

Team Number: 45

**2024 China International Law of the Sea Moot Court Competition**

**Case Concerning the Shipwreck of**

**the Nuestra Señora *Aparecida***

**in the Antillean Sea**

(The Kingdom of Idris v. The Republic of Vespucia)

**COUNTER-MEMORIAL OF**

**THE REPUBLIC OF VESPUCIA**

**11 August 2024**

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**Treaties and Other International Agreements**

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| International Covenant on Economic, Social and Cultural Rights (1976) 993 UNTS 3 | 6 |
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| United Nations Convention on the Law of the Sea (1994) 1833 UNTS 397 | *passim* |
| Vienna Convention on the Law of Treaties 1155 UNTS331 (1969) | 16, 18, 32-33 |

**ICJ and PCIJ Cases**

***PCIJ Cases***

|  |  |
| --- | --- |
| *Diversion of Water from the Meuse* (Judgment) (Dissenting Opinion by M. Anzilotti) [1937] PCIJ Series A/B No 70 | XXI |
| *Factory At Chorzów (Germany v Poland)* (Claim for Indemnity, Merits) [1928] PCIJ Series A No 17 | 37 |
| *Legal Status of Eastern Greenland* (Judgment) (Dissenting Opinion of Judge Anzilotti) [1933] PCIJ Series A/B No 53 | XXI |
| *Phosphates in Morocco* (Judgment) [1938] PCIJ Series A/B No 74 | 37 |

***ICJ Cases***

|  |  |
| --- | --- |
| *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v Colombia)* (Judgment) [2016] ICJ Rep 19 | XX |
| *Avena and Other Mexican Nationals (Mexico v United States of America)* (Judgment) [2004] ICJ Rep 12 | XVIII, 37 |
| *Case Concerning Kasikili/Sedudu Island (Botswana v Namibia)* (Judgement) [1999] ICJ Rep 1045 | 16 |
| *Case Concerning Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment)[2010] ICJ Rep 14 | 16, 22 |
| *Case Concerning the Gabcīkovo-Nagymaros Project* *(Hungary v Slovakia)* (Judgement) [1997] ICJ Rep 7 | 22, 37 |
| *Certain Norwegian Loans (France v Norway)* (Judgment) (Separate Opinion of Sir Hersch Lauterpacht) [1957] ICJ Rep 9 | XXI |
| *Continental Shelf (Libyan Arab Jamahiriya v Malta)* (Judgment) [1985] ICJ Rep 13 | 11 |
| *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v USA)* (Judgment) [1984] ICJ Rep 246 | 18 |
| *Elettronica Sicula SpA (ELSI) (USA v Italy)* (Judgment) [1989] ICJ Rep | XXI |
| *Fisheries Jurisdiction (UK v Iceland)* (Judgment) [1974] ICJ Rep 3 | 34 |
| *Immunities and Criminal Proceedings (Equatorial Guinea v France)* (Preliminary Objections) (Judgment) [2018] ICJ Rep 292 | XVIII |
| *Interhandel (Switzerland v USA)* (Judgment) [1959] ICJ Rep 6 | XXI |
| *Jadhav (India v Pakistan)* (Judgment) [2019] ICJ Rep 418 | XVIII |
| *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution* *276 (1970)* (Advisory Opinion) [1971] ICJ Rep 16 | 10 |
| *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v USA)* (Judgment) (Dissenting Opinion of Judge Schwebel) [1986] ICJ Rep 14 | XXI |
| *North Sea Continental Shelf* (Judgment) [1969] ICJ Rep 3 | 34 |
| *Oil Platforms (Iran v USA)* (Preliminary Objection) (Judgment) [1996] ICJ Rep 803 | 18 |
| *South West Africa (Ethiopia v South Africa; Liberia v South Africa)* [1966] ICJ Rep 6 | 20 |
| *Territorial Dispute (Libyan Arab Jamahiriya v Chad)* (Judgment) [1994] ICJ Rep 6 | 32 |

**ITLOS Cases**

|  |  |
| --- | --- |
| *M/V “SAIGA” (No. 2) Case (Saint Vincent and the Grenadines v Guinea)* (Judgment)(Dissenting opinion of Judge Warioba) [1999] ITLOS No 2 | 34 |
| *M/V “SAIGA” (No. 2) Case (Saint Vincent and the Grenadines v Guinea)* (Separate Opinion of Judge Zhao) [1999] ITLOS No 2 | 41 |
| *M/V “SAIGA” (No. 2) Case (Saint Vincent and the Grenadines v Guinea)* (Judgment)[1999] ITLOS No 2 | 39-40 |
| *M/V “Virginia G” (Panama v Guinea-Bissau)* (Judgment) (Declaration of Judge Nelson) [2014] ITLOS No 19 | 32 |
| *Southern Bluefin Tuna Cases (New Zealand v Japan; Australia v Japan)* (Provisional Measures) (Order) [1999] ITLOS Rep 280 | XV |
| *The M/V “Virginia G” Case (Panama v Guinea-Bissau)* (Judgment) [2014] ITLOS No 19 | 39, 42 |

**Other International and Regional Cases**

***ECtHR Cases***

|  |  |
| --- | --- |
| *Case of Belilos v Switzerland* ECtHR App no 10328/83 (1988) | XIX |
| *Case of Guzzardi v Italy* ECtHR App no 7367/76 (1980) | 46 |
| *Tyrer v UK* ECtHR App no 5856/72 (1978) | 10 |

***ICSID Cases***

|  |  |
| --- | --- |
| *Global Trading v Ukraine* (Award) [2010] ICSID Case No ARB/09/11 | XIX |

***PCA Cases***

|  |  |
| --- | --- |
| *Chagos Marine Protected Area Arbitration (Mauritius v UK)* (Award) [2015]PCA Case No 2011-03 | 34, 43 |
| *Duzgit Integrity Arbitration (Malta v Sao Tomi and Principe)* (Award) [2016] PCA Case No 2014-07 | 41 |
| *The Arctic Sunrise Arbitration (Netherlands v Russia)* (Award) [2015] PCA No 2014-02 | 39 |
| *The South China Sea Arbitration (Philippines v China)* (Award on Jurisdiction and Admissibility) [2015] PCA Case No 2013-19 | XVIII |
| *The South China Sea Arbitration (Philippines v China)* (Award) [2016] PCA Case No 2013-19 | XX, 29, 31, 42 |

***International Arbitral Awards***

|  |  |
| --- | --- |
| *Continental Shelf Arbitration (France v UK)* (Decision) [1977] 18 RIAA 3 | XIX |

**Domestic Law and Cases**

|  |  |
| --- | --- |
| Abandoned Shipwreck Act 1988 (USA) | 7, 12 |
| Act No 5 of 1992 on Heritage Objects (Indonesia) | 12 |
| *Baltimore, Crisfield & Onancock Line v US* 140 F.2d 230 (4th Cir. 1944) | 10 |
| Law on Cultural Heritage 2001 (Viet Nam) No. 28/2001/QH10 2001 | 12 |
| National Cultural Heritage Act of 2009 (Philippines) No. 10066 | 12 |
| *Odyssey Marine Exploration v Shipwrecked Vessel* 657 F.3d 1159 (11th Cir. 2011) | 7 |
| Protection of Wrecks Act 1973 (UK) | 12 |
| Regulation of the People’s Republic of China on the Administration of the Protection of Underwater Cultural Relics 2022 (China) | 12 |
| Sunken Military Craft Act 2004 (USA) | 7, 12 |

**UN Documents and Publications**

***UNGA Documents***

|  |  |
| --- | --- |
| UN, ‘Informal Single Negotiating Text’ (1975) UN Doc A/CONF.62/WP.8/Part III | 4 |
| UN, ‘Revised single negotiating text (part III)’ (1976) UN Doc A/CONF.62/WP.8/Rev. 1/Part III | 4 |
| UNGA, ‘Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations’ (1970) UN Doc A/RES/2625(XXV) | 6 |
| UNGA, ‘Declaration on the Granting of Independence to Colonial Countries and Peoples’ (1960) UN Doc A/RES/1514(XV) | 6, 11 |

***HRComm Documents***

|  |  |
| --- | --- |
| *Camargo v Colombia* (1982) UN Doc CCPR/C/15/D/45/1979 | 39 |
| *Fardon v Australia* (2010) UN Doc CCPR/C/98/D/1629/2007 | 46 |
| *Fijalkowska v Poland* [2005] UN Doc CCPR/C/84/D/1061/2002 | 46 |
| HRComm, ‘General Comment No 34’ (2011) UN Doc CCPR/C/GC/34 | 41 |
| HRComm, ‘General Comment No 35’ (2014) UN Doc CCPR/C/GC/35 | 40, 47 |
| HRComm, ‘General Comment No 36’ (2019) UN Doc CCPR/C/GC/36 | 46 |
| *Leehong v Jamaica* (1999) UN Doc CCPR/C/66/D/613/1995 | 46 |
| *Mukong v Cameroon* (1994) UN Doc CCPR/C/45/D/458/1991 | 40 |

***ILC Documents***

|  |  |
| --- | --- |
| ILC, ‘Draft Articles on Diplomatic Protection with commentaries’ (2006) UN  Doc A/61/10 | XXI |
| ILC, ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts’ (2001) UN Doc A/RES/56/83 | 37 |
| ILC, ‘Guide to Practice on Reservations to Treaties’ (2011) UN Doc A/66/10 | XIX |
| ILC, ‘Report of the International Law Commission: Commentaries to the Articles Concerning the Law of the Sea’ (1956) UN Doc A/3159 | 4 |

***Other UN Documents and Publications***

|  |  |
| --- | --- |
| CESCR, ‘General comment No 14’ (2000) UN Doc E/C.12/2000/4 | 46 |
| Oceans and Law of the Sea, ‘Declarations or Statements upon UNCLOS ratification’ <https://www.un.org/Depts/los/convention\_agreements/convention\_declarations.htm>accessed 11 August 2024. | 19 |
| UN, ‘Basic Principles on the Use of Force and Firearms by Law Enforcement Officials’ (1990) UN Doc A/CONF.144/28/Rev.1 | 41, 46 |
| UNESCO World Heritage Centre, ‘World Heritage Committee Inscribes Two New Sites on World Heritage List’ (2010) <https://whc.unesco.org/en/news/640> accessed 11 August 2024. | 25 |
| UNESCO, ‘Feasibility study for the drafting of a new instrument for the protection of the underwater cultural heritage’ (1995) UNESCO Doc 146 EX/27 | 3 |
| UNESCO, ‘Guidelines For The Implementation Of Resolution Xx-6 Of The Ioc Assembly Regarding The Deployment Of Profiling Floats In The High Seas Within The Framework Of The Argo Programme’ (2008) Res IOC/EC-XLI-4 | 19 |
| United Nations Office of Legal Affairs, Marine Scientific Research: a revised guide to the implementation of the relevant provisions of the United Nations Convention on the Law of the Sea (2010) | 4, 18 |

**Other International and Regional Materials**

|  |  |
| --- | --- |
| IACHR, ‘Report on Terrorism and Human Rights’ (2002) OEA/Ser.L/V/II.116 Doc.5 rev.1 corr. | 40 |

**Books**

|  |  |
| --- | --- |
| Alex G Oude Elferink, ‘Artificial Islands, Installations and Structures’Max Planck Encyclopedia of Public International Law (2013) | 29 |
| Alexander Proelss et al, *United Nations Convention on The Law of the Sea: A Commentary* (1st edition, Nomos Verlagsgesellschaft 2017) | XVI, XVII, XIX, 2, 29-30, 42 |
| Anastasia Strati, *The Protection of the Underwater Cultural Heritage: An Emerging Objective of the Contemporary Law of the Sea* (Kluwer Academic Publishers 1995) | 2 |
| Browne K and Raff M, *International Law of Underwater Cultural Heritage* (Springer Cham 2023) | 23 |
| Bryan Garner, *Black’s Law Dictionary* (9th edition, West Group 2009) | XIX, 15 |
| Eke Boesten, *Archaeological And/or Historic Valuable Shipwrecks in International Waters - Public International Law and What It Offers* (1st edition, TMC Asser 2002) | 15, 17, 21 |
| James Crawford, *Brownlie’s Principles of Public International Law* (9th edition, Oxford University Press 2019) | 9, 11 |
| Malcolm N. Shaw, *International Law* (8th edition, Cambridge University Press 2017) | 11 |
| Marian Nash Leich ed, *Digest of United States Practice in International Law* (1980) | 10 |
| Mark E. Villiger, *Commentary on The 1969 Vienna Convention on the Law of Treaties* (1st edition, Martinus Nihoff Publishers 2009) | 20 |
| Mark Staniforth, ‘Archaeology’ in John B Hattendorf (ed), *The Oxford Encyclopedia of Maritime History*, vol. 1 (Oxford University Press 2007) | 17 |
| Miguel García García-Revillo, *The Contentious and Advisory Jurisdiction of the International Tribunal for the Law of the Sea* (2015) | XV |
| Patrick J O’Keefe, *Shipwrecked Heritage: A Commentary on the UNESCO Convention on Underwater Cultural Heritage* (2nd edition, Institute of Art and Law 2014) | 23, 26, 44 |
| Peter-Tobias Stoll, ‘State Immunity’, Max Planck Encyclopaedia of Public International Law (2011) | 9 |
| Robert Kolb, ‘General Principles of Procedural Law’ in Andreas Zimmennan and Christian J. Tams (eds), *The Statute of the International Court of Justice: A Commentary* (3rd edition, Oxford University Press 2019) (Legal Annex 3) | XVIII |
| Roberta Garabello and Tullio Scovazzi ed, *The Protection of the Underwater Cultural Heritage Before and After the 2001 UNESCO Convention* (Martinus Nijhoff Publishers 2003) | 12 |
| Sarah Dromgoole, *Underwater Cultural Heritage and International Law* (Cambridge University Press 2013) | 3, 22, 24, 26-27 |
| Somesh Dutta, ‘Preliminary Proceedings: UNCLOS’, Max Planck Encyclopaedia of Public International Law (2021) | XIX |
| Vaughan Lowe and Stefan Talmon (eds), *The Legal Order of the Oceans: Basic Documents on the Law of the Sea* (1st edition, Bloomsbury Publishing Plc 2009) | 28 |
| Yoshifumi Tanaka, *The International Law of the Sea* (2nd edition, Cambridge University Press 2015) | 42 |

**Articles**

|  |  |
| --- | --- |
| ‘International Congress of Maritime Museums, 21 September 1993’ (1994) 3 International Journal of Cultural Property 308 | 26 |
| Bernard H. Oxman, ‘The Regime of Warships under the United Nations Convention on the Law of the Sea’ (1983-1984) 24 Virginia Journal of International Law 809 | 42 |
| Fitzmaurice, ‘The Law and Procedure of the International Court of Justice 1951-4: Treaty Interpretation and Other Points’ (1957) 23 British Yearbook of International Law 203 | 20 |
| Katherine L Croff, ‘The Underwater Cultural Heritage and Marine Scientific Research in the Exclusive Economic Zone’ (2009) 43(1) Marine Technology Society Journal 93 | 5, 16-17 |
| M.M. Losier, ‘The Conflict between Sovereign Immunity and the Cargo of Sunken Colonial Vessels’ (2017) The International Journal of Marine and Coastal Law 32 | 9, 10 |
| Maksym Tsutskiridze et al, ‘Underwater Cultural Heritage: Regime and Jurisdiction Challenges’ (2022) 8 Lex Portus 59 | 36 |
| Mindell David A and Croff Katherine L, ‘Deep Water, Archaeology and Technology Development’ (2002) 36 Marine Technology Society Journal 13 | 16, 18 |
| Natalino Ronzitti, ‘The Legal Regime of Wrecks of Warships and Other State-owned Ships in International Law’ (2015) 76 Yearbook of Institute of International Law 267 | 9 |
| P Birnie, ‘Law of the Sea and Ocean Resources: Implications for Marine Scientific Research’ (1995) 10 International Journal of Marine and Coastal Law 229 | 17 |
| Philomene A. Verlaan, ‘Marine Archaeology: A Trojan (Sea) Horse?’ (1989) 8(1) Marine Science and Technology 231 | 5, 16 |
| Robyn Frost,‘Underwater Cultural Heritage Protection’ (2004) 23 Australian Year Book of International Law 25 | 25 |
| S. K. N. Blay, R. W. Piotrowicz & B. M. Tsamenyi, ‘Problems with the Implementation of the Third United Nations Law of the Sea Convention: The Question of Reservations and Declarations’ (1984-1987) 11 Australian Year Book of International Law 67 | 20 |
| Sarah Dromgoole, ‘Revisiting the Relationship between Marine Scientific Research and the Underwater Cultural Heritage’ (2010) 25 International Journal of Marine and Coastal Law 33 | 17-18, 26 |
| Yin-Cheng Hsu,‘Developments in International Cultural Heritage Law: What Hampers the Convention on the Protection of the Underwater Cultural Heritage’ (2016) 3 Edinburgh Student Law Review 116 | 30 |
| Yurika Ishii, ‘The “Due Regard” Obligation and the Peaceful and Economic Use of the exclusive economic zone Other than Fisheries’ (2019) 34 The International Journal of Marine and Coastal Law 73 | 34 |
| Zhao H, ‘Recent developments in the legal protection of historic shipwrecks in China’ (1992) 23 Ocean Development and International Law 305 | 2 |

**Miscellaneous**

|  |  |
| --- | --- |
| Bryan A. Garner, *Black’s Law Dictionary* (12th edition, Thomson Reuters 2024) <<https://1.next.westlaw.com/Link/Document/FullText?findType=Y&pubNum=223765&cite=BLACKS12THP14400&originatingDoc=Iff5d4b88808411e4b391a0bc737b01f9&refType=DA&originationContext=document&transitionType=DocumentItem&ppcid=18e367be1fd6476cb12ea61b4d242e5e&contextData=(sc.Search)#co_pp_sp_223765_placeoforigin>> accessed 11 August 2024 | 21 |
| Perez Alvaro (Speech in the First Committee of the United Nations General Assembly, 22nd Session, 1515th Meeting1 November 1967) <<https://www.un.org/depts/los/convention_agreements/texts/pardo_ga1967.pdf>> accessed 11 August 2024 | 23 |

# STATEMENT OF JURISDICTION

# THE TRIBUNAL DOES NOT HAVE JURISDICTION OVER THE CASE UNDER THE UNCLOS AND THE PARTIES’ DECLARATIONS.

## THE CASE EXCEEDS THE SCOPE OF THE TRIBUNAL’S JURISDICTION.

Under Article 288 of UNCLOS, the Tribunal has jurisdiction over disputes related to the interpretation or application of the Convention and relevant international agreements.[[1]](#footnote-1) Moreover, the Tribunal’s jurisdiction is only activated when the peaceful methods chosen by the parties fail to resolve the dispute.[[2]](#footnote-2) If a dispute involves both UNCLOS and other international treaties, the dispute resolution mechanism may be governed by the provisions of those other treaties, not solely by mechanisms under the UNCLOS.[[3]](#footnote-3) The present dispute includes issues such as the legality of the arrest of Navarro crew members alleged to infringe on Vespucia’s sovereignty, the determination of the unjustifiability of armed resistance by Idris sailors, and obligations related to the protection of artifacts under UNESCO Convention.[[4]](#footnote-4) These issues clearly fall outside the scope of the UNCLOS interpretation, and thus the Tribunal lacks jurisdiction over this case.[[5]](#footnote-5) Under Article 298 of UNCLOS, this case falls under marine scientific research **[‘MSR’]** as specified in Article 297, which can be excluded from jurisdiction.[[6]](#footnote-6)

## THE PARTIES DECLARE THAT BOTH THE COURT AND THE TRIBUNAL HAVE JURISDICTION AND THAT THE TRIBUNAL DOES NOT HAVE PRIORITY.

Under Article 280 of UNCLOS, the provisions of the Convention do not preclude States from resolving disputes concerning the interpretation or application of the Convention through any other peaceful means of their own choice.[[7]](#footnote-7) This provision is intended to provide the greatest flexibility to the parties.[[8]](#footnote-8) Additionally, Article 281 further emphasizes that the procedures under this section are only applicable if the peaceful methods chosen by the parties have failed to resolve the dispute.[[9]](#footnote-9) Article 287 of UNCLOS provides that jurisdiction can be determined by different permanent courts, namely the Tribunal or the Court.[[10]](#footnote-10) This provision reflects the ‘default rule’, which states that, in the absence of differing choices by the parties or if no choice is made by one or both parties, the court with jurisdiction is determined by the respondent.[[11]](#footnote-11) Upon ratification of the UNCLOS, both Vespucia and Idris declared that their governments had the right to choose either the Court or the Tribunal for dispute resolution, but did not specify any priority between the two.[[12]](#footnote-12) Furthermore, given that the Court has jurisdiction over any issue of international law and the parties have agreed to the Court’s jurisdiction, the Court should therefore have jurisdiction over this dispute.[[13]](#footnote-13)

# NONE OF THE FOUR SUBMISSIONS MADE BY IDRIS IS ADMISSIBLE

None of the four submissions by Idris is admissible since [A] the first two submissions constitute an abuse of process; [B] the third submission is prima facie unfounded; and [C] the fourth submission lacks exhausting local remedies and clean hands.

## IDRIS’S FIRST AND SECOND SUBMISSIONS REGARDING APAREIDA AND ITS CARGO ARE INADMISSIBLE FOR ABUSING PROCESS.

If the claimant’s application constitutes an abuse of process, the court and tribunal must refrain from exercising jurisdiction[[14]](#footnote-14) and find a claim inadmissible.[[15]](#footnote-15) International judicial courts limited the abuse of process in exceptional circumstances[[16]](#footnote-16) such as ‘use proceedings for aims alien to the ones for which the procedural rights at stake have been granted’.[[17]](#footnote-17)

Here, as countries associated with underwater cultural heritage **[‘UCH’]**,[[18]](#footnote-18) both parties should peacefully cooperate to protect UCH jointly.[[19]](#footnote-19) However, the use of proceedings in order to promote its claim to sovereignty over the *Aparecida* and its cargo is a clear attempt by Idris.[[20]](#footnote-20) Therefore, the present case falls within the exceptional circumstances articulated above that the Tribunal should reject.

## IDRIS’S THIRD SUBMISSION IS INADMISSIBLE DUE TO ITS *PRIMA FACIE* UNFOUNDEDNESS.

UNCLOS Article 294(1) precludes prima facie unfounded claims concerning conflicts between coastal and non-coastal States in the exclusive economic zone **[‘EEZ’]**.[[21]](#footnote-21) ‘*Prima facie* unfounded’ refers to ‘frivolous’[[22]](#footnote-22), namely ‘lacking legal basis’.[[23]](#footnote-23) Determining whether a claim is prima facie unfounded concerns treaty interpretation,[[24]](#footnote-24) in which interpretative declarations and States’ reactions are elements to consider.[[25]](#footnote-25)

UNCLOS Article 310 allows for ‘interpretive declaration’ purporting to clarify the meaning of provisions.[[26]](#footnote-26) State’s intention and relevant provisions shall be considered to determine if a statement constitutes such declaration.[[27]](#footnote-27) Specifically, as for Article 58, the freedom of non-coastal States to construct structures in others’ EEZ is *prima facie* not involved.[[28]](#footnote-28) Thus, a *contrario* reading of Article 60 that coastal States have no right of structures other than those in paragraph (1)(b) and (1)(c) while non-coastal States have will lead to conflicting provisions, which is unacceptable.[[29]](#footnote-29) A coastal State shall have rights to all types of structures in its EEZ.

Here, a conflict regarding rights to construct structures in the EEZ between Idris and Vespucia exists. The word ‘understand’ in Vespucia’s declaration indicates its intention to make an interpretative declaration.[[30]](#footnote-30) This declaration accords with UNCLOS Articles 58 and 60. Moreover, States including Idris made no objections.[[31]](#footnote-31) Thus, Idris’s alleged right to build structures is *prima facie* unfounded. Therefore, Idris’s third submission is inadmissible.

## IDRIS’S FOURTH SUBMISSION IS INADMISSIBLE FOR LACK OF EXHAUSTING LOCAL REMEDIES AND CLEAN HANDS.

Diplomatic protection refers to a State acting on behalf of its nationals injured by another State.[[32]](#footnote-32) Before exercising diplomatic protection, local remedies shall be exhausted[[33]](#footnote-33) unless conclusively proven impossible.[[34]](#footnote-34) Moreover, as a general principle of law[[35]](#footnote-35), the Clean Hands doctrine provides that a claim is inadmissible when an alleged conduct is the consequence of the applicant’s own illicit behavior.[[36]](#footnote-36)

Here, acting on behalf of the two naval crews, Idris is exercising diplomatic protection.[[37]](#footnote-37) However, no evidence showed that local remedies were exhausted or impossible.[[38]](#footnote-38) As for clean hands, Idris violated Vespucia’s rights under the UNCLOS and UNESCO by unauthorized construction of artificial structures.[[39]](#footnote-39) This illicit conduct resulted in Vespucia’s blockade.[[40]](#footnote-40) Therefore, Idris’s claim is inadmissible for lack of exhausting local remedies and clean hands.

Therefore, all four submissions made by Idris are inadmissible.

# QUESTIONS PRESENTED

1. *Whether* Vespucia has breached its international obligations under the UNCLOS and the UNESCO Convention, by claiming sovereignty and jurisdiction over the *Aparecida* and its cargo.
2. *Whether* Vespucia has violated its international obligations under the UNCLOS and the UNESCO Convention, by demanding prior consent from Idris to access the shipwreck.
3. *Whether* Vespucia must respect the right of Idris to emplace an artificial structure for archaeological exclusive purposes near the site of the shipwreck.
4. *Whether* Vespucia must cease the blockade of the artificial structure and allow the Idrisian vessels (private and state-owned) to provide food, water, and oil fuel to the installation.

# STATEMENT OF FACTS

BACKGROUND

The Kingdom of Idris **[‘Idris’]** is a developed country located in Terraferma, and the Republic of Vespucia **[‘Vespucia’]** is a developing country situated in the Columbus continent; the two States are separated by thousands of nautical miles. Idris and Vespucia share historical ties since the latter was colonized by the former from the 16th century to September 1822 when Vespucia eventually gained its political independence from Idris.

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Idris and Vespucia ratified the UNCLOS on 25 August 1993 and 15 January 1990 respectively. Both parties made their declaration for choosing a mean for the settlement of disputes pursuant to Article 287 of the UNCLOS. Furthermore, the Vespucian Government also declares its exclusive right on archaeological and historical nature, which is found within the maritime zones, and reclaims its right on all types of installations and structures.

OTHER TREATIES RATIFIED BY IDRIS AND VESPUCIA

Idris and Vespucia are also parties to parties to the 2001 Convention on the Protection of the Underwater Cultural Heritage **[‘UNESCO Convention’]**, the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage **[‘World Heritage Convention’]**, and to the 1969 Vienna Convention on the Law of Treaties **[‘VCLT’]**.

APARECIDA

In April 1790, a colonial vessel the *Aparecida* sunk in the *Antillean Sea*, which is now the EEZ and continental shelf of Vespucia. The *Aparecida* sank with its cargo including gold coins mined and minted in Vespucia and carefully crafted artifacts in the old Vespucian tradition, while the crew of the *Aparecida* was partly employees of Idrisian private colonial venture.

THE ANNOUNCEMENT BY BOTH SIDES

On 4 October 2023, an ocean exploration company found the sunken *Aparecida*. Then it announced the exact location and exceptional condition of the shipwreck. After that, both Idris and Vespucia claimed sovereign interests in the shipwreck. President of Vespucia claimed jurisdiction over the *Aparecida* and its cargo because of the location of the shipwreck and its historical and cultural link with the cargo. The Prime Minister of Idris claimed sovereign immunity as the sunken *Aparecida* is still an Idrisian state vessel. The cargo and the shipwreck are interlinked for immunity purposes. Vespucia intends to preserve the *Aparecida* *in situ* to boost local tourism, while Idris intends to salvage the cargo and remove part of the vessel which may require excavation according to Idrisian archaeologists.

THE SEARCHING ACTIVITIES OF IDRIS

Idris’s Prime minister Gomez authorized the deployment of the state-owned vessel, *Marina*, to conduct research activity on the *Aparecida*. Vespucia claimed ownership and jurisdiction of the wreck and its cargo, demanding prior consent for *Marina*’s access to the *Aparecida* in its EEZ and refusing research authorization for *Marina*. Idris asserted *Aparecida* as state property, arguing no authorization was needed for *Marina* since it wasn’t conducting research or economic activities in Vespucia’s waters. After unauthorized access, archaeologists on *Marine* confirmed *Aparecida* was in excellent condition and expressed Idris’s intent to salvage cargo and even to remove parts of the vessel including excavation into the sea-floor sediments of Vespucia’s continental shelf.

THE ESTABLISHMENT OF SAN ANDRÉS MARINE PARK

On 21 December 2023, Vespucia enacted Decree no. 1,098 establishing a marine park encompassing the 200-nautical mile EEZ and continental shelf around San Andrés Island. The newly established San Andrés Marine Park is a full protection zone aiming ‘to safeguard the representativeness of historical and ecological habitats and ecosystems of the national territory and jurisdictional waters, preserving the existing historical and biological heritage’. Moreover, the decree guarantees the right of the traditional communities of the island to use the resources of the marine park sustainably and rationally.

CONSTRUCTION OF THE ARTIFICIAL STRUCTURE

Before the *Marina* departed heading back to Idris, the Idrisian crew emplaced a small artificial structure (15 by 30 m) for the purpose of assisting their marine archaeologists in future expeditions to the shipwreck in Vespucia’s EEZ. Two naval crews stayed on the installation and were designated to maintain and protect it. This artificial structure is entirely buoyant, not anchored to the continental shelf or any insular feature of Vespucia. Furthermore, It has remained in the same site consistently.

Upon ratification, Vespucia stated that it enjoyed exclusive rights to construct and to authorize and regulate the construction, operation and use of all types of installations and structures in its EEZ and on its continental shelf under UNCLOS. After Idris’s emplacement of the artificial structure, Vespucia emphasized its exclusive rights as a coastal State.

THE DETENTION OF NAVARRO AND CREW

*Navarro* – a private Idrisian-flagged ship which operates in the Antillean Sea – was hired by Idris to serve as a bunkering vessel to supply fuel oil, food, water, and other supplies to the sailors and for the maintenance of the artificial structure.

On 2 January 2024, after the *Navarro* concluded its operations on the artificial structure, the *Navarro* and its crew were arrested by a Vespucian naval ship and brought to a port at San Andrés Island. After 20 hours detention, the *Navarro* and crew were released.

THE BLOCKADE AND PREVENTING SUPPLIES

Vespucia planned to remove the artificial structure, but since the two Idrisian sailors showed that they were armed and prepared to resist, Vespucian officials decided to block any further assistance to the installation. The Vespucian Minister of Foreign Affairs sent an official communication to its counterpart confirming this measure.

The two sailors appear to be in good health conditions and capable of maintaining their conditions for several more months.

# SUMMARY OF PLEADINGS

***A***

The claiming of Vespucia does not violate the obligations under the UNCLOS and the UNESCO Convention.

*First*, rather than sovereignty stated by Idris, Vespucia exercises sovereign rights and jurisdiction over the *Aparecida* and its cargo because of economic activity, natural resources, and MSR. Moreover, Vespucia has jurisdiction over the cargo pursuant to human rights law. Additionally, the integrity of the *Aparecida* and its cargo led to the mutual extension of jurisdiction and rights.

*Second,* Idris does not enjoy sovereign immunity. The sunken *Aparecida* can neither be construed as a vessel, warship or other non-commercial government ship, nor be regarded as state property, as is implicitly abandoned. Moreover, the immunity of the cargo should be specifically excluded because of modern legal principles against colony.

*Lastly*, the manner in which Vespucia claims does not violate its obligations. Vespucia’s claiming is aimed at preventing Idrisian interference with its sovereign rights and jurisdiction and immediate danger to the *Aparecida* as a ‘Coordinating State’ pursuant to the UNESCO Convention.

***B***

Vespucia did not violate its international obligations under the UNCLOS and the UNESCO Convention, by demanding prior consent from Idris to access the shipwreck.

*First*, Vespucia has jurisdiction rights over *Aparecida* for its close link with the natural resources in Vespucia’s EEZ.

*Second,* Idris’s activity constitutes MSR, which requires Vespucia’s consent. Alternatively, Idris’s emplacement of the artificial structure still needs prior consent.

*Third,* Vespucia has preferential rights and has right to regulate activities towards *Aparecida*. Therefore, Vespucia follows the principle of *in situ* preservation under the UNESCO Convention by demanding prior consent.

*Lastly,* Vespucia did not breach the principle of cooperation in the aspect of demanding prior consent, constructing marine park, boosting tourism, and sharing information.

***C***

Vespucia has no obligation to respect the right of Idris to emplace an artificial structure near the site of *Aparecida*.

*First,* Idris has no right to emplace an artificial structure in Vespucia’s economic exclusive zone under the UNCLOS. Vespucia enjoys exclusive rights towards the construction of the artificial structure according to Articles 60 and 80. Under Article 59, Idris also has no right to construct an artificial structure. Even if Idris had the right to emplace the structure, its construction was illegal under UNCLOS Article 58(3).

*Second,* Idris’s action of emplacing an artificial structure in the EEZ of Vespucia violated the UNESCO Convention. Idris’s failure to report and notify its activity violated Article 9(1)(b). Moreover, Idris’s failure to cooperate with Vespucia violated Article 10(3)(5) and Article 19(1).

*Third,* Idris must dismantle its artificial structure in Vespucia’s EEZ promptly. Idris’s action is an internationally wrongful act, violating the UNCLOS and the UNESCO Convention and causing injury to Vespucia’s exclusive rights in the EEZ.

***D***

Vespucia has no obligation to cease the blockade of the artificial structure or allow the Idrisian vessels (private and state-owned) to provide food, water, and oil fuel to the installation.

*First,* Vespucia did not breach its obligations under the UNCLOS. Vespucia has the right to block the artificial structure and any further assistance to the installation. In any regard, Vespucia’s enforcement did not breach the standards of necessity, reasonableness, unavoidability, and proportionality. Also, Vespucia did not impair the freedom of navigation. Furthermore, Vespucia did not breach the due regard.

*Second,* Vespucia shall rely on UNESCO Convention Article 10(2) and Article 10(6). Vespucia has the right to prohibit or authorize any activity directed at UCH located on its continental shelf to prevent interference with its sovereign rights. Moreover, Vespucia acted on behalf of the State Parties as a whole and not in its interest.

*Third,* Vespucia’s blockade measures did not violate the human rights of Idrisian sailors.

# PLEADINGS

# Vespucia does not violate the UNCLOS and the UNESCO Convention through claiming.

**(A)** First, Vespucia exercises sovereign rights and jurisdiction over the *Aparecida* and cargo under the UNCLOS. Vespucia has jurisdiction over the cargo pursuant to human rights law. Sovereign rights and jurisdiction over the integral shipwreck are indivisible. **(B)** Second, there is no sovereign immunity. The *Aparecida* is not a state vessel. The cargo is excluded from immunity under contemporary anti-colonization law. No established Customary International Law pertains to the immunity of UCH. **(C)** Third, Vespucia’s claiming prevents Idrisian interference and immediate danger to the UCH.

## Vespucia exercises sovereign rights and jurisdiction, not sovereignty as stated by the Applicant.

The announcement made by Casares[[41]](#footnote-41) did not claim sovereignty as stated by the Applicant.[[42]](#footnote-42) Instead, **(1)** Vespucia exercises sovereign rights and jurisdiction over the *Aparecida* and its cargo. **(2)** Additionally, Vespucia has preferential rights to the cargo. **(3)** Considering the integrity of the *Aparecida* and its cargo, the sovereign rights and jurisdiction over the *Aparecida* and its cargo are extended mutually.

### Vespucia exercises sovereign rights and jurisdiction over the Aparecida and its cargo under the UNCLOS.

The UNESCO Convention does not delineate sovereign rights and jurisdiction.[[43]](#footnote-43) Thus, sovereign rights and jurisdiction should be in accordance with the UNCLOS.

#### Vespucia exercises sovereign rights of economic relevance over the Aparecida and its cargo pursuant to the UNCLOS.

Coastal States exercise sovereign rights over activities for the economic exploitation and exploration in EEZ.[[44]](#footnote-44) Such sovereign rights require activities with economic relevance. [[45]](#footnote-45) However, the relevance to natural resources is not accepted by all State Parties.[[46]](#footnote-46)

Here, considering the shipwreck’s location in EEZ, Vespucia exercises sovereign right over activities for economic exploitation and exploration. The activity Vespucia intends to take is preservation *in situ* to boost local tourism, bring revenues and improve local economic life[[47]](#footnote-47), which meets the requirement of economic relevance. Additionally, extending coastal States’ jurisdiction over shipwrecks in the EEZ or on the continental shelf has been established as a Customary International Law.[[48]](#footnote-48)

Thus, Vespucia exercises sovereign rights of economic exploitation and exploration over the *Aparecida* and its cargo.

#### Vespucia exercises sovereign rights of natural resources over the Aparecida pursuant to the UNCLOS.

Coastal States exercise sovereign rights to explore and exploit, conserve and manage the natural resources in EEZs and on continental shelves. [[49]](#footnote-49) UCH includes the shipwrecks and their natural context containing natural resources within.[[50]](#footnote-50) Moreover, shipwreck sites have a strong relationship with marine living resources.[[51]](#footnote-51)

Considering the shipwreck’s location in EEZ and on continental shelf[[52]](#footnote-52), Vespucia exercises such sovereign right with regard to natural resources. Despite the fact that the shipwreck may be excluded from natural resources by an International Law Commission commentaries to the draft of Convention on the Continental Shelf,[[53]](#footnote-53) the *Aparecida* has been an integral part of ecological habitats and ecosystems together with natural resources within this area.[[54]](#footnote-54) Thus, any archaeologic action directed at it interferes with natural resources. Therefore, Vespucia exercises sovereign rights with regard to natural resources over the *Aparecida* and its cargo.

#### Vespucia has jurisdiction regarding MSR over the Aparecida pursuant to the UNCLOS.

Coastal States have jurisdiction to regulate, authorize, and conduct MSR in EEZs.[[55]](#footnote-55) MSR under the UNCLOS refers to activities for the purpose of increasing mankind’s knowledge of the marine environment and its process.[[56]](#footnote-56)

On one hand, by definition, maritime archaeology is the scientific study of the material remains of human marine activities, which also increases the knowledge of the marine environment in general and benthic processes in particular;[[57]](#footnote-57) on the other, maritime archaeology shares the same equipment with MSR,[[58]](#footnote-58) including remote-sensing equipment.

Therefore, maritime archaeology is construed as MSR, and consequently Vespucia has jurisdiction over Idris’s archaeological activities directed at the *Aparecida* and its cargo.

### Vespucia has jurisdiction over the cargo pursuant to human rights law.

The UNESCO Convention shall be interpreted and applied in a manner consistent with international law.[[59]](#footnote-59) Vespucia, the legitimate representative of the Vespucian people, has jurisdiction over the cargo on the basis of the right of freely disposing of natural wealth and resources.

All peoples may freely dispose of their natural wealth and resources for their own ends[[60]](#footnote-60). It’s the corollary that peoples have the right of the cultural heritage made from their natural wealth and resources.[[61]](#footnote-61) The States of origin have preferential right to protect those objects.[[62]](#footnote-62)

Here, the cargo in question involves Vespucian natural wealth and resources which have been taken and occupied by Idris colonizers[[63]](#footnote-63). Considering the gold coins mined in Vespucia[[64]](#footnote-64), Vespucia is the State of origin. Thus, Vespucia has jurisdiction over the protection of the cargo.

### Vespucia exercises sovereign rights and jurisdiction over the Aparecida’s cargo, as the Aparecida and its cargo are inseparable.

The archaeologic or historic shipwreck and its cargo are treated as a whole pursuant to international law.[[65]](#footnote-65) Such a rule is also supported by domestic laws and judgments. [[66]](#footnote-66) Additionally, in light of the protection of UCH, the recovery of the cargo also inevitably interferes with the shipwreck.

As a sunken vessel, the *Aparecida* has been an integral whole with its cargo since their submersion centuries ago. Here, salvaging the cargo leads to removing parts of the *Aparecida*[[67]](#footnote-67), which results in unnecessary and irretrievable harm to the *Aparecida* in excellent condition[[68]](#footnote-68). Therefore, the aforementioned sovereign rights and jurisdiction over the cargo extend to the *Aparecida*, and vice versa.

## There is no sovereign immunity enjoyed by Idris with regard to the *Aparecida*.

### Idris does not enjoy sovereign immunity over the Aparecida.

#### The sunken Aparecida does not qualify as a vessel, and therefore is no longer subject to the jurisdiction of the Flag State Idris.

Sunken ships do not qualify as vessels because they fail to meet the navigability requirement for vessels.[[69]](#footnote-69)

Here, the sunken *Aparecida* fails to meet the requirement of navigability. Thus, the *Aparecida* does not qualify as a vessel. Consequently, it does not fall under the category of warships or other non-commercial government ships, which are two types of vessels within the UNCLOS.

#### Alternatively, Aparecida does not qualify as a warship or other non-commercial government ship.

Warships and other non-commercial government ships under the UNCLOS have sovereign immunity[[70]](#footnote-70). Such immunity requires the vessel to be capable of facilitating the performance of public functions.[[71]](#footnote-71) By definition, warships should be equipped with crew under regular armed forces discipline.[[72]](#footnote-72) As a category of non-commercial government vessels, warshipsrequire no engaging in trade activities,[[73]](#footnote-73) as such engagement shall weaken sovereign importance.[[74]](#footnote-74)

Here, the *Aparecida* was used to explore the colonial trade,[[75]](#footnote-75) bearing commercial use. Also, part of *Aparecida*’s crew was recruited, employed, and provisioned by some private venture located in Malaca,[[76]](#footnote-76) partially unqualified for the standard of ‘militarily disciplined’. Furthermore, the sunken *Aparecida* stopped exercising sovereign acts and serving the interests of Idris after centuries’ submersion. [[77]](#footnote-77) For the above reasons, *Aparecida* is unqualified for immunity.

#### The Aparecida has been abandoned implicitly by Idris.

Vessels sunk in the distant past should be determined by abandonment rules at that period. According to that, positive actions are unnecessary.[[78]](#footnote-78) The implicit abandonment means the sunken warship losing its character as state property, which represents the loss of sovereign immunity.[[79]](#footnote-79)

Here, as a colonial ship sunk centuries ago, the abandonment of *Aparecida* can be applied to the implicit rule. Thus, the *Aparecida* has been abandoned by Idris through Idris’s inaction and non-assertion of rights for centuries.[[80]](#footnote-80) Therefore, the immunity over state property has been also severed.

### Idris does not enjoy sovereign immunity over the cargo.

A contemporary interpretation of international law, including the law of immunity, should be in light of present-day conditions[[81]](#footnote-81), which is also supported by the court.[[82]](#footnote-82) Modern legal principles should be applied to contemporary disputes, rather than perpetuating the plunder and oppression of colonization through sovereign immunity, which obviously violates the principles of sovereign equality, self-determination[[83]](#footnote-83) and the prohibition of colonial domination.[[84]](#footnote-84)

### No Customary International Law is established regarding sovereign immunity of UCH.

As a source of international law[[85]](#footnote-85), an established Customary International Law requires state practice and *opinio juris* of states[[86]](#footnote-86). Such practice requires uniformity, consistency and generality.[[87]](#footnote-87)

Although maritime powers tend to claim sovereign immunity over sunken warships,[[88]](#footnote-88) their practice does not consist in some cases.[[89]](#footnote-89) Additionally, developing coastal countries usually claim their ownership or jurisdiction and do not support such sovereign immunity. [[90]](#footnote-90) Thus, there is neither uniform and general state practice, nor *opinio juris* regarding sovereign immunity of underwater.

## The manner in which Vespucia claims its sovereign rights and jurisdiction does not breach the obligations under the UNCLOS and the UNESCO Convention.

### Vespucia’s claiming is aimed at preventing interference with its sovereign rights and jurisdiction pursuant to UNESCO Convention Article 10(2).

Coastal States have the right to prohibit or authorize any activity directed at such heritage to prevent interference with their sovereign rights or jurisdiction.[[91]](#footnote-91)

As mentioned before, Vespucia has sovereign rights and jurisdiction over both the *Aparecida* and its cargo provided by international law. While Idris’s activities constitute interference with such sovereign rights and jurisdiction. Thus, Vespucia’s claiming aimed at preventing interference with its sovereign rights and jurisdiction is in conformity with the UNESCO Convention.

### Vespucia’s claiming is aimed at preventing immediate danger to the Aparecida as a ‘Coordinating State’ pursuant to the UNESCO Convention Article 10(4).

A State without explicit declaration of opposition shall be the ‘Coordinating State’, whose EEZ or continental shelf the UCH is located in.[[92]](#footnote-92) Such a State is entitled to take all practicable measures to prevent immediate danger to the UCH prior to consultations.[[93]](#footnote-93)

Here, considering the location of *Aparecida*[[94]](#footnote-94) and no explicit declaration of opposition, Vespucia shall be the ‘Coordinating State’. Thus, Idris shall not conduct activities directed at the *Aparecida* and its cargo without consultation or authorisation. Considering the excellent condition of *Aparecida*[[95]](#footnote-95), it should be preserved *in situ*[[96]](#footnote-96), in preference to be salvaged or partly removed[[97]](#footnote-97). Idris’s unauthorised salvage violating the UNESCO Convention constitutes an immediate danger to the *Aparecida*. Thus, Vespucia’s claiming aimed at preventing immediate danger to the *Aparecida* as a Coordinating State is in conformity with the UNESCO Convention.

# Vespucia did not violate its international obligations by demanding prior consent from Idris to access the shipwreck.

## Vespucia has jurisdiction over the shipwreck.

Coastal State has sovereign rights and jurisdiction over the EEZ to explore and exploit, conserve and manage natural resources.[[98]](#footnote-98) The State in whose EEZ or on whose continental shelf UCH is located has the right to regulate any activity directed at the UCH to prevent interference with its sovereign rights or jurisdiction.[[99]](#footnote-99) Moreover, jurisdiction refers to a government’s power to exercise authority over things within its territory,[[100]](#footnote-100) certainly including the right to regulate the access towards UCH.

Here, the *Aparecida* not only served as a historical heritage but also served as a habitat for natural resources in Vespucia’s EEZ.[[101]](#footnote-101) Thus, activities directed at the wreck will inevitably interfere with natural resources. Therefore, Vespucia was entitled to exercise jurisdiction towards the *Aparecida*.

## Vespucia was entitled to demand prior consent for Idris’s activity.

According to Article 246 of the UNCLOS, Vespucia has the right to demand Idris to ask for prior consent[[102]](#footnote-102) since **(1)** Idris’s activity constitutes MSR. **(2)** Alternatively, Idris’s emplacement of the artificial structure still needs prior consent. **(3)** Furthermore, Vespucia hasdeclared its rights before.

### Idris’s activity constitutes MSR.

**(a)** First, underwater archaeology could be subject to the MSR regime under the UNCLOS. **(b)** Collecting valuable data within a coastal State’s EEZ can be regarded as a form of MSR.

#### Underwater archaeology could be subject to the MSR regime under the UNCLOS.

Treaty interpretation is based on the ordinary meaning of its terms, context, objectives, and purposes.[[103]](#footnote-103) First, underwater archaeology can be equivalent to MSR since the similar definitions and the same equipment and techniques[[104]](#footnote-104). MSR includes oceanography, marine biology, and other activities.[[105]](#footnote-105) Maritime archaeology is the scientific study of the material remains of human activities, which also increase the knowledge of the marine environment.[[106]](#footnote-106) Archaeology uses scientific methods to acquire scientific knowledge about the human past,[[107]](#footnote-107) similar to scientific activities involving historic shipwrecks.[[108]](#footnote-108)

Second, under Part XII of UNCLOS, MSR has the marine environment as its object,[[109]](#footnote-109) similarly, archaeology relates to the marine environment, and the search and location process will affect the marine environment.[[110]](#footnote-110) Third, UNCLOS Articles 149 and 303 indicate that protecting UCH is its objective.[[111]](#footnote-111) The entire UNCLOS, including provisions about MSR, should be interpreted accordingly. Therefore, underwater archeology falls within the legal regime of MSR.[[112]](#footnote-112)

Here, Vespucia, as the country discovered UCH within its EEZ,[[113]](#footnote-113) has rights to demand Idris acquire prior consent. Therefore, Vespucia did not violate its obligations.

#### Vespucia has the right to control the release of data collected within its EEZ.

To interpret provisions, shall refer to the objectives of the EEZ.[[114]](#footnote-114) According to the legislature’s intent of establishing the EEZ as a special maritime zone under the UNCLOS, any impact on a coastal State’s economic interests shall fall under the UNCLOS.[[115]](#footnote-115)

Data generated from the seabed shall considered as a ‘tradable commodity’ containing economic value.[[116]](#footnote-116) Underwater archaeologists study gather valuable information for coastal State rights in its EEZ, including ocean engineering, resources exploration, and marine environment protection.[[117]](#footnote-117) Thus, the State shall be able to control the release of such data, regardless of how and by whom it was collected.

Here, Idris uses a research vessel to collect information on the *Aparecida*,[[118]](#footnote-118) which shall be regarded as a form of MSR. Therefore, it shall be conducted with Vespucia’s consent.[[119]](#footnote-119)

### Even if such activities cannot be regarded as MSR, Vespucia still acts in accordance with its rights and obligations.

The deployment and use of installation for marine research is subject to the same conditions set forth for the exercise of MSR.[[120]](#footnote-120) Here, Idris’s entrance and the successful emplacement of artificial structure to conduct future research on the shipwreck need uniformly Vespucia’s consent in advance.[[121]](#footnote-121)

### Furthermore, Vespucia has declared its rights before.

According to the UNCLOS, States are allowed to make declarations as long as they do not alter the legal effect of the Convention’s provisions,[[122]](#footnote-122) which are followed by 137 parties.[[123]](#footnote-123) These interpretative declarations are instruments that serve as an authentic means of interpretation to interpret treaty provisions.[[124]](#footnote-124) Although States can ignore or not respond to any declaration,[[125]](#footnote-125) when it affects their interests still should show attitudes, unless it is impermissible under Article 309.[[126]](#footnote-126) Otherwise, the State shall take action against it.[[127]](#footnote-127)

Here, the declaration made by Vespucia does not constitute a reservation and is inconsistent with Article 310.[[128]](#footnote-128) Idris, did not take any action when ratified the UNCLOS to protest against it.[[129]](#footnote-129) Therefore, Idris is bound to respect Vespucia’s interpretation. Therefore, Idris shall respect Vespucia’s right.

## Vespucia’s demands of prior consent are based on its preferential rights and the principle of *in situ* preservation.

Vespucia has **(1)** preferential right towards the cargo and thus has the right to determine the disposal of the *Aparecida*. **(2)** The principle of *in situ* preservation shall be applied.

### Vespucia has a preferential right towards the Aparecida.

The UNESCO Convention defines ‘UCH’ as vessels and their cargo submerged for at least 100 years.[[130]](#footnote-130) Under the UNCLOS, the country of origin enjoys preferential rights in protecting discovered historical artifacts,[[131]](#footnote-131) including participating in cooperation during recovery and relevant decision-making.[[132]](#footnote-132) Moreover, ‘country of origin’ refers to where goods are manufactured or produced.[[133]](#footnote-133)

Here, since the *Aparecida* had been sunk to the sea for more than 200 years, it can surely be defined as UCH.[[134]](#footnote-134) Additionally, Vespucia is the country where treasures are produced as well as the cultural state originated.[[135]](#footnote-135) Therefore, Vespucia, as country of origin, was entitled to determine the disposition of the *Aparecida*.

### The principle of preservation in situ of UCH demands Vespucia to regulate Idris’s activities.

According to the UNESCO Convention, the principle of preservation *in situ* of UCH shall be considered as the first option[[136]](#footnote-136) and the State in whose EEZ or on whose continental shelf UCH is located has the right to regulate any activity ‘directed at’ UCH.[[137]](#footnote-137) ‘Directed at’ means activities directly or indirectly physically disturb or damage UCH.[[138]](#footnote-138) Additionally, the principle of prevention constitutes Customary International Law that requires the adoption of preventative measures even in the absence of scientific certainty.[[139]](#footnote-139) Even if, according to the principle of *ex situ,* UCH under an emergency condition, such as climate change or hazards posed by the site, may make it preferable to excavate.[[140]](#footnote-140) However, weighing the feasibility of *ex-situ* shall be accompanied by full scientific investigation and proper reports.[[141]](#footnote-141)

Here, the *Aparecida* lies in the Vespucia’s EEZ, giving the Vespucia the right to regulate the activities of the *Aparecida*. However, Idris’s conduct, including excavation and salvage, undoubtedly may have a direct impact on the UCH.[[142]](#footnote-142) Thus, Vespucia, as the coastal State, was entitled to refuse to grant consent. Whereas Idris may claim that the *Aparecida* is in emergency and needs to be excavated, while there is no equivalent severity has occurred.[[143]](#footnote-143) Furthermore, there was no sufficient report to support Idris’s claims. Therefore, Vespucia fulfilled its obligations and refused Idris lawfully.

## Vespucia has fulfilled its obligation to cooperate in the development and exploitation of the UCH.

Idris may allege that Vespucia has breached the obligation of cooperation by **(1)** refusing to grant consent **(2)** constructing a marine park **(3)** conducting commercial exploitation and **(4)**failing to inform. However, Vespucia complys with its treaty obligation.

### Vespucia has ample ground for refusing to grant consent.

According to Article 246 of UNCLOS, a State may, at its discretion, withhold its consent to the conduct of an MSR project.[[144]](#footnote-144) Under the UNESCO Convention, the coastal State has the right to regulate activity ‘directed at’ UCH to prevent interference with its sovereign rights or jurisdiction.[[145]](#footnote-145) Additionally, the Coordinating State can take unilateral measures before consultations to prevent ‘immediate danger’ to UCH which includes human activities directly or indirectly affecting UCH.[[146]](#footnote-146)

Here, in light of Idris’s intention to drill into the continental shelf as well as the construction of artificial islands, interfere with Vespucia’s jurisdiction. Idris’s plan will impose immediate danger to UCH.[[147]](#footnote-147) Therefore, Vespucia has grounds to withhold its consent.

### Vespucia’s construction of the Marine Park is in conformity with international law.

States like America have designated particular areas with national significance due to historical research.[[148]](#footnote-148) National marine sanctuaries are also created to protect historic shipwrecks.[[149]](#footnote-149) In this zone, States would have jurisdiction over activities affecting the UCH.[[150]](#footnote-150) While this right is not explicitly prohibited by international law, the UNCLOS also declares the duty of states to protect and preserve objects of an archaeological and historical nature found at sea.[[151]](#footnote-151)

Here, the marine park was located in Vespucia’s EEZ which was under Vespucia’s original jurisdiction,[[152]](#footnote-152) with its aims to protect the historical, ecological habitats and ecosystems of the jurisdictional waters.[[153]](#footnote-153)

### Vespucia’s tourism development plan did not constitute commercial exploitation.

Idris may argue that Vespucia’s treatment of the *Aparecida* is investigated for private financial gain and contradicts the principle of non-commercial exploitation.[[154]](#footnote-154) While the rule restricts the activities related to UCH, it still permits states to benefit financially from recovery.[[155]](#footnote-155)

Here, Vespucia attracting tourists and supporting local businesses would not be seen as ‘commercial exploitation’.[[156]](#footnote-156) Therefore, Vespucia, as a developing state, aimed to generate revenue and improve the economy sustainably without violating any international obligations.[[157]](#footnote-157)

### Vespucia has already cooperated in information sharing.

Idris may allege that Vespucia has breached its duty to cooperate---inform the flag state.[[158]](#footnote-158) However, the phrase ‘should’ be hortatory rather than obligatory.[[159]](#footnote-159) Additionally, ‘inform’ does not imply a requirement for flag state consent before any interference.[[160]](#footnote-160) If necessary, the coastal State may also take measures without prior consultation.[[161]](#footnote-161) Furthermore, the reciprocal duty to cooperate is not limited to information-sharing, excavation and conservation of UCH are included as well.[[162]](#footnote-162)

Here, Vespucia acted in good faith and fulfilled its obligations sincerely through diplomatic message exchange.[[163]](#footnote-163) Regarding Idris’s unauthorized access and salvage plan without prior consent[[164]](#footnote-164) and may constitute an immediate danger. Therefore, Vespucia is acting necessarily to avert a pressing danger and did not breach the obligation to cooperate.

# Vespucia has no obligation to respect the right of Idris to emplace an artificial structure near the site of *Aparecida*.

Vespucia has no obligation to respect Idris’s alleged right to emplace an artificial structure near the shipwreck both under **(A)** the UNCLOS and **(B)** the UNESCO Convention. Moreover, **(C)** Idris must dismantle its artificial structure in Vespucia’s exclusive economic zone promptly.

## Vespucia has no obligation to respect the right of Idris to emplace an artificial structure in its EEZ or on its continental shelf under the UNCLOS.

Vespucia has no obligation to respect Idris’s right to emplace an artificial structure since **(1)** Idris has no such right under the UNCLOS. **(2)** Even if Idris has the right, Idris’s construction is illegal under UNCLOS Article 58(3).

### Idris has no right to emplace an artificial structure.

#### Emplacing an artificial structure without Vespucia’s authorisation violated Vespucia’s exclusive rights under UNCLOS Articles 60 and 80.

Coastal States have exclusive rights to all types of structures in the EEZ and on the continental shelf,[[165]](#footnote-165) which is confirmed by State practice.[[166]](#footnote-166) Alternatively, the emplacement of the artificial structure violated Vespucia’s exclusive rights under UNCLOS Articles 60 and 80[[167]](#footnote-167) since the structure shall be regarded as **(i)** an artificial island, **(ii)** an artificial structure for the purposes provided in Article 56 and other economic purposes or **(iii)** an artificial structure which may interfere with the exercise of coastal States’ rights.

##### The artificial structure (15 by 30 m) is an artificial island.

Within the EEZ, only the coastal State or authorised States may construct artificial islands.[[168]](#footnote-168) ‘Artificial island’ can be defined under Article 121 of UNCLOS.[[169]](#footnote-169) Size alone doesn’t determine the status of an artificial island, but the ability to sustain human habitation or economic life matters.[[170]](#footnote-170)

Here, two sailors who were left on the artificial structure lived on it.[[171]](#footnote-171) Able to Sustain human habitation, the structure consequently satisfies the standard of an artificial island. Therefore, the installation constitutes an artificial island.

##### Alternatively, the installation is for the purposes provided for in Article 56 and other economic purposes.

Coastal States enjoy exclusive rights of structures for the purposes of Article 56 and other economic purposes within the EEZ and continental shelf.[[172]](#footnote-172) The economic purposes under Article 60(1)(b) refer to economically relevant uses of the EEZ,[[173]](#footnote-173) echoing the wording of Article 56 (1)(a).[[174]](#footnote-174) Commercial exploitation towards historical objects is included.[[175]](#footnote-175) The purposes of Article 56 mainly refer to measures towards natural resources.[[176]](#footnote-176)

Here, Idris’s alleged ‘archaeological exclusive purpose’ of the artificial structure is doubtful. The two sailors left behind are navel crew, not archaeologists.[[177]](#footnote-177) Moreover, Idris’s actions exposed its economic purposes. Claiming sovereignty and jurisdiction over the vessel and cargo,[[178]](#footnote-178) Idris planned to salvage the cargo and remove the vessel.[[179]](#footnote-179) This indicates its intention to enjoy the value of the wreckage rather than the alleged archaeological exclusive purposes. Furthermore, archaeological activities will inevitably affect natural resources in Vespucia’s EEZ since the *Aparecida* was embedded in the seabed.[[180]](#footnote-180) Therefore, the installation is within the scope of UNCLOS Article 60(1)(b).

##### Furthermore, the installation interferes with the exercise of Vespucia’s right in its EEZ and on its continental shelf.

Coastal States have exclusive rights of installations which may interfere with the exercise of their rights.[[181]](#footnote-181) These rights mainly point to activities for economic purposes and the preservation of natural resources[[182]](#footnote-182) and cultural heritage.[[183]](#footnote-183) Installations may produce pollution to the marine environment[[184]](#footnote-184) and consequently impede the preservation of natural resources and cultural heritage.[[185]](#footnote-185)

Here, the *Aparecida* is preserved *in situ* to boost tourism in Vespucia.[[186]](#footnote-186) The structure near the shipwreck will affect Vespucia’s tourism industry and revenue. Erecting a marine park, Vespucia aimed to preserve the historical and biological heritage.[[187]](#footnote-187) The installation, as a source of pollution, may derogate the function of this marine park. Furthermore, Idris’s plan to remove the *Aparecida* violated *in situ* protection.[[188]](#footnote-188) Idris’s future work for archaeology on the installation will also interfere with Vespucia’s right to conserve natural resources since the shipwrecks are embedded in the seabed.[[189]](#footnote-189)

Therefore, Idris violated UNCLOS Articles 60 and 80 by emplacing the artificial structure without Vespucia’s permission.

#### Idris has no right to construct an artificial structure under UNCLOS Article 59.

##### Article 59 does not apply in the present case.

Only when UNCLOS doesn’t attribute rights to any States within the EEZ will Article 59 apply.[[190]](#footnote-190) However, UNCLOS has already given the coastal State the exclusive right to construct all types of artificial structures. Therefore, Article 59 does not apply in this case.

##### Even if Article 59 applies, Idris has no right to emplace an artificial structure in Vespucia’s EEZ.

Article 59 shall be interpreted primarily based on its text.[[191]](#footnote-191) The realization of ‘equity’ needs the consideration of special interests and needs of developing countries.[[192]](#footnote-192) To fully interpret ‘relevant circumstances’, we may make reference to UNCLOS Article 303, a relevant provision.[[193]](#footnote-193) Thus, the rights of identifiable owners of archaeological objects shall be protected.[[194]](#footnote-194) As to the international community’s interests, the UNESCO’s provision for the benefit of all mankind can be used as a supplementary means[[195]](#footnote-195), which favors the rights of the State of cultural origin.[[196]](#footnote-196) It also grants the State of cultural origin or ownership the right to participate in the activities of UCH.[[197]](#footnote-197)

Here, as a developing country[[198]](#footnote-198), Vespucia’s interests shall take precedence. Vespucia needs the shipwreck to boost its economy,[[199]](#footnote-199) as well as the construction of artificial structures to assist archaeology.[[200]](#footnote-200) As a State of cultural origin and ownership, Vespucia has the right to preserve and manage UCH. Therefore, Idris has no right to emplace an artificial structure in Vespucia’s EEZ or on its continental shelf.

### Even if Idris had the right, its construction was illegal under UNCLOS Article 58(3).

Article 58(3) requires non-coastal States to have due regard for coastal States’ economic interests when exercising their rights.[[201]](#footnote-201) The due regard should be interpreted as such regard for rights as is called for by the circumstances and the nature of the rights at issue.[[202]](#footnote-202) The need for conservation for the benefit of all should also be taken into consideration.[[203]](#footnote-203) Due regard also involves the cooperation obligation.[[204]](#footnote-204) It mainly includes prior notification, negotiation and consultation.[[205]](#footnote-205)

Here, Idris’s emplacement of the structure and intention to salvage the cargo infringed on Vespucia’s rights to the preservation of ecological lives and historical relics.[[206]](#footnote-206) It also impeded activities for tourism, affecting the economic interests of Vespucia.[[207]](#footnote-207) Additionally, Idris violated the cooperation obligation for its failure to notify or consult with Vespucia regarding the installation in advance.[[208]](#footnote-208) Therefore, Idris violated UNCLOS Article 58(3).

## Idris’s emplacement of the artificial structure in Vespucia’s EEZ violated the UNESCO Convention.

Idris’s emplacement of the artificial structure in Vespucia’s EEZ violated the UNESCO Convention since **(1)** Idris failed to report and notify its activity under Article 9(1)(b) and **(2)** failed to cooperate with Vespucia under Article 10(3)(5) and 19(1).

### Idris’s failure to report and notify its activity violated Article 9(1)(b).

When a non-costal State intends to engage in activities directed at UCH located in a coastal State’s EEZ, it shall report such activity to the latter.[[209]](#footnote-209)

Here, since the installation is for archaeology, the construction exposed Idris’s intention to engage in activities directed at UCH.[[210]](#footnote-210) Thus, this construction shall be reported promptly. However, Idris did not inform Vespucia in advance. Therefore, Idris violated the obligation of prior notification under the UNESCO Convention.

### Idris’s failure to cooperate with Vespucia violated Articles 10(3)(5) and 19(1).

The right to permit UCH-related activities belongs to coastal States.[[211]](#footnote-211) Concerning the management of UCH, the UNESCO Convention grants States Parties the right to take actions carried out in cooperation with the Coordinating State.[[212]](#footnote-212) With regard to the protection, State parties shall cooperate to protect UCH or implement measures agreed by other States.[[213]](#footnote-213)

Here, Idris’s construction of the artificial structure was not carried out in cooperation with any other State.[[214]](#footnote-214) It didn’t obtain Vespucia’s authorisation either.[[215]](#footnote-215) Idris’s approach to conserving the heritage was also not cooperative with Vespucia, as it wanted to remove the vessels[[216]](#footnote-216) and Vespucia wanted to conserve them *in situ*.[[217]](#footnote-217) Therefore, Idris breached its duty to cooperate with other State Parties.

## Idris must dismantle its artificial structure in Vespucia’s EEZ promptly.

A breach of an international obligation which is attributed to a State entails State responsibility.[[218]](#footnote-218) The responsible State is obliged to make full reparation to ‘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.’[[219]](#footnote-219)

Here, Idris’s construction of the artificial structure violated the UNCLOS and the UNESCO Convention and caused injury to Vespucia’s exclusive rights in the EEZ. Consequently, Idris is obliged to make reparation. Therefore, Idris must dismantle the artificial structure promptly.

# VESPUCIA HAS NO OBLIGATION TO CEASE THE BLOCKADE OF THE ARTIFICIAL STRUCTURE OR ALLOW THE IDRISIAN VESSELS (PRIVATE AND STATE-OWNED) TO PROVIDE FOOD, WATER, AND OIL FUEL TO THE INSTALLATION.

Vespucia has no obligation to cease the blockade or allow the Idrisian vessels (private and State-owned) to provide supplies to the installation under **(A)** the UNCLOS and **(B)** the UNESCO Convention. Moreover, **(C)** Vespucia’s measures did not violate the human rights of the sailors.

## Vespucia did not violate its obligations under the UNCLOS.

**(1)** Vespucia has the right to block the artificial structure and prohibit further assistance to the installation under UNCLOS Article 73. **(2)** It did not violate the criteria under UNCLOS Article 73. Additionally, Vespucia did not **(3)** impair the freedom of navigation of Idris under UNCLOS Article 58(1) and 87 or **(4)** the obligation of due regard under UNCLOS Article 58(3).

### Vespucia has the right to block the artificial structure and further assistance to the installation under UNCLOS Article 73.

A coastal State may, in the exercise of its sovereign rights to conserve the living resources in the EEZ, take arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with the UNCLOS.[[220]](#footnote-220)

Here, *Aparecida* lies in Vespucia’s EEZ,[[221]](#footnote-221) and Vespucia has the exclusive right to authorize and regulate the construction, operation, and use of artificial structure.[[222]](#footnote-222) Therefore, it has the right to block the artificial structure and any further assistance to the installation according to UNCLOS Article 73.

### In any regard, Vespucia’s enforcement did not breach the criteria under UNCLOS Article 73.

The blockade measures shall meet the standards of **(a)** necessity, **(b)** reasonableness, **(c)** unavoidability and proportionality.[[223]](#footnote-223)

#### Vespucia did not breach the standard of necessity.

The application of potentially lethal force by a private person acting in self-defence, or by another person coming to his or her defence, shall be strictly necessary in view of the threat posed by the attacker; it shall represent a method of last resort after other alternatives have been exhausted or deemed inadequate.[[224]](#footnote-224)

Here, since the Vespucian naval vessel once asked the Idrisian research vessel to leave the area but was refused by the Idrisian government and after Vespucia arrested *Navarro* and its crew,[[225]](#footnote-225) the Idrisian sailors showed that they were armed and prepared to resist,[[226]](#footnote-226) blocking further assistance to the installation was strictly necessary self-defence chosen by Vespucian officials while other alternatives were inadequate. Therefore, the blockade measures met the standard of necessity.

#### Vespucia did not breach the standard of reasonableness.

Preventive detention is an exceptional step,[[227]](#footnote-227) reasonable when the detainee poses an imminent and severe threat to State security.[[228]](#footnote-228)

Here, the two Idrisian sailors were designated to maintain and protect the installation in Vespucia’s EEZ and showed that they were armed and prepared to resist. Moreover, there was no indication of the sailors’ intention. This showed an imminent and severe threat to Vespucia’s security. Thus, Vespucia chose the blockade measures as preventive detention was reasonable.

#### Vespucia did not breach the standard of unavoidability and proportionality.

The Tribunal stated that the unavoidability needs to be tested when regulating Maritime Law Enforcement operations.[[229]](#footnote-229) When the lawful use of force is unavoidable, law enforcement officials shall exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; minimize damage and injury, and respect and preserve human life.[[230]](#footnote-230) Moreover, with regard to the criteria of proportionality,[[231]](#footnote-231) it requires that interference shall be the least intrusive means to achieve the protective purpose.[[232]](#footnote-232)

Here, since Idris emplaced an artificial structure in Vespucia’s EEZ without Vespucia’s authorization and Idrisian sailors were armed,[[233]](#footnote-233) Vespucia chose blockade measures. Compared with potentially lethal force and other actions, these measures were the least intrusive means to protect Vespucia’s sovereign rights as sailors’ lives and health were protected.[[234]](#footnote-234) Therefore, the blockade measures met the standard of unavoidability and proportionality.

### Vespucia did not impair the freedom of navigation under UNCLOS Articles 58(1) and 87.

The bunkering of vessels in the exclusive economic zone is not navigation under the UNCLOS.[[235]](#footnote-235) International law should at all times distinguish between navigation and the commercial activities of a shipping business.[[236]](#footnote-236) Here, the Idrisian government hired the *Navarro* - a private Idrisian-flagged ship- to serve as a bunkering vessel to supply fuel oil, food, water, and other supplies to the sailors and for the maintenance of the artificial structure.[[237]](#footnote-237) Thus, *Navarro’*s activities were commercial activities. Therefore, the blockade measures did not impair the freedom of navigation.

Alternatively, compared to the high seas, the exercise of the rights of other States is subjected to stricter limits in the EEZ.[[238]](#footnote-238) This conclusion is one of the relevant factors implying that a rebuttable presumption in favour of the coastal State shall be recognized that is applicable in the event of a conflict between the sovereign rights of the coastal State and the freedoms of other States.[[239]](#footnote-239) ‘It is not mere interference or damage that is prohibited, but interference without due regard ... a balancing of interests in the use of the seas is required.’[[240]](#footnote-240)

Here, Vespucia chose blockade measures in accordance with the standards of necessity, reasonable, unavoidable, and proportional to protect its sovereign rights, therefore did not impair the freedom of navigation of the Idrisian vessel.

Moreover, Vespucia has jurisdiction over the use of artificial structures.[[241]](#footnote-241) Thus *Navarro*, a private ship, failed to obtain Vespucia’s authorization before it served to supply the sailors and maintain the artificial structure in Vespucia’s EEZ.[[242]](#footnote-242)

### Vespucia did not breach the due regard under UNCLOS Article 56(2).

Article 56 (2) would usually require that a balancing exercise of the colliding rights and interests with the coastal State’s rights and interests be consciously undertaken.[[243]](#footnote-243) This assessment will necessarily involve at least some consultation with the rights-holding State.[[244]](#footnote-244) These consultations would have to be undertaken in good faith, i.e., (1) in a timely manner, (2) in a spirit of understanding of the other State's concerns in connection with the proposed activities.[[245]](#footnote-245)

Here, the Vespucian naval vessel asked the Marina to leave the area timely and strongly objected to Idris emplacing the artificial structure in its EEZ.[[246]](#footnote-246) In this case, Vespucia understood Idris’s concerns in connection with the proposed activities as the naval vessel only asked Marina to leave the site in a timely manner,[[247]](#footnote-247) and it was not until Idris sent *Navarro* and its armed crew without noticing Vespucia that it took blockade measures. Therefore, the blockade can be seen as a consciously balancing exercise chosen by Vespucia concerning the colliding rights and interests with Idris.

## Vespucia is entitled to take relevant measures as required by the UNCLOS.

### Vespucia shall rely on UNESCO Convention Article 10(2).

According to UNESCO Convention Article 10(2), Vespucia has the right to prohibit or authorize any activity directed at UCH located on its continental shelf to prevent interference with its sovereign rights as provided for by international law including the UNCLOS.[[248]](#footnote-248) The power given to the coastal State under UNESCO Convention Article 10(2) can provide extensive protection for UCH, and a determination by a state that its sovereign rights are suffering is not likely to be put aside.[[249]](#footnote-249)

Underwater heritage is often intimately associated with natural resources.[[250]](#footnote-250) Here, *Aparecida* is embedded in sea-floor sediments and may be a habitat for marine animals. Thus, any activity directed at the wreck will inevitably interfere with those natural resources.[[251]](#footnote-251) Also, Idris has impaired Vespucia’s sovereign right under UNCLOS Article 60 by placing the artificial structure without authorization from Vespucia.[[252]](#footnote-252) Therefore Vespucia shall rely on UNESCO Convention Article 10(2).

### Vespucia shall rely on UNESCO Convention Article 10(6).

In coordinating consultations, taking measures, and issuing authorizations pursuant to UNESCO Convention Article 10(6), the Coordinating State shall act on behalf of the State Parties as a whole and not in its interest.[[253]](#footnote-253)

Here, the marine park established by Vespucia, encompassing the EEZ, is a full protection zone aiming to safeguard the representativeness of historical and ecological habitats and ecosystems of the national territory and jurisdictional waters, preserving the existing historical and biological heritage.[[254]](#footnote-254) Moreover, since Idrisian archaeologists once expressed their intentions to salvage the cargo and remove parts of the vessel,[[255]](#footnote-255) Vespucia refused to grant research authorization to better protect the underwater heritage on behalf of all States rather than in its interest. Therefore, Vespucia shall rely on UNESCO Convention Article 10(6).

## Vespucia’s actions comply with international human rights law.

### Vespucia’s blockade measures did not violate the right to life of Idrisian sailors.

The right to life concerns individuals free from acts which may cause unnatural or premature death.[[256]](#footnote-256) Here, the sailors were in good health condition and capable of maintaining their conditions for several more months. [[257]](#footnote-257) Therefore, Vespucia’s blockade measures did not violate the right to life of Idrisian sailors.

### Vespucia’s blockade measures did not violate the right of liberty and security of Idrisian sailors.

The right of liberty and security of the person relates to detention or other physical constraints.[[258]](#footnote-258) A State may take forceful measures which cause minimum injury when necessary after considering all alternatives.[[259]](#footnote-259) A deprivation of liberty is legitimate when it aims to prevent injury to others and lasts for an appropriate period of time.[[260]](#footnote-260)

Here, since the two sailors were armed and prepared to resist,[[261]](#footnote-261) Vespucia had to block further assistance to protect its sovereign rights. The detention lasted 20h, not longer than absolutely necessary.[[262]](#footnote-262) Moreover, there was no evidence showing that Vespucia’s measures caused injury to Idrisian sailors or that it failed to prevent and address unjust use of force in law enforcement. Therefore, Vespucia’s blockade measures did not violate the right of liberty and security of Idrisian sailors.

# PRAYER FOR RELIEF

The Republic of Vespucia respectfully requests the Tribunal to adjudge and declare that:

**Ⅰ.** The Tribunal has no jurisdiction or admissibility over this case.

**Ⅱ.** Vespucia claimed sovereignty and jurisdiction over the *Aparecida* and its cargo, which has not breached its obligations under the UNCLOS and the UNESCO Convention.

**Ⅲ.** Vespucia demanded prior consent from Idris to access the shipwreck, which has not breached its obligations under the UNCLOS and the UNESCO Convention.

**Ⅳ.** Vespucia has no obligation to respect the right of Idris to emplace an artificial structure near the site of *Aparecida*.

**Ⅴ.** Vespucia has no obligation to cease the blocked of the artificial structure and allow the Idrisian vessels to access the installation.

Respectfully submitted,

Agents for Respondent

1. United Nations Convention on the Law of the Sea (1994) 1833 UNTS 397 **[‘UNCLOS’]**, art 288. [↑](#footnote-ref-1)
2. *Southern Bluefin Tuna Cases* *(New Zealand v Japan; Australia v Japan)* (Provisional Measures) (Order) [1999] ITLOS Rep 280 ¶50. [↑](#footnote-ref-2)
3. Miguel García García-Revillo, *The Contentious and Advisory Jurisdiction of the International Tribunal for the Law of the Sea* (2015) 41. [↑](#footnote-ref-3)
4. Facts ¶18. [↑](#footnote-ref-4)
5. UNCLOS, art 1. [↑](#footnote-ref-5)
6. UNCLOS, art 298; UNCLOS, art 297. [↑](#footnote-ref-6)
7. UNCLOS, art 280. [↑](#footnote-ref-7)
8. Alexander Proelss et al, *United Nations Convention on The Law of the Sea: A Commentary* (1st edition, Nomos Verlagsgesellschaft 2017) **[‘Alexander Commentary’]** 1818. [↑](#footnote-ref-8)
9. UNCLOS, art 281. [↑](#footnote-ref-9)
10. UNCLOS, art 287. [↑](#footnote-ref-10)
11. Alexander Commentary,1852. [↑](#footnote-ref-11)
12. Annex 1. [↑](#footnote-ref-12)
13. Statute of the International Court of Justice 33 UNTS 993 **[‘ICJ Statue’]**,art 36.2(b). [↑](#footnote-ref-13)
14. UNCLOS, art 294(1); *Avena and Other Mexican Nationals (Mexico v US)* (Judgment) [2004] ICJ Rep 12 **[‘*Avena*’]** ¶44. [↑](#footnote-ref-14)
15. *Immunities and Criminal Proceedings (Equatorial Guinea v France)* (Preliminary Objections) (Judgment) [2018] ICJ Rep 292 ¶¶141, 145. [↑](#footnote-ref-15)
16. *Jadhav (India v Pakistan)* (Judgment) [2019] ICJ Rep 418 ¶49; *The South China Sea Arbitration (Philippines v China)* (Award on Jurisdiction and Admissibility) [2015] PCA Case No 2013-19 ¶128. [↑](#footnote-ref-16)
17. Robert Kolb, ‘General Principles of Procedural Law’ in Andreas Zimmennan and Christian J. Tams (eds), *The Statute of the International Court of Justice: A Commentary* (3rd edition, Oxford University Press 2019) (Legal Annex 3) ¶49. [↑](#footnote-ref-17)
18. Facts ¶¶3, 5. [↑](#footnote-ref-18)
19. Convention on the Protection of Underwater Cultural Heritage (2001) 2563 UNTS 158 **[‘UNESCO Convention’]**, art 2. [↑](#footnote-ref-19)
20. Facts ¶18. [↑](#footnote-ref-20)
21. UNCLOS, arts 294(1), 297(1)(a)(b). [↑](#footnote-ref-21)
22. Somesh Dutta, ‘Preliminary Proceedings: UNCLOS’, Max Planck Encyclopaedia of Public International Law (2021) ¶1. [↑](#footnote-ref-22)
23. Bryan Garner, *Black’s Law Dictionary* (9th edition, West Group 2009) **[‘Black’s Law’]** 282. [↑](#footnote-ref-23)
24. *Global Trading v Ukraine* (Award) [2010] ICSID Case No ARB/09/11 ¶¶47-52. [↑](#footnote-ref-24)
25. ILC, ‘Guide to Practice on Reservations to Treaties’ (2011) UN Doc A/66/10 **[‘Guide to Practice’]** ¶4.7.1. [↑](#footnote-ref-25)
26. UNCLOS, art 310; Guide to Practice ¶1.2; Alexander Commentary, 2005. [↑](#footnote-ref-26)
27. Guide to Practice ¶1.3.1; *Case of Belilos v Switzerland* ECtHR App no 10328/83 (1988) ¶¶48-49; *Continental Shelf Arbitration (France v UK)* (Decision) [1977] 18 RIAA 3 ¶55. [↑](#footnote-ref-27)
28. UNCLOS, art 58; *The South China Sea Arbitration (Philippines v China)* (Award) [2016] PCA Case No 2013-19 **[‘*South China Sea Arbitration*’]** ¶700. [↑](#footnote-ref-28)
29. *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v Colombia)* (Judgment) [2016] ICJ Rep 19 ¶37. [↑](#footnote-ref-29)
30. Annex 1, Declaration of Vespucia ¶3. [↑](#footnote-ref-30)
31. Annex 1. [↑](#footnote-ref-31)
32. ILC, ‘Draft Articles on Diplomatic Protection with commentaries’ (2006) UN

    Doc A/61/10, 27. [↑](#footnote-ref-32)
33. UNCLOS art 295; *Interhandel (Switzerland v USA)* (Judgment) [1959] ICJ Rep 6, 27; *Elettronica Sicula SpA (ELSI) (USA v Italy)* (Judgment) [1989] ICJ Rep 15 ¶50. [↑](#footnote-ref-33)
34. *Certain Norwegian Loans (France v Norway)* (Judgment) (Separate Opinion of Sir Hersch Lauterpacht) [1957] ICJ Rep 9, 39. [↑](#footnote-ref-34)
35. *Diversion of Water from the Meuse* (Judgment) (Dissenting Opinion by M. Anzilotti) [1937] PCIJ Series A/B No 70, 50. [↑](#footnote-ref-35)
36. *Legal Status of Eastern Greenland* (Judgment) (Dissenting Opinion of Judge Anzilotti) [1933] PCIJ Series A/B No 53, 95; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v USA)* (Judgment) (Dissenting Opinion of Judge Schwebel) [1986] ICJ Rep 14 ¶¶268-272. [↑](#footnote-ref-36)
37. Facts ¶17. [↑](#footnote-ref-37)
38. ibid. [↑](#footnote-ref-38)
39. Facts ¶12. [↑](#footnote-ref-39)
40. Facts ¶¶15-16. [↑](#footnote-ref-40)
41. Facts ¶6. [↑](#footnote-ref-41)
42. Facts ¶18. [↑](#footnote-ref-42)
43. UNESCO Convention, arts 2,10. [↑](#footnote-ref-43)
44. UNCLOS, art 56(1). [↑](#footnote-ref-44)
45. Zhao H, ‘Recent developments in the legal protection of historic shipwrecks in China’ (1992) 23 Ocean Development and International Law 305, 316-317; Alexander Commentary, 428. [↑](#footnote-ref-45)
46. Anastasia Strati, *The Protection of the Underwater Cultural Heritage: An Emerging Objective of the Contemporary Law of the Sea* (Kluwer Academic Publishers 1995), 292. [↑](#footnote-ref-46)
47. Facts ¶6. [↑](#footnote-ref-47)
48. UNESCO, ‘Feasibility study for the drafting of a new instrument for the protection of the underwater cultural heritage’ (1995) UNESCO Doc 146 EX/27, 5. [↑](#footnote-ref-48)
49. UNCLOS, art 56(1),77(1). [↑](#footnote-ref-49)
50. UNESCO Convention, art 1. [↑](#footnote-ref-50)
51. Sarah Dromgoole, *Underwater Cultural Heritage and International Law* (Cambridge University Press 2013) **[‘Underwater Cultural Heritage’]** 268. [↑](#footnote-ref-51)
52. Facts ¶5. [↑](#footnote-ref-52)
53. ILC, ‘Report of the International Law Commission: Commentaries to the Articles Concerning the Law of the Sea’ (1956) UN Doc A/3159, 298. [↑](#footnote-ref-53)
54. Facts ¶13. [↑](#footnote-ref-54)
55. UNCLOS, arts 56, 246. [↑](#footnote-ref-55)
56. United Nations Office of Legal Affairs, Marine Scientific Research: A revised guide to the implementation of the relevant provisions of the United Nations Convention on the Law of the Sea (2010) **[‘MSR guide’]**, 4-6; UN, ‘Informal Single Negotiating Text’ (1975) UN Doc. A/CONF.62/WP.8/Part III, 177; UN, ‘Revised single negotiating text (part III)’ (1976) UN Doc. A/CONF.62/WP.8/Rev. 1/Part III, 180. [↑](#footnote-ref-56)
57. Philomene A. Verlaan, ‘Marine Archaeology: A Trojan (Sea) Horse?’ (1989) 8(1) Marine Science and Technology 231 **[‘Marine Archaeology’]**,235. [↑](#footnote-ref-57)
58. Katherine L Croff, ‘The Underwater Cultural Heritage and Marine Scientific Research in the Exclusive Economic Zone’ (2009) 43(1) Marine Technology Society Journal 93 **[‘Croff’]**, 97-98. [↑](#footnote-ref-58)
59. UNESCO Convention, art 3. [↑](#footnote-ref-59)
60. International Covenant on Economic, Social and Cultural Rights (1976) 993 UNTS 3, art 1(2). [↑](#footnote-ref-60)
61. UNGA, ‘Declaration on the Granting of Independence to Colonial Countries and Peoples’ (1960) UN Doc A/RES/1514(XV) **[‘UNDRIP’]**, art 28. [↑](#footnote-ref-61)
62. UNCLOS, art 149; UNGA, ‘Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations’ (1970) UN Doc A/RES/2625(XXV) **[‘1970 Convention’]**, arts 5-16; UNDRIP, art 31. [↑](#footnote-ref-62)
63. Clarifications ¶2. [↑](#footnote-ref-63)
64. Facts ¶3. [↑](#footnote-ref-64)
65. UNESCO Convention, art 1(1)(a)(ii). [↑](#footnote-ref-65)
66. Abandoned Shipwreck Act 1988 (USA) **[‘ASA’]**, Pub.L. 100–298, § 2102(d), 102 Stat. 432; Sunken Military Craft Act 2004 (USA) **[‘SMCA’]**, Pub.L. No. 108– 375, §§ 1401–08, 118 Stat. 1811, 2094–98; *Odyssey Marine Exploration v Shipwrecked Vessel* 657 F.3d 1159 (11th Cir. 2011), 1180. [↑](#footnote-ref-66)
67. Facts ¶9. [↑](#footnote-ref-67)
68. Facts ¶9. [↑](#footnote-ref-68)
69. UNCLOS, arts 29, 96 (“under the command of […] manned by […]”, “*on* the high seas” (emphasis added)); International Convention on Salvage, 1989 (1996) 1953 UNTS 165, art 1(b). [↑](#footnote-ref-69)
70. UNCLOS, art 32. [↑](#footnote-ref-70)
71. James Crawford, *Brownlie’s Principles of Public International Law* (9th edition, Oxford University Press 2019) **[‘Brownlie’]**, 470; Peter-Tobias Stoll, ‘State Immunity’, Max Planck Encyclopaedia of Public International Law (2011). [↑](#footnote-ref-71)
72. UNCLOS, art 29. [↑](#footnote-ref-72)
73. UNCLOS, art 32; UNESCO Convention, art 1(8). [↑](#footnote-ref-73)
74. Natalino Ronzitti, ‘The Legal Regime of Wrecks of Warships and Other State-owned Ships in International Law’ (2015) 76 Yearbook of Institute of International Law 267, 305-306. [↑](#footnote-ref-74)
75. Facts ¶4. [↑](#footnote-ref-75)
76. Facts ¶4. [↑](#footnote-ref-76)
77. M.M. Losier, ‘The Conflict between Sovereign Immunity and the Cargo of Sunken Colonial Vessels’ (2017) The International Journal of Marine and Coastal Law 32 **[‘Losier’]**,8. [↑](#footnote-ref-77)
78. Marian Nash Leich ed, *Digest of United States Practice in International Law* (1980), 1004; *Baltimore, Crisfield & Onancock Line v US* 140 F.2d 230 (4th Cir. 1944), 234. [↑](#footnote-ref-78)
79. Losier, 10. [↑](#footnote-ref-79)
80. Facts¶¶3, 7. [↑](#footnote-ref-80)
81. *Tyrer v UK* ECtHR App no 5856/72 (1978) ¶31. [↑](#footnote-ref-81)
82. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution* *276 (1970)* (Advisory Opinion) [1971] ICJ Rep 16, 19. [↑](#footnote-ref-82)
83. Charter of the United Nations (1945) 1 UNTS 16, arts 1(2), 2(1). [↑](#footnote-ref-83)
84. UNDRIP. [↑](#footnote-ref-84)
85. ICJ Statue, art 38. [↑](#footnote-ref-85)
86. *Continental Shelf (Libyan Arab Jamahiriya v Malta)* (Judgment) [1985] ICJ Rep 13, 20; Malcolm N. Shaw, *International Law* (8th edition, Cambridge University Press 2017) 344. [↑](#footnote-ref-86)
87. Brownlie, 22-23. [↑](#footnote-ref-87)
88. SMCA; ASA; Protection of Wrecks Act 1973 (UK); Relevant treaties: Agreement concerning the wreck of the CSS Alabama (1989) 1559 UNTS 277, arts 1-3; Agreement between the Government of the French Republic and the Government of the United States of America regarding the wreck of ‘La Belle’ (2003) 2238 UNTS 413, arts 1-3. [↑](#footnote-ref-88)
89. Exchange of letters constituting an agreement concerning the regulation of the terms of settlement of the salvaging of the wreck of HMS Birkenhead (1989) 1584 UNTS 322; Roberta Garabello and Tullio Scovazzi ed, *The Protection of the Underwater Cultural Heritage Before and After the 2001 UNESCO Convention* (Martinus Nijhoff Publishers 2003) 263-264. [↑](#footnote-ref-89)
90. Regulation of the People’s Republic of China on the Administration of the Protection of Underwater Cultural Relics 2022 (China), arts 2, 3; Law on Cultural Heritage 2001 (Viet Nam) No. 28/2001/QH10 2001, art 6; Act No 5 of 1992 on Heritage Objects (Indonesia), art 4. [↑](#footnote-ref-90)
91. UNESCO Convention, art 10(2). [↑](#footnote-ref-91)
92. UNESCO Convention, art 10(3). [↑](#footnote-ref-92)
93. UNESCO Convention, art 10(4). [↑](#footnote-ref-93)
94. Facts ¶5. [↑](#footnote-ref-94)
95. Facts ¶9. [↑](#footnote-ref-95)
96. UNESCO Convention Annex, rules 1, 4. [↑](#footnote-ref-96)
97. Facts ¶9. [↑](#footnote-ref-97)
98. UNCLOS, art 56. [↑](#footnote-ref-98)
99. UNESCO Convention, arts 10(1), (2). [↑](#footnote-ref-99)
100. Black’s Law, 927. [↑](#footnote-ref-100)
101. Eke Boesten, *Archaeological And/or Historic Valuable Shipwrecks in International Waters - Public International Law and What It Offers* (1st edition, TMC Asser 2002) **[‘Eke’]**,70; Facts ¶¶6, 10, 13. [↑](#footnote-ref-101)
102. UNCLOS, art 246. [↑](#footnote-ref-102)
103. Vienna Convention on the Law of Treaties 1155 UNTS331 (1969) **[‘VCLT’]**, art 31(1); *Case Concerning Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment)[2010] ICJ Rep 14 **[‘*Pulp Mills*’]**¶25; *Case Concerning Kasikili/Sedudu Island (Botswana v Namibia)* (Judgement) [1999] ICJ Rep 1045 ¶18. [↑](#footnote-ref-103)
104. Croff, 98; Mindell David A and Croff Katherine L, ‘Deep Water, Archaeology and Technology Development’ (2002) 36 Marine Technology Society Journal 13 **[‘Mindell and Croff’]**,271. [↑](#footnote-ref-104)
105. Croff, 96. [↑](#footnote-ref-105)
106. Marine Archaeology, 235. [↑](#footnote-ref-106)
107. Mark Staniforth, ‘Archaeology’ in John B Hattendorf (ed), *The Oxford Encyclopedia of Maritime History*, vol. 1 (Oxford University Press 2007) 124-127. [↑](#footnote-ref-107)
108. Eke, 481. [↑](#footnote-ref-108)
109. P Birnie, ‘Law of the Sea and Ocean Resources: Implications for Marine Scientific Research’ (1995) 10 International Journal of Marine and Coastal Law 229, 242. [↑](#footnote-ref-109)
110. Sarah Dromgoole, ‘Revisiting the Relationship between Marine Scientific Research and the Underwater Cultural Heritage’ (2010) 25 International Journal of Marine and Coastal Law 33 **[‘Sarah Dromgoole’]**,46. [↑](#footnote-ref-110)
111. UNCLOS, arts 149, 303. [↑](#footnote-ref-111)
112. Croff, 98. [↑](#footnote-ref-112)
113. Facts ¶5. [↑](#footnote-ref-113)
114. VCLT, art 31; *Oil Platforms (Iran v USA)* (Preliminary Objection) (Judgment) [1996] ICJ Rep 803 ¶ 27; *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v USA)* (Judgment) [1984] ICJ Rep 246 ¶¶65,70. [↑](#footnote-ref-114)
115. MSR guide ¶30. [↑](#footnote-ref-115)
116. Sarah Dromgoole, 57. [↑](#footnote-ref-116)
117. Mindell and Croff, 271. [↑](#footnote-ref-117)
118. Facts ¶9. [↑](#footnote-ref-118)
119. UNCLOS, art 246. [↑](#footnote-ref-119)
120. UNESCO, ‘Guidelines For The Implementation Of Resolution Xx-6 Of The Ioc Assembly Regarding The Deployment Of Profiling Floats In The High Seas Within The Framework Of The Argo Programme’ (2008) Res IOC/EC-XLI-4. [↑](#footnote-ref-120)
121. Facts ¶11; Clarification ¶4. [↑](#footnote-ref-121)
122. UNCLOS, art 310. [↑](#footnote-ref-122)
123. Oceans and Law of the Sea, ‘Declarations or Statements upon UNCLOS ratification’ <https://www.un.org/Depts/los/convention\_agreements/convention\_declarations.htm>accessed 11 August 2024. [↑](#footnote-ref-123)
124. Mark E. Villiger, *Commentary on The 1969 Vienna Convention on the Law of Treaties* (1st edition, Martinus Nihoff Publishers 2009) 654; *South West Africa (Ethiopia v South Africa; Liberia v South Africa)* [1966] ICJ Rep 6 ¶¶135, 136. [↑](#footnote-ref-124)
125. Fitzmaurice, ‘The Law and Procedure of the International Court of Justice 1951-4: Treaty Interpretation and Other Points’ (1957) 23 British Yearbook of International Law 203, ¶¶270, 277. [↑](#footnote-ref-125)
126. S. K. N. Blay, R. W. Piotrowicz & B. M. Tsamenyi, ‘Problems with the Implementation of the Third United Nations Law of the Sea Convention: The Question of Reservations and Declarations’ (1984-1987) 11 Australian Year Book of International Law 67 **[‘Declarations’]**, 104. [↑](#footnote-ref-126)
127. Declarations, 97. [↑](#footnote-ref-127)
128. Annes 1: Vespucia Declarations. [↑](#footnote-ref-128)
129. Annes 1: Idris Declarations. [↑](#footnote-ref-129)
130. UNESCO Convention, art 1. [↑](#footnote-ref-130)
131. UNCLOS, art 149. [↑](#footnote-ref-131)
132. Eke, 481. [↑](#footnote-ref-132)
133. Bryan A. Garner, *Black’s Law Dictionary* (12th edition, Thomson Reuters 2024) <<https://1.next.westlaw.com/Link/Document/FullText?findType=Y&pubNum=223765&cite=BLACKS12THP14400&originatingDoc=Iff5d4b88808411e4b391a0bc737b01f9&refType=DA&originationContext=document&transitionType=DocumentItem&ppcid=18e367be1fd6476cb12ea61b4d242e5e&contextData=(sc.Search)#co_pp_sp_223765_placeoforigin>> accessed 11 August 2024. [↑](#footnote-ref-133)
134. Facts ¶3 [↑](#footnote-ref-134)
135. Facts ¶3. [↑](#footnote-ref-135)
136. UNESCO Convention, art 2. [↑](#footnote-ref-136)
137. UNESCO Convention, art 10. [↑](#footnote-ref-137)
138. Underwater Cultural Heritage, 60. [↑](#footnote-ref-138)
139. *Case Concerning the Gabcīkovo-Nagymaros Project* *(Hungary v Slovakia)* (Judgement) [1997] ICJ Rep 7 **[‘*GabCikovo-Nagymaros*’]** ¶1407; *Pulp Mills* ¶101. [↑](#footnote-ref-139)
140. Perez Alvaro (Speech in the First Committee of the United Nations General Assembly, 22nd Session, 1515th Meeting1 November 1967) <<https://www.un.org/depts/los/convention_agreements/texts/pardo_ga1967.pdf>> accessed 11 August 2024; Browne K and Raff M, *International Law of Underwater Cultural Heritage* (Springer Cham 2023) 445. [↑](#footnote-ref-140)
141. Patrick J O’Keefe, *Shipwrecked Heritage: A Commentary on the UNESCO Convention on Underwater Cultural Heritage* (2nd edition, Institute of Art and Law 2014) **[‘Patrick Commentary’]** 123. [↑](#footnote-ref-141)
142. Facts ¶¶5, 9. [↑](#footnote-ref-142)
143. Facts ¶9. [↑](#footnote-ref-143)
144. UNCLOS, art 246. [↑](#footnote-ref-144)
145. UNESCO Convention, art 10(2). [↑](#footnote-ref-145)
146. Underwater Cultural Heritage, 349. [↑](#footnote-ref-146)
147. Facts ¶9. [↑](#footnote-ref-147)
148. UNESCO World Heritage Centre, ‘World Heritage Committee Inscribes Two New Sites on World Heritage List’ (2010) <https://whc.unesco.org/en/news/640> accessed 11 August 2024. [↑](#footnote-ref-148)
149. Robyn Frost,‘Underwater Cultural Heritage Protection’ (2004) 23 Australian Year Book of International Law 25, 38. [↑](#footnote-ref-149)
150. ibid. [↑](#footnote-ref-150)
151. UNCLOS, art 56. [↑](#footnote-ref-151)
152. Facts ¶5. [↑](#footnote-ref-152)
153. Facts ¶13. [↑](#footnote-ref-153)
154. ‘International Congress of Maritime Museums, 21 September 1993’ (1994) 3 International Journal of Cultural Property 308, 309. [↑](#footnote-ref-154)
155. Patrick Commentary, 124. [↑](#footnote-ref-155)
156. Sarah Dromgoole, xxxiv. [↑](#footnote-ref-156)
157. Facts ¶6. [↑](#footnote-ref-157)
158. UNESCO Convention, art 7(3). [↑](#footnote-ref-158)
159. UNESCO Convention, art 7(3); Underwater Cultural Heritage, 157. [↑](#footnote-ref-159)
160. Underwater Cultural Heritage, 157. [↑](#footnote-ref-160)
161. UNESCO Convention, art 10(4). [↑](#footnote-ref-161)
162. Underwater Cultural Heritage, 62. [↑](#footnote-ref-162)
163. Facts ¶8. [↑](#footnote-ref-163)
164. Facts ¶¶7, 8. [↑](#footnote-ref-164)
165. Annex 1 Declaration of Vespucia¶3. [↑](#footnote-ref-165)
166. Vaughan Lowe and Stefan Talmon (eds), *The Legal Order of the Oceans: Basic Documents on the Law of the Sea* (1st edition, Bloomsbury Publishing Plc 2009) 915, 917, 967. [↑](#footnote-ref-166)
167. UNCLOS, arts 60, 80. [↑](#footnote-ref-167)
168. UNCLOS, art 60(1); *South China Sea Arbitration* ¶1035. [↑](#footnote-ref-168)
169. UNCLOS, art 121; Alex G Oude Elferink, ‘Artificial Islands, Installations and Structures’Max Planck Encyclopedia of Public International Law (2013) ¶3. [↑](#footnote-ref-169)
170. UNCLOS, art 121(3); *South China Sea Arbitration* ¶1203B(6)(7). [↑](#footnote-ref-170)
171. Facts ¶11. [↑](#footnote-ref-171)
172. UNCLOS, art 60(1)(b). [↑](#footnote-ref-172)
173. Alexander Commentary, 428. [↑](#footnote-ref-173)
174. Alexander Commentary, 471. [↑](#footnote-ref-174)
175. Yin-Cheng Hsu,‘Developments in International Cultural Heritage Law: What Hampers the Convention on the Protection of the Underwater Cultural Heritage’ (2016) 3 Edinburgh Student Law Review 116, 121. [↑](#footnote-ref-175)
176. UNCLOS, art 56 (1)(a). [↑](#footnote-ref-176)
177. Clarifications ¶6. [↑](#footnote-ref-177)
178. Facts ¶¶7,8. [↑](#footnote-ref-178)
179. Facts ¶9. [↑](#footnote-ref-179)
180. ibid. [↑](#footnote-ref-180)
181. UNCLOS, art 60(1)(c). [↑](#footnote-ref-181)
182. UNCLOS, art 56(1) [↑](#footnote-ref-182)
183. UNCLOS, art 303(1)(2). [↑](#footnote-ref-183)
184. UNCLOS, art 194 (3). [↑](#footnote-ref-184)
185. *South China Sea Arbitration* ¶¶1203B(13)(16). [↑](#footnote-ref-185)
186. Facts ¶6. [↑](#footnote-ref-186)
187. Facts ¶13. [↑](#footnote-ref-187)
188. Facts ¶9. [↑](#footnote-ref-188)
189. ibid. [↑](#footnote-ref-189)
190. UNCLOS, art 59; *M/V “Virginia G” (Panama v Guinea-Bissau)* (Judgment) (Declaration of Judge Nelson) [2014] ITLOS No 19 ¶¶8, 9. [↑](#footnote-ref-190)
191. *Territorial Dispute (Libyan Arab Jamahiriya v Chad)* (Judgment) [1994] ICJ Rep 6 ¶41. [↑](#footnote-ref-191)
192. UNCLOS, Preamble ¶5. [↑](#footnote-ref-192)
193. VCLT, art 31(1). [↑](#footnote-ref-193)
194. UNCLOS, art 303(3). [↑](#footnote-ref-194)
195. VCLT, art31. [↑](#footnote-ref-195)
196. UNESCO Convention, arts 11(4), 12(6). [↑](#footnote-ref-196)
197. UNESCO Convention, arts 9(5), 11 (4).  [↑](#footnote-ref-197)
198. Facts ¶1. [↑](#footnote-ref-198)
199. Facts ¶6. [↑](#footnote-ref-199)
200. Facts ¶11. [↑](#footnote-ref-200)
201. UNCLOS, art 58(3); *M/V “SAIGA” (No. 2) Case (Saint Vincent and the Grenadines v Guinea)* (Judgment)([Dissenting opinion of Judge Warioba](https://itlos.org/fileadmin/itlos/documents/cases/case_no_2/published/C2-J-1_Jul_99-DO_W.pdf)) [1999] ITLOS No 2 ¶84. [↑](#footnote-ref-201)
202. *Chagos Marine Protected Area Arbitration (Mauritius v UK)* (Award) [2015]PCA Case No 2011-03**[‘*Chagos Arbitration*’]**, 362. [↑](#footnote-ref-202)
203. *Fisheries Jurisdiction (UK v Iceland)* (Judgment) [1974] ICJ Rep 3 ¶ 72. [↑](#footnote-ref-203)
204. UNCLOS, art 303(1); Yurika Ishii, ‘The “Due Regard” Obligation and the Peaceful and Economic Use of the exclusive economic zone Other than Fisheries’ (2019) 34 The International Journal of Marine and Coastal Law 73, 74. [↑](#footnote-ref-204)
205. *Chagos Arbitration* ¶519; *North Sea Continental Shelf* (Judgment) [1969] ICJ Rep 3 ¶85. [↑](#footnote-ref-205)
206. Facts ¶9. [↑](#footnote-ref-206)
207. Facts ¶6. [↑](#footnote-ref-207)
208. Facts ¶¶11, 12. [↑](#footnote-ref-208)
209. UNESCO Convention, art 9(1)(b). [↑](#footnote-ref-209)
210. Facts ¶11. [↑](#footnote-ref-210)
211. Maksym Tsutskiridze et al, ‘Underwater Cultural Heritage: Regime and Jurisdiction Challenges’ (2022) 8 Lex Portus 59, 69. [↑](#footnote-ref-211)
212. UNESCO Convention, art 10(3)(a). [↑](#footnote-ref-212)
213. UNESCO Convention, arts 10(5), 19(1). [↑](#footnote-ref-213)
214. Facts ¶¶11, 12. [↑](#footnote-ref-214)
215. ibid. [↑](#footnote-ref-215)
216. Facts ¶9. [↑](#footnote-ref-216)
217. Facts ¶6. [↑](#footnote-ref-217)
218. ILC, ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts’ (2001) UN Doc A/RES/56/83 **[‘ARSIWA’]**, art 1, 2; *Phosphates in Morocco* (Judgment) [1938] PCIJ Series A/B No 74, 28; *GabCikovo-Nagymaros* ¶78. [↑](#footnote-ref-218)
219. ARSIWA, art 31, 35; *GabCikovo-Nagymaros* ¶149; *Avena* ¶119; *Factory At Chorzów* (Germany v Poland) (Claim for Indemnity, Merits) [1928] PCIJ Series A No 17, 47. [↑](#footnote-ref-219)
220. UNCLOS, art 73(1). [↑](#footnote-ref-220)
221. Facts ¶5. [↑](#footnote-ref-221)
222. UNCLOS, art 60(1)(b). [↑](#footnote-ref-222)
223. *The Arctic Sunrise Arbitration (Netherlands v Russia)* (Award) [2015] PCA No 2014-02  ¶326; *M/V “SAIGA” (No. 2) Case (Saint Vincent and the Grenadines v Guinea)*  (Judgment)[1999] ITLOS No 2 **[‘*SAIGA (No. 2)*’]** ¶155; *The M/V “Virginia G” Case (Panama v Guinea-Bissau)* (Judgment) [2014] ITLOS No 19 **[‘*Virginia G*’]** ¶359. [↑](#footnote-ref-223)
224. *Camargo v Colombia* (1982) UN Doc CCPR/C/15/D/45/1979 ¶13.2. [↑](#footnote-ref-224)
225. Facts ¶¶10, 15. [↑](#footnote-ref-225)
226. Facts ¶16. [↑](#footnote-ref-226)
227. *Mukong v Cameroon* (1994) UN Doc CCPR/C/45/D/458/1991 ¶9.8. [↑](#footnote-ref-227)
228. HRComm, ‘General Comment No 35’ (2014) UN Doc CCPR/C/GC/35 **[‘GC 35’]** ¶15; IACHR, ‘Report on Terrorism and Human Rights’ (2002) OEA/Ser.L/V/II.116 Doc.5 rev.1 corr. ¶124. [↑](#footnote-ref-228)
229. *SAIGA (No. 2)* ¶155. [↑](#footnote-ref-229)
230. UN, ‘Basic Principles on the Use of Force and Firearms by Law Enforcement Officials’ (1990) UN Doc A/CONF.144/28/Rev.1 **[‘Basic Principles’]** ¶5. [↑](#footnote-ref-230)
231. *Duzgit Integrity Arbitration (Malta v Sao Tomi and Principe)* (Award) [2016] PCA Case No 2014-07 ¶209. [↑](#footnote-ref-231)
232. HRComm, ‘General Comment No 34’ (2011) UN Doc CCPR/C/GC/34 ¶34. [↑](#footnote-ref-232)
233. Facts ¶¶11, 12, 16. [↑](#footnote-ref-233)
234. Clarifications ¶5. [↑](#footnote-ref-234)
235. *M/V “SAIGA” (No. 2) Case (Saint Vincent and the Grenadines v Guinea)* (Separate Opinion of Judge Zhao) [1999] ITLOS No 2 ¶¶2, 3. [↑](#footnote-ref-235)
236. ibid. [↑](#footnote-ref-236)
237. Facts ¶14. [↑](#footnote-ref-237)
238. Yoshifumi Tanaka, *The International Law of the Sea* (2nd edition, Cambridge University Press 2015) 135; *Virginia G* ¶168; *South China Sea Arbitration* ¶700. [↑](#footnote-ref-238)
239. Alexander Commentary, 449. [↑](#footnote-ref-239)
240. Bernard H. Oxman, ‘The Regime of Warships under the United Nations Convention on the Law of the Sea’ (1983-1984) 24 Virginia Journal of International Law 809, 827. [↑](#footnote-ref-240)
241. *See* Pleading 3. [↑](#footnote-ref-241)
242. Facts ¶10. [↑](#footnote-ref-242)
243. *Chagos Arbitration* ¶534. [↑](#footnote-ref-243)
244. *Chagos Arbitration* ¶519. [↑](#footnote-ref-244)
245. *Chagos Arbitration* ¶528. [↑](#footnote-ref-245)
246. Facts ¶¶10, 12. [↑](#footnote-ref-246)
247. Facts ¶10. [↑](#footnote-ref-247)
248. UNESCO Convention, art 10(2). [↑](#footnote-ref-248)
249. Patrick Commentary,69. [↑](#footnote-ref-249)
250. Patrick Commentary,68. [↑](#footnote-ref-250)
251. ibid. [↑](#footnote-ref-251)
252. Facts ¶¶11, 12. [↑](#footnote-ref-252)
253. UNESCO Convention, art 10(6). [↑](#footnote-ref-253)
254. Facts ¶13. [↑](#footnote-ref-254)
255. Facts ¶9. [↑](#footnote-ref-255)
256. HRComm, ‘General Comment No 36’ (2019) UN Doc CCPR/C/GC/36 ¶3. [↑](#footnote-ref-256)
257. Clarifications ¶5. [↑](#footnote-ref-257)
258. *Case of Guzzardi v Italy* ECtHR App no 7367/76 (1980) [↑](#footnote-ref-258)
259. *Leehong v Jamaica* (1999) UN Doc CCPR/C/66/D/613/1995 ¶ 9.3; Basic Principles ¶ 5; CESCR, ‘General comment No 14’ (2000) UN Doc E/C.12/2000/4 ¶32. [↑](#footnote-ref-259)
260. *Fardon v Australia* (2010) UN Doc CCPR/C/98/D/1629/2007 ¶ 7.3; *Fijalkowska v Poland* [2005] UN Doc CCPR/C/84/D/1061/2002 ¶8.3. [↑](#footnote-ref-260)
261. Facts ¶16. [↑](#footnote-ref-261)
262. Facts ¶15; GC 35 ¶15. [↑](#footnote-ref-262)