

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 RESPONDENT

TABLE OF CONTENTS

INDEX OF AUTHORITIES	IV
STATEMENT OF JURISDICTION	X
QUESTIONS PRESENTED	11
SUMMARY OF PLEADINGS	17
PLEADINGS	20
I. RITANIA’S CONDUCT CONCERNING THE EXCELSIOR ISLAND PROJECT COMPLIED WITH INTERNATIONAL LAW, AND RITANIA HAS NO OBLIGATION TO COMPENSATE AMALEA FOR ANY LOSS OR DAMAGE ALLEGEDLY CAUSED BY THE 2009 LANDSLIDE	20
A. <i>Ritania’s conduct with respect to the Excelsior Island project complied with international law and the Malachi Gap Treaty</i>	20
1. Ritania’s risk assessment regarding the Excelsior Island project is consistent with international law.....	21
a. Ritania was not required to perform an EIA on EIGP’s proposed dredging activity under customary international law	22
b. Ritania’s risk assessment complied with the Malachi Gap Treaty	22
2. Ritania’s notification to and consultation with Amalea regarding EIGP’s dredging project comported with international law	23
3. This Court’s denial of provisional measures confirms the reasonableness of Ritania’s conduct regarding the Excelsior Island project.....	24
4. Ritania is not bound by Amalea’s extension of its Coastal Fisheries Protection Act to the Gap	25
5. Ritania acted in good faith regarding the construction of Excelsior Island.....	26
B. <i>Ritania is not liable to compensate Amalea for economic losses caused by the landslide</i>	26
1. Amalea lacks standing to bring a claim before this Court.....	27
2. The landslide is not attributable to Ritania	27
3. Ritania is not strictly liable for the losses caused by the landslide.....	28
4. Compensation is not the appropriate remedy	29
a. Amalea is not entitled to consequential damages	29
b. Amalea did not fulfil its duty to mitigate damages following the landslide.....	30
II. THE CORONET AND STOLEN ARTIFACTS PROPERLY BELONG TO RITANIA WHICH HAS THE RIGHT TO PROTECT THEM AND AMALEA’S SALVAGE OF THE <i>CARGAST</i> IS UNLAWFUL	30
A. <i>The cargo and artifacts of Ritanian origin properly belong to Ritania</i>	30
1. Ritania retains title to the crown and artifact stolen from Helios	30
2. The <i>Cargast</i> was not a state-operated vessel entitled to sovereign immunity.....	32
3. Amalea’s salvage of the <i>Cargast</i> is unlawful	32
a. Amalea’s salvage of the <i>Cargast</i> violates the International Salvage Convention...	32

b. Regardless of Ritania’s ownership, Amalea’s salvage of the Cargast is unlawful because the cargo is Ritanian cultural heritage.....	33
B. <i>The return of Ritania’s property and objects of cultural heritage is the proper remedy</i>	34
III. THE AMALEAN NAVY’S PURSUIT AND ARREST OF OSCAR DE LUZ WAS ILLEGAL.....	35
A. <i>Amalea’s hot pursuit of Oscar de Luz was illegal</i>	36
1. Amalea did not reasonably suspect anyone aboard the <i>Daedalus</i> of violating any law or regulation for which Amalea had established its contiguous zone.....	36
2. The <i>Icarus</i> did not give an adequate visual or auditory signal prior to commencing pursuit	37
B. <i>Amalea’s arrest of Oscar de Luz was illegal</i>	38
1. Amalea did not have universal jurisdiction over Luz.....	38
a. Human trafficking is not slave trading	38
b. Human trafficking is not a universal jurisdiction crime	39
c. Amalea did not have reasonable grounds to suspect Oscar de Luz of piracy or any other universal jurisdiction crime	41
2. Even if Amalea’s pursuit was legal, Amalea failed to exercise the requisite diligence in arresting the <i>Daedalus</i>	41
IV. AMALEA WAS WITHOUT JURISDICTION TO TRY LUZ IN CONNECTION WITH THE <i>ROSEHILL</i> COLLISION AND MUST RETURN HIM TO RITANIA IMMEDIATELY.....	43
C. <i>Amalea’s trial of Oscar de Luz for acts related to the Icarus and Rosehill collisions was illegal</i>	43
1. Under the High Seas Convention, Ritania has exclusive adjudicative jurisdiction over Oscar de Luz as a Ritanian national and the <i>Daedalus</i> as a Ritanian-flagged ship	43
2. Ritania has exclusive jurisdiction over safety violations within the perimeter of Excelsior Island to Ritania	45
3. Even if Amalea had concurrent jurisdiction, its exercise of adjudicative jurisdiction over Oscar de Luz is unreasonable	46
4. Because the pursuit and arrest of Oscar de Luz were made in violation of international law, Amalea’s trial of Luz was <i>a fortiori</i> illegal.	48
D. <i>Amalea must return Oscar de Luz to Ritania immediately</i>	49

INDEX OF AUTHORITIES

Treaties and Other International Agreements

1989 INTERNATIONAL CONVENTION ON SALVAGE, art. 25, 1953 U.N.T.S. 193.....	33
Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation art. 9, March 10, 1988, 1678 U.N.T.S. 201.....	35
CONVENTION ON ENVIRONMENTAL IMPACT IN A TRANSBOUNDARY CONTEXT (Espoo Convention), app. 1, 30 I.L.M. 800 (1991).....	22, 29
Convention on Fishing and Conservation of the Living Resources of the High Seas, art. 6(4), 1966 U.N.T.S 286 (Apr. 29, 1958).	26
Convention on the Continental Shelf art. 71, Apr. 28, 1958, 499 U.N.T.S. 311	26
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Convention on the High Seas, <i>supra</i> note 73, arts. 6, 11.....	35
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Factory at Chorzow, 1927 P.C.I.J. (ser. A) No. 17, at 47-48 (Sept 13).....	50
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Mavrommatis Jerusalem Concessions (Greece v. U.K.), 1925 P.C.I.J. (ser. A) No. 5 (Mar. 26) 24	
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North Sea Continental Shelf (Fed. Rep. Germ. v. Den.; Fed. Rep. Germ. v. Neth.) 1969 I.C.J. 3	20
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29, 30	
Table Recapitulating the Status of the Convention and of the Related Agreements, Jan. 10, 2014	
.....	43
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11 I.L.M. 1416 (1972).....	20
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Ann. Dig. 191, No. 77, (Fra.).....	48
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SEA 28 (1989).....	41, 46
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H.E. JOSÉ LUIS JESUS, <i>Protection of Foreign Ships against Piracy and Terrorism at Sea</i> , 18 INT’L J. MARINE & COASTAL L. 363, 388 (2003)	48
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STATEMENT OF JURISDICTION

Amalea and Ritania submit the present dispute to this Court by Special Agreement, dated September 17, 2013, pursuant to Article 36(1) and Article 40(1) of the Court's Statute. The parties have agreed to the contents of the Compromis submitted as part of the Special Agreement as modified by the Correction and Clarifications thereto. Both parties will accept the judgment of this Court as final and binding and shall execute it in good faith in its entirety.

QUESTIONS PRESENTED

The Republic of Ritania respectfully asks this Honorable Court:

- I. Whether Ritania's conduct with respect to the Excelsior Island project complied with its obligations under the Malachi Gap Treaty and international law and accordingly, whether Ritania is obligated to Amalea for economic losses caused by the 2009 landslide;
- II. Whether the cargo and artifacts of Ritania origin recovered from the wreck of the *Cargast* belong to Ritania , whether Ritania has the right to patrol to protect those artifacts and whether Milo Bellezza's salvage of the *Cargast* was unlawful;
- III. Whether Amalea's pursuit of Oscar de Luz into Ritania's EEZ and subsequent arrest were illegal;
- IV. Whether Amalea had jurisdiction to prosecute Oscar de Luz for his connection with the *Rosehill* incident and whether they must return him to Ritania immediately.

STATEMENT OF FACTS

Background

The Republic of Ritania is separated from the island state of Amalea by the Strait of Malachi (“Strait”) which ranges from 217-286 nmi wide. In the 1940s, Ritania discovered petroleum underneath the Strait and began negotiating with Amalea over the dominion of natural resources on the high seas but no resolution was reached. In 1956, Ritania issued a proclamation claiming rights to the natural resources of the subsoil and seabed contiguous to its coasts.

(Compromis ¶¶1-7.)

Both Amalea and Ritania signed the four Geneva Conventions on the Law of the Sea in 1958, ratifying them in 1961 and 1962, respectively. 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). Amalea signed UNCLOS in 1983 and claimed a 200 nmi EEZ the next year. (Compromis ¶¶8-11.)

Ritania and Amalea negotiated to resolve conflicting EEZ claims. In January 1993, both ratified the Malachi Gap Treaty (“Treaty”), which apportioned their rights with respect to a 1,200 square nmi area of the Strait. Ritania has the right to explore, exploit, and protect the natural resources of the seabed and subsoil; Amalea has reciprocal rights to the resources in the super-adjacent waters. Each Party agreed cooperate and due regard to the other’s interests in the Gap.

(Compromis ¶15; Annex B.)

Subsequently, Amalea amended its Coastal Fisheries Protection Act (CFPA), to apply to the Malachi Gap, requiring environmental impact assessments (EIAs) for all activities that could adversely affect Amalea’s sovereign rights. The Sirius Plateau in the Gap, is home to the Dorian

wrasse (“Wrasse”), a fish exclusive to the area and popular part of Amalean cuisine and export. (Compromis ¶¶12-19.)

In 2006, Ritanian company, Excelsior Island Gas & Power Limited (EIGP) proposed the construction of an artificial island in Ritania’s EEZ using sand reclaimed from the Gap. The proposed Excelsior Island would be used for energy production and exploitation of the Erebus gas field. In 2008, EIGP submitted an environmental impact assessment (EIA) on the project, as required by Ritanian law. (Compromis ¶¶14-23.)

Amalea claimed the project required Amalea’s consent and that EIGP’s EIA was inadequate for failing to address the potential effects of dredging on the Gap or its fish. Amalea also forwarded a report, prepared by the International League for Sustainable Aquaculture (ILSA) to the Ritanian ambassador. The report concluded that major dredging in the Gap could interfere with marine life and potentially cause a landslide. The Ambassador responded her department was not authorized to interfere with the independent regulatory role of the governmental authority. (Compromis ¶¶21-25)

At Ritania’s proposal, the states began negotiations in 2008 but reached a stalemate in July 2009. On August 1, 2009, after consultation with all competent government authorities, Ritania issued EIGP a permit to construct Excelsior Island. In response, Amalea sought provisional measures from this Court but was denied. (Compromis ¶¶23-27; Clarification ¶6.)

On December 10, 2009, an underwater landslide resulted from EIGP’s dredging, changing the composition of the Gap’s water. Amalea began a monitoring program for the fish of the Sirius Plateau. Early studies showed an immediate impact on the Wrasse population, but Amalea continued its fishing, even as Wrasse levels continued to fall. Only after ILSA declared

the Wrasse endangered in March 2012, did Amalea halt commercial fishing. (Compromis ¶¶28-30; Clarification ¶4.)

The Looting of the *Cargast*

Centuries ago, the King of Amalea granted Baldric Verdigris a letter of marque and provided him with the *Cargast*, outfitted with a battery of cannons and weapons, “to bring glory to the Kingdom of Amalea.” Private investors, hoping to profit from the *Cargast*’s procurement of foreign treasure, funded Verdigris’ crew. (Compromis ¶32.)

In 1510, after a lucrative trading mission, Verdigris pillaged the Ritanian capital of Helios, setting fire to the town, killing hundreds of people, and looted prized religious and cultural icons. Among the plunder was the Sacred Helian Coronet, which is said to be a gift from the gods to the first Ritanian king. The *Cargast* was lost at sea before reaching Amalea. The lost coronet remains the central symbol on Ritania’s flag and enjoys mythical importance in Ritanian iconography. (Compromis ¶33.)

In January 2010, Ritania discovered the wreck of the *Cargast*, in the Gap. Amalea claimed ownership over the *Cargast* and its cargo to the objection of Ritania. Ritania expressed hope for the return of its artifacts and reserved the right to send naval patrol vessels to prevent the desecration of Ritania’s national heritage. (Compromis ¶¶31-35.)

In January 2011, the Amalea announced that it had taken five items from the *Cargast*, including what appeared to be the coronet, in a dive by Swiss treasure hunter Milo Bellezza, who claimed the *Cargast* was in danger of collapse. Ritania strenuously protested Amalea’s seizures of the artifacts and Amalea’s subsequent licensing of Bellezza to capture more items from the *Cargast*. Shortly thereafter, Ritania’s navy began to patrol the area of the wreck. (Compromis ¶¶36-40; Clarification ¶8.)

The Arrest and Prosecution of Oscar de Luz

On February 13, 2011, Ritanian Oscar de Luz, steered the *Daedalus*, a stolen Ritanian-flagged yacht, toward Excelsior Island. At the same time, the Amalean cruise ship *Rosehill*, was passing within 500 meters of the Island. The *Rosehill*'s captain, perceiving that his ship was on a collision course with the *Daedalus*, veered toward Excelsior Island and crashed onto it. Five Ritanians working on the Island were killed and 127 passengers and crew of the *Rosehill*, including 89 Amaleans also perished. (Compromis ¶¶41-43; Clarification ¶11.)

Meanwhile, the *Rosehill* radioed Amalean authorities who then issued an alert, attributing the *Rosehill* collision to the *Daedalus* describing the *Daedalus* as a stolen Ritanian yacht fleeing toward Amalea with suspected human traffickers on board. (Compromis ¶42; Clarification ¶12.)

Captain Haddock of an Amalean naval vessel, the *Icarus*, received the alert and thereafter, picked up the *Daedalus* on radar 23 nmi off the Amalean coast. Haddock ordered the *Daedalus* to stop via radio and then commenced pursuit when the *Daedalus* did not. Haddock eventually pursued the yacht into Ritanian's EEZ when the *Daedalus* abruptly changed direction towards the *Icarus*. Haddock maintained course and the ships collided. As the *Daedalus* sank, Luz took refuge on a dinghy where he was arrested by the Amalean Navy and taken back to Amalea. Amalea determined that the *Daedalus*'s crew and passengers had committed no criminal acts and were released. (Compromis ¶¶45-46; Clarification ¶12.)

Ingroring Ritanian's protests, Amalea charged Luz with 127 counts of murder which includes reckless acts; (b) property crimes and negligent operation of a vessel for damage to the *Rosehill* and the *Icarus*; and (c) reckless endangerment of the *Rosehill*, the *Icarus*, and persons on board, and other vessels within the Gap and Amalean waters. Luz was convicted of nearly all

charges; these convictions were affirmed twice on appeal. Luz is currently imprisoned and will not be eligible for parole until 2032. (Compromis ¶¶47-49, Clarification ¶10.)

Submission to the International Court of Justice

After several months of negotiations, Amalea and Ritania agreed to refer their disputes regarding the Dorian wrasse, the *Cargast*, and Luz to the International Court of Justice. (Compromis ¶51.)

SUMMARY OF PLEADINGS

- I. 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. Ritania acted reasonably and within its rights when determining that performance of an EIA was not required for EIGP's proposed dredging activity. During the EIA process Ritania negotiated in good faith with Amalea for over a year. When those negotiations failed, this Court's conclusion that provisional measures were not appropriate confirmed the reasonableness of Ritania's conduct and permitted commencement of the EIGP's dredging.

Ritania is not liable to compensate Amalea for the economic losses caused by the 2009 landslide because Amalea lacks standing to bring these claims before the Court and the dredging that caused the landslide is attributable to EIGP, not Ritania. Strict liability for transboundary environmental harm has not crystallized as customary international law. Even if Ritania were liable for the losses caused by the landslide, compensation of Amalea's lost future profits would be an inappropriate remedy because Amalea's projection is too speculative and Amalea failed to mitigate damages following the landslide.

- II. The Coronet and stolen artifacts properly belong to Ritania. Amalea does not have title to objects acquired during the unlawful plunder of Helios. Neither the *Cargast* nor its cargo is entitled to sovereign immunity because the *Cargast* was not a warship. Amalea's salvage of Ritanian property violates the International Salvage

Convention and the basic principles of salvage. Even if the artifacts do not belong to Ritania, Amalea's salvage is unlawful because it contravenes Amalea's own declaration to adhere to the 2001 UNESCO Convention on Underwater Heritage. Amalea is obligated to return Ritania cultural objects. In the meantime, Ritania's naval patrols of the wreck site comport with international law.

III. Amalea's pursuit and arrest of Oscar de Luz was illegal. Ritania has exclusive jurisdiction of Luz and the *Daedalus*. Amalea had no reasonable basis to initiate hot pursuit of Luz. Even if Amalea had reason to pursue Luz, the *Icarus*'s insufficient signaling was procedurally deficient and invalidated the pursuit. Amalea had no jurisdiction to arrest Luz on the basis of a universal jurisdiction crime. Luz was not engaged in piracy and even if there were human traffickers aboard the *Daedalus*, human trafficking is not a crime of universal jurisdiction. Captain Haddock's failure to exercise the necessary care in arresting the *Daedalus* contravenes customary international law and invalidates Amalea's arrest.

IV. Amalea's trial of Luz for the *Rosehill* and *Icarus* collisions was illegal. Ritania has exclusive jurisdiction to try Luz because he was a Ritania national, on a Ritanian-flagged ship and his safety violations occurred within Ritania's jurisdiction. Even if Amalea had concurrent jurisdiction over Luz, its extraterritorial exercise of jurisdiction was unreasonable. Amalea has no basis to assert universal jurisdiction. International law has only accepted passively personality in response to crimes targeting nationals of a particular state. There was no conduct that would grant

Amalea universal jurisdiction. It is incumbent upon Amalea to Luz to Ritania so that Ritania can properly investigate the incident and hold Luz responsible for his actions.

PLEADINGS

I. RITANIA'S CONDUCT CONCERNING THE EXCELSIOR ISLAND PROJECT COMPLIED WITH INTERNATIONAL LAW, AND RITANIA HAS NO OBLIGATION TO COMPENSATE AMALEA FOR ANY LOSS OR DAMAGE ALLEGEDLY CAUSED BY THE 2009 LANDSLIDE

A. Ritania's conduct with respect to the Excelsior Island project complied with international law and the Malachi Gap Treaty

States have the right to exploit their resources pursuant to their environmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states.¹ Injury to the environment of another state is not a *per se* violation of international law.²

The precautionary principle is an evolving legal principle of environmental protection that attempts to codify the strategy for addressing environmental risk.³ The principle concerns the manner in which policy-makers apply science, technology, and economics for the purpose of protecting the environment.⁴ The precautionary principle is not customary international law.⁵ Customary international law is evidenced through widespread and consistent state practice and *opinio juris*.⁶ There is “no clear and uniform understanding of the meaning of the precautionary

¹ U.N. Convention on the Law of the Sea, art. 193, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS]; U.N. Conference on the Human Environment, Stockholm Declaration, June 16, 1972, *princ.* 21, 11 I.L.M. 1416 (1972); U.N. Conference on Environmental Development, Rio Declaration on Environment and Development, June 14, 1992, *princ.* 2, 31 I.L.M. 874 (1992); *Corfu Channel (U.K. v. Alb.)*, 1949 I.C.J. Reports 4, 22 (Apr. 9).

² OSCAR SCHECTER, *The Emergence of International Environmental Law*, 14 HARV. INT'L L.J. 423, 492 (1973); DANIEL BODANSKY, *Customary (and Not So Customary) International Environmental Law*, 3 IND. J. GLOBAL LEGAL STUD. 105, 110-11 (1995).

³ JAMES CRAWFORD, *BROWNIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 375 (8th ed., 2012) [hereinafter “Crawford”].

⁴ *Id.*

⁵ *Id.*; JAMES CAMERON & JULI ABOCHUR, *THE PRECAUTIONARY PRINCIPLE IN INTERNATIONAL LAW* 30-31 (David Freestone & Ellen Hey eds., 1996).

⁶ *North Sea Continental Shelf (Fed. Rep. Germ. v. Den.; Fed. Rep. Germ. v. Neth.)* 1969 I.C.J. 3 ¶37; *see also* I.C.J. STATUTE, art. 38(1)(b) [hereinafter “ICJ Statute”].

principle among members of the international community.”⁷ The lack of uniformity is evident in the disparate implementations of the precautionary principle in international conventions and varying domestic EIAs.⁸ Even neighboring states such as Mexico, the United States, and Canada disagree on whether certain activities require an EIA, and whether the same standards apply to government and private projects.⁹

Even if this Court finds that the precautionary principle has crystallized as custom, it is understood to be an obligation of performance—*due diligence*—rather than an obligation of result.¹⁰ Due diligence is “manifested in reasonable efforts by a State to inform itself of factual and legal components that relates foreseeably to a contemplated procedure and to take appropriate measures in timely fashion to address them.”¹¹ Ritania exercised due diligence in issuing EIGP the permit to dredge. The requirements of due diligence are ambiguous; scholars generally agree that they entail three procedural duties: (1) *assessing* the potential transboundary effects of an activity, (2) *notifying* any potentially affected states, and (3) *consulting* with those states over what to do.¹²

1. Ritania’s risk assessment regarding the Excelsior Island project is consistent with international law

⁷ PHILLIPE SANDS & JACQUELINE PEEL, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* 222 (3rd ed. 2012).

⁸ ELLEN HEY, *The Precautionary Concept in Environmental Policy and Law: Institutionalizing Caution*, 4 *GEO. INT’L L. REV.* 303, 307(1992); JOHN H. KNOX, *The Myth and Reality of Transboundary Environmental Impact Assessment*, 96 *AMER. J. INT’L L.* 291, 313 (2002).

⁹ JOHN H. KNOX, *The Myth and Reality of Transboundary Environmental Impact Assessment*, 96 *AMER. J. INT’L L.* 291, 315 (2002) [hereinafter “Knox”].

¹⁰ *Id.*, at 293; GÜNTHER HANDL, *National Uses of Transboundary Air Resources: The International Entitlement Issue Reconsidered*, 26 *NAT’L RES. J.* 405, 429 (1986).

¹¹ Rep. of the Int’l Law Comm’n, 8th Sess., Apr. 24–July 4, 2001, 154, U.N. Doc. A/56/10 [hereinafter *Commentaries to Draft Articles on Prevention of Transboundary Harm*].

¹² Knox, *supra* note 9 at 295.

a. Ritania was not required to perform an EIA on EIGP's proposed dredging activity under customary international law

International law requires states to perform an EIA when there is a risk that a proposed industrial activity may have a significant adverse impact in a transboundary context.¹³ Prior to performing an EIA a state undergoes a screening process to determine if an EIA is necessary.¹⁴ The threshold determination of whether circumstances require an EIA is left to the state performing the activity.¹⁵ Ritania is only obligated to perform an EIA if, through its own screening process, it determines that an EIA is necessary.

Customary international law does not proscribe which activities necessitate an EIA nor the scope and content of such assessments.¹⁶ The Espoo Convention, the most important convention addressing transboundary EIAs¹⁷, only requires EIAs for large-scale projects.¹⁸ For activities such as seabed dredging, a state is obligated only to discuss the possibility of performing an EIA.¹⁹ Thus, Ritania was not obligated to perform an EIA on EIGP's dredging program.

b. Ritania's risk assessment complied with the Malachi Gap Treaty

¹³ UNCLOS, *supra* note 1, art. 206; *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, ¶204, 2010 I.C.J. 14, 83.

¹⁴ NEIL CRAIK, *THE INTERNATIONAL LAW OF ENVIRONMENTAL IMPACT ASSESSMENT* 28, (2008) [hereinafter "Craik"].

¹⁵ *Id.*, at 134; ANDRE NOLLKAEMPER, *THE LEGAL REGIME FOR TRANSBOUNDARY WATER POLLUTION: BETWEEN DISCRETION AND CONSTRAINT* 181 (1993).

¹⁶ *Pulp Mills*, ¶205.

¹⁷ Knox, *supra* note 9, at 301-2.

¹⁸ CONVENTION ON ENVIRONMENTAL IMPACT IN A TRANSBOUNDARY CONTEXT (Espoo Convention), app. 1, 30 I.L.M. 800 (1991) [hereinafter "Espoo Convention"].

¹⁹ *Id.*, appendix 2; Craik, *supra* note 14, at 134.

The Malachi Gap Treaty must be interpreted in good faith according to the terms ordinary or especially intended meaning, in light of its object and purpose at the time of conclusion.²⁰ In case of ambiguity, recourse may be had to preparatory works and circumstances of the treaty's conclusion.²¹

In the treaty context, the terms “EIA” and “assessment” have developed as terms of art.²² The absence of these terms evidences a lack of positive obligations to assess the environmental impact of EIGP's proposed dredging. As the “whereas” clauses note, the MGT is promotional in nature with the key shared objective of balancing and promoting the interest of the parties, not conferring technical obligations.

2. Ritania's notification to and consultation with Amalea regarding EIGP's dredging project comported with international law

States altering a shared water resource have an obligation to cooperate in good faith with potentially affected states to resolve any conflicts.²³ Cooperation is in good faith if negotiations are conducted meaningfully with a genuine intention to achieve a positive result.²⁴

Cooperation simply entails notification and consultation.²⁵ Transboundary EIA

²⁰ Vienna Convention on the Law of Treaties, arts. 31-32, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VLCT]; *Kasikili/Sedudu Island (Bots. V. Namib.)* 1999 I.C.J. 1045, 1059.

²¹ VCLT, art. 32; *Oil Platforms (Iran v. U.S.A)* 1996 I.C.J. 803, 812.

²² Craik, *supra* note 14, at 127.

²³ *Lac Lanoux Arbitration (Fr. v. Spain)*, 24 I.L.R. 101 (1957); *Case Concerning Land Reclamation by Singapore in and Around the Straits of Johor (Malay. v. Sing.)* Case No. 12, Provisional Measures Order Oct. 8, 2003 available at www.itlos.org; Craik, *supra* note 14 at 68; Alan Boyle, *The Principle of Co-operation: The Environment*, in *THE UNITED NATIONS AND THE PRINCIPLES OF INTERNATIONAL LAW* 120 (Vaughan Lowe and Colin Warbrick, eds., 1994).

²⁴ *Fisheries Jurisdiction Case (U.K. v. Ice.)*, 1974 I.C.J. 3, ¶78; *Delimitation of the Boundary in the Gulf of Maine Area (Can. V. U.S.)*, 1984 I.C.J. 246, ¶87; *North Sea Continental Shelf* at ¶85.

²⁵ Craik, *supra* note 14, at 68; *Lac Lanoux*, at ¶16.

procedures vary widely for notifying and consulting affected parties.²⁶ Notification can occur prior to or after assessment.²⁷ The ILC Draft Articles on Prevention of Transboundary Harm provides that states only need to notify a potentially affected state of the results of an assessment.²⁸ Practice of state parties to the Espoo Convention also differs: prior to the EIA (Norway), during the EIA procedure (Croatia), or upon publication of the EIA (Lichtenstein).²⁹ These divergent practices demonstrate that consent is not required before utilizing a shared water resource.³⁰

Ritania complied with the duty to cooperate by engaging in bilateral negotiations with Amalea from mid-2008 until July 2009. It is a general principle of international law that good faith is presumed.³¹ It is incumbent upon Amalea to prove that Ritania breached its international obligations by not acting in good faith.³²

3. This Court's denial of provisional measures confirms the reasonableness of Ritania's conduct regarding the Excelsior Island project

²⁶ Economic Commission for Europe, Review of Implementation of the Espoo Convention, ECE/MP.EIA/11 (2008), Section 1:4 Findings of the Review; Crawford *supra* note 3 at 360; Phoebe Okowa, *Procedural Obligations in International Environmental Agreements*, 67 B.Y.I.L. 275, 281 (1996).

²⁷ Rep. of the Int'l Law Comm'n, Apr. 23–June 1, Aug. 10–July 2, 2001, 26, U.N. Doc. A/56/10 [hereinafter Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities].

²⁸ *Id.*

²⁹ Economic Commission for Europe, Review of Implementation of the Espoo Convention, ECE/MP.EIA/11 (2008), Section 2:2 Notification.

³⁰ Lac Lanoux Arbitration (Fr. v. Spain), 24 I.L.R. 101 (1957).

³¹ Lighthouses Case between France and Greece (Fr. v. Greece), 1934 P.C.I.J. (ser. A/B) No. 62 (Mar. 17); Mavrommatis Jerusalem Concessions (Greece v. U.K.), 1925 P.C.I.J. (ser. A) No. 5 (Mar. 26).

³² *Id.*

Article 41 of this Court’s statute provides the power to “indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.”³³ This Court has found provisional measures to be appropriate when immediate action is required to prevent irreparable harm to the rights being claimed.³⁴ In *Nuclear Tests*, provisional measures were appropriate when there was an immediate possibility that France would conduct further atmospheric nuclear tests and that the fallout from those tests would cause irreparable damage.³⁵

This Court’s denial of Amalea’s request for provisional measures reinforces the reasonableness of Ritania’s decision to issue the dredging permit. As the permit was issued prior to Amalea’s submission this Court must have considered the ramifications of the dredging program in its judgment. Because parties are entitled to put forward their observations on the dispute, as well as expert testimony on the subject matter,³⁶ Amalea would have presented all available evidence, including the ILSA report. Nevertheless, this Court determined that there wasn’t a risk of irreparable harm to Amalea’s rights in the Malachi Gap. The Court’s decision effectively recognized that Ritania’s decision to issue the dredging permit did not pose a significant risk to Amalea’s rights. A finding by this Court for the Applicant would amount to an *ex post* revision of Ritania’s obligations that is unjust and incompatible with international law.

4. Ritania is not bound by Amalea’s extension of its Coastal Fisheries Protection Act to the Gap

Amalea’s Coastal Fisheries Protection Act (CFPA) does not bind Ritania. States are

³³ ICJ Statute, *supra* note 6, art. 41; LaGrand (Ger. V. U.S.) 2001 I.C.J. 466, ¶102 (June 27).

³⁴ SHABTAI ROSENNE, PROVISIONAL MEASURES IN INTERNATIONAL LAW 135 (2005).

³⁵ Nuclear Tests (N.Z. v. Fra.), 1973 I.C.J. 135, ¶30 (June 22).

³⁶ ICJ Statute, arts. 43, 76.

prohibited from enforcing conservation measures in areas of the high seas adjacent to the territorial sea of a foreign state if the foreign state is opposed to them.³⁷ While Amalea amended the CFPA after agreeing to the MGT Amalea cannot use the MGT to justify illegal enforcement of its domestic laws. Allowing Amalea to unilaterally expand the treaty contravenes the basic principle of consent between sovereigns.

5. Ritania acted in good faith regarding the construction of Excelsior Island

A state abuses its right when it exercises it with the sole purpose of causing injury to another state.³⁸ The Court cannot presume an abuse of right.³⁹ Judge Lauterpacht noted that the abuse of right doctrine “must be wielded with studied restraint.”⁴⁰ The Convention on the Continental Shelf permits states to exploit the natural resources as long as it does not result in an “unjustifiable interference” of fishing, conservation, or navigation.⁴¹

Ritania exploited the resources of the seabed in the Malachi Gap to construct Excelsior Island. Regardless of the result, Ritania issued the dredging permit in good faith.

B. Ritania is not liable to compensate Amalea for economic losses caused by the landslide

³⁷ Convention on Fishing and Conservation of the Living Resources of the High Seas, art. 6(4), 1966 U.N.T.S 286 (Apr. 29, 1958).

³⁸ German Interests in Polish Upper Silesia (Germ. v. Pol.), 1925 P.C.I.J. (ser. A) No. 6 (Aug. 25).

³⁹ Free Zones of Upper Savoy and District of Gex (Fr. v. Switz.), 1930 P.C.I.J. (ser. A) No. 24, 12 (Order of Dec. 6); The Conditions of Admission of a State to a Membership in the U.N. (Art. 4 of the Charter), Order, 1948 I.C.J. 57, 79 (Mar. 3).

⁴⁰ HERSCH LAUTERPACHT, THE DEVELOPMENT OF INTERNATIONAL LAW BY THE INTERNATIONAL COURT 164 (1958).

⁴¹ Convention on the Continental Shelf art. 71, Apr. 28, 1958, 499 U.N.T.S. 311; Int'l Law Comm'n, Articles concerning the Law of the Sea with commentaries, U.N. Doc. A/CN.4/104, at 299 (July 4, 1956).

1. Amalea lacks standing to bring a claim before this Court

Amalea is attempting to assert diplomatic protection for its fishing industry. States may exercise diplomatic protection over companies.⁴² However, a claim is inadmissible unless the corporation has exhausted the legal remedies available in the state allegedly responsible for the injury.⁴³

In mixed claims where a state is asserting diplomatic protection and direct injury based on the violation of a treaty exhaustion of local remedies is required if the indirect element is preponderant.⁴⁴ In *ELSI* this Court rejected the argument that it was unnecessary to exhaust local remedies because part of the claim was premised on the violation of a treaty.⁴⁵

In Amalea's claim for compensation the indirect element is preponderant. The decrease in the Dorian wrasse population caused economic loss to Amalean fishing companies. The indirect injury elements which "colours and pervades [...] the claim as a whole[,]"⁴⁶ renders the local remedies rule applicable. As no local remedies have been pursued Amalea lacks standing to claim compensation.

2. The landslide is not attributable to Ritania

⁴² Crawford *supra* note 3, at 705; *Draft articles on diplomatic protection, with commentaries*, art 9, [2006] 2 Y.B. INT'L L. COMM'N 24, U.N. Doc. A/CN.4/SER.A/2006.

⁴³ Crawford *supra* note 3 at 711; *Electronica Sicula S.p.A. (ELSI) (U.S.A. v. Italy)*, 1989 I.C.J. 15, 42 (Jul. 20) [hereinafter *ELSI*].

⁴⁴ THE LAW OF INTERNATIONAL RESPONSIBILITY 1063 (James Crawford et al. eds. 2010).

⁴⁵ *ELSI*, at 43.

⁴⁶ *Id.*

Ritania is not responsible for the landslide. State responsibility is triggered when conduct attributable to the state constitutes a breach of that state's international obligation.⁴⁷ While the arbitral tribunal in *Trail Smelter* found Canada liable for breaches caused by Canadian companies this rule has not risen to the level of custom.⁴⁸ In 1972, Canada attempted to hold the U.S. liable for environmental damage caused by an oil spill in Cherry Point Washington on the basis of the *Trail Smelter* principle.⁴⁹ The U.S. refused and the Atlantic Petroleum Corporation paid the cost of cleanup operations.⁵⁰ Rather states have paid compensation for environmental damage caused by private companies only based on the principle of comity.⁵¹ Ritania's authorization of EIGP did not cause the landslide or resulting environmental harm. EIGP caused the landslide and resulting environmental harm.

3. Ritania is not strictly liable for the losses caused by the landslide

Strict liability for environmental damage has not crystallized as customary international law.⁵² To the extent that strict liability is imposed it is limited to accidental damage arising from

⁴⁷ Int'l Law Comm'n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Chapter I art. 2, U.N. Doc. A/56/10(SUPP) (Oct. 1, 2001) [hereinafter "Commentaries on State Responsibility"].

⁴⁸ XUE HANQIN, *TRANSBOUNDARY DAMAGE IN INTERNATIONAL LAW* 76-80 (2003) [hereinafter "Xue"].

⁴⁹ BERNADETTE V. BRENNAN, *Liability and Compensation for Oil Pollution from Tankers Under Private International Law: TOVALOP, CRISTAL, and the Exxon Valdez*, 2 *GEO. INT'L ENVTL. L. REV.* 1 (1989).

⁵⁰ XUE, *supra* note 48, at 79.

⁵¹ *Id.*, at 76-80.

⁵² *Id.*, at 2.

inherently ultra-hazardous activities.⁵³ As evidenced by its exclusion from Appendix 1 of the Espoo Convention, dredging is not considered to be an ultra-hazardous activity.⁵⁴

The foundation of strict liability for environmental damage is the harm principle, articulated by this Court in *Corfu Channel*.⁵⁵ This principle incorporates the subjective requirement of “knowingly” which indicates that strict liability is not appropriate even for transboundary harm.⁵⁶ When the strict liability has been imposed, such as in *Trail Smelter*, it has because states have willfully accepted liability for actions that caused transboundary harm.⁵⁷ Ritania does not accept responsibility for EIGP’s actions and strict liability is inapplicable here.

4. Compensation is not the appropriate remedy

a. Amalea is not entitled to consequential damages

Even if this Court finds that Ritania breached its obligations owed to Amalea compensation is not the appropriate remedy. “Compensation is limited to damage actually suffered as a result of an internationally wrongful act, and excludes damage which is indirect and remote.”⁵⁸ Lost future profits with speculative elements are not compensable,⁵⁹ but only awarded when an “anticipated income stream has attained sufficient attributes to be considered legally

⁵³ G. Handl, *Liability as an Obligation Established by a Primary Rule of International Law*, 16 NETH. Y.B. INT’L L. 49, 70 (1985).

⁵⁴ Espoo Convention, *supra* note 18, app. 1.

⁵⁵ *Corfu Channel*, at 22.

⁵⁶ *Id.*; Craik, *supra* note 14, at 63.

⁵⁷ *Trail Smelter (U.S. v. Can.)* 3 R.I.A.A. 1905, (1945); Xue, *supra* note 48 at 78-79.

⁵⁸ Commentaries on State Responsibility, *supra* note 47, arts. 34-35.

⁵⁹ LG&E Energy Corp, LG&E Capital Corp, LG&E International Inc. v. Arg., ICSID Case No ARB/02/1, Award on Damages, ¶51, (July 25, 2007) available at https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC786_En&caseId=C208; Commentaries on State Responsibility, *supra* note 47, art. 36(27); JOHN BARKER, *The Different Forms of Reparation: Compensation*, in THE LAW OF INTERNATIONAL RESPONSIBILITY 609 (James Crawford et al. eds. 2010).

protected.”⁶⁰ In *LG&E Energy v. Argentina*, an ICSID tribunal refused to award future profits for possible dividends gained on a lost investment, noting that the calculation exercise would be too speculative.⁶¹ Amalea’s estimation that the loss of the projected commercial exploitation of the Dorian wrasses to be “no less than USD \$250 million annually over the next five years” is too speculative. Amalea has no ownership or contracts relating to this fish. Amalea’s projection is predicated on a number of variables that include the weather, global demand, and marine ecology. Awarding lost future profits is not appropriate in these circumstances.

b. Amalea did not fulfil its duty to mitigate damages following the landslide

Amalea has not fulfilled its duty to mitigate the harm once the landslide occurred.⁶² After the landslide Amalea continued to fish the Dorian Wrasse for two years despite ILSA’s finding that landslide had a significant and immediate impact on the wrasse population. Amalea continued to permit fishing of the wrasse even after ILSA declared the wrasse to be endangered. Any potential that the Dorian wrasse population will recover was directly impaired by Amalea’s failure to mitigate losses to the population by implementing more sustainable fishing practices.

II. THE CORONET AND STOLEN ARTIFACTS PROPERLY BELONG TO RITANIA WHICH HAS THE RIGHT TO PROTECT THEM AND AMALEA’S SALVAGE OF THE *CARGAST* IS UNLAWFUL

A. The cargo and artifacts of Ritanian origin properly belong to Ritania

1. Ritania retains title to the crown and artifact stolen from Helios

States are not permitted to take the property of other states without consent.⁶³ States are permitted to take “booty” from a vanquished nation, however property is only considered booty

⁶⁰ Commentaries on State Responsibility, *supra* note 47, art. 36(27).

⁶¹ *LG&E Energy Corp, LG&E Capital Corp, LG&E International Inc. v. Arg.*, at ¶51.

⁶² MARIE-LOUISE LARSSON, *THE LAW OF ENVIRONMENTAL DAMAGE* 537 (1999).

⁶³ DANIEL O’CONNELL, *INTERNATIONAL LAW* 844 (1965).

if it is seized to prosecute the war effort.⁶⁴ Pillage is the act of forcibly seizing the enemy's property that is not necessary for war.⁶⁵ Pillage is prohibited under international law and does not transfer title of the property to the pillager.⁶⁶ Mere possession by another state does not extinguish the property rights of the original owner.⁶⁷

Amalea's claim that the cargo of the *Cargast* is the property of Amalea is contrary to international law. Amalea gains no rights to the property because it was found in their EEZ. UNCLOS, the International Salvage convention and state practice as evidenced in *Lisippo Bronze* rulings confirm that while coast states have rights to underwater cultural heritage in their territorial sea, those rights do not extend to the EEZ.⁶⁸ Amalea stole the coronet during the siege of Helios in 1510. Awarding Amalea title to the stolen coronet runs contrary to the general principle *ex injuria ius non oritur*, "unlawful acts cannot create law."⁶⁹

Ritania never abandoned its claim to the coronet. In the maritime salvage context abandonment cannot be implied but requires an "act of leaving or deserting such property...without the intention of returning to it."⁷⁰ The mere fact that property is lost at sea

⁶⁴ LEONARD DUBOFF, *THE DESKBOOK OF ART LAW* 129 (1977).

⁶⁵ *Id.*

⁶⁶ JEAN MARIE-HENCKAERTS & LOUISE DOSWALD-BECK, *INTERNATIONAL COMMITTEE OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOLUME I: RULES 52* (2005); HAGUE CONVENTION WITH RESPECT TO THE LAWS OF CUSTOMS OF WAR ON LAND, July 28, 1899, art. 47, 32 STAT. 1803, T.S. NO. 403.

⁶⁷ G.F. DE MARTENS, *SUMMARY OF THE LAW OF NATIONS 1748-1795* 339 (W. Cobbet trans. 1795).

⁶⁸ PATRIZIA VIGNI, *Enforcement of Underwater Cultural Heritage by Courts*, in *ENFORCING INTERNATIONAL CULTURAL HERITAGE LAW* 133-35 (Francesco Francioni & James Gordley eds. 2013); UNCLOS, *supra* note 1, art. 303.

⁶⁹ BIN CHENG, *GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS* 187 (1994).

⁷⁰ MARTIN J. NORRIS, *BENEDICT ON ADMIRALTY: THE LAW OF SALVAGE* § 134 9-10 (7th ed. 1991).

does not divest the owner of title.⁷¹

2. The *Cargast* was not a state-operated vessel entitled to sovereign immunity

Sovereign immunity prohibits execution against property, such as a warship, of a foreign state.⁷² Immunity only extends to sunken vessels on government non-commercial service at the time of sinking.⁷³ The *Cargast* is not subject to sovereign immunity because it was engaged in a commercial activity for the benefit of private investors. Prior to the sacking of Helios, the *Cargast* engaged in a trading mission for the benefit of private investors who had provided the crew of the ship.

Even if this Court finds that the *Cargast* is subject to sovereign immunity, it cannot allow Amalea to appropriate important Ritanian artifacts by cloaking the ship's cargo in the ship's immunity. Sovereign immunity does not extend to unlawfully obtained cargo or become the property of the flag state even if the vessel is protected by sovereign immunity.⁷⁴

3. Amalea's salvage of the *Cargast* is unlawful

a. Amalea's salvage of the Cargast violates the International Salvage Convention

Article 25 of the International Salvage Convention, to which both Ritanian and Amalea are parties, prohibits the salvage of state-owned, non-commercial cargo absent the consent of the

⁷¹ MARK A. WILDER, *Application of Salvage Law and the Law of Finds to Sunken Shipwreck Discoveries*, 67 DEF. COUNS. J. 92, 94 (2000).

⁷² Crawford, *supra* note 3, at 502-3; UN CONVENTION ON JURISDICTIONAL IMMUNITIES AND THEIR PROPERTY, art. 21 G.A. RES. 59/38, ANNEX, U.N. DOC. A/RES/59/38 (DEC. 2, 2004).

⁷³ J. ASHLEY ROACH & ROBERT W. SMITH, EXCESSIVE MARITIME CLAIMS 541 (3rd ed. 2012); UNESCO Convention on the Protection of the Underwater Cultural Heritage, art. 1(8) Nov. 2, 2001, 41 I.L.M. 40 [hereinafter "UNESCO Underwater Convention"]; Convention on the High Seas arts. 8-9, April 29, 1958, 450 U.N.T.S. 82 [hereinafter "High Seas Convention"]; UNCLOS *supra* note 1, arts. 95-96.

⁷⁴ UN CONVENTION ON JURISDICTIONAL IMMUNITIES AND THEIR PROPERTY, *supra* note 72, art. 4.

state owner.⁷⁵ The purpose of this provision was to prevent salvors from using salvage as a pretext to seize state property.⁷⁶ By designating its recovery operations as “salvage” Amalea has consented to the Convention’s application to the *Cargast*.⁷⁷ The principle of salvage is to restore property lost or in peril at sea to its owner.⁷⁸ Salvors do not become property owners.⁷⁹ As such Milo Bellezza’s looting of the *Cargast* contravenes the law of salvage and does not transfer ownership of the artifacts from Ritania to Amalea.⁸⁰

b. Regardless of Ritania’s ownership, Amalea’s salvage of the Cargast is unlawful because the cargo is Ritanian cultural heritage

Cultural heritage includes objects of cultural, archeological, or historical nature.⁸¹ As a UN member, Amalea is bound to promote international cultural cooperation when necessary for peaceful resolutions.⁸² The cargo aboard the *Cargast* includes prized religious and cultural icons of great significance to Ritania. Scholars have asserted the need to protect cultural property since inception of international law.⁸³

⁷⁵ 1989 INTERNATIONAL CONVENTION ON SALVAGE, art. 25, 1953 U.N.T.S. 193.

⁷⁶ COMITÉ INT’L MARITIME, THE TRAVAUX PRÉPARATOIRES OF THE CONVENTION ON SALVAGE, 1989, 489-90, (2003).

⁷⁷ 1989 INTERNATIONAL CONVENTION ON SALVAGE, art. 4, 1953 U.N.T.S. 193, S. Treaty Doc. No. 102-12, 102d Cong., 1st Sess. (1991).

⁷⁸ THOMAS H. BELKNAP, JR., *Treasure Salvage: Finders Keepers?*, 80 MAR. REP & ENGINEERING NEWS 8 (2007).

⁷⁹ *R.M.S. Titanic v. Wreck and Abandoned Vessel*, 286 F.3d 194, 203 (4th Cir. 2002).

⁸⁰ *Id.*

⁸¹ UNCLOS, *supra* note 1, art. 149; *Pulp Mills*, at ¶210; UNESCO Underwater Convention *supra* note , art. 1 (a) Nov. 2, 2001, 41 I.L.M. 40.

⁸² U.N. Charter, art. 55(1).

⁸³ HUGO GROTIUS, *DE JURE BELLI AC PACI LIBIRI TRES*, bk. II, ch XIX, pt. I, 32 (1646) *translated in* CLASSICS OF INTERNATIONAL LAW (1925); RICHARD SHELLEY HARTIGAN, *LIEBER’S CODE AND THE LAW OF WAR* 16 (1983).

Applying the law of salvage to historic wrecks leads to the destruction of valuable archaeological information and the commercial exploitation of cultural objects.⁸⁴ As codified in the 2001 UNESCO Convention and by the International Council on Monuments and Sites—a council of leading archeologists—a basic principle when dealing with cultural objects is ensuring that cultural heritage achieves its maximum protection.⁸⁵ While Ritania is only a signatory to the 2001 UNESCO convention, Amalea is a party to the treaty and is still obligated to adhere to the terms of the treaty in respect to the *Cargast* and its cargo. Reciprocity cannot be used to excuse a state from its own declaration.⁸⁶

By contracting with the treasure hunter Bellezza, Amalea has hired an individual who is unconcerned with the preservation of cultural objects but is instead interested in the material profit to be gained from retrieving from such artifacts. Bellezza has failed to present a project design laying out his methodology, credentials or a timetable for completing the project as recommended by ICOMOS, a council composed of the world’s leading archeologists.⁸⁷ The salvage of the *Cargast* is nothing more than glorified looting of Ritania’s cultural treasure.

B. The return of Ritania’s property and objects of cultural heritage is the proper remedy

⁸⁴ Sarah Dromgoole, Protection of Historic Wreck: The UK Approach, 4 INT’L J. ESTUARINE & COASTAL L. 26, 36 (1989).

⁸⁵ UNESCO Underwater Convention *supra* note 81, art. 4(c); Int’l Council on Monuments and Sites, Charter on the Protection and Management of Underwater Cultural Heritage, arts. 1-2, Sofia, Oct. 1996, *available at* http://www.international.icomos.org/charters/underwater_e.pdf.

⁸⁶ Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.) 1984 I.C.J. 392, ¶¶62-65 (Nov. 26).

⁸⁷ Int’l Council on Monuments and Sites, Charter on the Protection and Management of Underwater Cultural Heritage, *supra* note 85, art. 2.

Restitution, the practice of returning cultural objects to their country of origin, has been in practice since the renaissance.⁸⁸ Cultural objects return to their place of origin regardless of political changes that occur after the objects are displaced.⁸⁹ The UN General Assembly, UNESCO conventions, and domestic law have codified the duty to return cultural objects that have been unlawfully removed from their country of origin.⁹⁰ Because the artifacts were looted from Helios Amalea is obligated to return them to Ritania.

III. THE AMALEAN NAVY'S PURSUIT AND ARREST OF OSCAR DE LUZ WAS ILLEGAL

Under the High Seas Convention, to which both Amalea and Ritania are parties, Ritania has exclusive jurisdiction to arrest its nationals and flagships on the high seas.⁹¹ This provision is the codification of a long-standing rule of customary international law,⁹² which the emergence of the exclusive economic zone as a legal régime has not abrogated.⁹³ This rule also applies to ships' auxiliary watercrafts.⁹⁴ This exclusive jurisdiction is absolute in the case of collisions and

⁸⁸ CRAIG FORREST, *INTERNATIONAL LAW AND THE PROTECTION OF CULTURAL HERITAGE* 132-35 (2010); WOJCIECH W. KOWALSKI, *Claims of Art and Their Legal Nature*, 31 in *RESOLUTION OF CULTURAL PROPERTY DISPUTES* (Int'l Bureau Permanent Court of Arbitration ed. 2003).

⁸⁹ WOJCIECH W. KOWALSKI, *Claims of Art and Their Legal Nature*, 31 in *RESOLUTION OF CULTURAL PROPERTY DISPUTES* (Int'l Bureau Permanent Court of Arbitration ed. 2003).

⁹⁰ G.A. Res 3187 (XXVIII), U.N. Doc. A/RES/3187(XXVIII) (Dec. 18, 1973); J.A.R NAFZIGER, *The Principles of Co-operation in the Mutual Protection and Transfer of Cultural Material*, 8 *CHI. J. INT'L L.* 147, 150 (2007).

⁹¹ Convention on the High Seas, *supra* note 73, arts. 6, 11.

⁹² L.F.L Oppenheim, *International Law* 330 (1905); Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation art. 9, March 10, 1988, 1678 U.N.T.S. 201.

⁹³ Hersch Lauterpacht, "Sovereignty over Submarine Areas" 27 *BRIT. Y. B. OF INT'L L.* 376, 383 (1950); UNCLOS, *supra* note 1, arts. 58, 92.

⁹⁴ See UNCLOS, *supra* note 1, art. 111(4); Arctic Sunrise (Neth. v. Russ.), Case No. 22, Provisional Measures, ¶35 available at itlos.org (Golitsyn J., dissenting).

other navigational incidents.⁹⁵ Because Oscar de Luz is Ritanian and the *Daedalus* was Ritanian-flagged, Amalea cannot legally arrest Luz for any collision-related crimes. None of the exceptions to this rule apply. Therefore, Amalea’s pursuit and arrest of Luz was illegal.

A. Amalea’s hot pursuit of Oscar de Luz was illegal

Under the High Seas Convention and customary international law, a ship must meet procedural requirements to arrest a foreign ship outside its territorial waters pursuant to the right of hot pursuit.⁹⁶ The requirements of hot pursuit are cumulative, such that failing any single one renders the pursuit and subsequent arrest unlawful.⁹⁷

1. Amalea did not reasonably suspect anyone aboard the *Daedalus* of violating any law or regulation for which Amalea had established its contiguous zone

Hot pursuit may commence in the contiguous zone only for a violation of a law for which the zone was created to enforce.⁹⁸ Amalea’s contiguous zone was established to deter and punish infringement of customs, fiscal, immigration, and sanitary laws and regulations within its territory and territorial sea.⁹⁹

Assuming *arguendo* that human trafficking would violate Amalea’s immigration laws, Amalea needed “good reason to believe” that the *Daedalus* harbored human traffickers.¹⁰⁰ This

⁹⁵ Convention on the High Seas, *supra* note 73, art. 11(3).

⁹⁶ *Id.*, art. 23; UNCLOS, *supra* note 1, art. 111.

⁹⁷ Convention on the High Seas, *supra* note 73, art. 23; M/V Saiga Case (No.2) (St. Vincent v. Guinea), Case No. 2, 2 ITLOS Rep. 4, ¶146 (July 1, 1999).

⁹⁸ Convention on the High Seas, *supra* note 73, art. 23.

⁹⁹ Convention on the Territorial Sea and Contiguous Zone art. 24, Apr. 29, 1958, 516 U.N.T.S. 205.

¹⁰⁰ Convention on the High Seas, *supra* note 73 art. 23.

reasonable belief must be founded on strong indications, not sheer suppositions.¹⁰¹ More than suspicion is required.¹⁰² While the Amalean Coastal Protection Service (ACPS) alerted Captain Haddock that persons aboard the *Daedalus* were suspected of human trafficking, Amalea alleges no facts that justify this suspicion. As Amalea carries the burden of proving facts material to its case, this Court may infer that no such facts exist.¹⁰³ Without such facts, any suspicion in reliance on the allegation of human trafficking is unfounded, and therefore without “good reason.”¹⁰⁴ Thus, the *Daedalus* pursued the *Icarus* without good reason to believe it had violated a law for which Amalea had established its contiguous zone.

2. The *Icarus* did not give an adequate visual or auditory signal prior to commencing pursuit

A ship must signal a foreign vessel to stop before it may legally commence pursuit of that vessel.¹⁰⁵ The International Maritime Organization, of which both Amalea and Ritania are members, prescribes a list of internationally recognized visual and auditory signals for ordering a vessel to stop.¹⁰⁶ Captain Haddock only issued a verbal, wireless order to the *Daedalus*, which there is no indication the *Daedalus* received. Radio signal by itself does not fulfill the signaling

¹⁰¹ NICHOLAS M. POULANTZAS, *THE RIGHT OF HOT PURSUIT IN INTERNATIONAL LAW*, 156-7 (2002) [hereinafter “Poulantzas”].

¹⁰² *M/V Saiga*, at 147.

¹⁰³ SHABTAI ROSENNE, *THE LAW AND PRACTICE OF THE INTERNATIONAL COURT* 580 (1965); *Military and Paramilitary Activities*, at ¶101.

¹⁰⁴ Poulantzas, *supra* note 101, at 156-57.

¹⁰⁵ Convention on the High Seas *supra* note 73, art 23; UNCLOS *supra* note 1, art. 111; *M/V Saiga* at 147.

¹⁰⁶ INT’L MARITIME ORG. *INTERNATIONAL CODE OF SIGNALS* 83 (1985).

requirement to begin hot pursuit, as it is subject to abuse and may be ineffective.¹⁰⁷ Because the *Icarus* was within visual distance of the *Daedalus* when the order was given, it was remiss of Captain Haddock not to issue an additional visual signal. Captain Haddock's omission rendered Amalea's pursuit unlawful.

B. Amalea's arrest of Oscar de Luz was illegal

1. Amalea did not have universal jurisdiction over Luz

Slave trading and piracy are exceptions to flag state exclusive jurisdiction under the Convention on the High Seas and customary international law.¹⁰⁸ Slavery and piracy confer universal jurisdiction over their perpetrators.¹⁰⁹ Before exercising universal jurisdiction, a state must establish a *prima facie* case against the suspect for violating a crime of universal jurisdiction.¹¹⁰ Amalea lacks the evidence to substantiate its suspicion that Luz engaged in the slave trade, piracy, or any other exception to Ritanian exclusive jurisdiction.

a. Human trafficking is not slave trading

¹⁰⁷ Crawford, *supra* note 3, at 310-11; See *M/V Saiga*; Int'l Law Comm'n, *Articles concerning the Law of the Sea with commentaries*, U.N. Doc. A/CN.4/104, at 285 (July 4, 1956); Poulantzas *supra* note 101, at 204.

¹⁰⁸ Convention on the High Seas, *supra* note 73, art. 22; UNCLOS *supra* note 1, art. 110.

¹⁰⁹ Arrest Warrant of 11 April 2000 (*D.R. Congo v. Belg.*), 2002 I.C.J. 63, ¶¶61-5 (Feb. 14) (Higgins, Kooijmans & Buergenthal, dissenting); DANIELLE IRELAND-PIPER, *Prosecutions of Extraterritorial Criminal Conduct and the Abuse of Rights Doctrine* 9 *Utrecht L. Rev.*, 68, 77 (2103); D.F. ORENTLICHER, *Whose Justice? Reconciling Universal Jurisdiction with Democratic Principles*, in *INTERNATIONAL LAW AND INTERNATIONAL RELATIONS*, 205 (T.J. BIERSTEKER ET AL. EDS., 2007); ROGER O'KEEFE *Universal Jurisdiction*, 2 *J. Int'l Crim. Just.* 735, 739-40 (2004); ROSALYN HIGGINS, *PROBLEMS AND PROCESS*, 58 (1994).

¹¹⁰ Princeton University Program in Law and Public Affairs, *The Princeton Principles on Universal Jurisdiction*, princ. 1(4) (2001).

Trafficked persons are not necessarily slaves.¹¹¹ Human trafficking includes both the transportation for the purpose of “sexual exploitation, forced labour or services... practices similar to slavery, or servitude or the removal of organs...” and, distinctly, transportation for the purpose of slavery.¹¹² A slave is a person “over whom any or all of the powers attaching to the right of ownership are exercised.”¹¹³ Trafficked persons may be debtors, sex workers, or subsistence laborers, none of whom are subject to the hallmarks of ownership – subjection to purchase, to absolute use, to transferal to others, and to permanence of an inherited or inheritable claim.¹¹⁴

A state cannot reasonably suspect a human trafficker of engaging in the slave trade without evidence that control commensurate with ownership is exercised over the trafficked individuals.¹¹⁵ Amalea does not assert that any such evidence existed and had no reason to suspected anyone aboard the *Daedalus* of engaging in the slave trade.

b. Human trafficking is not a universal jurisdiction crime

¹¹¹ ANNE GALLAGHER, THE INTERNATIONAL LAW OF HUMAN TRAFFICKING 177-84 (2010) [hereinafter “Gallagher”].

¹¹² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime art. 3(1), Dec.25, 2003 2237 U.N.T.S. 319 [hereinafter “Human Trafficking Protocol”].

¹¹³ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery art. 7, Sept. 7, 1956 226 U.N.T.S. 3; Slavery Convention art. 1, Sept. 25, 1926 vol. LX L.N.T.S. 253.

¹¹⁴ Gallagher, *supra* note 112, at 184; United Nations Office on Drugs and Crime Global Report on Trafficking in Persons 2012.

¹¹⁵ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery art. 7, Sept. 7, 1956, 226 U.N.T.S. 3; Slavery Convention art. 1, Sept. 25, 1926, vol. LX L.N.T.S. 253.

Human trafficking has gained at most aspirational acceptance as a crime.¹¹⁶ A state's obligation to criminalize it is still "soft" and has not yet gained a binding quality at customary law.¹¹⁷ In 2003, the parties to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Human Trafficking Protocol) agreed to begin criminalizing human trafficking domestically.¹¹⁸ The parties to the Council of Europe Convention on Action against Trafficking in Human Beings (Council of Europe Convention) promised to criminalize human trafficking within their territories beginning in 2008.¹¹⁹

States prosecute human traffickers based on traditional jurisdiction.¹²⁰ The Human Trafficking Protocol does not provide for the interdiction of ships engaged in human trafficking on the high seas.¹²¹ The Human Trafficking Protocol only calls on states to act with domestic legislation.¹²² The European Council Convention directs states to establish jurisdiction over human trafficking in their own territories, aboard their ships, aboard their aircraft, and by or against their nationals – not universally.¹²³ Moreover, it allows states to make reservations to limit the application of the Convention.¹²⁴ The treaties which criminalizing trafficking further

¹¹⁶ Gallagher, *supra* note 112, at 177-84.

¹¹⁷ *Id.*

¹¹⁸ Human Trafficking Protocol, *supra* note 112, arts. 9-13.

¹¹⁹ Council of Europe Convention on Action against Trafficking in Human Beings art. 18, May 16, 2005, C.E.T.S. No. 197

¹²⁰ Crawford, *supra* note 3, at 315; DOUGLAS GUILFOYLE, SHIPPING INTERDICTION AND THE LAW OF THE SEA 227 (2009).

¹²¹ *Id.*

¹²² Human Trafficking Protocol, *supra* note 112, arts. 5, 11(4).

¹²³ Council of Europe Convention on Action against Trafficking in Human Beings art. 31(1), May 16, 2005, C.E.T.S. No. 197.

¹²⁴ Council of Europe Convention on Action against Trafficking in Human Beings art. 31(2), May 16, 2005, C.E.T.S. No. 197.

detract from any claim of universal jurisdiction by allowing denunciation.¹²⁵ Amalea cannot pursue and arrest Luz on the basis of suspected human trafficking.

c. Amalea did not have reasonable grounds to suspect Oscar de Luz of piracy or any other universal jurisdiction crime

An act of piracy must take place outside the jurisdiction of any state.¹²⁶ Luz's acts were committed within 500 meters of Excelsior Island and are therefore subject to Ritania's jurisdiction under customary law.¹²⁷

Further, piracy requires a specific intent.¹²⁸ Under the Convention on the High Seas, piracy must be "directed . . . against" another ship, person, or property in furtherance of "private ends."¹²⁹ A reckless act is performed without regard to consequences.¹³⁰ As these are two separate and independent mental states a reckless act cannot be an act of piracy. Because Luz was convicted only of reckless crimes Amalea may not use piracy to justify the pursuit and arrest.

2. Even if Amalea's pursuit was legal, Amalea failed to exercise the requisite diligence in arresting the *Daedalus*.

No state may exercise sovereignty over any part of the high seas and states may only exercise jurisdiction in limited circumstances and for limited purposes.¹³¹ Hot pursuit only

¹²⁵ Human Trafficking Protocol, *supra* note 112, art. 3(1); Council of Europe Convention on Action against Trafficking in Human Beings art. 46, May 16, 2005, C.E.T.S. No. 197.

¹²⁶ Convention on the High Seas, *supra* note 73, art. 15.

¹²⁷ BÁRBARA KWIATKOWSKA, THE 200 MILE EXCLUSIVE ECONOMIC ZONE IN THE NEW LAW OF THE SEA 28 (1989); UNCLOS, *supra* note 1, art. 60.

¹²⁸ JOHN C. COLOMBOS, INTERNATIONAL LAW OF THE SEA 387 (4th ed. 1959); BLACK'S LAW DICTIONARY 1306 (4th ed. 1968); UNCLOS, *supra* note 1, art. 101.

¹²⁹ Convention on the High Seas, *supra* note 73.

¹³⁰ BLACK'S LAW DICTIONARY 1435 (4th ed. 1968).

¹³¹ Convention on the High Seas, *supra* note 73, art. 2; UNCLOS, *supra* note 1, art. 89.

allows a foreign state to arrest a ship for the purpose of escorting her to that state's port for further inquiry.¹³² The pursuing state may arrest an individual only after it brings the ship within its sovereign territory and conducts a reasonable investigation.¹³³ Thus, Amalea could not have arrested Luz aboard the *Daedalus*.

Amalea may argue that it could not reasonably escort Luz in his dinghy to an Amalean port, and therefore was able to arrest him on the dinghy. Because Amalea destroyed the *Daedalus*, arrest is not justified.

Though the pursuing ship may arrest a foreign vessel, it is restricted in its methods. It must exercise "great diligence... to ensure the safety of the lives of all persons on the pursued vessel."¹³⁴ All vessels on the high seas must take action to avoid collision whenever an approaching vessel does not appreciably change course.¹³⁵ Thus, Captain Haddock's expectation "that the *Daedalus* would turn at the last moment" did not excuse his failure to take corrective action.

Moreover, a ship must never "exceed the immediate necessity" of its situation.¹³⁶ Destruction of the pursued vessel must be avoided as far as possible.¹³⁷ The *Icarus* neglected its duty to exercise "great diligence" to ensure the safety of those aboard the *Daedalus*, and the

¹³² Convention on the High Seas, *supra* note 73, art. 23(6); Poulantzas, *supra* note 101, at 214, 234-35.

¹³³ *Id.*

¹³⁴ Poulantzas, *supra* note 101, at 236; Convention on the High Seas, *supra* note 73, art. 2.

¹³⁵ INT'L MARITIME ORG., International Regulations for Preventing Collisions at Sea, Rules 8, 7(d)(i) (1972).

¹³⁶ JOHN C. COLOMBOS, A TREATISE ON THE LAW OF PRIZE 288 (1949); *M/V Saiga*, ¶155.

¹³⁷ G. GIDEL, LE DROIT INTERNATIONAL PUBLIC DE LA MER: vol. III 358 (1932-34); *Report of the Commission of Enquiry, Bureau International de la Cour Permanente*, The Hague, March 1962, available online at http://legal.un.org/riaa/cases/vol_XXIX/521-539.pdf; Poulantzas, *supra* note 101, at 236.

manner of pursuit and arrest “exceeded the immediate necessity” of its situation. The *Icarus* could have continued to chase the *Daedalus*, arresting the ship and bringing it to port for investigation. Instead, with full knowledge of the risk he was taking with the lives aboard her, Captain Haddock chose not to avert collision, sinking the *Daedalus*. The *Icarus* did not exercise “great diligence” to protect the safety of those aboard the *Daedalus* and it “exceeded the immediate necessity” of its situation.

Amalea may not acquire jurisdiction by risking the lives aboard the *Daedalus* and sinking her in contravention of international law. Therefore, notwithstanding the legality of hot pursuit, Amalea’s arrest of Luz was illegal.

IV. AMALEA WAS WITHOUT JURISDICTION TO TRY LUZ IN CONNECTION WITH THE ROSEHILL COLLISION AND MUST RETURN HIM TO RITANIA IMMEDIATELY

C. Amalea’s trial of Oscar de Luz for acts related to the *Icarus* and *Rosehill* collisions was illegal

1. Under the High Seas Convention, Ritania has exclusive adjudicative jurisdiction over Oscar de Luz as a Ritanian national and the *Daedalus* as a Ritanian-flagged ship

Under the High Seas Convention, in the event of a collision or other navigational incident on the high seas, only the flag state or state of which the accused is a national may institute penal or disciplinary proceedings.¹³⁸ No subsequent agreement or practice has modified this provision.¹³⁹ It was adopted verbatim into UNCLOS and ratified by 166 parties.¹⁴⁰ Resort to the

¹³⁸ Convention on the High Seas, *supra* note 73, at art. 11(1).

¹³⁹ VCLT, *supra* note 20, art. 31(3).

¹⁴⁰ UNCLOS, *supra* note 1, art. 97; Table Recapitulating the Status of the Convention and of the Related Agreements, Jan. 10, 2014, *available online at* http://www.un.org/Depts/los/reference_files/status2010.pdf.

Convention's *travaux préparatoires*, though unnecessary,¹⁴¹ confirms the provision's application to the *Rosehill* and *Icarus* collisions. The provision was adopted in response to the Permanent Court of International Justices' seven-six decision in *Lotus*,¹⁴² which sanctioned the extraterritorial application of Turkish law to a Frenchman whose criminal negligence caused the death of eight Turkish nationals.¹⁴³ Article 11 of the High Seas Convention's was therefore a clear rejection of passive personality and the effects principle as justifications for the prosecution of crimes committed on the high seas, even for those involving criminal responsibility for loss of life.¹⁴⁴ In fact, the provision was adopted with the express object of protecting ships and their crews from the risk of penal proceedings before foreign courts.¹⁴⁵

The Convention's grant of jurisdiction to the flag state is nearly absolute.¹⁴⁶ The only exception is for acts of piracy.¹⁴⁷ States must compensate ships for any delay caused by an unfounded arrest for piracy, even when there were reasonable grounds to suspect piracy.¹⁴⁸

¹⁴¹ VCLT, *supra* note 20, art. 32; S.S. *Lotus* (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10, 16 (Sept. 7).

¹⁴² Int'l Law Comm'n, *Articles concerning the Law of the Sea with commentaries*, U.N. Doc. A/CN.4/104, at 281 (July 4, 1956); S.S. *Lotus*, at 16.

¹⁴³ S.S. *Lotus*, at 10.

¹⁴⁴ See Int'l Law Comm'n, *Articles concerning the Law of the Sea with commentaries*, U.N. Doc. A/CN.4/104, at 281 (July 4, 1956).

¹⁴⁵ *Id.*

¹⁴⁶ See Convention on the High Seas, *supra* note 73.

¹⁴⁷ *Id.*, art. 19; Int'l Law Comm'n, *Articles concerning the Law of the Sea with commentaries*, U.N. Doc. A/CN.4/104, at 279 (July 4, 1956).

¹⁴⁸ Convention on the High Seas, *supra* note 73, art. 20; Int'l Law Comm'n, *Articles concerning the Law of the Sea with commentaries*, U.N. Doc. A/CN.4/104, art. 46 cmt. 3 at 284 (July 4, 1956).

Accordingly, convictions for piracy must be explicit.¹⁴⁹ Amalea has not charged Oscar de Luz with piracy. Amalea may not simultaneously avoid liability for unreasonable arrests and take advantage of the universal jurisdiction which piracy affords.¹⁵⁰

Thus, as Luz is Ritanian and the *Daedalus* a Ritanian-flagged ship, Ritania has the exclusive jurisdiction to try him for acts related to the *Icarus* and *Rosehill* collisions. Amalea must respect Ritania's exclusive jurisdiction over acts committed by Ritanian nationals on board Ritanian ships.¹⁵¹

2. Ritania has exclusive jurisdiction over safety violations within the perimeter of Excelsior Island to Ritania

The Convention on the Continental Shelf, to which both Amalea and Ritania are parties, allows states to maintain safety zones of up to 500 meters around their continental shelf installations.¹⁵² States of all nationalities must respect these zones.¹⁵³ This provision was deemed necessary given the extreme vulnerability of such installations.¹⁵⁴ The *Rosehill* collision ruptured three oxy-fuel tanks on Excelsior Island and killed five Ritanian workers. Under the

¹⁴⁹ BLACK'S LAW DICTIONARY 3106.

¹⁵⁰ VCLT, *supra* note 20, art. 26.

¹⁵¹ *Id.*

¹⁵² Convention on the Continental Shelf art. 5(3), April 29, 1958, 499 U.N.T.S. 311.

¹⁵³ *Id.*

¹⁵⁴ Int'l Law Comm'n, *Articles concerning the Law of the Sea with commentaries*, U.N. Doc. A/CN.4/104, at 270 (July 4, 1956).

Convention, the coastal state has exclusion jurisdiction over both installations and the safety zone.¹⁵⁵

This grant of jurisdiction over artificial islands has risen to the level of customary international law.¹⁵⁶ Far from being a persistent objector, Amalea itself has endorsed this rule by proclaiming its own exclusive economic zone for the “establishment and use of artificial islands.” This exclusive jurisdiction includes criminal jurisdiction with offenses committed on or against artificial islands.¹⁵⁷ Excelsior Island is an artificial island within Ritania’s exclusive economic zone, and Luz’s reckless acts are safety transgressions and thus under Ritania’s jurisdiction.

3. Even if Amalea had concurrent jurisdiction, its exercise of adjudicative jurisdiction over Oscar de Luz is unreasonable

The extraterritorial exercise of jurisdiction must always be reasonable.¹⁵⁸ Amalea’s exercise of jurisdiction over a Ritanian national on a Ritanian vessel for acts committed within

¹⁵⁵ Convention on the Continental Shelf art. 5(4), April 29, 1958, 499 U.N.T.S. 311; Int’l Law Comm’n, *Articles concerning the Law of the Sea with commentaries*, U.N. Doc. A/CN.4/104, art. 71, cmt. 3 (July 4, 1956).

¹⁵⁶ BÁRBARA KWIATKOWSKA, *The 200 Mile Exclusive Economic Zone in the New Law of the Sea* 1989, 28; *See also* Continental Shelf (Tunisia/Libya) (Sep. Op., Judge Jiménez de Aréchaga), 1982 I.C.J. 100, ¶ 54; Convention on the Continental Shelf art. 5(3), April 29, 1958, Vol. 499 U.N.T.S. 311; UNCLOS, *supra* note 1, art. 60; Continental Shelf (Libya/Malta), 1985 I.C.J. 13, ¶ 34 (June 3, 1985).

¹⁵⁷ UNCLOS Commentaries, p. 585 at 60.15(d); UNCLOS, *supra* note 1, art. 60.

¹⁵⁸ *Filleting within the Gulf of St. Lawrence between Canada and France*, 19 RIAA 225, ¶ 54 (July 17, 1986); *Barcelona Traction, Light and Power Co. Ltd. (Belg. v. Spain)*, Second Phase, 1970 I.C.J. 3, ¶ 93 (Feb. 5).

Ritania's exclusive economic zone is an unreasonable interference with Ritania's sovereignty.¹⁵⁹ Passive personality jurisdiction is reasonably exercised only under exceptional circumstances.¹⁶⁰

As Judge Moore noted in his dissent to the *Lotus* case, unrestricted use of passive personality jurisdiction would be untenable: "[A]n inhabitant of a great commercial city . . . may in the course of an hour unconsciously fall under the operation of a number of foreign criminal codes."¹⁶¹ This would completely vitiate the principle that a state has exclusive jurisdiction over its own territory.¹⁶² It would also prevent actors from assessing the legal implications of their conduct, because they might not be able to ascertain the nationalities of persons with whom they interact, and thus which state's laws would apply.¹⁶³

Accordingly, international law has only accepted the use of passive personality jurisdiction over organized crimes intentionally directed against nationals of a particular state,¹⁶⁴ e.g. terrorism.¹⁶⁵ No facts suggest that Luz's acts were directed against Amalean nationals by

¹⁵⁹ See U.S. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 403 n.8 (1987).

¹⁶⁰ MALCOLM N. SHAW, INTERNATIONAL LAW 666 (6th ed., 2008).

¹⁶¹ *S.S. Lotus*, at 92.

¹⁶² *Id.*; WILLIAM EDWARD HALL, INTERNATIONAL LAW, 261, 263 (8th ed., 1924).

¹⁶³ A. ZERK, 'Extraterritorial Jurisdiction: Lessons for the Business and Human Rights Sphere From Six Regulatory Areas' (Working Paper No. 59, Harvard Corporate Social Responsibility Initiative, 2010), p. 20.

¹⁶⁴ ERIC TALBOT JENSEN, Exercising Passive Personality Jurisdiction Over Combatants, 42 INT'L LAW 1115 (2008); ROBERT J. LONDON III, Who Should be Held Responsible for the Kidnapping of Thirteen Japanese Citizens?, 13 TRANSNAT'L L. & CONTEMP. PROBS. 699, 707 (2003).

¹⁶⁵ ERIC TALBOT JENSEN, Exercising Passive Personality Jurisdiction Over Combatants, 42 Int'l L. 1116-17 (2008).

reason of their nationality and none of the crimes for which he was convicted required intent greater than recklessness or negligence.

Only the Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation (SUA Convention) allows for passive personality jurisdiction for other maritime crimes. The SUA Convention was adopted in response to a 1985 terrorist attack on the Italian-flagged *Achille Lauro*.¹⁶⁶ Amalea is not a party to the SUA Convention, and its provisions have not achieved the status of customary international law.¹⁶⁷ The drafters of the High Seas Convention expressly declined to allow for the arrest of ships having committed hostile acts against a state for fear that such a rule would be too easily abused.¹⁶⁸ Consequently jurisdiction cannot be based on passive personality.

4. Because the pursuit and arrest of Oscar de Luz were made in violation of international law, Amalea's trial of Luz was *a fortiori* illegal.

If a defendant's presence within a state's territory is acquired by violating international law, the defendant's mere presence does not confer jurisdiction. Courts have universally rejected

¹⁶⁶ H.E. JOSÉ LUIS JESUS, Protection of Foreign Ships against Piracy and Terrorism at Sea, 18 INT'L J. MARINE & COASTAL L. 363, 388 (2003); ABBAS DAHER DJAMA, THE PHENOMENON OF PIRACY OFF THE COAST OF SOMALIA 20 (2011).

¹⁶⁷ Lawrence Azubuike "International Law Regime Against Piracy," Ann. Surv. Int'l & Comp. L. 43, 56 (2006).

¹⁶⁸ Int'l Law Comm'n, *Articles concerning the Law of the Sea with commentaries*, U.N. Doc. A/CN.4/104, art. 46 cmt. 4 at 284, art. 66 cmt. 4 at 295 (July 4, 1956).

the theory of that *male captus bene detentus*,¹⁶⁹ absent a finding that the defendant is *hostis humani generis*.¹⁷⁰ State attempts to distinguish between the custody of an arresting officers and the custody of the court have been called “a mere face-saving device.”¹⁷¹ Amalea has not accused or convicted Luz of any universally condemned crimes. Therefore, as Amalea’s arrest of Luz was effected in violation of its treaty obligations, Amalea had no jurisdiction to try him.

D. Amalea must return Oscar de Luz to Ritania immediately

Ritania is entitled to the return of Luz. This Court has stated that the proper remedy for wrongful detention is repatriation.¹⁷² Should this Court find the continuing detention of Luz to be an unlawful exercise of jurisdiction of Amalea return is the only appropriate relief is Luz’s return.

Under Article 94 of UNCLOS, Ritania has an obligation to investigate every marine casualty on the high seas involving a ship flying its flag and causing loss of life to nationals of another state.¹⁷³ Thus, Ritania has an obligation to investigate Luz’s activities. Amalea, by

¹⁶⁹ *State v. Ebrahim*, 1991 (2) SA 553 (A) (S. Afr.); *Ex Parte Bennett*, [1994] 1 A.C. 42 (H.L.) (U.K.); *S v. Beahan* 1991 (2) ZLR 98 (S); *R v Hartley* (1978) 2 NZLR 199 (CA); *In re Jolis*, Tribunal Correctionnel [TCA] [criminal court of first instance] Avenes, [1933-34] Ann. Dig. 191, No. 77, (Fra.).

¹⁷⁰ *CrimC (Jer.) 40/61 Attorney-General v. Eichmann* [1962] (Isr.); *United States v. Alvarez-Machain*, 504 U.S. 655 (1992) (torture); *Prosecutor v. Dragan Nikolic*, Case No. IT-94-2-AR73, Decision on Defence Motion Challenging the Exercise of Jurisdiction by the Tribunal (ICTY, Oct. 9, 2002).

¹⁷¹ EDWIN D. DICKINSON, *Jurisdiction Following Seizure or Arrest in Violation of International Law*, 28 Am J. Int’l L. 231, 235-36 n.12 (1934).

¹⁷² *U.S. Diplomatic and Consular Staff in Tehran (U.S. v. Iran)*, 1980 I.C.J. 3, ¶95 (May 24).

¹⁷³ UNCLOS, *supra* note 1, art. 94.

refusing to return Ritania, is preventing Ritania from fulfilling its international obligations. As a signatory, Amalea has an obligation not to defeat the object and purpose of UNCLOS.¹⁷⁴

Amalea had no right to pursue, arrest, or try Luz. Amalea's imprisonment of Luz is a sustained exercise of adjudicative jurisdiction and a continuing breach of its international obligations. This breach entitles Ritania to Luz's return as an equitable remedy.¹⁷⁵ Reparation must, as far as possible wipe out the consequences of the illegal act.¹⁷⁶ Thus, where possible, specific performance is the appropriate remedy; if monetary compensation were the only remedy, a state could buy the right to breach a treaty.¹⁷⁷

¹⁷⁴ VCLT, *supra* note 20, art. 18.

¹⁷⁵ *Diplomatic and Consular Staff in Tehran*, ¶ 95; ALBERTO COSTI, *Problems with Current International and National Practices Concerning Extraterritorial Abduction*, 8 N.Z. Y.B. ASS'N FOR COMP. L., 57, 62; *Spanish Zones of Morocco (Spain v. UK)* [1925] 2 R.I.A.A 615, 641; *Factory at Chorzow*, 1927 P.C.I.J. (ser. A) No. 17, at 47-48 (Sept 13).

¹⁷⁶ *Chorzow*, at 47.

¹⁷⁷ *Id.*; *Rainbow Warrior*, para. 111.

PRAYER FOR RELIEF

Ritania respectfully requests the Court to adjudge and declare that:

- I. Ritania's conduct concerning the Excelsior Island project complied with international law, and Ritania has no obligation to compensate Amalea for any loss or damage allegedly caused by the 2009 landslide
- II. The Coronet and stolen artifacts properly belong to Ritania which has the right to protect them and Amalea's salvage of the *Cargast* is unlawful
- III. Amalea Was Without Jurisdiction to Try Luz in Connection with the *Rosehill* Collision and Must Return Him to Ritania Immediately
- IV. Amalea Was Without Jurisdiction to Try Luz in Connection with the *Rosehill* Collision and Must Return Him to Ritania Immediately