

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)

**MEMORIAL OF**

**THE KINGDOM OF IDRIS**

**11 August 2024**

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# **STATEMENT OF JURISDICTION**

# **THE TRIBUNAL HAS JURISDICTION OVER THE CASE ACCORDING TO UNCLOS AND THE PARTIES’ DECLARATIONS.**

## ***The Parties explicitly state the Tribunal’s jurisdiction in their declarations.***

Pursuant to UNCLOS Article 286, any dispute concerning the interpretation or application of the Convention must be submitted, at the request of any party, to a court or tribunal with jurisdiction for compulsory resolution.[[1]](#footnote-1) This stipulates that all disputes involving the interpretation or application of the Convention should be submitted to a court or tribunal with jurisdiction.[[2]](#footnote-2) Building on this, Article 287 further stipulates that States have the right to choose the method for resolving disputes concerning the interpretation or application of the Convention.[[3]](#footnote-3) As part of UNCLOS provisions, the Tribunal is authorized to exercise compulsory jurisdiction over disputes related to the interpretation or application of the Convention.[[4]](#footnote-4) Upon ratifying UNCLOS, Idris explicitly declared its right under Article 287 to choose the Tribunal as the dispute resolution mechanism, both Vespucia and Idris have acknowledged the Tribunal’s jurisdiction over maritime disputes, thus the jurisdiction of the Tribunal as the dispute resolution mechanism in this case is indisputable and aligns with the parties’ declarations within the framework of UNCLOS.[[5]](#footnote-5)

## ***The case involves the interpretation of UNCLOS and related international agreements.***

Under UNCLOS Article 288, the Tribunal has jurisdiction over disputes related to the interpretation or application of the Convention and relevant international agreements.[[6]](#footnote-6) Whether or not the dispute also involves the interpretation or application of other international treaties between the parties, the compulsory procedures provided under Part XV, Section 2, remain applicable.[[7]](#footnote-7) Other related issues do not alter the fundamental nature of the dispute, which fundamentally concerns the interpretation and application of UNCLOS.[[8]](#footnote-8) Additionally, in cases of disputes regarding the jurisdiction of a court or tribunal, the court or tribunal itself must decide the issue.[[9]](#footnote-9) Therefore, even if the case involves marine research within the Exclusive Economic Zone **[‘EEZ’]** and other international conventions, these disputes still fall within the domain of maritime law.[[10]](#footnote-10) Jurisdictional disputes between the parties should be determined by the Tribunal.[[11]](#footnote-11)

# **THE FOUR CLAIMS SUBMITTED BY IDRIS ARE ADMISSIBLE.**

The four claims submitted by Idris are admissible since **[A]** the case cannot be deemed an abuse of process under UNCLOS; **[B]** the admissibility of the case cannot be excluded due to Vespucia’s unlawful conduct; and **[C]** the case does not meet other requirements for exclusion of admissibility.

## ***The case cannot be deemed as an abuse of process under UNCLOS.***

Pursuant to Article 294 of UNCLOS, the Tribunal shall refrain from claims constituting abuse of process.[[12]](#footnote-12) A claim shall not constitute abuse of process, as shown in the Mauritius/Maldives, if a dispute exists,[[13]](#footnote-13) and the claim is confined to relevant provisions entitling ligitation.[[14]](#footnote-14)

*First*, there’s a dispute between Idris and Vespucia. A dispute exists, if there lies ‘a conflict of legal views or of interests’.[[15]](#footnote-15) Here, exchanges between the Idrisian and Vespucian government have shown, Idris and Vespucia bear conflictive views rights over the shipwreck, on whether ‘sovereign immunity’ may be given,[[16]](#footnote-16) and on whether ‘prior consent’ is needed.[[17]](#footnote-17) Also, interests regarding the cargo have been in heated discussion.[[18]](#footnote-18)

Furthermore, the claims are properly confined to the relevant provisions. Here, Idris’s claim, as submitted by Idris, appertain to Vespucia’s breach of UNCLOS and UNESCO Convention.[[19]](#footnote-19) Both conventions entitle Contracting Parties to resort to judicial proceedings over disputes concerning their interpretation or application.[[20]](#footnote-20)

Therefore, there is a dispute between Idris and Vespucia, Vespucia cannot claim that the legal basis for the inadmissibility of this case is UNCLOS Article 294, citing abuse of process and lack of prima facie evidence.

## ***The admissibility of the case cannot be excluded due to Vespucia’s unlawful conduct.***

Under UNCLOS Article 300, States are obligated to fulfil their duties under the Convention in good faith and exercise the rights, jurisdiction, and freedoms recognized therein in a manner that does not constitute an abuse of rights.[[21]](#footnote-21) Breach of this provision can result in State responsibility.[[22]](#footnote-22) Furthermore, the clean hands doctrine asserts that a State engaged in illegal activities cannot benefit from similar or identical actions by other states.[[23]](#footnote-23) In this case, Vespucia’s exclusive claim clearly exceeds the rights of coastal States in the EEZ as stipulated in UNCLOS Article 56 and shall be recognized as a violation of this norm.[[24]](#footnote-24) Therefore, Vespucia’s attempt to exclude the admissibility of this case not only lacks legal merit but also constitutes a blatant abuse of rights under the guise of sovereignty.

## ***The case does not meet other requirements for exclusion of admissibility.***

Despite Vespucia’s assertion that procedural flaws render the case inadmissible under UNCLOS Article 283.[[25]](#footnote-25) It is sufficient for the parties to have communicated about the dispute to be considered as having exchanged views.[[26]](#footnote-26) The obligation for prior consultation should not be regarded as a statement potentially affecting the admissibility of the case.[[27]](#footnote-27) In this instance, while Idris requested to terminate negotiations, Vespucia sent diplomatic communications regarding aid to Idris, to which Idris responded, demonstrating that both parties communicated about the dispute, thus not impacting the admissibility of the case.[[28]](#footnote-28)

While UNCLOS Article 295 stipulates that a claim is admissible only after exhausting local remedies as required by international law.[[29]](#footnote-29) This prerequisite does not apply when no relevant connection exists between the injured party and the respondent State at the time the harm occurred.[[30]](#footnote-30) The sailors involved in this case were working on Idris–constructed artificial structures, conducting archaeological work for Idris, and had no connection to Vespucia, therefore, there is no need to exhaust local remedies.[[31]](#footnote-31)

# **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 UNCLOS Article 287. 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 *Nuestra Señora Aparecida* **[‘*Aparecida*’]** sunk in the Antillean Sea, which is now the EEZ and continental shelf of Vespucia. The *Aparecida* sank with its cargo including at least ten tons of silver, a sizeable amount of gold coins, a vast array of precious stones, and bejeweled artifacts. The gold coins were mined and minted in Vespucia and carefully crafted artifacts in the old Vespucian tradition. The crew of the *Aparecida* was partly employees of Idrisian private colonial venture.

The ocean exploration company *Beyond Sea Water* confirmed that *Aparecida* lies at a depth of approximately 450 meters and its excellent condition.

**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**

After confirming the location of the wreck, both Idris and Vespucia claimed sovereignty over it. Vespucia’s president issued a statement saying that he would use it to develop regional tourism and improve economic life. At the same time, Idris sent the State-owned ship *Marina* to the wreck site to collect further information about the *Aparecida*.

In the following days, the Vespucia government emphasized that any plan to approach the wreck would require its prior consent, but refused to authorize the *Marina* to conduct research. The Idris government made it clear that *Marina* did not intend to conduct marine scientific research or other economic activities in Vespucia’s EEZ and continental shelf.

**THE ARTIFICIAL STRUCTURE**

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

After the emplacement, Vespucian authorities stated that they had exclusive right over all types of installations and structures in its EEZ and on its continental shelf.

**THE 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. This Marine Park is a full protection zone aiming to safeguard the habitats and ecosystems and preserve the existing historical and biological heritage. Furthermore, the decree ensures sustainable and rational use of marine park resources by the island’s traditional communities.

**THE DETENTION OF NAVARRO AND CREW**

The *Navarro* is a private Idrisian-flagged ship operating in the Antillean Sea. It was hired by Idris to serve as a bunkering vessel, transmitting supplements to the sailors and maintaining the artificial structure.

On 2 January 2024, after the *Navarro* concluded its operations on the artificial structure, a Vespucian naval ship arrested the *Navarro* and its crew and brought them to a port at San Andrés island, for alleged violations of Vespucia’s sovereign rights in the UNCLOS. After 20 hours of detention, Vespucia released the *Navarro* and crew.

**THE BLOCKADE AND PREVENTING SUPPLIES**

After releasing the *Navarro* and its crew, the Vespucian naval ship returned to the artificial structure, tending to remove it. However, it finally changed to block further assistance to the installation and sailors. The Vespucian Minister of Foreign Affairs confirmed the measures.

This blockade put the sailors’ lives at risk and hindered bilateral negotiations. It also prevented Idris’s access and future expeditions to the *Aparecida*, violating international cultural heritage law.

# **SUMMARY OF PLEADINGS**

**I**

*First*, Idris has sovereign immunity and jurisdiction over *Aparecida* under UNCLOS since *Aparecida* constitutes a sunken warship of Idris under UNCLOS Article 29 and is still the State property of Idris. That’s because *Aparecida* acts like a sovereign State rather than a commercial individual while Idris has never expressly or implicitly relinquished ownership of *Aparecida*.

*Second*, Vespucia has no jurisdiction over *Aparecida* under UNCLOS Article 56 since *Aparecida* lies in the EEZ of Vespucia while Vespucia has no right to explore or conserve it. It is because Article 56 suggests that in the EEZ, the coastal State only has sovereign rights for the purpose of exploring and conserving the natural resources. However, it does not contain the exploration and conservation of military and governmental vessels.

Conversely, the *Aparecida* should constitute ‘underwater cultural heritage’ **[‘UCH’]** and ‘common Heritage of Mankind’. To best protect the finite resource, *Aparecida* should also be protected by both Idris and Vespucia.

However, Vespucia has not fulfilled its legal obligation on the aforementioned acts, it should not have consultative jurisdiction over the wreck.

**II**

Vespucia has violated its international obligations under the UNCLOS and the UNESCO Convention, by demanding prior consent from Idris to access the shipwreck;

*First*, Vespucia may only demand prior consent for limited issues. The activity taken by Idris didn’t belong to marine scientific research.

*Second*, Vespucia has no rights to demand prior consent, for the activities taken by Idris didn’t interference with Vespucia’s sovereign rights or jurisdiction.

*Third*, Vespucia doesn’t have jurisdiction rights over Aperacida, for it is a State vessel and can be ‘sovereign immunity’.

Lastly, Vespucia breach the principle of cooperation in the aspect of demanding prior consent, constructing marine park, boosting tourism and sharing information.

**III**

Vespucia shall respect the right of Idris to emplace an artificial structure for archaeological exclusive purpose near the site of the shipwreck.

*First*, Vespucia shall respect the right to emplace the artificial structure under UNCLOS. This right is not precluded by Vespucia’s exclusive rights under Article 60, while Idris enjoy this right under Article 59. Meanwhile, Idris did not violate its obligation of due regard in terms of its emplacement under Article 58(3). Futhermore, Vespucia has the obligation of due regard to respect Idris’ rights under Article 56(2).

*Second*, Vespucia shall respect the right to emplace the artificial structure under UNESCO. The UNESCO does not preclude the right of Idris towards the shipwreck in Vespucia’s EEZ. Moreover, Vespucia shall not prohibit the emplacement of Idris’ artificial structure under Article 9 and 10.

**IV**

Vespucia’s measures to block the artificial structure and preventing Idrisian vessels form supplying violated the UNCLOS.

*First*, Vespucia violated UNCLOS. Vespucia has no right to take enforcement measures under Article 73. And in any regard, Vespucia violated the criteria for enforcement under Article 73. Moreover, Vespucia’s measures impaired Idrisian vessels’ navigation freedom and violated its obligation of due regard.

*Second*, Vespucia violated UNESCO. Vespucia has no right to take enforcement measures under Article 10(2) and 10(6).

*Third*, Vespucia violated human rights of Idrisian sailors. Vespucia’s measures resulted in inhuman treatments and violated the right to life, the right of liberty and security of person of Idrisian sailors.

# **PLEADINGS**

# **VESPUCIA HAS BREACHED ITS INTERNATIONAL OBLIGATIONS UNDER THE UNCLOS AND THE UNESCO CONVENTION, SINCE IDRIS HAS SOVEREIGN IMMUNITY AND JURISDICTION OVER APARECIDA AND ITS CARGO.**

Idris has sovereign immunity and jurisdiction over *Aparecida* since **[A]** *Aparecida* is protected by sovereign immunity from any foreign jurisdiction under UNCLOS; **[B]** Vespucia has no jurisdiction over *Aparecida* under UNCLOS and the UNESCO Convention; **[C]** Vespucia has no jurisdiction over *Aparecida* under UNESCO Convention.

## ***Aparecida* is protected by sovereign immunity from any foreign jurisdiction under UNCLOS.**

*Aparecida* is protected by sovereign immunity from any foreign jurisdiction under UNCLOS, because **[1]** it constitutes a sunken warship of Idris under UNCLOS Article 29; **[2]** *Aparecida* acts like a sovereign State rather than a commercial individual; **[3]** Idris has never expressly or implicitly relinquished ownership of *Aparecida*; **[4]** The cargo and the shipwreck of *Aparecida* are interlinked for immunity purposes. Overall, **[5]** *Aparecida* is protected by sovereign immunity of Idris.

### ***Aparecida constitutes a sunken warship of Idris.***

#### *Aparecida was a warship of Idris.*

Concerning the definition of ‘warship’, UNCLOS Article 29 provides that a ‘warship’ needs to have distinguishing marks of its nationality, be under the command of an officer duly commissioned by the government of the State, and manned by a crew that is under regular armed forces discipline.[[32]](#footnote-32) In addition, a State does not have to be at war for a sunken naval vessel to be a warship, as countries have navies in times of war and peace.

Here, *Aparecida* was well-known as an Idrisian galleon.[[33]](#footnote-33) When *Aparecida* sunk, it was part of the Idrisian Armada and Rodrigo Mendes, a famous Idrisian captain who was evidently appointed by the Idrisian government was in charge of *Aparecida* and his crew,[[34]](#footnote-34) making it a sunken warship.

Thus, *Aparecida* falls within the scope of a warship.

#### *Aparecida is still the State property of Idris after its sinking.*

To determine the status of *Aparecida* after its sinking, it is necessary to determine whether the principle of sovereign immunity continues to apply to a warship even after it has sunk. However, the claim for immunity is based on the notion that such craft remain State property. States have reasons for maintaining an interest in State vessels after their sinking and these interests are not confined merely to casualties. There is thus a legal foundation for granting such property indefinite immunity.[[35]](#footnote-35)

In this case, the ocean exploration company *Beyond Sea Water* confirmed that *Aparecida* lies at a depth of approximately 450 meters[[36]](#footnote-36) and the cargo on the warship included at least ten tons of silver, a sizeable amount of gold coins, a vast array of precious stones, and bejeweled artifacts[[37]](#footnote-37) which remain the interests of Idris. The fact that the *Aparecida* has been sitting on the ocean floor for over 200 years does not negate Idris’s property interest in the shipwreck.

As a result, *Aparecida* constitutes a sunken warship of Idris.

### ***Aparecida acts like a sovereign State instead of a commercial individual.***

UNCLOS Article 32 grants immunity to warships and other government vessels used for non-commercial operations.[[38]](#footnote-38) UNCLOS Article 236 also provides the provisions of this Convention only on government non-commercial service.[[39]](#footnote-39) ln the line with the restrictive doctrine, whereby immunity is limited to situations in which a State acts on its own behalf; thus, immunity is only granted to State vessels that are involved in non-commercial operations. This theory became a trend after the nineteenth century after it was applied in *the Charkieh* in 1873.[[40]](#footnote-40)

Therefore, a State act is required to determine if Idris has sovereign immunity.

In this case, *Aparecida* was part of the Idrisian Armada , which explored the colonial commerce between Idris and Vespucia[[41]](#footnote-41) on behalf of the government. It is an act involving inter-State relations that has a direct impact on State interests. Thus, it was not behaving like a typical private individual in the marketplace.

Even if the colonial commerce can be viewed as a commercial activity, *Aparecida* enjoy the immunity as a State commercial vessel. This position was expressed in *The Parlement Belge*[[42]](#footnote-42) in 1880: ‘the ship being used subordinately and partially for trading purposes does not take away the general immunity.’

Consequently, Vespucia could not be exempted from general immunity in whatever capacity it was involved in the colonial trade.

### ***Idris has never expressly or implicitly relinquished ownership of Aparecida.***

A state’s immunity from suit is a prerogative that it can waive at any time. Only where a waiver has been ‘stated by the most express language or by such overwhelming implications from the text as will leave no room for any other reasonable construction’ will it be found.[[43]](#footnote-43)

Furthermore, Section 9 of *the State Immunity Act (1978)* provides that if a State agrees in writing to submit a dispute that has arisen or is likely to arise to arbitration, that State cannot enjoy immunity in the UK courts in proceedings relating to the matter of arbitration.

Here, there was no formal waiver of sovereign immunity, no involvement in proceedings in another state, and no inferred waiver of sovereign immunity, hence it should be enjoyed.

### ***Aparecida and its cargo should be seen as a whole.***

According to the *Nairobi International Convention on the Removal of Wrecks*, Article 1 provides that ‘wreck’ means any part of a sunken or stranded ship, including any object that is or has been on board such a ship. The cargo on board should be consistent with the wreckage of the sunken warship, and it is reasonable to regard the cargo on board as identical to the wreckage of the sunken warship.

Under the *Sunken Military Craft Act (SMCA)*, the rights, title, and interest in any sunken military craft are protected absent an ‘express divestiture of title.’. The definition of a ‘sunken military craft’ includes a sunken warship or other military vessel, as well as ‘all or any portion of the associated contents of a craft.’. ‘Associated contents’ corresponds to ‘the equipment, cargo, and contents of a sunken military craft that are within its debris field ... and the remains and personal effects of the crew and passengers of a sunken military craft that are within its debris field.’.

Treating the cargo as part of the shipwrecked *Aparecida* is also consistent with the Abandoned Shipwreck Act (ASA)[[44]](#footnote-44). Under the ASA, the Federal Government asserts and transfers title of any ‘abandoned shipwreck’ to the State in whose submerged lands the wreck is embedded. Like the SMCA, the ASA defines ‘shipwreck’ as ‘a vessel or wreck, its cargo and other contents’.[[45]](#footnote-45) And the ASA shows that the protections awarded to a sunken sovereign vessel also extend to the cargo aboard that vessel.

Therefore, under the ASA, the cargo that was aboard the *Aparecida* would not be considered separate from the shipwreck.

Also, *The Odyssey case*[[46]](#footnote-46)demonstrated that by cloaking the cargo with Spanish immunity, the Court transferred problems about rights, title, and interests (collectively, ‘proprietary rights’) over UCH-freight to a jurisdiction, Spain, where they would be protected by the Convention. As a result, the goods on the shipwreck should be protected under State immunity as private rights.

Here, *Aparecida* is a sunken warship and the Idrisian archaeologists confirmed the excellent condition of the shipwreck[[47]](#footnote-47) which means the cargo on the ship still exists in the shipwreck of *Aparecida*.

Thus, the *Aparecida* and its cargo are entitled to the same immunities.

### ***Overall, Aparecida is protected by sovereign immunity of Idris.***

From the legal point of view, UNCLOS Article 32 provides the immunities of warships and other government ships operated for non-commercial purposes.[[48]](#footnote-48) From the perspective of State Practices, Magistrate Judge Pizzo issued a Report & Recommendations stating in the Mercedes case in 2011 that, on the balance of evidence, the wreck was the Mercedes and ‘unquestionably’ the property of Spain.[[49]](#footnote-49) While as the cargo aboard the Mercedes is considered part of the wreck for the purposes of sovereign immunity, Peru is barred from attempting to file a complaint in US courts against any part of the Mercedes or any cargo it was carrying at the time of the sinking.

It is worth noting that after similar cases, many particularly concerned States, including the US, Germany, Japan, Russia, Spain, UK, clarified their position in their unilateral declaration on the legal status of sunken State vessels by stating that sunken State vessels continue to enjoy sovereign immunity after sinking, wherever they are located.[[50]](#footnote-50)

As previously proven, *Aparecida* should be protected by Idris’ sovereign immunity.

## **Vespucia has no jurisdiction over *Aparecida*.**

Vespucia has no jurisdiction over *Aparecida* since **[1]** *Aparecida* lies in the EEZ of Vespucia while Vespucia has no right to explore or conserve it; **[2]** Conversely, the *Aparecida* should be part of the ‘common Heritage of Mankind’ and be protected by all coordinating states;**[3]** However, Vespucia is in breach of its obligation to confer as a Coordinating State under the UNESCO Convention and therefore should be excluded.

### ***Aparecida lies in the EEZ of Vespucia while Vespucia has no right to explore or conserve it.***

According to the UNCLOS, Article 56 suggests that in the EEZ, the coastal State only has sovereign rights for the purpose of exploring and conserving the natural resources, such as the production of energy from the water, currents, and winds.[[51]](#footnote-51) However, it does not contain the exploration and conservation of military and governmental vessels.

Here, as *Aparecida* is a sunken warship of Idris, Vespucia is not entitled to claim sovereignty based on the legitimate owner of the cargo, and its actions would be considered foreign interference.

Also, the exemption of warships from salvage was reaffirmed in *the* *Convention*: this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognized principles of international law unless that State decides otherwise.[[52]](#footnote-52) It is applied sovereign immunity to sunken State vessels and they shall not be salvaged without the express consent of the flag State.[[53]](#footnote-53) *The Outer Continental Shelf Lands Act* only extends federal control over the outer continental shelf for purposes of exploration and exploitation of natural resources and establishes that abandoned shipwrecks found on *the Convention on the Continental Shelf* are governed by the traditional law of salvage.[[54]](#footnote-54) Thus, Vespucia has no jurisdiction under *the 1989 Salvage Convention* .

Since Vespucia has lost jurisdiction, Idris enjoys immunity from the obligation to rescue *Aparecida* and its cargo .

### ***Conversely, the Aparecida should be part of the ‘common Heritage of Mankind’ and be protected by both Idris and Vespucia.***

#### *Aparecida and its cargo constitute underwater cultural heritage’.*

The *Aparecida* was loaded with invaluable cargo, including at least 10 tons of silver explored from different parts of the Idrisian colonial empire, a sizeable amount of gold coins minted in Vespucia, a vast array of precious stones, and bejeweled artifacts, carefully crafted in the old Vespucian tradition.[[55]](#footnote-55) Archaeologists can learn about the Vespucians’ production capabilities and lives 200 years ago by analyzing their artifacts and currency. At the same time, this ship formerly housed a large number of Idrisian crew members, and their equipment, clothes, log books, and other items can be utilized by archaeologists to study Idrisian life 200 years ago.

Therefore, *Aparecida* and its cargo have tremendous anthropological and historical importance and should be maintained intact for future investigation which makes them ‘underwater cultural heritage’.

#### *Aparecida shall be regarded as part of the common collective cultural heritage of mankind.*

According to the UNCLOS, Article 136 provides that The Area and its resources are the common heritage of mankind[[56]](#footnote-56) and Article 137 reaffirms that all rights in the resources of the Area are vested in mankind as a whole.[[57]](#footnote-57) Article 149 further States that all archeological and historical objects discovered in the Area must be maintained or disposed of for the benefit of humanity as a whole.[[58]](#footnote-58) Underwater cultural artifacts are a finite resource, they cannot be recovered once they have been damaged or destroyed. These artifacts on *Aparecida* and itself being an integral link to the past should be regarded as part of humanity’s common collective cultural heritage and should be protected as such.[[59]](#footnote-59)

#### *Aparecida should be protected by both Vespucia and Idris.*

In 1986, the United States Congress passed the *‘Titanic Maritime Memorial Act’*, which recognized the ‘Titanic’ as an ‘international maritime memorial’, Article 5 of the Act pointed out that the ‘Titanic’ has not only national but also international important historical, cultural, and scientific value.[[60]](#footnote-60) ‘Titanic’ became the common heritage of mankind, and all States parties to the Convention have the right to stop any illegal acts against the ‘Titanic’ within the scope of the Convention’s mandate.

Similar to this case, there are different countries that claim sovereignty over the shipwreck, and both the ship and the cargo on board are underwater cultural heritage, but it was ultimately decided that the four countries with close ties to the wreck should sign an agreement to achieve the best protection effect.

Here, the shipwreck of the *Aparecida* and its cargo are underwater cultural heritage and have great cultural value while both Idris and Vespucia claim sovereignty over the shipwreck. Refer to the past practice, it may be better if *Aparecida* and its cargo could be protected by Idris and Vespucia both .

### ***Vespucia violated its commitment to confer as a Coordinating State under the UNESCO Convention and should be excluded from coordinating states.***

UNESCO Convention Article 10(3) provides that where there is a discovery of underwater cultural heritage or it is intended that activity shall be directed at underwater cultural heritage in a State Party’s EEZ or on its continental shelf, that State Party shall: consult all other States Parties which have declared an interest under Article 9, paragraph 5, on how best to protect the underwater cultural heritage.[[61]](#footnote-61)

Here, Monica Casares, the President of Vespucia said that the *Aparecida* will be preserved in situ in order to boost tourism (scuba diving) on the island of San Andres, bringing revenues and improving the economic life of the island.[[62]](#footnote-62) Meanwhile, the Vespucian government reiterated its claims over the *Aparecida* and its cargo, emphasized that any attempt to have access to the shipwreck needs its prior consent, and refused to grant research authorization for the *Marina*.[[63]](#footnote-63) On the aforementioned acts, Vespucia consulted no decisions with Idris. Thus, Vespucia had violated its commitment to be a coordinating state. Therefore, Vespucia should not have consultative jurisdiction over the wreck.

# **VESPUCIA HAS VIOLATED ITS INTERNATIONAL OBLIGATIONS UNDER THE UNCLOS AND THE UNESCO CONVENTION, BY DEMANDING PRIOR CONSENT FROM IDRIS TO ACCESS THE SHIPWRECK.**

Under the UNCLOS and UNESCO Convention, States may only demand prior consent for certain issues.[[64]](#footnote-64) Here, Idris’s access to shipwreck is independent of such issues and belongs neither to **[A]** marine scientific research **[‘MSR’]** nor to **[B]** interference with coastal state’s sovereign rights or jurisdiction. Furthermore, by demanding so, **[C]** Vespucia fails to exercise the cooperative obligation.[[65]](#footnote-65)

## **Vespucia’s requirement for Idris to obtain its consent for activities other than scientific research, which exceeded the scope of its rights granted by UNCLOS Articles 56(1), 77(1), 246 and UNESCO Convention Article 2(10).**

UNCLOS Articles 56(1)(2), 246[[66]](#footnote-66) limit the authorizing power of coastal states, whereby coastal States may only demand prior consent for marine scientific activities. Here, Idris’s access to shipwreck cannot be categorized as scientific activities, because: **[1]** the survey Idris took doesn’t constitute marine scientific research; **[2]** The object of Idris’s activity does not belong to scientific resources; **[3]** The data collected by Idris isn’t for scientific use.

### ***The survey Idris took doesn’t belong to marine scientific research.***

Under UNCLOS, coastal States have the right to regulate marine scientific research activities conducted on their continental shelf and within their EEZ.[[67]](#footnote-67) ‘MSR’ should be defined as any scientific research conducted to increase the understanding of the marine environment, including its resources and living organisms.[[68]](#footnote-68)

Here, the research activities carried out by Idris are not targeted at marine resources,[[69]](#footnote-69) and the research activities do not constitute scientific research.[[70]](#footnote-70) Therefore, they should not fall within the scope of Part XIII of UNCLOS.

### ***The object of Idris’s activity does not belong to scientific resources.***

According to UNCLOS Article 77(4)[[71]](#footnote-71) and UNESCO Convention Article 1(1)[[72]](#footnote-72), UCH refers to the human traces that have a cultural, historical or archaeological character and have been under water for at least 100 years.[[73]](#footnote-73) However, MSR conducts comprehensive research on marine resources and organisms.[[74]](#footnote-74)

The shipwreck, confirmed as Idris’s notable vessel lost 200 years ago, qualifies as UCH due to its artificial origin and age.[[75]](#footnote-75) The research focuses on its culturally valuable contents,[[76]](#footnote-76) not meeting criteria for marine scientific or biological studies.[[77]](#footnote-77)

### ***The data collected by Idris isn’t for scientific use.***

In accordance with the mandates delineated by authoritative entities such as the UK government,[[78]](#footnote-78) the prescriptive guidelines issued by the United Nations,[[79]](#footnote-79) and the repository of the National Centers for Environmental Information of China,[[80]](#footnote-80) data procured via MSR endeavors ought to be dedicated to the pursuit of scientific inquiry.[[81]](#footnote-81)

Here, after Idris arrived at the shipwreck location, a primary survey was done to assess its condition to preserve and develop the site.[[82]](#footnote-82) Importantly, this objective does not involve marine ecological exploration or collecting such data for future use.[[83]](#footnote-83)

## **The activities taken by Idris do not interference with its sovereign rights or jurisdiction of Vespucia.**

Based on UNCLOS Articles 56(1) and 77(1),[[84]](#footnote-84) coastal States may only demand prior consent for activities interference with its sovereign rights or jurisdiction. Here, Vespucia has no right to request prior consent because: **[1]** Idris has jurisdiction and sovereignty over the shipwreck; **[2]** The ship can be ‘sovereign immunity’ due to it being a State vessel.

### ***Idris has jurisdiction and sovereignty over the shipwreck.***

UNCLOS and UNESCO Convention grant coastal States only preferential rights over biological resources in other areas,[[85]](#footnote-85) to prevent the emergence of ‘creeping jurisdiction’.[[86]](#footnote-86) The rights should not be broadly interpreted to avoid diminishing freedom of navigation or imposing management responsibilities on some States for UCH.[[87]](#footnote-87)

Here, without shipwreck jurisdiction, Vespucia and Idris have equal legal standing regarding underwater heritage[[88]](#footnote-88) as interested states.[[89]](#footnote-89) Both countries should foster international cooperation,[[90]](#footnote-90) Vespucia cannot unilaterally demand Idris’s concurrence or make unilateral authorization decisions.

### ***The ship can be ‘sovereign immunity’ due to it’s a State vessel.***

UNESCO Convention exempts State-owned vessels from its scope due to their link with national sovereignty. Determining State ownership involves assessing original ownership, intended use, abandonment intentions, and domestic laws.[[91]](#footnote-91) Despite trading activities, it retained its State property status and sovereign immunity.[[92]](#footnote-92)

Here, the shipwreck was part of Idris’s commercial fleet for colonial transport and captained by an Idris citizen,[[93]](#footnote-93) is State-owned property due to its initial ownership[[94]](#footnote-94) and use. Loss of possession due to technological limits and location uncertainty after sinking did not represent an intention to relinquish ownership.[[95]](#footnote-95) After confirming the wreck’s identity, Idris actively managed it and maintained its State-owned status under sovereign immunity.[[96]](#footnote-96)

## **Idris has the right to approach the shipwreck due to the duty of cooperative obligation and preferential rights, based on UNCLOS Articles 149, 303(1)(3), 56(2) and UNESCO Convention Articles 2(2), 19(1).**

UNCLOS Articles 56(2), 149, 303[[97]](#footnote-97) and UNESCO Convention Articles 2(2), 19(1)[[98]](#footnote-98) State that all the country should cooperate in protecting the heritage, and particular regard should be paid to the Country of origin. Vespucia’s request for prior consent is a violation of the above obligations. Because: **[1]** Vespucia failed to acknowledge Idris’s preferential rights as the original country for the shipwreck; **[2]** Vespucia failed to exercise the cooperative obligation of the protection of the shipwreck; **[3]** Idris enjoys the right of freedom of navigation within Vespucia’s EEZ.

### ***Vespucia failed to acknowledge Idris’s preferential rights as the original country for the shipwreck.***

Under UNCLOS, the State of UCH’s origin has priority rights.[[99]](#footnote-99) If a State vessel is identified, the coastal State must notify the flag state, prioritizing its rights.[[100]](#footnote-100) In the salvage incident involving the San José, Bolivia’s claim on cargo origin was rejected,[[101]](#footnote-101) affirming the wreck’s original owner’s superior historical and archaeological ties over cargo origin.

Here, Vespucia’s actions have obstructed Idris’s legitimate investigation and hindered the shipwreck’s excavation and protection, disregarding the priority rights as the source country.[[102]](#footnote-102) According to the principle of nationality,[[103]](#footnote-103) Vespucia should respect Idris’s rights and prioritize Idris’s opinions in a series of actions concerning the shipwreck.

### ***Vespucia failed to exercise the cooperative obligation of the protection of the shipwreck.***

Cooperation is an obligation for UNCLOS contracting states, not just a right,[[104]](#footnote-104) as well as UNESCO Convention.[[105]](#footnote-105) This involves sharing information, conducting research, and carrying out excavations.[[106]](#footnote-106) Especially when shipwreck development on the continental shelf or within the EEZ requires the flag state’s consent and coordination with interested states.[[107]](#footnote-107)

*First*, Vespucia’s plan of using UCH to promote local tourism and diving projects[[108]](#footnote-108) belongs to commercial development, which violates protecting obligations.[[109]](#footnote-109) *Second*, Vespucia’s investigation was inadequate, and its plan lacked Idris’s agreement and coordination with interested states.[[110]](#footnote-110) *Third*, Vespucia’s refusal to authorize Idris’s research further violates its collaborative responsibilities and the intent of UNESCO Convention.[[111]](#footnote-111)

### ***Idris enjoys the right of freedom of navigation within Vespucia’s EEZ.***

Pursuant to UNCLOS Articles 58 and 78, the right to navigate freely within and over the continental shelf of a coastal State is vested in all nations,[[112]](#footnote-112) which is recognized as customary international law.[[113]](#footnote-113) When exercising this right, States must fulfill the duty of due regard avoiding interference with other vessels[[114]](#footnote-114) and not threatening the coastal state’s-national security.[[115]](#footnote-115)

Here, Idris’s State vessel approached an underwater site located on the continental shelf and within the EEZ of Vespucia.[[116]](#footnote-116) This approach did not threaten Vespucia’s national security or economic interests.[[117]](#footnote-117) Idris employed a fully functional vessel and insured professional personnel and facilities, thereby not interfering other vessels’ navigation or compromising maritime safety. Vespucia’s refusal hindered Idris’s equitable use of marine resources,[[118]](#footnote-118) thus infringing upon its navigational rights.

# **Vespucia shall respect the right of Idris to emplace an artificial structure for archaeological exclusive purpose near the site of the shipwreck.**

## **Vespucia shall respect the right of Idris to emplace the artificial structure for archaeological exclusive purpose near the shipwreck site under UNCLOS.**

**[1]** Idris’s right to emplace an artificial structure for archaeological exclusive purpose is not precluded by Vespucia’s exclusive rights. **[2]** It enjoys such right under UNCLOS Article 59. Moreover, **[3]** Idris did not violate its obligation of due regard and **[4]** Vespucia must respect Idris’s right under the obligation of due regard.

### ***Idris’s right is not precluded by Vespucia’s exclusive rights under UNCLOS Article 60.***

**[a]** Vespucia’s rights to installations are confined to those in UNCLOS Article 60, not all types of installations. As **[b]** an artificial structure, not an island, Idris’s artificial structure is not **[c]** for the purposes in Article 56 or other economic purposes, and **[d]** not interfering with the exercise of Vespucia’s rights.

#### *Vespucia does not have exclusive rights to all types of installations in its EEZ.*

States are prohibited from making reservations[[119]](#footnote-119) or declarations purporting to modify the legal effect of provisions.[[120]](#footnote-120) UNCLOS Article 60 does not grant coastal States’ rights to all types of installations literally.[[121]](#footnote-121)

Here, Vespucia’s declaration extends its right in the EEZ unlawfully.[[122]](#footnote-122) Therefore, it does not enjoy exclusive rights to all types of installations in its EEZ as it stated.

#### *The artificial structure (15 by 30 m) is not an artificial island.*

Artificial islands are built from materials piled on the seabed, while installations and structures are not.[[123]](#footnote-123) The size of an artificial island is generally about 0.15 to 0.5 square kilometers.[[124]](#footnote-124)

Here, the artificial structure is not anchored to the continental shelf or any insular feature of Vespucia.[[125]](#footnote-125) Its size is 15 by 30m, which is far from that of an island.[[126]](#footnote-126) Therefore, the artificial structure is not an artificial island.

#### *The artificial structure is not for the purposes in Article 56 or other economic purposes.*

‘The purposes provided for in article 56’ refers to those of exploring and exploiting, conserving and managing natural resources.[[127]](#footnote-127) Since EEZ is created to protect coastal States’ economic interests, artificial structures for other economic purposes are also regulated by coastal States.[[128]](#footnote-128)

Here, the artificial structure aims to assist Idris’s marine archaeologists in future archaeology.[[129]](#footnote-129) It is neither for exploitation or exploration of natural resources, nor for economics. Moreover, the two sailors were designated to maintain the structure, not for economic purposes.[[130]](#footnote-130) Therefore, the artificial structure is not within the scope of UNCLOS Article 60(1)(b).

#### *The artificial structure does not interfere with the exercise of Vespucia’s right in its EEZ.*

In context,[[131]](#footnote-131) ‘Rights of the coastal State’ of Article 60(1)(c) refers to the sovereignty and jurisdiction in Article 56(1).[[132]](#footnote-132) Sovereignty encompasses all rights related to natural resource exploration, exploitation, conservation, and management.[[133]](#footnote-133) Furthermore, coastal States have jurisdiction over marine scientific research and marine environmental preservation.[[134]](#footnote-134)

Here, not anchored to Vespucia’s seabed or islands, the structure did not interfere with natural resources on the continental shelf.[[135]](#footnote-135) Since the *Aparecida* is neither subject to Vespucia’s sovereignty over natural resources nor belongs to Vespucia,[[136]](#footnote-136) the structure does not disturb Vespucia’s resource-oriented or archaeological rights. Since the structure is entirely buoyant and only two sailors stay,[[137]](#footnote-137) it will not affect the unconstructed marine parkor pollute the marine environment.[[138]](#footnote-138) Therefore, the artificial structure does not interfere with the exercise of Vespucia’s right.

### ***Idris has the right to emplace an artificial structure for archaeological exclusive purpose near the shipwreck under UNCLOS Article 59.***

Given the present case, **[a]** Article 59 applies. and **[b]** the right of emplacing the artificial structure shall be attributed to Idris.

#### *Article 59 applies in the present case.*

As a backup clause,[[139]](#footnote-139) Article 59 shall apply when UNCLOS does not attribute rights to any States in the EEZ and a conflict arises,[[140]](#footnote-140) such as installations and structures serving non-economic purposes.[[141]](#footnote-141)

Here, the archaeological purpose is non-economic and there is a dispute between Idris and Vespucia.[[142]](#footnote-142) Therefore, Article 59 applies in the present case.

#### *The right to emplace an artificial structure for archaeological exclusive purpose shall be attributed to Idris.*

The word ‘equity’ of Article 59 refers to ‘*equity infra legem*’,[[143]](#footnote-143) infusing reasonableness and individualized justice.[[144]](#footnote-144) Relevant circumstances’ shall be considered as well.[[145]](#footnote-145) Moreover, Article 59 favors interests of other States or the international community when resource exploration and exploitation are not involved.[[146]](#footnote-146) Additionally, only when extended weapon tests like launching torpedoes in an EEZ exist will coastal States’ interests precede.[[147]](#footnote-147)

Here, since the *Aparecida* is located in Vespucia’s EEZ, it is unfavorable for Idris to conduct archaeological activities based on its ownership.[[148]](#footnote-148) After the *Marina* being expelled, emplacing the artificial structure became a backup and compromised measure.[[149]](#footnote-149) Thus, Idris was in a disadvantaged position under ‘*equity infra legem*’. Meanwhile, acting for archaeological exclusive purposes, Idris’s interest in shipwreck archaeology shall be favored.[[150]](#footnote-150) Furthermore, the two armed naval crews were designated to protect the archaeological artificial structure, whose impact was far less than extended weapon tests.[[151]](#footnote-151) Therefore, the right to emplace the artificial structure for archaeological exclusive purpose shall be attributed to Idris.

### ***Idris did not violate its obligation of due regard under UNCLOS Article 58(3).***

States shall have due regard to the rights of coastal States under Article 58(3).[[152]](#footnote-152) They shall fulfil ‘due regard’ in good faith, such as making every effort to mitigate impacts on other States.[[153]](#footnote-153) Moreover, they shall adhere to the principles of reasonableness, necessity, and proportionality to avoid imposing unnecessary burdens on other States.[[154]](#footnote-154)

Here, the artificial structure is not anchored to the continental shelf or any insular feature.[[155]](#footnote-155) It is only a backup measure. Thus, Idris has already made efforts to minimise the impact on Vespucia’s resources in its EEZ. Moreover, with archaeological purpose, the structure’s size (15 and 30m) is reasonable.[[156]](#footnote-156) Since only two sailors stayed with limited supplies, Idris did not exceed the necessary limits or impose extra burdens.[[157]](#footnote-157) Therefore, Idris did not violate its obligation of due regard.

### ***Vespucia has the obligation to respect the rights of emplacing the artificial structure under UNCLOS Article 56(2).***

According to Article 56(2), a coastal State shall have due regard to the rights of other States when the latter’s activities do not interfere with its sovereign rights in the EEZ.[[158]](#footnote-158) The ‘due regard’ here involves the obligation to tolerate non-coastal States’ legitimate activities in its EEZ.[[159]](#footnote-159) Additionally, coastal States shall not take seizure or detention measures against these lawful activities.[[160]](#footnote-160)

Here, Idris did not interfere with Vespucia’s sovereign rights over natural resources.[[161]](#footnote-161) Thus, Vespucia shall tolerate the emplacement. Additionally, the *Navarro* and its crew shall not be arrested, as they do not interfere with Vespucia’s sovereign rights.[[162]](#footnote-162) Therefore, Vespucia has the obligation to respect the rights of emplacing the artificial structure.

## **Vespucia shall respect the right of Idris to emplace the artificial structure for archaeological exclusive purpose near the site of the shipwreck under UNESCO.**

**[1]** The UNESCO does not preclude Idris’s right over shipwreck and **[2]** Vespucia shall not prohibit the emplacement of artificial structure.

### ***The UNESCO does not preclude the right of Idris towards the shipwreck in Vespucia’s EEZ.***

Although the UNESCO grants coastal States considerable rights towards underwater heritage in the EEZ,[[163]](#footnote-163) it neither precludes rights of the shipwreck’s owner nor prejudices the rights of State Parties.[[164]](#footnote-164)

Here, Idris has sovereignty and jurisdiction of the *Aparecida*, including the right to conduct archaeological activities.[[165]](#footnote-165) The UNESCO does not modify these rights. Therefore, Idris’s rights towards the shipwreck in Vespucia’s EEZ are not precluded.

### ***Vespucia shall not prohibit the emplacement of Idris’s artificial structure.***

Since the emplacement of artificial structure is not activities directed at heritage, **[a]** Idris’s rights are not precluded by Article 9. Moreover, **[b]** Vespucia shall invoke neither Article 10(2) nor **[c]** Article 10(6) to prohibit the emplacement.

#### *Idris’s rights are not precluded by Article 9.*

Under Article 9(1)(b), States Parties shall transmit the reports of ‘activities directed at heritage’ in the EEZ rapidly and effectively.[[166]](#footnote-166) Contextually,[[167]](#footnote-167) such activities only refer to those object at and disturb underwater cultural heritage under Article 1(6).[[168]](#footnote-168) Moreover, the reporting obligation is procedural[[169]](#footnote-169) and will not modify State’s sovereign rights.[[170]](#footnote-170)

Here, the emplacement of artificial structure currently does not involve any physical archaeological activities to the shipwreck.[[171]](#footnote-171) Meanwhile, no evidence shows that the structure’s assistance to future archaeology will disturb the *Aparecida*.[[172]](#footnote-172) Thus, Idris has no reporting obligation since the emplacement is not directed at underwater cultural heritage. Additionally, the reporting obligation itself shall not nullify Idris’s rights as the owner. Therefore, Idris’s rights are not precluded by Article 9.

#### *Vespucia shall not invoke UNESCO Convention Article 10(2).*

Article 10(2) grants coastal States the right to authorize activities directed at heritage in its EEZ or on its continental shelf to prevent interference with its sovereignty or jurisdiction.[[173]](#footnote-173) Referring to UNESCO Convention Article 1(6) and UNCLOS Parts V and VI,[[174]](#footnote-174) these activities are those ‘object at and disturb heritage’.[[175]](#footnote-175)

Here, the emplacement is not directed at underwater cultural heritage. Moreover, the artificial structure does not interfere with Vespucia’s sovereignty or jurisdiction.[[176]](#footnote-176) Therefore, Vespucia shall not invoke UNESCO Convention Article 10(2).

#### *Vespucia shall not invoke UNESCO Convention Article 10(6).*

Article 10(6) requires the Coordinating State to act on behalf of the States Parties as a whole.[[177]](#footnote-177) A State intending to take activities directed at underwater cultural heritage located in its EEZ can be the Coordinating State.[[178]](#footnote-178) No preferential or jurisdictional rights are granted to the Coordinating State based on its acts.[[179]](#footnote-179)

Here, Vespucia intended to exploit the shipwreck for tourism and establish a marine park.[[180]](#footnote-180) These activities are directed at the shipwreck, thus Vespucia shall take the Coordinating State’s duties. However, Vespucia acted on behalf of itself and only considered its own revenues and economic interest.[[181]](#footnote-181) It ignores and refuses Idris lawful archaeological research.[[182]](#footnote-182) Moreover, Vespucia has no preferential or jurisdictional rights over the artificial structure.[[183]](#footnote-183) Therefore, Vespucia shall not invoke UNESCO Convention Article 10 (6).

# **VESPUCIA’S MEASURES TO BLOCK THE ARTIFICIAL STRUCTURE AND PREVENT IDRISIAN VESSELS FROM SUPPLYING VIOLATED THE UNCLOS.**

Vespucia must cease the blockade and allow the Idrisian vessels (private and State-owned) to provide supplies to the installation since its measures violated **[A]** the UNCLOS and **[B]** UNESCO Convention. Moreover, **[C]** Vespucia did not violate human rights of the sailors.

## **VESPUCIA VIOLATED THE UNCLOS.**

**[1]** Vespucia has no right to take enforcement measures under UNCLOS Article 73. **[2]** In any regard, its measures violated criteria under UNCLOS Article 73. Moreover, **[3]** it impaired the freedom of navigation of Idris and **[4]** violated the obligation of due regard.

### ***Vespucia has no right to take enforcement measures under UNCLOS Article 73.***

The sovereign rights within an EEZ pertain primarily to the management of living resources.[[184]](#footnote-184) Coastal States may take measures in exercising its sovereign rights,[[185]](#footnote-185) and its exclusive rights regarding jurisdictional exercise are limited to installations and structures intended for the other economic purposes provided for in Article 60(2).[[186]](#footnote-186)

Here, Vespucia’s sovereign rights and enforcement jurisdiction within its EEZ are limited to natural resources. Vespucia has no authority to enforce measures against the Idris’s artificial structure because it does not fall within the jurisdictional scope as economic aims or activities related to the management of living resources. Therefore, Vespucia can’t take measures under UNCLOS Article 73.

### ***In any regard, Vespucia’s measures violated UNCLOS Article 73.***

#### *Vespucia’s measures violated the criteria of necessity.*

Necessity requires using force as a last resort.[[187]](#footnote-187) Necessity examines whether States have other alternatives less in conflict or more compliant with its international obligations.[[188]](#footnote-188)

Here, even if Vespucia had the right to take the enforcement, measures shall be commensurate with the degree of Idris influence at the lowest amount. Furthermore, there were other less restrictive options for Vespucia, such as negotiation, consultation and signing a Mutual Benefit Agreement. According to Casare’s statement,[[189]](#footnote-189) Vespucia would use the shipwreck to boost its economy, thus the measures were intended to gain stronger control over the shipwreck, not to protect. The blockade and prevention were dispensable and arguably dangerous. Therefore, the necessary criteria was violated.

#### *Vespucia’s measures violated the criteria of reasonableness.*

Reasonableness shall be tested by relevant factors and particular circumstances of the case.[[190]](#footnote-190) A reasonable decision reflects a coherent and rational chain of analysis.[[191]](#footnote-191)

Here, Vespucia did not assess or consider the objective situation and immediately conducted the blockade, without a reasonable, transparent and intelligible process.[[192]](#footnote-192) These measures would have an unacceptable adverse impact on Idris and the international community, and there was no relevant evidence and legislation that could be a legitimate basis for Vespucia’s actions. The lack of constraints at the fact and the legal level reflects the loss of a logical chain needed for reasonable behaviors. Therefore, the reasonable criteria was violated.

#### *Vespucia’s measures violated the criteria of unavoidability and proportionality.*

The Tribunal States that the unavoidability needs to be tested when regulating Maritime Law Enforcement operation.[[193]](#footnote-193) The ‘unavoidable’ is that ‘other means remain ineffective or without any promise of achieving the intended result.’[[194]](#footnote-194) Moreover, the third criterion is considered as proportionality[[195]](#footnote-195) and it requires the means employed must not be excessive.[[196]](#footnote-196) In *Saiga*,[[197]](#footnote-197) the proportionality requires measures proportional to the aim and the consideration of the damage caused.

Here, Vespucia had other more peaceful means such as consultation to achieve the intended result with less adverse impact. However, it took measures to pose serious threats to the shipwreck and sailors’ lives, showing excessive effect compared with the purpose of protecting the shipwreck and its EEZ. Therefore, both unavoidability and proportionality criteria were violated.

### ***Vespucia impaired the freedom of navigation of Idrisian vessels.***

The high-seas freedoms of navigation including the essential liberty of maritime transportation[[198]](#footnote-198) apply in the EEZ.[[199]](#footnote-199) An activity is related to the freedom of navigation when it is the purpose of ship navigation and iscrucial for further navigation.[[200]](#footnote-200) The freedom of navigation incorporates States as well as individual or private entities.[[201]](#footnote-201)

Here, the navigation purposes of both state-owned and private vessels of Idris were only to transport supplies to the structure and sailors.[[202]](#footnote-202) The transportation belongs to exercising its freedom of navigation in Vespucia’s EEZ and further navigation should not be prevented. Therefore, transporting supplies shall be allowed.

### ***Vespucia was in breach of the obligation of due regard under UNCLOS Article 56.***

The ordinary meaning of ‘due regard’ is comparable with that of the ‘reasonable regard’,[[203]](#footnote-203) requiring to be cognisant of and consider others’ interests in decision-making, as a State’s obligation of proper conduct toward another.[[204]](#footnote-204) It requires States to make a good faith to assess whether their own activities unduly infringe on others’ rights,[[205]](#footnote-205) through taking full account and reconciling each rights,[[206]](#footnote-206) including the international community.[[207]](#footnote-207) The degree of the due regard is refraining from taking actions that would adversely affect the interests of others.[[208]](#footnote-208)

Here, Vespucia inappropriately conducted the blockade without consideration, unduly violating Idris’s national and civil rights through unjustifiable interference.[[209]](#footnote-209) Vespucia did not assess the effects of the conduct in good faith. In addition, Vespucia tried to monopolize and obtain economic benefits through the wreck,[[210]](#footnote-210) reject the approach and research of Idris,[[211]](#footnote-211) cut off supplies to enforce deterrence.[[212]](#footnote-212) In the process, huge adverse effect was given to the interests of Idris and the international community. Therefore, Vespucia violated its obligations of due regard.

## **Vespucia violated the UNESCO by imposing the blockade and preventing Idrisian vessels’ supplies.**

### ***Vespucia has no right to take enforcement measures under UNESCO Convention Article 10(2).***

Article 10(2) does not grant the coastal States any new rights but is only of a declaratory nature.[[213]](#footnote-213) Therefore, a coastal State won’t benefit from a presumption of priority simply on the basis of the sovereign character of its entitlements in the EEZ.[[214]](#footnote-214)

Here, Vespucia is neither granted any new sovereign rights and jurisdiction beyond the specific scope of Article10(2) and Article 56, nor has it acquired any other priority over Idris. The normal operation of the artificial structure and the supplies did not have the effect of interfering with Vespucia’s sovereign rights or jurisdiction.[[215]](#footnote-215) Therefore, Vespucia can’t rely on UNESCO Convention Article 10(2) to conduct the blockade and the prevention.

### ***Vespucia has no right to take enforcement measures under UNESCO Convention Article 10(6).***

Measures under Article 10 (6) shall be taken both in coastal State’s interest and States Parties as a whole.[[216]](#footnote-216) The powers granted to the States Parties are not meant as an extension of coastal States’ jurisdiction and they shall be the agents for the enforcement of contracting States’ collective will.[[217]](#footnote-217)

Here, Idris, as the owner of the shipwreck, has a collective will to better protect the wreck. However, Vespucia regarded the wreck as its own and tried to monopolize it.[[218]](#footnote-218) In the process of the blockade for this purpose, it also deprived the shipwreck of the opportunity to obtain better protection from Idris, a developed country with more advanced technology. This undermined the value of the shipwreck, and went against the collective will and interests of the international community. Therefore, Vespucia can’t rely on UNESCO Convention Article 10(6) to take these measures.

## **Vespucia violated human rights of Idrisian sailors.**

### ***The blockade and preventing supplies resulted in inhuman treatment.***

Inhuman treatment relates to acts that cause physical pain and mental suffering to the victim.[[219]](#footnote-219) No justification or extenuating circumstances could excuse a violation of human treatment for any reasons[[220]](#footnote-220) and no derogation is allowed.[[221]](#footnote-221)

Here, blocking and preventing supplies caused physical and mental suffering to sailors, especially the mental harm was difficult to reflect through the surface condition. Vespucia was in order to ensure its control over the shipwreck and interfered with the basic needs and rhythms of daily life of sailors.[[222]](#footnote-222) This is an unacceptable derogation of human treatment. Therefore, Vespucia’s measures resulted in inhuman treatment.

### ***Vespucia’s measures violated the right to life of Idrisian sailors.***

The right to life concerns individuals who are free from acts and omissions that intend or may cause unnatural or premature death.[[223]](#footnote-223) Deprivation of life involves intentional[[224]](#footnote-224) or foreseeable life-terminating harm that hasn’t resulted in loss of life.[[225]](#footnote-225) States have the obligation to protect life from all foreseeable threats,[[226]](#footnote-226) since no derogation is permitted for this supreme right.[[227]](#footnote-227)

Here, the blockade and preventing supplies carried the risk of unnatural or premature death to sailors. The damage to mental integrity and the threat to lives are certain, although the current structural materials are expected to last for several months.[[228]](#footnote-228) However, due to changes in the environment, sailors need new supplies at any time, such as timely medical treatment. Vespucia’s measures are foreseeable dangers and constitute the derogation, whatever the degree. Therefore, Vespucia’s measures violated the right to life of Idrisian sailors.

### ***Vespucia’s measures violated the right of liberty and security of person of Idrisian sailors.***

Everyone has the liberty and security of person.[[229]](#footnote-229) Liberty is the freedom from confinement of the body, not a general freedom of action, which can be deprived by the motion restriction within a narrower space.[[230]](#footnote-230) Security concerns freedom from body and mental injury as well as integrity.[[231]](#footnote-231) States shall prevent and redress unjustifiable use of force in law enforcement for these rights.[[232]](#footnote-232)

Here, Vespucia deprived sailors of movement and body freedom by confining them to the small structure.[[233]](#footnote-233) Moreover, through violating physical and mental freedom, or at least compromising the integrity, Vespucia harmed the personal security of sailors. In the whole course of actions, Vespucia did not prevent and correct this damage. Therefore, Vespucia’s measures violated the liberty and security of person of Idrisian sailors.

# **PRAYER FOR RELIEF**

For the foregoing reasons, he Kingdom of Idris, respectfully requests this Honourable Tribunal to adjudge and declare that:

1. 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. Vespucia has violated its international obligations under the UNCLOS and the UNESCO Convention, by demanding prior consent from Idris to access the shipwreck;
3. Vespucia must respect the right of Idris to emplace an artificial structure for archaeological exclusive purposes near the site of the shipwreck;
4. 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.

Respectfully submitted,

Agents for the Applicant

1. UNCLOS, art 286. [↑](#footnote-ref-1)
2. Alexander Proelss et al, *United Nations Convention on The Law of the Sea: A Commentary* (Nomos Verlagsgesellschaft 2017) **[‘Alexander Commentary’]** 1844. [↑](#footnote-ref-2)
3. UNCLOS, art 287. [↑](#footnote-ref-3)
4. Alexander Commentary 1850. [↑](#footnote-ref-4)
5. Annex 1. [↑](#footnote-ref-5)
6. UNCLOS, art 288(1). [↑](#footnote-ref-6)
7. *Southern Bluefin Tuna Cases* *(New Zealand v Japan; Australia v Japan)* (Order 27 August 1999) ITLOS Reports 1999 ¶50. [↑](#footnote-ref-7)
8. *The MOX Plant Case (Ireland v United Kingdom)* (Procedural Documents) [2003] PCA Order No 3 ¶18. [↑](#footnote-ref-8)
9. UNCLOS, art 288(4). [↑](#footnote-ref-9)
10. Facts ¶18. [↑](#footnote-ref-10)
11. *M/V ‘Louisa’ Case (Saint Vincent and the Grenadines v Kingdom of Spain)* (Judgment of 28 May 2013) ITLOS Report 2013 ¶73. [↑](#footnote-ref-11)
12. UNCLOS, art 294(1). [↑](#footnote-ref-12)
13. *Dispute Concerning Delimitation of the Maritime Boundary Between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)* (Preliminary Objections, Judgment of 28 January 2021) ITLOS Report 2021 ¶¶345, 349. [↑](#footnote-ref-13)
14. UNCLOS ¶¶346–49. [↑](#footnote-ref-14)
15. *Mavrommatis Palestine Concessions (Greece v Britain)* [1924] PCIJ Rep Series A No 211; *Certain Property (Liechtenstein v Germany)* [2005] ICJ Rep 6 ¶24. [↑](#footnote-ref-15)
16. Facts ¶7. [↑](#footnote-ref-16)
17. Facts ¶8. [↑](#footnote-ref-17)
18. Facts ¶¶6, 8–9. [↑](#footnote-ref-18)
19. Facts ¶18. [↑](#footnote-ref-19)
20. UNCLOS, art 286; UNESCO Convention, art 25(3). [↑](#footnote-ref-20)
21. UNCLOS, art 300. [↑](#footnote-ref-21)
22. Alexander Commentary1938. [↑](#footnote-ref-22)
23. *Legal Status of Eastern Greenland (Denmark v Norway)* (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-23)
24. UNCLOS, art 56. [↑](#footnote-ref-24)
25. UNCLOS, art 286. [↑](#footnote-ref-25)
26. *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)*, (Award) [2015] PCA Case No 2011-03, ¶382; *The Arctic Sunrise Arbitration (Netherlands v Russia)* (Award) [2015] PCA No 2014-02 ¶151; *Duzgit Integrity Arbitration (Malta v São Tomé and Príncipe)* (Award) [2016] PCA Case No 2014-07 ¶199. [↑](#footnote-ref-26)
27. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea intervening)* (Preliminary Objections) [1998] ICJ Rep 275 ¶¶108–109. [↑](#footnote-ref-27)
28. Facts ¶17. [↑](#footnote-ref-28)
29. UNCLOS, art 295. [↑](#footnote-ref-29)
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