

**F1030-R**

**LAWASIA 2009**  
**INTERNATIONAL MOOT COURT COMPETITION**  
**IN THE INTERNATIONAL ARBITRATION CENTER**

**September 2009**

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*Case Concerning the Salvage of the Shipwreck Coeur de l'Ocean*

**BENEVOLENT HERITAGE INC.**

*Claimant*

**v.**

**THE GOVERNMENT OF ROLGA**

*Respondent*

**MEMORIAL FOR THE RESPONDENT**

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**TABLE OF CONTENTS**

**TABLE OF CONTENTS** ..... i  
**INDEX OF AUTHORITIES** ..... iv  
**STATEMENT OF JURISDICTION** ..... v  
**QUESTIONS PRESENTED** ..... vi  
**SUMMARY OF FACTS** ..... vii  
**SUMMARY OF PLEADINGS** ..... x  
**PLEADINGS** ..... 1

**I. THE GOVERNMENT OF ROLGA HAS NOT INTERFERED WITH THE CLAIMANT’S RIGHTS AND PERFORMANCE UNDER THE 1995 PARTNERING AGREEMENT MEMORANDUM BY ENTERING INTO AGREEMENT WITH ASTORIA, BY RATIFYING THE 2001 UNESCO CONVENTION AND BY ALLOWING THE TOUR OPERATORS TO ORGANISE WRECK DIVINGS TO THE WRECK SITE INCLUDING THE TAKING PHOTOGRAPHS**..... 1

**1. No specific rights were granted to Heritage Inc. other than the right to salvage the shipwreck and the right to benefit from the retrieved artefacts as designed in the 1995 Partnering Agreement Memorandum** ..... 1

**2. The acts of Rolga Government to enter into Agreement with Astoria in 2003 and to ratify the 2001 UNESCO Convention on the Protection of Underwater**

Cultural Heritage did not interfere any rights or performance of the Claimant under the 1995 Memorandum.....	1
3.    Rolga Government, by allowing the tour operators to organise wreck divers to the wreck site including taking photographs, did not interfere the rights and performance of the claimant under the 1995 Memorandum .....	3
II.    BENNEVOLENT HERITAGE INC. DOES NOT ENJOY EXCLUSIVE RIGHTS OF PHOTOGRAPHING AND DOCUMENTING OF THE COEUR DE L’OCEAN.....	4
1.    Bennevolent Heritage Inc. was not entitled to the exclusive rights of photographing and documenting of the Coeur de l’Ocean under the 1995 Partnering Agreement Memorandum.....	4
2.    In any event, Bennevolent Heritage Inc. could not enjoy the rights of photographing and documenting of the Coeur de l’Ocean .....	5
III.    THE DISTRIBUTION OF ARTEFACTS SOLELY ON THE BASIS OF SALVAGE LEGAL PRINCIPLES WAS NOT ENVISAGED BY THE 1995 PARTNERING AGREEMENT MEMORANDUM .....	6
1.    Bennevolent Heritage Inc. has the obligation to comply with its commitment under the 1995 Partnering Agreement Memorandum with the Government of Rolga .....	6
a.    The 1995 Partnering Agreement Memorandum is a binding instrument between the two parties.....	6
b.    The Agreement does not fall within the conditions under Art. 7 of the Convention on Salvage.....	6

<b>2. Rolga fulfilled its obligation to ensure the disposition of the artefacts salvaged from the shipwreck under the UNESCO Convention on the Protection of Underwater Cultural Heritage</b> .....	8
<b>a. The Coeur de l’Ocean’s shipwreck was entitled to be underwater cultural heritage</b> .....	8
<b>b. Rolga fulfilled its obligation to ensure the disposition of the artefacts salvaged from the shipwreck under the UNESCO Convention on the Protection of Underwater Cultural Heritage</b> .....	9
<b>3. Bennevolent Heritage Inc. acted in a mannner contrary to the protection of the cultural value of the shipwreck</b> .....	11
<b>CONCLUSION AND PRAYER FOR RELIEF</b> .....	13

## INDEX OF AUTHORITIES

### Conventions and Treaties

International Convention on Salvage. ....	7, 8
UNESCO Convention on protection of Underwater Cultural Heritage 2001 .....	2, 9,10
United Nation Convention on the Law of the Sea.....	3, 4

### Cases

R.M.S Titanic, Inc. v. Haver, 171 F.3d 943, 1999 A.M.C. 1330 (4 <sup>th</sup> Cir. (Va.), Mar 24, 1999) (NO.98-1934) .....	5
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## **STATEMENT OF JURISDICTION**

Benevolent Heritage. Inc and the Government of Rolga have submitted this matter to the International Arbitration Center pursuant to the 1995 Partnering Agreement Memorandum between the two parties. Bennevolent Heritage Inc. and the Government of Rolga have accepted the jurisdiction of the Arbitral Tribunal.

## **QUESTIONS PRESENTED**

- I. Whether the Respondent, the Government of Rolga, has interfered with the Claimant's rights and performance under the Agreement by entering into Agreement with Astoria, by ratifying the 2001 UNESCO Convention and by allowing the tour operators to organise wreck divers to the wreck site including the taking photographs.
  
- II. Whether the Claimant, Benevolent Heritage Inc. was entitled to enjoy exclusive rights of photographing and documenting of the Coeur de l' Ocean.
  
- III. Whether the distribution of artefacts solely on the basis of salvage legal principles was envisaged by the 1995 Partnering Agreement Memorandum.

## SUMMARY OF FACTS

Historically, Astoria was a colonial empire of the West famous with the military voyages to the New World . One of the most notable adventures was that of the journey made by the Coeur de l' Ocean led by Captain Van Cleef in 1800 to conquer the ancient trading city of Zamzala, which is now part of the territory of the State of Rolga. After tearing down the city ,the army of Astoria enrouted to another destination but the vessel sank bringing along a large amount of cargos, the amounts of which constituted commercial shipments and other war booty.

Rolga gained independence from 1959 and then It has prospered on agriculture and tourism. It is also well-known for an extraordinary collection of war wrecks scattered around its maritime waters during World War II.

In 1990, head of Benevolent Heritage Inc, a coporation under Rolgan law, Mr Bernard, a national of Astoria submitted a proposal to Rolga for the survey and recovery of significant historical wrecks belonging to the era of expansion of Astorian presence in the region. The existing law of Rolga required the authority to approve all survey or recovery involving historical objects or sites. in 1995, The Government eventually approved the project and the 'Partnering Agreement Memorandum' was signed on 27<sup>th</sup> September 1995 after the Heritage Inc recovered the shipwreck and some artefacts which is believed to be the Coeur de l' Ocean.

In 2000, Rolga strengthened its cultural heritage appreciation as "symbol of nationhood" introducing a new economic plan and a new law which was to protect historical wrecks and

the sustaining use of cultural resources and sites. The Minister was authorized to subject some areas into restriction if he deemed it relevant. Following this, the Government of Rolga entered into an Agreement on the “Protection of Astorian Wrecks” with the Government of Astoria in 2001 with the main object of providing better protection to historic wrecks where both countries share genuine “historical and cultural” interests. In the Agreement, Astoria agreed to transfer all its right, title and interest in and to wrecked ancient vessels of the Astoria lying on or off the coast of Rolga to Rolga with the hope that Rolga will endeavor to do its best to preserve any objects recovered from its seabed for the benefit of mankind. Consistently, Astoria made no claims to the Coeur de l’Ocean as well as no objection to the activities of either Benevolent Heritage or Aquatic View based on the “Protection of Wrecks” Agreement. Rolga on the other hand recognizes that Astoria has a continuing interest, particularly for historical and other cultural purposes, in articles recovered from any of the vessels referred to in the Agreement”

At the same time, Aquatic View, a specialized tour operator was given permit by the Government to organize exclusive underwater trips to view the wreck of Coeur de l’Ocean. The staff have been taking photographs and making video clips of the wrecks and have posted these materials on their website as promotional materials for the exclusive trips. In addition, this company also engaged a songwriter to write a song entitled ‘Coeur de l’ Ocean’ and the CDs of which are commercially marketed as souvenirs. Heritage Inc. brought these issues to the attention of the Rolgan Historic Monument Executive Agency but the Agency was unable at this time of the complaint to deal with the matter. The

activities of the tour operator have, according to Heritage Inc., jeopardized their ongoing television documentary deal with an International Broadcasting Company

By 2003, Heritage Inc. reconsidered their position under the contract with the Government of Rolga and felt that further investment in efforts, time and money into other Astorian wrecks would be harmful to the company. Soon the parties took steps at finalizing the distribution of artefacts recovered from the wreck of Coeur de l' Ocean but things got worse when Heritage Inc. accused the Government of Rolga of unfair distribution of artefacts contrary to the 1995 Memorandum. The dispute is now brought before the International Arbitration Center pursuant to article 10 of the 1995 Memorandum.

## **SUMMARY OF PLEADINGS**

The Government of Rolga requests the Tribunal to declare that: The Government of Rolga has not interfered with the Claimant's rights and performance under the Agreement by entering into Agreement with Astoria, by ratifying the 2001 UNESCO Convention and by allowing the tour operators to organise wreck divers to the wreck site including the taking photographs; the Claimant does not enjoy exclusive rights of photographing and documenting of the Coeur de l' Ocean; and the distribution of artefacts solely on the basis of salvage legal principles was not envisaged by the 1995 Partnering Agreement Memorandum.

It is firstly submitted that no specific rights were granted to Heritage Inc. other than the right to salvage the shipwreck and the right to benefit from the retrieved artefacts as designed in the 1995 Partnering Agreement Memorandum. Additionally, the acts of Rolga Government to enter into Agreement with Astoria in 2003 and to ratify the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage did not interfere any rights or performance of the Claimant under the 1995 Memorandum. Furthermore, Rolga Government, by allowing the tour operators to organise wreck divers to the wreck site including taking photographs, did not interfere the rights and performance of the claimant under the 1995 Memorandum. Consequently, the Government of Rolga has not interfered with the Claimant's rights and performance under the Agreement by entering into Agreement with Astoria, by ratifying the 2001 UNESCO Convention and by allowing the tour operators to organise wreck divers to the wreck site including the taking photographs.

Rolga's second submission is that Bennevolent Heritage Inc. was not entitled to the exclusive rights of photographing and documenting of the Coeur de l'Ocean under the 1995 Partnering Agreement Memorandum and in any event, Bennevolent Heritage Inc. could not enjoy the rights of photographing and documenting of the Coeur de l'Ocean. Therefore, Bennevolent Heritage Inc. does not enjoy exclusive rights of photographing and documenting of the Coeur de l'Ocean.

Finally, Rolga Government submits that Bennevolent Heritage Inc. has the obligation to comply with its commitment under the 1995 Partnering Agreement Memorandum with the Government of Rolga. Furthermore, Rolga fulfilled its obligation to ensure the disposition of the artefacts salvaged from the shipwreck under the UNESCO Convention on the Protection of Underwater Cultural Heritage while Bennevolent Heritage Inc. acted in a manner contrary to the protection of the cultural value of the shipwreck. Concludingly, the distribution of artefacts solely on the basis of salvage legal principles was not envisaged by the 1995 Partnering Agreement Memorandum and the artefacts salvaged should be distributed according to the 1995 Partnering Agreement Memorandum itself.

## PLEADINGS

### **I. THE GOVERNMENT OF ROLGA HAS NOT INTERFERED WITH THE CLAIMANT'S RIGHTS AND PERFORMANCE UNDER THE 1995 PARTNERING AGREEMENT MEMORANDUM BY ENTERING INTO AGREEMENT WITH ASTORIA, BY RATIFYING THE 2001 UNESCO CONVENTION AND BY ALLOWING THE TOUR OPERATORS TO ORGANISE WRECK DIVINGS TO THE WRECK SITE INCLUDING THE TAKING PHOTOGRAPHS**

- 1. No specific rights were granted to Heritage Inc. other than the right to salvage the shipwreck and the right to benefit from the retrieved artefacts as designed in the 1995 Partnering Agreement Memorandum**

Benevolent Heritage Inc. submitted a proposal to Rolga Government for the survey and recovery of significant historical wrecks belonging to the era of expansion of Astorian presence in the region<sup>1</sup> and the project was approved just because it is pursuant to the law of Rolga at that time. Particularly, the authority must approve all survey or recovery excavation projects involving historical objects or sites. Hence, the purpose of the 1995 Partnering Agreement Memorandum (hereinafter "the 1995 Memorandum") should be merely for recovery and survey and Heritage owns no specific right other than the right to salvage the shipwreck and the right to benefit from the retrieved artefacts

- 2. The acts of Rolga Government to enter into Agreement with Astoria in 2003 and to ratify the 2001 UNESCO Convention on the Protection of Underwater**

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<sup>1</sup> *Moot problem*, para. 4.

**Cultural Heritage did not interfere any rights or performance of the Claimant  
under the 1995 Memorandum**

The 2003 Agreement between Rolga and Astoria (hereinafter “the 2003 Agreement”) and the UNESCO Convention on the Protection of Underwater Cultural Heritage are in conformity with the United Nations Convention on the Law of the Sea (hereinafter UNCLOS”).

The 2003 Agreement is on the protection of Astorian Wrecks with the main objects of providing better protection to historic wrecks where both countries share the genuine historical and cultural interest.<sup>2</sup> Similarly, the purpose of the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage (hereinafter “the 2001 UNESCO Convention”) is also for the protection and preservation of underwater cultural heritage. Those documents are both in conformity with international law and practice, including the United Nations Convention on the Law of the Sea of 10 December 1982 and other conventions.<sup>3</sup> In fact, the 2003 Agreement and the ratification of the 2001 UNESCO Convention is just a step to implement the rules provided under UNCLOS and other instruments.

The 1995 Memorandum is in conformity with the UNCLOS 1982, thus it is in conformity with both aboved mentioned documents

First, there is no evidence indicating that the 1995 Memorandum is against the UNCLOS 1982. Moreover, because the 1995 Memorandum is signed after the time UNCLOS came

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<sup>2</sup> *Moot Problem*, para. 9

<sup>3</sup> *UNESCO Convention on the Protection of Underwater Cultural Heritage 2001*, adopted in 2001, entered into force in 2009, preambular para. 12.

into force, it ought to be interpreted in accordance with the provisions under the Convention. In other words, no provisions under agreement 1995 should be construed in a manner contradictory to the UNCLOS 1982, and by the same token, the 2003 Agreement and the 2001 UNESCO Convention.

**3. Rolga Government, by allowing the tour operators to organise wreck divers to the wreck site including taking photographs, did not interfere the rights and performance of the claimant under the 1995 Memorandum**

First, Rolga has sovereignty over the wreck under the UNCLOS 1982 as its location is within Rolga's territorial sea, thus it has the right to allow the operation of Aquatic View. Under Art. 2 of the UNCLOS, states have sovereignty over the territorial sea which extends to the seabed and subsoil.<sup>4</sup> The breadth of the territorial sea can be established to the limit of 12 n.m. from the baseline.<sup>5</sup> In this case, Rolga established a 12 n.m. territorial sea<sup>6</sup> in which the wreck lies.<sup>7</sup> Thus Rolga has sovereign right to impose laws and regulations to control its territorial sea including signing and ratification international treaties, namely the 2001 UNESCO Convention and the 2001 Agreement with Astoria.

Second, the operation of wreck divers to the wreck site including taking photographs did not interfere the salvage operation or infringe the benefits of Benevolent Heritage Inc. relating to the artefacts retrieved. The operation conducted by Aquatic View, in the position of the claimant, jeopardized their on going television documentary deal with an

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<sup>4</sup> *United Nation Convention on the Law of the Sea*, adopted in 1982, entered into force in 1994, Art. 2.

<sup>5</sup> *Ibid*, Art. 3.

<sup>6</sup> *Moot Problem*, para. 16.

<sup>7</sup> *Further Clarification*, para. 1.

international broadcasting company. However, this allegation could not be justifiable because as proved subsequently, the exclusive right of taking photographs and documenting the wreck does not belong to Benevolent Heritage Inc. Moreover, the benefit relating to the artefacts that Benevolent Heritage deserved to has never been reduced as the operation did nothing to impair those artefacts as well as the salvage process.

Finally and most importantly, even if the operation impaired the benefit of Benevolent Heritage Inc., Rolga has no obligation to ensure such benefits. In the 1995 Memorandum, no obligation was established on behalf of Rolga to ensure the benefit of Heritage Inc. from taking photographs or documenting the shipwreck.

## **II. BENNEVOLENT HERITAGE INC. DOES NOT ENJOY EXCLUSIVE RIGHTS OF PHOTOGRAPHING AND DOCUMENTING OF THE COEUR DE L'OCEAN**

### **1. Bennevolent Heritage Inc. was not entitled to the exclusive rights of photographing and documenting of the Coeur de l'Ocean under the 1995 Partnering Agreement Memorandum**

Under the Partnering Agreement Memorandum, the Bennevolent Heritage Inc. was explicitly or implicitly entitled the rights of photographing and documenting of the Coeur de l'Ocean. First, there is no provision indicating such rights. Second, although Bennevolent Heritage Inc. had covered the cost for conserving and documenting the artefacts, and such activities were implemented pursuant to the plan proposed by

Bennevolent Heritage Inc.,<sup>8</sup> the scope of the two activities is limited to the artefacts retrieved from the site,<sup>9</sup> not Coeur de l’Ocean as a whole. Therefore, the Government of Rolga has the right of photographing and documenting the artefacts that were not retrieved by the Bennevolent Heritage Inc.

**2. In any event, Bennevolent Heritage Inc. could not enjoy the rights of photographing and documenting of the Coeur de l’Ocean**

In the case *R.M.S Titanic, Inc. v. Haver*, the United States Court of Appeal for the Fourth Circuit, while considering respondent’s appeal, had not agreed with the Virginia District Court as they purport to prohibit the visiting, viewing, searching, surveying, photographing and obtaining images of the wreck or the wrecksite, as long as these activities do not interfere claimant’s salvage rights.<sup>10</sup> In the present case, Bennevolent Heritage Inc. was the salvor of the shipwreck, thus it only had the rights to salvage activities, which do not include the activities of photographing and documenting of the Coeur de l’Ocean. Consequently, Bennevolent Heritage Inc. could not enjoy the rights of photographing and documenting of the Coeur de l’Ocean.

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<sup>8</sup> *Moot Problem*, Appendix (1), Part. 3, para. 3.

<sup>9</sup> *Moot problem*, Appendix (1), Part. 3, para. 2.

<sup>10</sup> *R.M.S Titanic, Inc. v. Haver*, 171 F.3d 943, 1999 A.M.C. 1330 (4<sup>th</sup> Cir. (Va.), Mar 24, 1999) (NO.98-1934), part VIII.

**III. THE DISTRIBUTION OF ARTEFACTS SOLELY ON THE BASIS OF SALVAGE LEGAL PRINCIPLES WAS NOT ENVISAGED BY THE 1995 PARTNERING AGREEMENT MEMORANDUM**

**1. Bennevolent Heritage Inc. has the obligation to comply with its commitment under the 1995 Partnering Agreement Memorandum with the Government of Rolga**

**a. The 1995 Partnering Agreement Memorandum is a binding instrument between the two parties**

As the Bennevolent Heritage Inc. and the Government of Rolga agreed to conclude the 1995 Partnering Agreement Memorandum, the two parties are bound by it. The term of the 1995 Memorandum, which is for twenty years, is still not expired. The conditions on which the 1995 Memorandum may be terminated were not met, as the parties have agreed upon a project plan within 100 days from the day on which Benevolent Heritage Inc. submits the project plan to the Government; the shipwreck was determined to be the Coeur de l' Ocean; and artefacts have been retrieved from the site with eighteen months from the date that the Parties agree to the project plan.

Therefore, Heritage Inc. is under the obligation to comply with its commitment under the 1995 Memorandum with the Government of Rolga.

**b. The Agreement does not fall within the conditions under Art. 7 of the Convention on Salvage**

**i. The Convention on Salvage is applicable to the 1995 Memorandum between the Government of Rolga and Bennevolent Heritage Inc. under Art. 6 of the Convention on Salvage**

According to Art. 6 of the Convention on Salvage, the Convention on Salvage is applicable to the 1995 Memorandum between the Government of Rolga and Bennevolent Heritage Inc. Art. 6 of the abovementioned Convention provides that it “shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication”.<sup>11</sup> In this case, the 1995 Memorandum between Rolga and Heritage sets forth the principal terms “Agreement Concerning the Shipwreck Coeur de l’Ocean”, including the exploration as well as the conservation and documentation of any artefacts that may be retrieved from the shipwreck.<sup>12</sup> Those activities are undertaken to assist the shipwreck of the Cour de l’Ocean which is in danger, thus they fall within the definition of salvage operation under Art. 1 of the Convention on Salvage. In conclusion, the Convention on Salvage is applicable to the 1995 Memorandum.

**ii. The 1995 Memorandum does not fall within the conditions under Art. 7 of the Convention on Salvage**

Art. 7 of the Convention on Salvage provides that a contract should only be nullified if (a) it has been entered into under undue influence or the influence of danger and its terms are

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<sup>11</sup>*International Convention on Salvage*, adopted in 1989, entered into force in 1996, Art. 6.

<sup>12</sup>*Moot Problem*, Memorandum, Project Plan.

inequitable; or (b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.<sup>13</sup>

In the case at bar, the 1995 Memorandum was concluded with consent from two parties in the interests of recovering the “bedazzling underwater treasures ever found today”<sup>14</sup> without any undue influence or influence of danger. Furthermore, the salvage operation was successfully taken place and the results were quite fruitful. Also, the sharing proportion between the Government and Heritage Inc., in any case, reveals that the payment under the contract can not be in an excessive degree too large or too small for the services actually rendered.

Concludingly, the 1995 Memorandum could not be nullified as it does not fall within the conditions under Art. 7 of the Convention on Salvage.

**2. Rolga fulfilled its obligation to ensure the disposition of the artefacts salvaged from the shipwreck under the UNESCO Convention on the Protection of Underwater Cultural Heritage**

**a. The Coeur de l’Ocean’s shipwreck was entitled to be underwater cultural heritage**

Art. 1 (1) (a) of the UNESCO Convention on the Protection of Underwater Cultural Heritage provides the definition of underwater cultural heritage, which reads: “*Underwater cultural heritage*” means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as: (i) sites, structures, buildings, artefacts and

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<sup>13</sup> *International Convention on Salvage*, Art. 7.

<sup>14</sup> *Moot problem*, para. 5.

*human remains, together with their archaeological and natural context; (ii) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and (iii) objects of prehistoric character”*.<sup>15</sup> In the present case, Cour de l’Ocean is a vessel which has a particular cultural, historical and archaeological character, as it was greedily laden by the soldiers of Astoria, with cargoes of exotic goods, silks and spices, as well as trunks of royal jewelry.<sup>16</sup> In other words, the Coeur de l’Ocean is the reflection of a historical and cultural period of the Palace of Zamzala, which is now part of the territory of the State of Rolga,<sup>17</sup> with wealthiness and prosperity. Moreover, it is totally under water continuously for the period of over 100 years from the 1800s to 1995 when the Government of Rolga permitted Heritage Inc. to perform salvage operation. With the facts above, it can be safely concluded that the shipwreck of Coeur de l’Ocean is entitled to be underwater cultural heritage and is protected under the UNESCO Convention on the Protection of Underwater Cultural Heritage.

**b. Rolga fulfilled its obligation to ensure the disposition of the artefacts salvaged from the shipwreck under the UNESCO Convention on the Protection of Underwater Cultural Heritage**

First, Rolga was the owner of the shipwreck. In the Agreement on the “Protection of Astorian Wrecks” between the Government of Rolga and the Government of Astoria in 2001, Astoria as successor to the property and assets of the Astorian ancient wrecks, agrees to transfer all its right, title and interest in and to wrecked ancient vessels of the Astoria

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<sup>15</sup> *UNESCO Convention on the Protection of Underwater Cultural Heritage*, Art. 1 (1) (a).

<sup>16</sup> *Moot problem*, para 1.

<sup>17</sup> *Moot problem*, para 1.

lying on or off the coast of Rolga and in and to any articles thereof to Rolga.<sup>18</sup> The artefacts salvaged from the shipwreck are also in the custody of Rolga Government.<sup>19</sup>

Second, pursuant to Art. 18 (4) of the UNESCO Convention on the Protection of Underwater Cultural Heritage, State Parties which has seized underwater cultural heritage are under obligation to ensure that the disposition of underwater cultural heritage be for the public benefit, taking into account the need for conservation and research; the need for reassembly of a dispersed collection; the need for public access, exhibition and education.<sup>20</sup>

In the case at bar, the “Guiding Principles for the determination of the disposition of materials from the shipwrecks of Astoria off the coast of Rolga (2001)” to be read together with the 2001 Agreement between the Government of Rolga and the Government of Astoria reflected Rolga’s position on the disposition of the artefacts salvaged from the shipwreck of the Cour de l’Ocean. According to the Guiding Principles, the need for the reassembly of the dispersed collection and the need for conservation and research are specially stressed. It is provided that if the decision is made that the contents of an archaeological site are to be apportioned between two or more institutions, the first principle to be observed is that the total assemblage should be capable of reassembly to allow further statistical and scholarly analysis. It follows, therefore, that unnecessary splitting of a sample of closely similar objects capable of statistical treatment should be avoided and, where samples are accommodated in more than one institution, those institutions should contract not to disperse them further and, moreover, to agree to allow samples to be brought together for analysis and study as required. The second principle is

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<sup>18</sup> *Moot problem*, para. 9.

<sup>19</sup> *Moot problem*, para. 12.

<sup>20</sup> *UNESCO Convention on the Protection of Underwater Cultural Heritage*, Art. 18 (4).

that where unique or rare objects, themselves, form a meaningful assemblage within the whole, this assemblage should not be split or, if split, perfect replicas be made to complete the assemblage. As in the case of the division of statistical samples, an agreement should be made between the recipients to reconstitute the original assemblage if it is required for scholarly research.<sup>21</sup> It is also envisaged in the Guiding Principles that the general aim of ensuring that representative series of statistical samples and sufficient examples of the rarer objects will be deposited in the museums of the Astoria and Rolga is to convey the variety and contents of each wreck to both the public and to scholars, which is for the sake of public access and public benefit.

Moreover, beside concluding the 2001 Agreement with Astoria, Rolga did itself take measures to protect the cultural value of the heritage. In 2000, the Government of Rolga strengthened its cultural heritage appreciation as “symbol of nationhood”. A new law was passed in the same year to protect wrecks of historical and cultural significance to Rolga.<sup>22</sup> In the statement by Rolga’s Minister of Cultural Heritage, the significance of the protection of underwater cultural heritage was also stressed on.<sup>23</sup>

With all the arguments presented above, it is obvious that Rolga has fulfilled its obligation to ensure the disposition of the artefacts salvaged from the shipwreck under the UNESCO Convention on the Protection of Underwater Cultural Heritage.

### **3. Bennevolent Heritage Inc. acted in a manner contrary to the protection of the cultural value of the shipwreck**

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<sup>21</sup> *Moot Problem*, Guiding Principles for the Determination of the Disposition of Materials from the Shipwrecks of Astoria off The Coast of Rolga (2001)

<sup>22</sup> *Moot Problem*, para. 8.

<sup>23</sup> *Moot problem*, para. 7

Art. 2 (7) of the UNESCO Convention on the Protection of Underwater Cultural Heritage provides that underwater cultural heritage shall not be commercially exploited. In this case, some parts of the collection of the artefacts recovered from the shipwreck have been auctioned off at overseas auction houses.<sup>24</sup> There were allegations in many forums on Heritage Inc.'s commercial exploitation of the artefacts recovered from the Cour de l'Océan.<sup>25</sup> Further, as confirmed by a government underwater archaeologist stationed on site that many of the artefacts (eg. Chinese porcelains) were destroyed due to poor handling of objects.<sup>26</sup> Evidently, Heritage Inc. had acted in a manner contrary to the protection of underwater cultural heritage as provided under Art. 2(7) of the UNESCO Convention on the Protection of Underwater Cultural Heritage.

In conclusion, Bennevolent Heritage Inc. is under the obligation to comply with the 1995 Memorandum, to which it is a Party; Rolga Government has fulfilled its obligation to ensure the disposition of the artefacts salvaged from the shipwreck under the UNESCO Convention on the Protection of Underwater Cultural Heritage, while Bennevolent acted in a manner contrary to the protection of underwater cultural heritage as provided under Art. 2(7) of the same Convention. Therefore, the distribution of artefacts has to be carried out in conformity with the 1995 Memorandum other than solely on the basis of salvage legal principles, which was not envisaged in the 1995 Memorandum.

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<sup>24</sup> *Moot Problem*, para. 6.

<sup>25</sup> *Moot problem*, para. 10.

<sup>26</sup> *Moot problem*, para. 10.

## CONCLUSION AND PRAYER FOR RELIEF

**The Respondent, Government of Rolga, respectfully requests the Tribunal to declare that:**

I. The Government of Rolga has not interfered with the Claimant's rights and performance under the Agreement by entering into Agreement with Astoria, by ratifying the 2001 UNESCO Convention and by allowing the tour operators to organise wreck divings to the wreck site including the taking photographs.

II. The Claimant does not enjoy exclusive rights of photographing and documenting of the Coeur de l' Ocean.

III. The distribution of artefacts solely on the basis of salvage legal principles was not envisaged by the 1995 Partnering Agreement Memorandum.