was also involved in commercial transactions is not dispositive, as the language of the High Seas Convention did not create a commercial activity exception to the principle of sovereign immunity. *See also Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 610-12 (1992), where the Court held that a warship

inclusive definition of a warship for the purposes of sovereign immunity,⁴¹ and we urge this court to do the same.

As the flag state of the *Cargast*, absent express abandonment Amalea's interests in the warship are protected by sovereign immunity.⁴² Amalea's inviolable rights to the *Cargast* survive its sinking and the passing of time.⁴³ Amalea's right of sovereign

would remain so classified so long as the commercial activity satisfied sovereign objectives.

⁴¹ "ARA Libertad" Case (Argentina v. Ghana) Order of Dec. 15, 2012, ITLOS 20, ¶95; James Kraska, *International Decisions*, 107 AM. J. INT'L L 7, 5 (2013).

⁴² Report of the International Law Commission covering the work of its eighth session (A/3159), article 32 *Commentary*, II Yearbook of the ILC 1956, at 253, 280. *See, e.g.*, Moore, *Digest of International Law*, vol. 2 (1906), pp. 571-82; 1926 *International Convention for the Unification of Certain Rules Relating to the Immunity of State Owned Vessels*, 10 April 1926, art. 3(1), 176 LNTS 199; and additional Protocol, 24 May 1934, item 1, 176 LNTS 215. *See also* Geneva Convention on the Territorial Sea and the Contiguous Zone, art. 22; Convention on the High Seas arts. 8,9, April 29, 1958, 450 U.N.T.S. 82 (hereinafter High Seas Convention); 1989 International Convention on Salvage, art. 4; UNCLOS, arts. 32, 95, 236. *See also The Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116 (1812).

⁴³ *See, e.g.*, International Convention on Salvage, art. 4(1). *See also*, 1902 Treaty of Friendship and General Relations Between the United States of America and Spain, art. X, July 3, 1902, 33 Stat. 2105. Admiralty courts have generally deferred to the flag state

immunity extends to the *Cargast* and its cargo, which states treat as necessarily interlinked.⁴⁴

The international community places great importance on preserving the immunity in sunken warships and cargo; states observe this rule vis-à-vis their own vessels and those of other states.⁴⁵ This general principle is essential for stability in the law of the sea,⁴⁶ and has been maintained in numerous treaties.⁴⁷ Removal of the cargo by Ritania

in determining whether the vessel has been abandoned, *see, e.g.* Valentina Vadi, *War, Memory, and Culture: The Uncertain Legal Status of Historic Sunken Warships Under International Law*, 37(2) TUL. MAR. L.J. 333, 354 (2013); Mariano J. Aznar-Gómez, *Legal Status of Sunken Warships 'Revisited.'* 9(4) SPANISH YEARBOOK OF INTERNATIONAL LAW 61 (2003); Michael White, *Sunken Warships, Historic Wrecks, Title, Abandonment, Law of Finds, Salvage Rights* 95(3) THE AMERICAN JOURNAL OF INTERNATIONAL LAW (2001) 678. *See also* International Convention on Salvage, arts. 4(1), 29; Brussels Convention for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea, art 14; *Odyssey Marine Exploration, Inc. v. Unidentified Shipwrecked Vessel*, 657 F.3d 1159, 1174 (11th Cir. 2011), *cert. denied*, 132 S. Ct. 2379 (2012).

⁴⁴ *See, e.g., Odyssey, supra* note 40, at 1180-82.

⁴⁵ *See, e.g., Sea Hunt, Inc. v. Unidentified Shipwrecked Vessel or Vessels*, 221 F.3d 634 (4th Cir. 2000), at 647, *cert. denied*, 121 S.Ct. 1079 (2001); J. Ashley Roach, *France Concedes United States Has Title to CSS Alabama*, 85 Am. J. Int'l L. 381 (1991).

⁴⁶ James Kraska, *supra* note 41, at 7.

would amount to an infringement of Amalea's sovereign immunity under international law.

2. The artifacts were lawfully captured as spoils of war, as permitted by the contemporaneous law of nations

As the use of armed force duly commissioned by the King of Amalea, the attack on Helios constituted an act of war, irrespective of either a declaration of war or retaliation by Ritania.⁴⁸ In accordance with the contemporaneous law of nations, the items captured in this act of war immediately became the property of Amalea as the authorizing sovereign.⁴⁹ Ritania cannot claim property rights in those items seized in accordance with the law of nations.⁵⁰

3. Amalea has a continuing property right to the *Cargast* and the cargo, which it has not expressly abandoned

The *Cargast* was State property, granted to Captain Verdigris for use in Amalea's service and equipped by the King with substantial weaponry for this purpose. Independent from a claim of sovereign immunity, it is a matter of longstanding

⁴⁷ See, e.g. UNESCO Convention on the Protection of Underwater Heritage, art. 2(8) [hereinafter UNESCO]; Aznar-Gómez, *supra* note 43, at 61.

⁴⁸ HANS KELSEN, PRINCIPLES OF INTERNATIONAL LAW 27-28 (2003).

⁴⁹ GROTIUS, *supra* note 38, ¶¶ II, X, XXIV. It matters not that the warship was manned by a private individual; See also René-Jean Dupuy and Daniel Vignes, *Peaceful Uses Of The Sea, Denuclearization And Disarmament*, A Handbook on the New Law of the Sea (vol. 2). Martinus Nijhoff Publishers, 1991. 1232, 1258.

⁵⁰ GROTIUS, *supra* note 38, ¶VII.

customary law that absent an express act of abandonment, Amalea's property right in the *Cargast* and cargo survives.⁵¹ As a public vessel, Amalea retains ownership of the *Cargast* and its cargo.⁵²

B. Amalea properly salvaged the *Cargast* and its cargo in compliance with international law, and Amalea may continue to hold the artifacts in trust for all mankind

1. The *Cargast* and its cargo were cloaked with the sovereign immunity of Amalea who could lawfully salvage the wreck

Cloaked with the protection of sovereign immunity, the *Cargast* and its cargo are expressly excluded from the 1989 Convention on Salvage, and therefore may be lawfully salvaged by Amalea under the provisions of its national law.⁵³ In authorizing Milo

⁵¹ Jean-Pierre Queneudec, *Chronique du droit de la Mer*, 36 ANNUAIRE FRANÇAISE DE DROIT INTERNATIONAL 744, 751 (1990); Anastasia Strati, *The Protection of the Underwater Cultural Heritage: An Emerging Objective of the Contemporary Law of the Sea*, 222; Aznar-Gómez, *supra* note 43, at 77; *See, e.g.*, Agreement Regarding the Wreck of *La Belle*, U.S.-France, March 31, 2003; Agreement Concerning the Wreck of the CSS Alabama, Oct. 3, 1989, 20 UN Law of the Sea Bulletin 26 (1992); *See also* the Memorandum of Understanding Between the Government of Great Britain and Canada Pertaining to the Shipwrecks HMS *Erebus* and HMS *Terror*, Aug. 8, 1997. For decisions of municipal courts, *See, e.g.*, *Simon v. Taylor* 2 Lloyd's Rep 338, 345 (Singapore High Court 1974).

⁵² Vadi, *supra* note 43, at 355.

⁵³ International Convention on Salvage 1989, arts. 4, 5, 25. *See also* the International Convention for the Unification of Certain Rules of Law Relating to Assistance and

Bellezza to conduct the salvage in compliance with Amalean law, Amalea conducted a lawful salvage of state property the subject of sovereign immunity.

2. Amalea owed Ritania no conventional obligations regarding cultural heritage

Ritania has not ratified the UNESCO Convention on the Protection of Underwater Cultural Heritage, a condition precedent for invoking the rights and responsibilities therein.⁵⁴ The UNESCO Convention does not codify, crystallize or create customary international law, as is evidenced by the dearth of initial state consensus and subsequent low ratification.⁵⁵ Numerous major seafaring states objected to the Convention on the basis that it failed to incorporate the important customary principle that ‘title to identifiable sunken State vessels remains with Sovereign unless expressly abandoned.’⁵⁶

Salvage at Sea and Protocol of Signature, art. 14 (1910); Aznar-Gómez, *supra* note 43, at 89-90.

⁵⁴ UNESCO, *supra* note 47, arts. 2(a), 26.

⁵⁵ Sarah Dromgoole, *Reflections on the position of the major maritime powers with respect to the UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001*, 28 MARINE POLICY 116, 118 (2013).

⁵⁶ Sean Murphy, *Contemporary Practice of the United States*, 96 Am. J Int’l L. 468 (2002); Remarks of His Excellency Jean-David Levitte, Ambassador of France, on Signing of Agreements Concerning “La Belle,” Wreck of Robert Cavelier de la Sale’s Expeditionary Ship (Mar. 31, 2003), cited in *US-France Agreement regarding the Sunken Vessel “La Belle”* 97(3) Am. J Int’l L.688, at p. 680 (2003).

Moreover, consistent with state practice and international law, the UNESCO Convention does not displace Amalea's preeminent property rights and right of sovereign immunity over the Cargast and its cargo.⁵⁷ The UNESCO Convention therefore does not bind Amalea and Ritania *inter se*.

3. Irrespective of ownership, the *Cargast* and its cargo were salvaged in compliance with international law, and Amalea may therefore hold them in trust for all humankind

To the extent that such law gives rise to customary obligations, salvage of underwater cultural heritage is not a *per se* violation of international law and the practice continues in a number of jurisdictions.⁵⁸ As “the fundamental principles of salvage law,” the International Convention on Salvage employs a broad definition of “property”, which includes cultural artifacts.⁵⁹ The preference of *in situ* preservation of cultural artifacts may be overridden in case of necessity or imminent peril.⁶⁰ Faced with imminent collapse, the salvage of the entire wreck was the only available method to ensure the protection of all items.

⁵⁷ UNESCO, *supra* note 47, art. 2(8).

⁵⁸ SARAH DROMGOOLE, UNDERWATER CULTURAL HERITAGE AND INTERNATIONAL LAW 174 (2013).

⁵⁹ UNESCO, *supra* note 47 art. 1(c); NICHOLAS GASKELL, MERCHANT SHIPPING ACT 1995, SCHEDULE 11, 21, ¶377; DROMGOOLE, *supra* note 58, at 178.

⁶⁰ UNESCO, *supra* note 47, at Annex I, General Principles, rule 1; DROMGOOLE, *supra* note 58, at 175.

Amalea's intention to hold the property in trust for all mankind is consistent with the overarching principle emphasized in international instruments that items of cultural heritage be preserved and displayed for the benefit of all.⁶¹ Amalea is under no obligation under customary international law to return the artifacts to Amalea. While there has been some repatriation of cultural property, this is by no means widespread or consistent and is matched by extensive State retention of such artifacts for museum display.⁶²

4. Amalea's salvage was not in violation of the Treaty

The Treaty confers on Ritania rights only in relation to the *natural* resources of the seabed and subsoil; in accordance with international law these rights do not extend to

⁶¹ See, e.g. UNESCO, *supra* note 47, at preamble; Convention Concerning the Protection of the World Cultural and Natural Heritage 1972, preamble; UNCLOS, *supra* note 20, art. 303(1).

⁶² JAMES NAFZIGER AND ANN NICGORSKI (EDS.) CULTURAL HERITAGE ISSUES: THE LEGACY OF CONQUEST, COLONIZATION, AND COMMERCE (2009). See, e.g. Julie Masis, "Japan's Angkor art: Booty or fair exchange?" Asia Times (Dec. 23, 2013) http://atimes.com/atimes/Southeast_Asia/SEA-01-231213.html ; Michael Boland, "National Gallery of Australia refuses to follow suit on looted Indian art" The Australian (Dec. 18, 2013), <http://www.theaustralian.com.au/arts/visual-arts/national-gallery-of-australia-refuses-to-follow-suit-on-looted-indian-art/story-fn9d3avm-1226785317556#>; Anne-Marie O'Connor, "The Nazi Art Theft Crisis in Europe" Time (Dec. 19, 2013) <http://ideas.time.com/2013/12/19/the-nazi-art-theft-crisis-in-europe/>

a wrecked ship or its cargo.⁶³ Amalea's salvage is not in breach of the Malachi Gap Treaty.

C. Ritania's deployment of military vessels in an attempt to exercise control over the artifacts violates international law

1. Military activities cannot be conducted in Amalea's EEZ without Amalea's consent

Freedom of navigation is not absolute;⁶⁴ it must be exercised with due regard for the rights and interests of the coastal state.⁶⁵ Such freedom is restricted by the the general obligation in international law that the flag state "act in conformity with its international obligations."⁶⁶ In navigating military vessels in Amalea's EEZ, as a member of the United Nations, Ritania must not use military power as a means of international dispute settlement which endangers international peace and security.⁶⁷ The UNCLOS regime, as

⁶³ International Law Commission, *Convention on the Continental Shelf with Commentaries* (1956) 2 Yearbook of the International Law Commission, 298; Patrick O'Keefe, "International Waters," in SARAH DROMGOOLE (ED.) LEGAL PROTECTION OF THE UNDERWATER CULTURAL HERITAGE: NATIONAL AND LEGAL PERSPECTIVES (1999).

⁶⁴ John Colombos, *The Unification of Maritime International Law in Time of Peace*. (1944) 21 BRIT. Y'BOOK OF INT'L L. 96; Nordquist H. M., United Nations Convention on the law of the Sea 1982, a Commentary, vol. III, Martinus Nijhoff Publishers 86, ¶87.9(k) (1994). *See also* High Seas Convention, *supra* note 42, art. 2.

⁶⁵ High Seas Convention, *supra* note 42, art. 2; UNCLOS, Art 58(3).

⁶⁶ UNCLOS Commentaries, vol. III, *supra* note 37, at 81, ¶87.9(c).

⁶⁷ Charter of the United Nations, art. 2(3); UNCLOS Commentaries, vol. III, *supra* note 37, at 90, ¶88.7(a); *General and Complete Disarmament – Study on the naval arms race*,

a codification of much of the law of the sea, is replete with provisions that restrict States' use of the sea to peaceful purposes,⁶⁸ including within the EEZ.⁶⁹

Ritania's deployment of military vessels off the Amalean coastline creates a situation of heightened political tension and uncertainty, "fraught with the danger of war."⁷⁰ It leads to great insecurity of the international system.⁷¹ It is for these reasons that a number of states require prior authorization for the passage of military vessels within their EEZ, and various states appended declarations to ratifying UNCLOS to the effect

Report of the Secretary-General (A/40/535, para. 188, 40 GAOR, annexes, agenda item 68(b) (1985, mimeo.). Reproduced in 1 NETHERLANDS INSTITUTE OF THE LAW OF THE SEA YEARBOOK 11 (1985).

⁶⁸ René-Jean Dupuy and Daniel Vignes. "Peaceful Uses Of The Sea, Denuclearization And Disarmament." A Handbook on the New Law of the Sea (vol. 2). Martinus Nijhoff Publishers, 1232, 1237 (1991). *See, e.g.*, UNCLOS, Preamble, arts 88, 141, 143(1), 147(2)(d), 155(2), 240(1)(a), 246(3), 242.

⁶⁹ UNCLOS Commentaries, vol. III, *supra* note 37, at 92, ¶88.7(d). *See* UNCLOS, art. 56(2).

⁷⁰ KEN BOOTH, LAW, FORCE AND DIPLOMACY AT SEA 157 (1985).

⁷¹ Yee Sienho, *Agora, Military Activities in the EEZ, Sketching the Debate on Military Activities in the EEZ: An Editorial Comment*, 9 CHINESE JOURNAL OF INTERNATIONAL LAW 1, 5 (2010).

that they “did not consider the Convention to permit military exercise or maneuvers ... within the EEZ without the consent of the coastal state.”⁷²

**2.To the extent that certain military activity is tolerated,
Ritania’s military patrols are not the type to be permitted
under international law**

a) *Ritania’s deployment of military vessels to
Amalea’s EEZ does not constitute innocent passage*

Military vessels are entitled to pass through international straits “provided their passage is *innocent*.”⁷³ Ritania’s relentless attempts to exert control over the area and intimidate Amalea are inconsistent with the principle of innocent passage.⁷⁴ Ritania explicitly deployed the military vessels in response to perceived harm to its interest in the *Cargast*, thereby engaging in an unlawful measure of self-help in disrespect of international law.⁷⁵

b) *To the extent that the practice occurs within EEZs,
Ritania’s military patrols are not the type of
military activity tolerated in state practice*

⁷² For example, Brazil, Cape Verde, Uruguay, in Alan Vaughan Lowe, *Some legal problems arising from the use of the seas for military purposes*, 10 MARINE POLICY 171, 179 (1986).

⁷³ Corfu Channel, *supra* note 15, at 28 [emphasis in original]; Convention on the Territorial Sea and the Contiguous Zone, *supra* note 42, art. 16(4).

⁷⁴ *Cf* Corfu Channel, *supra* note 15, at 30-31, where the Court determined that the mere passage of ships one after another in line did not constitute a breach of the rules of innocent passage.

⁷⁵ *See, e.g.* Corfu Channel, *supra* note 15, at 35.

The Respondent may submit that support for military activity in the EEZ of another state is to be found in state practice. It is necessary to distinguish between navy activities of a more routine nature such as surveillance and training, which have been more readily tolerated by states, from those of a more belligerent nature designed to intimidate.⁷⁶ Coupled with the provocative and hostile statements by its officials, the continued presence of Ritanian military vessels within 80 nmis of Amalean coastline is beyond a reasonable naval exercise and abuses the principle of freedom of navigation.⁷⁷

3. Ritania may not use military power to assert cultural heritage claims over the cargo of the *Cargast*

The Treaty does not confer on Ritania the right to exercise jurisdiction over non-natural artifacts located in the Malachi Gap. The governing law is therefore the EEZ regime, an institution of such widespread and consistent state practice to have incontestably become part of customary law.⁷⁸ Lying 80 nmis from the Amalean coastline, the *Cargast* is within Amalea's claimed EEZ and may also fall within that of Ritania. Ritania has no right to exercise exclusive jurisdiction over cultural heritage found within its own EEZ;⁷⁹ it may certainly not exercise such jurisdiction regarding the

⁷⁶ Nong Hong, UNCLOS and Ocean Dispute Settlement: Law and politics in the South China Sea 79, 87 (2012).

⁷⁷ *Id.*

⁷⁸ Continental Shelf (Libya v. Malta) Case, 1985 I.C.J. 13, 33.

⁷⁹ Moritaka Hayashi, *Archaeological and historical objects under the United Nations Convention on the Law of the Sea* 20(4) MARINE POLICY 291, 294-95 (1996).

EEZ of Amalea or area of conflicting EEZs. Ritania's conduct amounts to an unlawful assertion of power.

III. THE AMALEAN NAVY'S PURSUIT OF OSCAR DE LUZ INTO RITANIA'S EEZ, AND HIS SUBSEQUENT ARREST WAS IN COMPLIANCE WITH INTERNATIONAL LAW

A. Amalea's pursuit of Luz was lawful under the regime of hot pursuit
1. The regime of hot pursuit applies

Upon the satisfaction of certain preconditions, the right of hot pursuit allows a state's military vessels to lawfully pursue and seize vessels beyond territorial waters.⁸⁰ Originally codified by the High Seas Convention,⁸¹ it incontestably provides lawful grounds for pursuit and arrest in international law.⁸² The preconditions for lawful hot pursuit were only slightly modified in subsequent codification of the law of the sea under UNCLOS,⁸³ to account for some development in state practice. The pursuit must be

⁸⁰ High Seas Convention, *supra* note 42, art. 23.

⁸¹ Convention on the High Seas art. 23, April 29, 1958, 450 U.N.T.S. 82.

⁸² ILC, *Commentaries on the Geneva Conventions*, 285. (A/CN.4/104 Report of the International Law Commission on the Work of its Eighth Session, 23, 4 July 1956, Official Records of the General Assembly, Eleventh Session, Supplement No. 9 (A/3159), published in 1956 Yearbook of International Law Commission vol. II.) [hereinafter, "Commentaries on the Geneva Conventions"]; *M/V Saiga (No.2) (St. Vincent v. Guinea)*, Case No. 2, Order of Jan 20, 1988 2 ITLOS Repl 4,5 Separate Opinion Judge Anderson, para.; NICHOLAS M. POULANTZAS, *THE RIGHT OF HOT PURSUIT IN INTERNATIONAL LAW* XXXI (2nd ed., 2002).

⁸³ UNCLOS, *supra* note 20, art. 111.

continuous and uninterrupted and not enter the territorial sea of the territorial sea of the flag state.⁸⁴ The *Icarus*, an Amalean navy vessel, continuously pursued the *Daedalus* from Amalea's contiguous zone before arresting the vessel in Ritania's EEZ. The elements in contention are the grounds upon which the pursuit was commenced, the reasonability of those grounds and whether sufficient warning was delivered prior to pursuit.

2. The *Icarus* commenced hot pursuit on suspicion of a violation of Amalean immigration laws, and while Oscar de Luz was within Amalea's contiguous zone

As the coastal state, Amalea may commence hot pursuit within its contiguous zone for suspected violations of "rights the protection of which the contiguous zone was established."⁸⁵ This extends *inter alia*, to suspected violations of customs and immigration regulations.⁸⁶ Amalea established a contiguous zone of 24 nmi to exercise jurisdiction over violation of its immigration laws. Suspecting Luz of human trafficking, the *Icarus* pursued Luz for suspected violations of the very laws Amalea's contiguous zone was established to protect.⁸⁷

⁸⁴ High Seas Convention, *supra* note 42, art. 23(1),(2).

⁸⁵ *Id.* at 23(1)

⁸⁶ Convention on the Territorial Sea and Contiguous Zone, *supra* note 42, art. 24.

⁸⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime art 11(1), UNGA-Res.55/25, Annex II, Nov.15,2000, 55 UN-GAOR, Supp.N o.49, 60,UN -Doc.A/55/49 [hereinafter Trafficking Protocol].

While the High Seas Convention previously provided for a contiguous zone of up to 12 nmi from a state's coastline, customary international law has evolved to extend this area to 24 nmi, a development which UNCLOS subsequently codified.⁸⁸ Accordingly, Amalea used radar to verify Luz's location was 23 nmi from Amalea's coastline and well within Amalea's contiguous zone prior to commencing pursuit.⁸⁹

3. Amalea's grounds for suspecting Luz of human trafficking were reasonable

The suspected violation of a state's law must be premised upon "good reason" for the hot pursuit to be lawful."⁹⁰ Suspected imminent violation of law based on reasonable grounds will also suffice.⁹¹ Prior to commencing hot pursuit, Captain Haddock was alerted by the Amalean authorities that the *Daedalus*, a stolen vessel with a crew of ten and an undetermined number of others on board, had fled the *Rosehill* incident towards Amalea and was suspected of human trafficking. Luz fled toward Ritania upon being warned to stop by a military vessel. Based on the totality of the circumstances, the *Icarus* had good reason to suspect the *Daedalus* of human trafficking.

⁸⁸ United Nations Convention on the Law of the Sea art. 33(2), Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS]; OUDE ELFERINK, ALEX G. AND ROTHWELL, DONALD R. THE LAW OF THE SEA AND POLAR MARITIME DELIMITATION AND JURISDICTION 112 (2001).

⁸⁹ UNCLOS, *supra* note 20, art. 23(2).

⁹⁰ UNCLOS, *supra* note 20, art. 23(1).

⁹¹ MCDUGAL & BURKE, *supra* note 83, at 896; UNCLOS Commentaries vol. III, *supra* note 37, at 111.9(b).

4. The *Icarus* gave sufficient warning to the *Daedalus* prior to commencing pursuit

As a precondition for lawful hot pursuit, a ship must issue a visual or auditory signal when commencing pursuit outside of a “distance which enables it to be seen or heard by the foreign ship.”⁹² The type of signal is immaterial if followed by the timely actual appearance of the arresting vessel.⁹³ Captain Haddock issued an order to the *Daedalus* to stop over several different radio frequencies commonly used by vessels in the Strait. The *Icarus* was within visual distance from the *Daedalus* when it issued the warning. State practice supports the use of radio signals to issue orders to stop.⁹⁴ In *R v. Mills*, a British court held that radio was the standard method of communication between vessels today and that courts must allow for the use of radio as a lawful signal for the commencement of hot pursuit.⁹⁵

B. Amalea’s Arrest of Luz Complied with International Law

1. Amalea’s arrest of Oscar de Luz was lawful as a consummation of hot pursuit

The arrest consummating hot pursuit is properly seen as a “continuation of an act of jurisdiction which has been begun...within the territory itself ...it is necessary to permit

⁹² High Seas Convention, *supra* note 42, art. 23(3).

⁹³ MCDUGAL & BURKE, *supra* note 91, at 897.

⁹⁴ Rachel Baird, *Arrests in a Cold Climate (Part 2)-Shaping hot pursuit through State practice*, Antarctic and Southern Ocean Law and Policy Occasional Papers, 10-11, http://eprints.usq.edu.au/5604/2/Baird_ASOLP_2009_AV.pdf.

⁹⁵ William C. Gilmore, *Hot Pursuit: The Case of R v. Mills and Others*, 44 Int’l & Comp. L.Q. 949, 958.

it in order to enable the territorial jurisdiction to be efficiently exercised.”⁹⁶ In *M/V Saiga*, the ITLOS stated that the “arrest of a ship in hot pursuit” was an “exercise of appropriate jurisdiction.”⁹⁷ Luz’s hot pursuit and arrest is a lawful application of Amalea’s rights to punish and prevent violations of its immigration laws.⁹⁸

2. Amalea’s Arrest of Oscar de Luz was Lawful as an Exercise of Universal Jurisdiction

a) Human trafficking is a valid basis for universal jurisdiction

Universal jurisdiction confers extraterritorial jurisdiction on all states over crimes of such gravity and magnitude to offend all mankind.⁹⁹ Universal jurisdiction over the crime of slavery is recognized in customary international law.¹⁰⁰ It is codified in the High Seas Convention, which specifically permits the boarding of vessels in suspicion of slavery.¹⁰¹

⁹⁶ JAMES CRAWFORD, *BROWNIE’S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 309 (8th ed., 2012).

⁹⁷ *M/V Saiga*, *supra* note 82, at ¶106.

⁹⁸ High Seas Convention, *supra* note 42, art. 33.

⁹⁹ *Attorney General of Israel v. Eichmann*, 36 I.L.R. 277 (Sup.Ct. Israel 1962) [hereinafter *Eichmann*]. *See, also* ROSALYN HIGGINS, *PROBLEMS AND PROCESS* 58 (1994); *U.S. v. Demjanjuk*, 767 F.2d 922 (6th Cir. 1985);

¹⁰⁰ M. CHERIF BASSIOUNI, *CRIMES AGAINST HUMANITY IN INTERNATIONAL CRIMINAL LAW* 240 (1999).

¹⁰¹ High Seas Convention, *supra* note 42, art. 22(b).

Luz was suspected of human trafficking, “the modern equivalent of slavery,”¹⁰² wherein perpetrators exercise ownership and control over victims.¹⁰³ The horrific nature of this crime has been recognized as permitting the exercise of universal jurisdiction over suspected violators in international instruments.¹⁰⁴

The definition of slavery within the Convention on the High Seas and UNCLOS should be interpreted to include human trafficking, consistent with international law. To do otherwise would lead to an unreasonable interpretation of the High Seas Convention inconsistent with international law.¹⁰⁵

b) Piracy gives rise to universal jurisdiction

Piracy is committed through illegal acts of violence performed for private ends against another vessel, or persons or property thereupon, which occurs outside a state’s

¹⁰² JAMES CRAWFORD, *BROWNLIE’S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 315 (8th ed., 2012).

¹⁰³ Trafficking Protocol, *supra* note 89, art 3(1); CONVENTION TO SUPPRESS THE SLAVE TRADE AND SLAVERY 1926; SUPPLEMENTARY CONVENTION ON THE ABOLITION OF SLAVERY, THE SLAVE TRADE AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY 1956; STEVEN RATNER & JASON ABRAMS, *ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW* 112 (2001).

¹⁰⁴ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 21 Mar. 1950, art. 11, 96 U.N.T.S. 271; Princeton Principles on Universal Jurisdiction, Principle 2(1), pg. 29.

¹⁰⁵ Vienna Convention on the Law of Treaties art. 33, May 23, 1969, 1155 U.N.T.S 331 [hereinafter VCLT].

territorial jurisdiction.¹⁰⁶ Attempted and threatened violence, be it chase or intimidation, will suffice to establish the requisite illegal acts of violence.¹⁰⁷ The law of nations has long included commission of murder within the category of violence amounting to piracy.¹⁰⁸ Piracy is an international crime punishable by all nations.¹⁰⁹ An authorized state vessel may pursue, board and arrest a vessel outside state jurisdiction where there are reasonable grounds for suspecting that the vessel is engaged in piracy.¹¹⁰ These provisions are equally applicable within the EEZ.¹¹¹

Sailing the *Daedalus*, a stolen vessel, Luz rammed the *Icarus* while within Ritania's EEZ, thereby committing an act of violence against the *Icarus* and causing the deaths of 127 individuals. There is no evidence to suggest that Luz's actions were in any

¹⁰⁶ High Seas Convention, *supra* note 42, arts. 14, 15; UNCLOS, *supra* note 42, art. 101.

¹⁰⁷ Oppenheim, *supra* note 121, at 328-29, § 276; *see also*, 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation [hereinafter SUA], art. 3*bis*(a), (c).

¹⁰⁸ Act of Congress of 1790, ch. 9, section 8; *United States v. Smith*, 18 U.S. 153 (1820).

¹⁰⁹ *United States v. Smith*, 18 U.S. 153 (1820); The Case of the S.S. "Lotus" (France/Turkey) (Diss. Op. Moore), 1927 P.C.I.J. Series A No.10, p. 65,70 [hereinafter Lotus Case].

¹¹⁰ High Seas Convention, *supra* note 42, art. 19; *Cf.* UN Sec. Council Res. 1950, para. 19, and Res. 1851.

¹¹¹ UNCLOS, *supra* note 42, art. 58(2); Commentaries on the LOS Conventions, *supra* note 82, at 282.

way authorized. There was reasonable grounds for the *Icarus* to suspect piracy and Amalea's arrest was lawful.

IV. 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

A. Amalea has jurisdiction to try Luz over the Rosehill incident and exercised this jurisdiction reasonably

1. Ritania does not have exclusive jurisdiction over Luz, and Amalea has concurrent jurisdiction to conduct the trial

Ritania does not have exclusive to jurisdiction to conduct the trial as under the High Seas Convention, this is only conferred on the flag state vis-à-vis the “master” or other persons “in service of the ship.”¹¹² Treaties should not be interpreted so as to produce unreasonable results.¹¹³ A master is a licensed mariner or professional seaman in ultimate command of the vessel.¹¹⁴ Luz had stolen the vessel and should not be afforded the status of master. The element “in service of the ship” should be restrictively interpreted as referring only to an individual in lawful operation of a vessel, lest states be deprived of remedy for unlawful attacks on their vessels at sea. Such an interpretation would lead to the unreasonable result of permitting intentional striking of military vessels where the flag state of those responsible chooses not to pursue. Ergo, exclusive jurisdiction does not arise on the facts.

¹¹² High Seas Convention, *supra* note 42, art. 19.

¹¹³ VCLT, *supra* note 121, art. 33.

¹¹⁴ ARAGON, JAMES R.; MESSER, TUULI ANNA *MASTER'S HANDBOOK ON SHIP'S BUSINESS* 3, (2001).

As recognized in the *Lotus Case*, states have a “wide measure of discretion” to apply their jurisdiction extraterritorially absent an express prohibitive rule to the contrary.¹¹⁵ There exists no express prohibition against a flag state asserting jurisdiction over an incident involving an intentional collision with its military vessel. Amalea is therefore permitted to exercise jurisdiction over the collision with the *Icarus*.

Support for Amalea’s exercise of concurrent jurisdiction as the flag state of the victim vessel, is found in Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation.¹¹⁶ SUA was concluded under the auspices of the International Maritime Organization, of which both Amalea and Ritania are members, and has been ratified of 156 states, demonstrating widespread state support. In an effort to better combat criminal incidents on the high seas, SUA has expanded the concept of which states may assert jurisdiction for serious criminal conduct at sea.¹¹⁷ States may assert jurisdiction over any person who *inter alia* causes damage to a ship when that damage is likely to endanger the vessels safe navigation¹¹⁸ or has caused injury or

¹¹⁵ The Case of the S.S. “Lotus” (France/Turkey) 1927 P.C.I.J. Series A No.10, p. 65,84 - 85 [hereinafter Lotus Case]

¹¹⁶ 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation [hereinafter SUA], art. 3*bis*(a).

¹¹⁷ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 21 Mar. 1950, 96 U.N.T.S. 271

¹¹⁸ *Id.*, art. 3(c).

death.¹¹⁹ Luz destroyed the *Rosehill*, which imperiled its navigation and caused the death of 127 individuals. Absent an express prohibitive rule, Amalea therefore may exercise concurrent jurisdiction consistent with the attitude of the international community.

2. Amalea's exercise of extraterritorial jurisdiction was in accordance with equitable principles and not unreasonable

Equitable principles are general principles of law that the court can apply under Article 38(1)(c) of the Statute for the International Court of Justice.¹²⁰ As the ICJ noted in the *Tunisia/Libya Continental Shelf* case, "it is bound to apply equitable principles as part of international law, and to balance up the various considerations which it regards as relevant in order to produce an equitable result."¹²¹ Because Ritania's laws do not provide for prosecution of offenses committed outside the country's territorial waters, if Amalea was not allowed to try Luz, he would avoid trial for his crimes. The exercise of jurisdiction by Amalea was therefore not unreasonable.

3. The trial was a lawful exercise of jurisdiction under the Effects Doctrine

The impact of Luz's conduct on Amalea is substantial, with 89 Amaleans killed, and Amalean fisherman and industry put seriously at risk by the explosion on the island. According to the effects doctrine, a state may exercise jurisdiction when an offence committed extraterritorially nonetheless features a constituent element or causes some

¹¹⁹ *Id.*, art. 3(g).

¹²⁰ Statute of the Int'l Ct. of Justice art. 38(1)(c), Oct. 24, 1945, 3 Bevens 1179 [hereinafter ICJ Statute]; *Diversion of Water from the Meuse Case (Neth. v. Bel.)*[1937], P.C.I.J. (Ser. A/B) No. 70.

¹²¹ MALCOLM N. SHAW, *INTERNATIONAL LAW* 108 (6th ed. 2008).

harmful effect in the regulating state,¹²² or when rights and interests of a state's citizens are prejudiced.¹²³ This approach was first articulated in the *Alcoa* case in 1945,¹²⁴ and later recognized in the *Lotus* case.¹²⁵ It has since been recognized in the jurisprudence of municipal legal systems across the international community.¹²⁶

The harmful effects of Luz's conduct in the Gap on Amalean rights and interests, and those of its citizens, are clear.

4. The trial was a lawful exercise of jurisdiction under the passive personality principle

Of the 127 deaths caused by Luz, 89 were Amalean nationals. According to the principle of passive personality, a state may exercise jurisdiction over a non-national for criminal conduct which caused harm to a national of that state.¹²⁷ This principle has been applied by states since the late 19th century,¹²⁸ and is today met with "relatively little

¹²² *Lotus*, *supra* note 126, at 85; *See also* William Dodge, *Understanding the Presumption Against Extraterritoriality*, 16 Berk. J. Int'l L. 85, 113-114 (1998).

¹²³ Clagett, Title III of the Helms-Burton Act is Consistent with International Law, 90 A.J.I.L. 434,435 (1996); CRAWFORD, *supra* note 98, at 463.

¹²⁴ *United States v. Aluminum Company of America*, 148 F. 2d 416 (2nd Cir. 1945).

¹²⁵ CRAWFORD, *supra* note 98, at 463

¹²⁶ POULANTZAS, *supra* note 82, at 72. HIGGINS, *supra* note 101, at 75.

¹²⁷ CRAWFORD, *supra* note 98, at 461.

¹²⁸ *Id.*

opposition.”¹²⁹ A consensus has developed supporting its use in certain circumstances of grave harm to individuals of the prosecuting state.¹³⁰ Passive personality jurisdiction has also been adopted in *aut dedere aut judicare* provisions in criminal law treaties,¹³¹ and municipal legislation in a number of domestic jurisdictions.¹³²

5. Amalea had jurisdiction to try Luz for crimes of piracy under the Convention on the High Seas and as a matter of Universal Jurisdiction

Luz engaged in piracy in the manner described above.¹³³ In addition to conferring universal jurisdiction to arrest, the High Seas Convention permits the courts of a state that seizes a pirate to “decide the penalties to be imposed.”¹³⁴ Universal jurisdiction to arrest for piracy was the original crime that the law of nations imbued with universal jurisdiction.¹³⁵ The fact that the actual charges were for murder rather than piracy *per se*

¹²⁹ MALCOLM N. SHAW, *INTERNATIONAL LAW* 666 (6th ed. 2008).

¹³⁰ Danielle Ireland-Piper, *Prosecutions of Extraterritorial Criminal Conduct and the Abuse of Rights Doctrine*, 9 *Utrecht Law Review* 68, 69 (2013).

¹³¹ SUA, *supra* note 121; CRAWFORD, *supra* note 98, at 461.

¹³² Danielle Ireland-Piper, *Prosecutions of Extraterritorial Criminal Conduct and the Abuse of Rights Doctrine*, 9 *Utrecht Law Review* 68, 71-72 (2013); ROSALYN HIGGINS, *PROBLEMS AND PROCESS* 68 (1994);

¹³³ *See supra*, [III.2(b)].

¹³⁴ High Seas Convention, *supra* note 42, art. 19.

¹³⁵ CRAWFORD, *supra* note 98, at 468; *The Princeton Principles on Universal Jurisdiction*, 2001 *Commentary*, 45.

is immaterial.¹³⁶ State practice demonstrates that trials for extraterritorial piracy have often been conducted despite the accused being charged with other offences.¹³⁷

6. Amalea's exercise of jurisdiction over Luz is permitted under the principle of *male captus bene detentus*

Even if Luz's arrest was improper, "unlawful apprehension of a suspect by state agents acting in the territory of another state is not a bar to the exercise of jurisdiction."¹³⁸

The principle of *male captus bene detentus* provides that unlawful seizure does not taint the exercise of adjudicative jurisdiction.¹³⁹ This doctrine has strong roots in Roman Law and has been applied by municipal courts for over 100 years.¹⁴⁰

In the *Eichmann* case, the Israeli courts established jurisdiction, irrespective of the illegality of the defendant's initial abduction from Argentina.¹⁴¹ This principle has been

¹³⁶ Cf. SUA, *supra* note 121, art. 5.

¹³⁷ Benjamin Weisner, *Somali Pirate Sentenced to Nearly 34 Years*, N.Y. TIMES, Feb. 16, 2011, http://cityroom.blogs.nytimes.com/2011/02/16/somali-pirate-sentenced-to-nearly-34-years/?_r=0.

¹³⁸ SHAW, *supra* note 131, at 80; Lotus Dissent, *supra* note 113, at 70.

¹³⁹ SHAW, *supra* note 131, at 680.

¹⁴⁰ M. Cherif Bassiouni, *Unlawful Seizures and Irregular Rendition Devices as Alternatives to Extradition*, 7 VAND. J. TRANSNAT'L L. 25, 45 (1973).

¹⁴¹ Covey Oliver, *The Attorney-General of the Government of Israel v. Eichmann*, 56 The American Journal of International Law, 805 (1962). Eichmann, pg. 884.

affirmed in the decisions of numerous domestic¹⁴² and international tribunals.¹⁴³

Bringing to trial those accused of universally condemned offences is of the utmost importance, and any illegality in the seizure of the accused should be “decoupled” from the exercise of jurisdiction over the accused.¹⁴⁴

Ritania’s penal code does not extend to crimes outside national jurisdiction. The murder of 127 individuals, and the catastrophic damage to Amalean state property, would remain unpunished had Amalea not had jurisdiction to conduct the trial. The question of jurisdiction over Luz is inseparable from the need to balance the potential encroachment upon Ritanian sovereignty against the injustice of allowing Luz to remain unapprehended in the face of this criminal conduct. Amalea may exercise jurisdiction to try over Luz.

B. Amalea owes no obligation to return Oscar de Luz to Ritania

1. Amalea fulfilled its obligation under the maxim *aut dedere aut judicare*

Irrespective of the legality of the arrest and trial, Amalea is not required to return Ruz and may retain him in custody. When multiple states have concurrent jurisdiction over an individual, the state which has custody of a fugitive is required to either try or

¹⁴² See, e.g. *United States v. Alvarez-Machain*, 505 U.S. 655 (1992).

¹⁴³ See, e.g. *Prosecutor v. Nikolić*, Case No.IT-94-2-AR73, (1995); *Prosecutor v. Simić*, Case No.IT-95-9-PT (2002); *Prosecutor v. Mrksić*, Case No.IT-95-13a-PT (1996). See further Edwin D. Dickinson, *Jurisdiction Following Seizure or Arrest in Violation of International Law*, 28 AM J. INT’L L. 231, 239 (1934).

¹⁴⁴ HIGGINS, *supra* note 101, at 72.

extradite him under the maxim *aut dedere aut judicare*.¹⁴⁵ Assuming arguendo that Ritania has concurrent jurisdiction to try Luz, Amalea tried him for his crimes and therefore has no obligation to return him.

2. Ritania's request amounts to a request for the extradition of Luz, which Amalea is under no obligation to perform

Extradition is the surrender of an individual by one state upon the demand of another, to be dealt with according to the laws of the latter.¹⁴⁶ An obligation to extradite arises only upon express and binding agreement between the two states.¹⁴⁷ Absent such an agreement, customary international law imposes no obligation upon a state to extradite, and extradition remains solely a matter of comity.¹⁴⁸ There are no treaties of extradition or mutual legal assistance between Amalea and Ritania, and Amalea is therefore under no obligation to return Luz to Ritania.

3. If the Court finds that Ritania has jurisdiction over Luz, the principle of *ne bis in idem* precludes Luz's return

The principle of *ne bis in idem* would preclude Luz's extradition because he has already been tried for offences relating to the *Rosehill* incident.¹⁴⁹ *Ne bis in idem*, or double jeopardy, is designed to protect individuals from multiple prosecutions for the

¹⁴⁵ M. CHERIF BASSIOUNI INTERNATIONAL EXTRADITION 35, (2002).

¹⁴⁶ BLACK'S LAW DICTIONARY 126 (9th ed. 2009).

¹⁴⁷ M. CHERIF BASSIOUNI INTERNATIONAL EXTRADITION 35, (2002); SAMUEL S. PUFFENDORF, THE ELEMENTS OF UNIVERSAL JURISPRUDENCE 24 (W. Oldfather trans., 1931) (1672).

¹⁴⁸ SHAW, *supra* note 131, at 686; *Hilton v. Guyot*, 159 U.S. 113, 163-164 (1895).

¹⁴⁹ *Ireland-Piper*, *supra* note 141, at 79.

same offence. This principle has been incorporated into international law through the statutes for the international criminal courts.¹⁵⁰ Returning Luz to face trial in Ritania would be in direct violation of this principle.

¹⁵⁰ YASMIN Q. NAQVI, IMPEDIMENTS TO EXERCISING JURISDICTION OVER INTERNATIONAL CRIMES 287-88 (2010).

Prayer for Relief

The Respondent requests that the Court adjudge and declare that:

A. 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;

B. 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;

C. The Amalean Navy's pursuit of Oscar de Luz into Ritania's EEZ, and his subsequent arrest, were in compliance with international law; and

D. 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.