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INTERNATIONAL CENTRE OF ARBITRATION

2009

4TH LAW ASIA MOOT COMPETITION 2009

BENEVOLENT HERITAGE INC.

(CLAIMANT)

v.

THE GOVERNMENT OF ROLGA

(RESPONDENT)

MEMORIAL FOR THE CLAIMANT

BENEVOLENT HERITAGE INC

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STATEMENT OF JURISDICTION

The Claimant has approached this Hon'ble Tribunal pursuant to Article 9 of the Partnering Agreement Memorandum, 1995.

QUESTIONS PRESENTED

- 1. Whether or not this Tribunal has the jurisdiction to decide on its Jurisdiction to arbitrate upon the dispute?**
- 2. Whether or not the parties have agreed for arbitration as the method of dispute resolution?**
- 3. Whether or not the subject matter of the dispute is arbitrable?**
- 4. Whether or not the Claimant is the owner of the artefacts?**
- 5. Whether or not the Claimant is entitled to remuneration under the law of salvage?**
- 6. Whether or not the Claimant is entitled to possession of artefacts?**
- 7. Whether or not the Respondent has interfered with the Claimant's rights?**
- 8. Whether or not there is any amount due by the Respondent to the Claimant?**
- 9. Whether or not the Claimant has the exclusive rights of photographing and documenting of the wreck?**
- 10. Whether or not Aquatic View's actions impede the Claimant's salvage operations?**

STATEMENT OF FACTS

The claimant, Benevolent Heritage Inc. is a company incorporated under the laws of Rolga, and Mr. Bernard Bodd, a national of Astoria is a well-known salvor and a major shareholder in the Claimant Company. In 1990, Mr. Bernard Bodd submitted a proposal to the Rolga Cultural Heritage Committee for the survey and recovery of significant historical wrecks belonging to the era of expansion of Astorian presence in the region. His proposal received the attention of the Government of Rolga, the respondent, as it involved the discovery of much coveted Coeur de l' Ocean among deep sea treasure hunters.

After extensive research and study of records at the maritime archives of Astoria, Benevolent Inc. predicted that the vessel was to be located between 20-25 kilometres off the coast of Rolga. After some years of survey, on 1st June 1993, a wreck identified as the Coeur de l' Ocean was discovered well within the proximity of the initial prediction, some 20 kilometers off the coast of Rolga. The Government eventually approved the project and the 'Partnering Agreement Memorandum' was signed on 27th September 1995. (*Annexure 1*). *Inter alia*, the Agreement Memorandum set forth the project plan, fees, deposits, sharing arrangements, merchandising income and expenses of the project.

Many of the artefacts were recovered from the wreck Coeur de l' Ocean. Some parts of the collection were auctioned off at overseas auction houses to partly finance the costs of the project. In the same year, the Government of Rolga strengthened its cultural heritage appreciation as "symbol of nationhood". Such a change was influenced by the development of international legal regime protecting the underwater cultural heritage, particularly the negotiations initiated by United Nations Educational, Social and Cultural Organisation (UNESCO), which later led to the adoption of the United Nations Convention in the Protection of the Underwater Cultural Heritage in Paris on 2nd November 2001. The new

economic plan which was introduced in the same year (2000) by Rolga also promised more efforts to be undertaken by the Government in protecting and ensuring sustaining use of its cultural resources.

A new law was passed in late 2000 to protect wrecks of historical and cultural significance to Rolga. 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” interest following the successful adoption of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage. In the agreement, Astoria agreed that Astoria, as successor to the property and assets of the Astorian ancient wrecks, transferred all its right, title and interest in and to wrecked ancient vessels of the Astoria lying on or off the coast of Rolga and in and to any articles thereof to Rolga which should accept such right, title and interest. Further, as provided in the Agreement, Rolga recognized that Astoria had a continuing interest, particularly for historical and other cultural purposes, in articles recovered from any of the vessels referred to in the Agreement.

In light of these developments, the government was questioned in many forums on its alleged involvement with the “commercial exploitation” of the artefacts recovered from the Coeur de l’ Ocean. 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 activities of the tour operator have, according to Heritage Inc., jeopardized their ongoing television documentary deal with an International Broadcasting Company.

These developments plus the change of mindset within society regarding the need for the protection of underwater cultural heritage and the move towards ratifying the 2001 UNESCO Convention, have prompted Heritage Inc. to reconsider their position under the contract with

the Government of Rolga. By 2003, they felt that further investment in efforts, time and money into other Astorian wrecks would only 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 could not reach an amicable settlement as Heritage Inc. accused the Government of Rolga of unfair distribution of artefacts contrary to the 1995 Agreement. The dispute is now brought before the International Arbitration Center pursuant to article 9 of the 1995 Agreement, according to which both the parties have agreed to arbitration as a method of dispute resolution.

SUMMARY OF PLEADINGS

11. THIS TRIBUNAL HAS THE JURISDICTION TO DECIDE ON ITS JURISDICTION TO ARBITRATE UPON THE DISPUTE.

It is submitted that the “*Kompetenz-Kompetenz*” rule allows arbitrators to examine their own jurisdiction.

12. THE PARTIES HAVE AGREED FOR ARBITRATION AS THE METHOD OF DISPUTE RESOLUTION

The parties have mutually decided upon Ho Chi Minh City as the seat of arbitration and the KRLCA Rules and the Rolgan law as the law governing the agreement.

13. THE SUBJECT MATTER OF THE DISPUTE IS ARBITRABLE

13.1. THERE IS A PRESUMPTION IN FAVOUR OF ARBITRABILITY

The burden of proof of arbitrability lies on the party challenging jurisdiction.

13.2. ARGUENDO, THE SUBJECT MATTER IS NOT ARBITRABLE.

3.2.1 SALVAGE CLAIMS ARE ARBITRABLE.

Salvage agreements have been considered to be arbitrable when arbitration is expressly agreed to.

3.2.2 THE ARBITRATION AGREEMENT IS NOT CONTRARY TO PUBLIC POLICY

Salvage legal principles are widely applied across various jurisdictions and arbitrability of a salvage dispute cannot be considered to be contradictory to international public policy.

14. CLAIMANT IS THE OWNER OF THE ARTEFACTS

The wreck was abandoned by Astoria, so the Claimant, is the owner of the artefacts so retrieved and subsequent laws cannot divest title retrospectively unless so stated.

15. CLAIMANT IS ENTITLED TO REMUNERATION UNDER THE LAW OF SALVAGE

The claimant has complied with all the conditions in the contract with the respondent. The contract is for salvage and the contract provides for a salvage remuneration which is payable by the respondent.

16. THE CLAIMANT IS ENTITLED TO POSSESSION OF ARTEFACTS

The claimant has a maritime lien that subsists and a subsequent law cannot change such an interest without an express intention and is therefore entitled to the artefacts till the required payment is made.

17. THE RESPONDENT HAS INTERFERED WITH THE CLAIMANT'S RIGHTS

If the agreement is annulled, remuneration shall be fixed as per the Salvage Convention.

18. THE AMOUNT DUE BY THE RESPONDENT WILL HAVE TO BE PAID TO THE CLAIMANT

The amounts are to be determined as per the apportionment so decided and the contract.

19. THE CLAIMANT HAS THE EXCLUSIVE RIGHTS OF PHOTOGRAPHING AND DOCUMENTING OF THE WRECK

19.1. THE CLAIMANT HAS EXCLUSIVE RIGHTS AS THE SALVOR

Salvors are entitled to such rights due to the effort so expended and allowing others such rights would amount to giving them access to physical artefacts.

9.2. AQUATIC VIEW NEEDS TO OBTAIN NECESSARY LICENSES FROM THE CLAIMANT

Rolga being party to the copyright convention and laws requires any party which distributes or sells photographs, etc. of the wreck, has to obtain licenses from the Claimant.

9.3 CLAIMANT'S INTERESTS WOULD BE ADVERSELY AFFECTED IF AQUATIC VIEW IS GRANTED THE REQUISITE ACCESS

Aquatic View's broadcasting its videos would amount to negatively impacting the Claimant's interests and would affect public interest, while allowing commercial profits to be made.

9.4 AQUATIC VIEW'S ACTIONS IMPEDES THE CLAIMANT'S SALVAGE OPERATIONS

The Respondent by permitting tour operators into the wreck site, have allowed physical interference, causing interference with performance of the contract.

PLEADINGS

1. THAT THIS HON'BLE TRIBUNAL HAS THE JURISDICTION TO DECIDE ON ITS JURISDICTION TO ARBITRATE UPON THE DISPUTE.

The power of an arbitral tribunal to decide upon its own jurisdiction is an inherent power.¹ It is submitted that the “*Kompetenz-Kompetenz*” rule allows arbitrators to examine their own jurisdiction.² It provides that the arbitrators are competent to determine their own competence.³ “There is a presumption that where an arbitration has been commenced, the issues of *kompetenz-kompetenz* will be first dealt with by the arbitral tribunal.⁴ The rule encompasses essentially two elements - that, an arbitral tribunal can rule upon its own jurisdiction and that for this purpose, the arbitration clause is separate and independent from the terms of the contract containing the transaction between the parties.⁵

In the instant case, the parties have agreed to be bound by the Rules of the Kuala Lumpur Regional Center for Arbitration, hereinafter the KLRCA Rules.⁶ According to Rule 1 of the KLRCA Rules, “Where the parties to a contract have agreed in writing that disputes in relation to that contract shall be settled or resolved by arbitration in accordance with the Rules for Arbitration of the KLRCA, then such disputes shall be settled or resolved by arbitration in accordance with the UNCITRAL Arbitration Rules.”

According to Article 21 of the UNCITRAL Rules, an arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.⁷

¹ Redfern, *LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION* 252 (2004).

² Fouchard, *INTERNATIONAL COMMERCIAL ARBITRATION* 416 (1999).

³ Moses, *THE PRINCIPLES AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION* 16 (2008).

⁴ Tweeddale, *ARBITRATION OF COMMERCIAL DISPUTES* 175 (2007).

⁵ *Supra* note 1 at 254.

⁶ Cl. 10, Partnering Agreement Memorandum.

⁷ Article 21 (1), (UNCITRAL) Arbitration Rules, 1976.

Further, the arbitral tribunal has the power to determine the existence or the validity of the contract of which an arbitration clause forms a part.⁸

Thus, it is submitted that this Hon'ble Tribunal has jurisdiction to decide upon its own jurisdiction.

2. THAT THE PARTIES HAVE AGREED FOR ARBITRATION AS THE METHOD OF DISPUTE RESOLUTION

It is submitted that the parties to the dispute have agreed that “any differences, discrepancies and disputes should the parties be unable to reach mutual understanding and agreement, those disputes and/or differences shall be referred to and/or decided by the arbitration in accordance with the Rules of Arbitration of the Kuala Lumpur Regional Centre of Arbitration.”⁹ “The most comprehensive forms of wording in an arbitration agreement are those which refer to the decision of an arbitral tribunal between the parties on issues expressed by the words *differences, disputes or claims.*” (emphasis added).¹⁰ In the instant dispute, the parties have mutually decided upon Ho Chi Minh City as the seat of arbitration.¹¹ The parties have further unequivocally agreed upon the KRLCA Rules to govern the procedure and the Rolgan law as the law governing the agreement.

3. THE SUBJECT MATTER OF THE DISPUTE IS ARBITRABLE

It is submitted that the preliminary issue of subject matter arbitrability falls for consideration before this Hon'ble Tribunal.

3.1. THAT THERE IS A PRESUMPTION IN FAVOUR OF ARBITRABILITY

Arbitrability refers to issues in dispute and whether they are capable of settlement by arbitration.¹² When parties choose arbitration as a method of dispute resolution, there is a

⁸ Article 21 (2), (UNCITRAL) Arbitration Rules, 1976.

⁹ No.4, Corrections & Clarifications.

¹⁰ Sutton, *RUSSEL ON ARBITRATION* 160 (1997).

¹¹ No.24, Further Clarifications.

¹² *Supra* note 4 at 107.

heavy presumption in favour of arbitrability.¹³ There is a presumption in favour of the validity of arbitration agreements.¹⁴ “Any doubts concerning the scope of arbitrable issues must be resolved in favour of arbitration, whether the problem at hand is in the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.”¹⁵ This presumption is greater where there is an international relationship between parties.¹⁶ In *Mitsubishi Motors Corp v. Soler Chrysler-Plymouth Inc.*¹⁷, the United States’ Supreme Court held that the issues of arbitrability would be interpreted more broadly in an international context than in a domestic context. The burden of proof of arbitrability lies on the party alleging that the dispute is not arbitrable.¹⁸ Thus, it is submitted that in the presence of a heavy presumption in favour of arbitrability, the burden of proof lies on the Respondent to rebut the presumption.

3.2. ARGUENDO, THE SUBJECT MATTER IS NOT ARBITRABLE

3.2.1. THAT SALVAGE CLAIMS ARE ARBITRABLE

It is submitted that the Respondent is a party to the International Convention on Salvage, 1989, hereinafter the Salvage Convention. Article 2 of the Salvage Convention recognizes the applicability of the Convention to judicial or arbitral proceedings relating to matters dealt with in the Convention when brought in by a State Party. This clearly indicates that any dispute involving a salvage contract is arbitrable and the Tribunal also has the jurisdiction to decide on salvage claims and apply the principles laid down in the Convention. “Salvage agreements have been considered to be arbitrable when arbitration is expressly agreed to, and numerous arbitrations have taken place.”¹⁹ One such arbitration, is that of Malaysian Historical Salvors against the state of Malaysia, hereinafter the MHS Case, (KRLCA, 1998)

¹³ Craig, *INTERNATIONAL CHAMBER OF COMMERCE ARBITRATION* 62 (2000).

¹⁴ *Oldroyd v. Elmira Savings Bank FSB*, 134 F 3d 72.

¹⁵ *Moses H Cone Memorial Hospital v. Mercury Construction Corp* 74 L Ed 2d 765 (1983).

¹⁶ *Deloitte Noraudit A/S v. Deloitte Haskins & Sells US*, 9 F 3d 1060.

¹⁷ 473 US 614, (1986) XI Ybk Comm Arbn 555-65.

¹⁸ *Supra* note 4 at 122.

¹⁹ *McCaddin v. Southeastern Marine Inc.*, 567 F. Supp. 2d 373.

in which, the claimant entered into a contract with the respondent for salvage of the 'DIANA'. The dispute was based on similar facts as in the dispute on hand before the Tribunal and the matter was initially subject to arbitration by the parties.²⁰

3.2.2. THAT THE ARBITRATION AGREEMENT IS NOT CONTRARY TO PUBLIC POLICY

It is submitted that while examining the objective arbitrability of an international dispute, a court must apply its conception of international public policy.²¹ Lack of arbitrability is a limit on party autonomy and jurisdiction of the tribunal and public policy is a qualification for that limit.²² Public policy is everywhere recognized as comprising the 'most basic notions of morality' and 'substantial justice.'²³ Public policy was defined by the English House of Lords as "that principle of law which holds that no subject can lawfully do that which has a tendency to be injurious to the public, or against public good".²⁴ "The concept of truly international public policy²⁵ is said to comprise fundamental rules of natural law, principles of universal justice, *jus cogens* in public international law²⁶, and the general principles of morality accepted by what are referred to as civilized nations."²⁷ "The term international public policy is also used to describe standards and norms that enjoy international consensus."²⁸

²⁰ See generally *Malaysian Historical Salvors SDN BHD v. The Government of Malaysia*, ICSID Case No. ARB/05/10.

²¹ *Supra* note 2 at 559.

²² Gerald Aksen, Kral Heinz Bocksteigel, Paolo Michele Patochchi, and Anne Marie Whitesell, (eds.) *Global Reflections on International Law, Commerce and Dispute Resolution: Liber Amicorum in Honor of Robert Briner* (ICC Publishing S.A., 2005).

²³ *Parsons 7 Wittermore Overseas Co. Inc. v. Societe Genrale du Papier RAKTA*, 508 F2d 969; *Minmetals Germany GmbH v. Ferco Steel Ltd.* [1999] 1 All ER (Comm) 315; See generally, Petrochilos, *PROCEDURAL LAW IN INTERNATIONAL ARBITRATION*, 98 (2004).

²⁴ *Egerton -v- Brownlow* (1853) 4 HLC 1.

²⁵ See generally James D. Fry, "Désordre Public International under the New York Convention: Wither Truly International Public Policy", 8 *Chinese J. Int'l L.* 81; Dennis G. Terez, "International Commercial Arbitration and International Public Policy", 81 *Am. Soc'y Int'l L. Proc.* 372.

²⁶ See generally Mohammad Reza Baniassadi, "Do mandatory rules of public law limit choice of law in international commercial arbitration?", 10 *Int'l Tax & Bus. Law.* 59.

²⁷ See Goldman, "Les conflits des lois dans l'arbitrage international de droit privé" (1963) *Recueil des Cours* 352.

²⁸ Donald Francis Donovan, "The Relevance (or lack thereof) of the notion of mandatory rules of law to investment treaty arbitration," 18 *Am. Rev. Int'l Arb.* 205.

The United Nations Convention on the Law of the Sea, hereinafter UNCLOS, Article 149 states that “all objects of an archaeological and historical nature found in the Area” (‘on the seabed and ocean floor beyond the limits of national jurisdiction’) “shall be preserved and disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.” Similarly, under UNCLOS Article 303, states have a dual duty to protect objects of an archaeological and historical nature found at sea and to cooperate for this purpose. However, UNCLOS Article 303 (3) unequivocally states that “Nothing in this article affects the rights of identifiable owners, *the law of salvage* (emphasis added) or other rules of admiralty, or laws and practices with respect to cultural exchanges.”

It is submitted that UNCLOS, which is widely accepted by the international community, unambiguously recognizes the application of law of salvage and further acknowledges the rights of identifiable owners.

Though the Convention for Protection of Underwater Cultural Heritage, hereinafter CPUCH aims at the preservation and protection of UCH²⁹, and prohibits its commercial exploitation³⁰, the CPUCH has been ratified by a limited number of countries. “Given the controversial nature of its provisions, the CPUCH is not likely to become part of customary international law. While its Annex states very general principles, salvage law provides a very detailed governing principle that has been elaborated by admiralty courts for centuries.”³¹

²⁹ See generally UNESCO Convention on the Protection of the Underwater Cultural Heritage Convention, 2001.

³⁰ Article 2 (7), UNESCO Convention on the Protection of the Underwater Cultural Heritage Convention, 2001.

³¹ Valentina Sara Vadi, “Investing in culture, Underwater cultural heritage and international investment law”, 42 *Vand. J. Transnat'l L.* 853

With the growing acceptance of arbitration, the public policy limits to arbitrability are gradually disappearing.³² This has been expressly recognized by the US Supreme Court in the case of *Mitsubishi Motors Corp v. Soler Chrysler-Plymouth Inc.*³³

Salvage legal principles are widely applied across various jurisdictions of the world and arbitrability of a salvage dispute can in no way be considered as being contrary to international public policy. Furthermore, “as in the MHS case, if parties voluntarily sign a salvage contract, arbitrators are bound to enforce that contract as long as it reflects (and does not contravene) customary maritime rules and practices.”³⁴ In the instant case, the parties have voluntarily entered into a valid arbitration agreement for resolution of disputes arising out of a salvage contract. This is widely accepted in maritime law and the dispute on hand is arbitrable by this Hon’ble Tribunal.

4. THE CLAIMANT IS ENTITLED TO OWNERSHIP UNDER THE LAW OF FINDS

The law of finds vests title to a property with a finder when the original owner has abandoned the same.³⁵ Abandonment requires abandoning the possession without an intention of returning to the vessel (*sine animo revertendi*) or without any hope for recovery (*sine spe recuperandi*).³⁶ The law of abandonment requires an intention to relinquish ownership and a physical act as well.³⁷ The law of finds provides that on finding and reducing it to possession³⁸; the claimant has complete rights of ownership. Possession need not necessarily have to be physical wherein telepossession and a remote operated vehicle would suffice.³⁹

³² *Supra* note 22.

³³ *Supra* note 17.

³⁴ *Supra* note 31.

³⁵ Schoenbaum, (2009) 2 Admiralty & Mar. Law § 16-7 ; *Marex Intern., Inc. v. Unidentified, Wrecked and Abandoned Vessel*, 952 F. Supp. 825, 1998.

³⁶ Dromgoole & N. Gaskell, “Interests in Wreck” in Palmer, *INTEREST IN GOODS* (1997).

³⁷ H. B. Chermiside, Jr., “Rights in and ownership of wrecked or derelict vessels and their contents not cast upon the shore”, 63 *A.L.R.2d* 1369.

³⁸ *Id.*; *Columbus America Discovery Group v. Unidentified Wrecked and Abandoned Sailing Vessel*, 742 F.Supp. 1327

³⁹ D.F. T. Horrell, “Telepossession is Nine-Tenths the Law – the emerging industry of Deep Ocean Discovery”, 3 *Pace Y.B. Int’l L.* 309.

In 1993, when the Claimant found the Coeur de l’Ocean⁴⁰ (hereinafter the Wreck) it was abandoned by the State of Astoria as it remained unclaimed for more than a hundred years.⁴¹ The ship was abandoned during a storm and subsequently, neither efforts were made to recover the ship nor were there any claims immediately when the ship was found.⁴² The claimant had found the shipwreck and had reduced it to possession by means of some of the artefacts that were removed from the wreck.⁴³ Therefore the Claimant is the owner of the artefacts so retrieved and reduced to possession.

However, The State of Rolga had claimed ownership over the wreck by stating so in the Partnering Agreement Memorandum.⁴⁴ State of Rolga, being a coastal State has rights under the UNCLOS to regulate the traffic or removal of cultural objects from the seabed in the contiguous zone.⁴⁵ Various other coastal States do not claim ownership over derelict vessels unless by an express statute⁴⁶ and it is not an automatic acquisition. The purpose of obtaining their sanction was to comply with the policy of the Rolgan State that a permission is required to carry out salvage activities.⁴⁷ Therefore, this does not vest the Rolgan State with ownership of the vessel.

The provision under Article 303, which requires protection of cultural heritage, is subject to the rights of identifiable owners or general admiralty laws and practice.⁴⁸ In this case, though Astoria is an identifiable owner, did not raise any claim about its ownership to the vessel despite the news of finding of such a vessel being made very public.⁴⁹ Abandonment may

⁴⁰ ¶ 5, p.2, Fact Sheet.

⁴¹ ¶ 1, p.1 Fact Sheet.

⁴² ¶ 1,5,6, p.1,2, Fact Sheet.

⁴³ ¶ 5, p.2 Fact Sheet.

⁴⁴ Cl. 5, Partnering Agreement Memorandum.

⁴⁵ Article 303 read with Article 33, United Nations Convention on the Law of the Sea, 1982.

⁴⁶ The Abandoned Shipwreck Act, 1987 (United States) and the Merchant Shipping Act, 1894 (United Kingdom)

⁴⁷ Malaysia’s Declaration on ratification of the UNCLOS, 1982 on 14th October, 1996 in Garabello R. & T. Scovazzi, *The Protection of Underwater Cultural Heritage* (2003).

⁴⁸ Article 303 (3), United Nations Convention on the Law of the Sea, 1982.

⁴⁹ ¶ 5, p.2, Fact Sheet.

also be implied by this act, considering the efflux of time and non-use of the property.⁵⁰ Astoria has clearly abandoned the vessel as it had not made any claim even after it had knowledge of the vessel. It is a rule of international law that the question of loss of title or abandonment should be determined by the flag State's laws.⁵¹ It has been held in the United Kingdom (whose laws are in pari materia with Astoria's laws) that mere efflux of time without any attempt at possession can be treated as abandonment of title.⁵² The prior occupant, i.e., the claimant had acquired rights before the State declared the same. Neither Astoria nor Rolga have any rights in the vessel. It is therefore argued that the claimant is the owner of the wreck.

Subsequent laws cannot divest title or affect transfer of title retrospectively unless specifically stated.⁵³ Vienna Convention on the Law of Treaties under Art. 28, Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.⁵⁴ This is supported by the decision by the International Court in the *Ambateielos* case where the court that a claim based on acts that happened in 1922 under a treaty in 1926 shall not lie.⁵⁵

The Underwater Cultural Heritage Convention thus does not affect a previous act of title transfer as it came into force only in 2009. In this case, the Underwater Cultural Heritage Convention indicates no intention to apply to previous acts of salvage. The act only purports to apply prospectively for the purpose of the protection of the cultural heritage. Therefore the

⁵⁰ *Columbus-America Discovery v. Unidentified Wrecked and Abandoned Vessel*, 974 F.2d 460.

⁵¹ US President's Statement on Protection of Sunken Warships, Dromgoole, "Interest in Wreck" in Interest in Goods; Supra note 35; O'Connell, *INTERNATIONAL LAW OF THE SEA, VOL. II* 911 (1984).

⁵² *The Lusitania* [1986] Q.B. 384; *Robinson v. Western Australian Museum* (1977) A.L.J.R. 806; O'Connell, *INTERNATIONAL LAW OF THE SEA, VOL. II* 913 (1984).

⁵³ S.D. Murphy, "Retroactive Application of a Treaty to a Treaty based Claim", 97 *Am. J. Int'l L.* 437.

⁵⁴ Vienna Convention on the Law of Treaties, 1969; Draft Articles on Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission on the Work of Its Fifty-third Session, UN GAOR, 56th Sess., Supp. No. 10, Art. 13, at 46, UN Doc. A/56/10/10 (2001), at <http://www.un.org/law/ilc/>; Northern Cameroons (*Cameroon v. UK*), 1963 ICJ REP. 15, 129 (Dec. 2).

⁵⁵ I.C.J. Rep. 1952, 40; Sinclair, *THE VIENNA CONVENTION ON THE LAW OF TREATIES* 30 (1984).

title to any property existing earlier shall not stand altered unless stated in express terms. Furthermore, Law of finds has been made applicable to sunken shipwrecks in various cases.⁵⁶

5. THE CLAIMANT IS ENTITLED TO SALVAGE REMUNERATION UNDER THE LAW OF SALVAGE

5.1. THE CLAIMANT IS ENTITLED TO REMUNERATION UNDER THE CONTRACT

The claimant and the respondent had entered into a partnering agreement memorandum in 1995 which required the claimant to submit a project plan for the implementation of the various provisions of the memorandum.⁵⁷ The claimant accordingly submitted a plan, which was approved by the respondent.⁵⁸ Hence, all the activities were as per the contract entered into by the parties and therefore this entitles the claimant to an amount envisaged under the partnering agreement memorandum.⁵⁹ The claimant had also invested large amounts in finding and salving such a ship wreck. Therefore all the conditions precedent as required by the partnering agreement memorandum have been complied with and the claimant has performed his contractual duties.

This is a salvage operation as it essentially involves retrieval of property in peril in navigable waters.⁶⁰ It has been held that retrieval of material from wrecks is a salvage operation and that “danger” for the purpose of a salvage award existed when a wreck was lying on the seabed.⁶¹ It is common and permissible to enter into contracts for the purpose of performing salvage operations.⁶² A salvage agreement once concluded has to be construed in accordance

⁵⁶Supra note 35; *Eads v. Brazelton* 179 F.Supp. 321. *Moyer v. Wrecked and Abandoned Vessel, Known as the Andrea Doria* 836 F.Supp. 1099; M.A. Wilder, “Application of Salvage Law and the Law of Finds to Sunken Shipwreck Discoveries”, 67 *Def. Couns. J.* 92 (2000),

⁵⁷¶5, p.2, Fact Sheet; Cl. 2, Partnering Agreement Memorandum.

⁵⁸No.23, Further Clarifications.

⁵⁹Cl. 5, Partnering Agreement Memorandum.

⁶⁰Brice, *MARITIME LAW OF SALVAGE* 1 (2003); IMO, Article 1(a) International Convention on Salvage, 1989;L.H. Dietz, Salvage- Law of finds, law of salvage, and treasure trove distinguished, 68 *Am. Jur.* 2d Salvage § 3 .

⁶¹*Columbus America Discovery Group v. Atlantic Mutual Insurance Company* [1995] AMC 1985 U.S. Courts of Appeal (4th Circuit); See IMO Docs. LEG/56/4/5; LEG 56/WP.14.

⁶²Supra note 60 at 321.

with the principles that govern ordinary law of contract save in so far as the principles applicable to salvage law.⁶³

Salvage remuneration however, is a right which accrues independently of a contract.⁶⁴

However, the contract here lays down the quantification of the remuneration to be paid by the Respondent. The parties have mutually agreed upon a sharing of the appraised values or the sale values of the artefacts.⁶⁵ The presence of a salvage contract excludes the application of the London Salvage Convention, therefore, the remuneration should be as stated and determined in the contract and not otherwise.⁶⁶

The contract per se is valid and binding. It has been entered into by mutual agreement and remuneration has been fixed as per the common law principles of salvage. It is stated that the Claimant is entitled to the artefacts or the value of the artefacts as agreed in the contract and therefore remuneration to that effect.

5.2. THE CLAIMANT IS ENTITLED TO THE ARTEFACTS

The claimant has been engaged in the salvage of these artefacts from 1995. As a salvor (contractually or not) he is entitled to remuneration under the law of salvage. He obtains a maritime lien on the *res* which is enforceable against it in respect of the salvage services rendered herein.⁶⁷ A maritime lien is a special property right in a ship given to a creditor by law as security for a debt or claim subsisting from the moment the debt arises; the claim may be based on a breach of contract, services rendered to the property, or injuries caused by that property.⁶⁸ Such a maritime lien attaches to the asset the minute the salvage services are rendered or from any other event that causes it to arise.⁶⁹ This lien arises by operation of law,

⁶³ *The Tojo Maru* [1972] A.C. 242 at 292; *The Unique Mariner* (No. 2) [1979] 1 Lloyd's Rep. 37 at 50-57.

⁶⁴ *Supra* note 60 at 321; See generally, Vincenzini, *INTERNATIONAL LAW OF SALVAGE* 92 (1992).

⁶⁵ Cl. 5, Partnering Agreement Memorandum.

⁶⁶ Article 6, IMO, London Salvage Convention, 1989.

⁶⁷ *Supra* note 60 at 323; *Supra* note 51 at 907.

⁶⁸ American Jurisprudence, 70 Am. Jur. 2d Shipping § 450; Baughen, *SHIPPING LAW* 225 (2004).

⁶⁹ Jackson, *ENFORCEMENT OF MARITIME CLAIMS* 451 (2000); T.M. Etting, "Maritime Liens", 30 *The American Law Register* 1 (1891).

it is a privileged claim and it travels with the property *unconditionally*⁷⁰ irrespective of change in possession etc. This lien has overarching priority over other claims if any.⁷¹ Therefore, this implies that the claimant has an overarching right in the property, a lien which cannot be disregarded. This lien may be extinguished on the payment of an equivalent amount or a security or even an arbitral award providing for the same.⁷² A maritime lien, furthermore, exists irrespective of the existence of possession.⁷³

The Underwater Cultural Heritage Convention states that there shall not be any application of salvage law unless it is as per Article 4. Article 4 requires activities of salvage to be carried out as per the convention, to protect underwater cultural heritage and thus to be without commercial exploitation. It is submitted that the Claimant had carried out these activities long before this Convention came into force in 2009. The Convention cannot be construed to imply extinguishment of rights created earlier and annulment of acts committed before it came into force.⁷⁴

Therefore a pre-existing maritime lien and its adjoining rights cannot be denied to the claimant. Therefore the claimant is entitled to the possession of the artefacts till the requisite payment is made. The maritime lien and right exists despite the absence of possession. It therefore does not matter even if the artefacts are with the custody of the Government.⁷⁵

Alternatively, the claimant is entitled to the equivalent value as agreed upon by the contract or a security for the equivalent amount. Also, as stated in the partnering agreement memorandum if the appraised values exceed \$ 45 Million, the claimant is entitled to own and possess those artefacts, to that extent that it exceeds the value.

⁷⁰ Black's Law Dictionary, 8th Ed., "Maritime liens" ; A.L. Shipman, "The Maritime Lien", 2 *YALE J. INT'L L.* 9 (1982).

⁷¹ *Supra* note 69 at 451; See generally Halsbury's Laws of England, Admiralty Law.

⁷² *Supra* note 69 at 472.

⁷³ "Maritime Liens", 15 *Columbia Law Review* 4 (1915) 343.

⁷⁴ Aust, *TREATY LAW AND PRACTICE* 47 (2000); Article 28, Vienna Convention on the Law of Treaties, 1969;

⁷⁵ ¶ 12, p.5, Factsheet.

5.3 ARGUENDO, THE AGREEMENT IS ANNULLED FOR INVALIDITY, CLAIMANT IN ENTITLED TO REMUNERATION

Even if the agreement is annulled or invalid for any reason, the maritime lien on the objects recovered from the Wreck is still valid and binding. The remuneration shall be fixed as per the conditions specified in the Salvage Convention.⁷⁶ Accordingly, the outcome of the salvage operations may be apportioned between the parties.

6. POSSESSION OR SALE IS NOT IN VIOLATION OF THE LAW AND THE GUIDING PRINCIPLES

The claimant, under traditional salvage law and the contract, is entitled to sell the artefacts in cases where he is not compensated for the amount due to him. However, the Underwater Cultural Heritage Convention prohibits any “commercial exploitation” of the cultural heritage. However, the National Heritage Act, 2005 of Malaysia (for all practical purposes, Rolga) allows the party to sell the artefacts when authorized by the State. As the Cultural Heritage Convention still has not been incorporated or transformed into Domestic Law (as is required in cases where the treaty is not self-executing)⁷⁷, the National Heritage Act will still be applicable. The National Heritage Act, 2005 allows for salvage operations on underwater cultural heritage, sale and ownership with due authorization by the Commissioner.⁷⁸ Thus, ownership and sale is not prohibited under the national law of the State.

7. THE RESPONDENT HAS INTERFERED WITH SALVAGE RIGHTS AND PERFORMANCE

The underwater cultural heritage convention and the agreement with Astoria in effect prohibit subsequent activities of the Claimant. These changed circumstances currently bar full fledged commercial sales of the artefacts, require in situ preservation etc. which make the further performance of the contract impossible and economically unviable. The claimant had agreed

⁷⁶ Article 13, IMO, London Salvage Convention, 1989.

⁷⁷ *Supra* note 74 at 146; See Generally, J.H. Jackson, “Status of Treaties in Domestic Legal Systems”, 86 *Am. J. Int'l L.* 310.

⁷⁸ Section 65,66, 95, 91, of National Heritage Act, 2005 (Malaysia).

to the contract owing to the lucrative nature of the transaction. Here, if a commercial exploitation is impermissible, the claimant is at a loss. The cost associated with the exploration and recovery of sunken shipwrecks is prohibitive.⁷⁹ It is impossible to explore these wrecks without any commercial activity to subsidize the project, by selling off valuable items recovered from the wreck. Often, Joint projects such as these are the only way to carry out the salvage and recovery in a feasible manner.⁸⁰

8. CLAIMANT IS ENTITLED TO BE PAID CERTAIN AMOUNTS BY THE RESPONDENT

8.1. APPORTIONMENT OF THE SALVAGE REMUNERATION

As per the contract, the claimant is entitled to 80% of the total revenues up to \$ 45 Million.

The total value of the artefacts excavated – \$ 63,789,000.

Therefore the value of apportionment as per the contract is as follows:

Upton 45,000,000: Govt: 9,000,000. Claimant: 36,000,000.

Beyond 45,000: $63,789,000 - 45,000,000 = 18,789,000$: Govt: 9394500; Claimant: 9394500

Beyond the 45 Million \$ limit, the claimants are entitled to own and possess the relative share of the artefacts. Hence, the claimants are entitled to salvage remuneration to the extent of 36,000,000 dollars and artefacts to the tune of 9394500 dollars. The joint marketing plan as envisaged by the memorandum clearly cannot be implemented owing to the changed legal circumstances.

In the event that the agreement is not complied with, the salvage award ought to be one that is liberal to compensate the salvor considering the investments and effort.⁸¹ In this case, the claimant has incurred expenditure in finding and subsequently salvaging the contents of the ship. The court has to bear in mind the various aspects such as the salvaged value of the vessel and other property; the measure of success obtained by the salvor; the nature and degree of

⁷⁹ R. Regan, “When Lost Liners Become Found: An Examination Of The Effectiveness Of Present Maritime Legal and Statutory Regimes For Protecting Historic Wrecks In International Waters With Some Proposals For Change”, 29 *Tul. Mar. L.J.* 313.

⁸⁰ *Id.*

⁸¹ *Columbus America Discovery Group v. Sailing Vessel* 742. F.Supp. 1327.

the danger; the skill and efforts of the salvors in salvaging the vessel, other property and life etc.⁸² Here, the salvor has exercised sufficient degree of skill considering the fact that it is headed by a well known archaeologist and expert in this area.⁸³ Furthermore the claimants have been sufficiently successful in salvaging the property from the shipwreck considering the items that have been produced and preserved.⁸⁴ Economic considerations are paramount when considering a salvage award and the court should take into consideration the expenses and costs incurred by the salvors.⁸⁵

8.2. AMOUNTS DUE UNDER THE CONTRACT

Furthermore, the claimant is entitled to the depository amount of \$1,250,000 placed with the Government as security till \$3,500,000 worth artefacts are recovered.

9. THE CLAIMANT HAS THE EXCLUSIVE RIGHTS OF PHOTOGRAPHING AND DOCUMENTING OF THE COEUR DE L' OCEAN

9.1. THE CLAIMANT HAS EXCLUSIVE RIGHTS OF PHOTOGRAPHING AND DOCUMENTING OF THE COEUR DE L' OCEAN AS THE SALVOR

It is submitted that the claimant is the sole salvor of the wreck in this case.

Neither the Salvage Convention nor the Partnering Agreement Memorandum includes a clause as to the right of photographing and documenting a vessel being salvaged. However, the claimant having been contracted to be the sole salvor is entitled to such rights.

In *Lindsay v. The Wrecked and Abandoned Vessel R.M.S. Titanic*,⁸⁶ the Court had granted such rights to the salvor in possession⁸⁷, laying down that the salvor did have specific authority and dominion over the site and could decide who would be allowed into the area for whatever purpose. Here, the court affirmed its earlier order in favor of RMST, the salvor,

⁸² See generally, IMO International Convention on Salvage, 1989.

⁸³ ¶4,5, p.2, Fact Sheet.

⁸⁴ ¶12, p.5, Fact Sheet; No.18, Further Clarifications.

⁸⁵ Supra note 35.

⁸⁶ 1998 WL 557591 (SDNY Sept. 2 1998).

⁸⁷ *RMS Titanic Inc. v. The Wrecked and Abandoned Vessel ("Titanic I")*, et al. 924 F. Supp. 714.

granting it exclusive salvor-in-possession rights of the *Titanic* wreck and wreck site. The Court believed that irreparable harm would come to the plaintiff if injunctive relief were denied and this finding results in a decided imbalance of hardship in plaintiff's favor. RMST had expended time, efforts, money, and ingenuity over a period of approximately nine years in locating the wreck, starting salvage operations, and continuing salvage operations. RMST was granted possession of the wreck site for monetary gain in order to compensate it for these efforts and to encourage their continuation. The Court was of the opinion that photographs can be marketed like any other physical artifact and, therefore, the rights to images, photographs, videos, and the like belong to R.M.S. Titanic.

RMST's rights thus encompassed the exclusive right to photograph the site, thus expanding its earlier order that granted an injunction against a competing salvor who applied to the court for permission to visit the site of the ship wreck to take photographs for his own collection.⁸⁸

The court did not explicitly grant a copyright to RMST, but essentially granted the right to photograph, duplicate and distribute the photographs, ensuring that the party has the exclusive right to sell photographs of an object, to which it had exclusive access.⁸⁹

Judge Bauer was of the view that video and photographic images could be treated as the equivalent of artefacts recovered from a shipwreck and allowing another party to take photographs is akin to permitting the physical invasion of the wreck and seizure of the artefacts themselves.⁹⁰

However, the Appeal Court reversed the district Court's order prohibit the visiting, viewing, searching, surveying, photographing, and obtaining images of the wreck or the wreck site, as long as these activities do not constitute any salvage effort or interfere with RMST's salvage

⁸⁸ *Id.*

⁸⁹ Rachel J. Lin, "Salvage Rights & Intellectual Property: Are Copyright and Trademark Rights Included in the Salvage Rights to the R.M.S. Titanic?" 23 *Tul. Mar. L.J.* 483.

⁹⁰ *Supra* note 86.

rights.⁹¹ RMST was held not have the exclusive right to photograph the vessel based on the position that these particular intellectual property rights would not be part and parcel of the salvor's rights. This is supported by the principle that a property right over an item would not prohibit the photographing of it so long as the item is located in a public area.⁹²

In the instant case, the claimant, Heritage Inc. is the sole salvor engaged in salvage operations of the wreck of Coeur de l' Ocean and therefore is the only party other than the Respondent to have a claim over the artefacts. The Respondent by allowing Aquatic view to photograph the wreck and the artefacts has breached the rights of the salvor in possession, as it creates images of artefacts, to which they have no right per se. Additionally, the wreck has not been granted public access and is at an undisclosed location, and allowing Aquatic View, who is not a party to the Partnering Agreement, access to the wreck would interfere with the efforts of the salvor.

It is submitted that the claimant alone has right to access the wreck since it is not in the public area and Aquatic view does not have rights to access the wreck and photograph it. Though the wreck is owned by the Government of Rolga any photographs so taken of the wreck and the artefacts during the salvage operations is the property of the claimant and it would have the right to reproduce, replicate and distribute photographs and video images of the Coeur de l' Ocean and this right is protected as a primary work under Article 2(1) of the Berne Convention, provided it is original.⁹³ A photograph of the wreck would be entitled to protection as a "photographic work" and the video clip would be a "cinematographic work" under the primary expression "literary and artistic works" under Article 2(1)⁹⁴, thus granting a copyright, making it mandatory for any other party to obtain the necessary license before

⁹¹ *R.M.S. Titanic Inc., Successor in Interest to Titanic Ventures, Limited Partnership v. Christopher S. Haver; Deep Ocean Expeditions* (1999) 171 F.3d 943 (U.S.C.A. 4th Circuit).

⁹² Chisum, *UNDERSTANDING INTELLECTUAL PROPERTY LAW* 5 (1998).

⁹³ Article 2(3) Berne Convention for the Protection of Literary and Artistic Works, 1886; Ricketson, *THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS: 1886-1986* (1987).

⁹⁴ Lewinski, *INTERNATIONAL COPYRIGHT LAW AND POLICY* 125 (2008).

taking and distributing such works.⁹⁵ Also, “artistic works” under the Copyright Act⁹⁶ has directly included “photographs” within its definition, so any right to photograph the wreck belongs to the salvor, who have all copyright over such photographs.

Aquatic View by taking such photographs and circulating them for promotion of their tours⁹⁷ is clearly infringing the rights of the Claimant as under Section 36 of the Copyright Act⁹⁸, since “selling, offering or exposing for sale or hire” or “distributing the article for purpose of trade” or “exhibiting the article in public”, all amount to infringement. Also the Claimant’s position as owner of the copyright could be reasonably induced since they were in possession while being involved in recovering the wreck and therefore such infringement⁹⁹ was knowingly allowed by the Respondent, by having given the necessary permission.

The Claimant should thereby be awarded damages, considering the flagrancy of the infringement and any benefit accrued to the person who performed the infringement.¹⁰⁰ Also, an injunction¹⁰¹ against Aquatic View should be granted so that no further reproduction, distribution or circulation of any such materials is indulged in.

9.2. AQUATIC VIEW NEEDS TO OBTAIN NECESSARY LICENSES FROM THE CLAIMANT

The granting of the right to photograph also includes the right to make derivative works of the photographs.¹⁰² Any company that wanted to make merchandise with pictures of the wreck of the Coeur de l’ Ocean would have to seek permission and obtain a licensing agreement from Heritage Inc. Aquatic View in order to take photographs or video clips of the wreck and distribute the same, needs to obtain a license as per Section 27A of the Copyright

⁹⁵ Section 27A, Copyright Act, 1987 (Malaysia).

⁹⁶ Section 3, Copyright Act, 1987 (Malaysia).

⁹⁷ ¶11, p.4, Fact Sheet.

⁹⁸ Section 36, Copyright Act (Malaysia).

⁹⁹ Section 36(4), Copyright Act (Malaysia).

¹⁰⁰ Section 37 (2) Copyright Act (Malaysia)

¹⁰¹ Section 37(1), Copyright Act (Malaysia).

¹⁰² R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel, 9 F. Supp. 2d 624.

Act, 1987.¹⁰³ In case, Aquatic View fails to do so, it would amount to an infringement under Section 36.¹⁰⁴

Also, as per Clause 6 of the Partnering Agreement Memorandum, only the claimant has exclusive rights over using the name “Coeur de l’ Ocean” in association with sales and marketing of merchandise relating to the wreck and therefore Aquatic View having commercially marketed CDs with songs entitled the same name, as “souvenirs”¹⁰⁵ has caused a breach of the Claimant’s rights under the agreement. Any merchandise utilizing the name of the ship needs to be permitted and licensed by Heritage Inc. itself.

9.3. CLAIMANT’S INTERESTS WOULD BE ADVERSELY AFFECTED IF AQUATIC VIEW IS GRANTED THE REQUISITE ACCESS

A salvor engaged in recovery and other salvage operations has certain commitments that parties to a contract must respect and allow to be performed.

In *RMS Titanic Inc. v. The Wrecked and Abandoned Vessel*¹⁰⁶, the court granted exclusive access to the Titanic wreck to RMST, the salvors acknowledging the possibility that the visits not sanctioned by RMST would have severe and negative impact on RMST’s commercial ventures, namely its various deals for exclusive broadcasts with documentary and news networks. Broadcasts of such nature recognize the public interest in the value inherent in ancient shipwrecks and associated materials. Since, with the help of the documentary the general public could view the wreck.¹⁰⁷

In the present case, the Claimant has a television documentary deal with an International Broadcasting Company.¹⁰⁸ However, the tour operator, Aquatic View, has made video clips which are posted on their website as a promotional feature for the exclusive tour trips they

¹⁰³ Section 27A, Part IVA Copyright Act, 1987 (Malaysia).

¹⁰⁴ Section 36, Part VI, Copyright Act, 1987 (Malaysia).

¹⁰⁵ ¶11, p.4, Fact Sheet.

¹⁰⁶ *Supra* note 102.

¹⁰⁷ Patty Gerstenblith, “Identity and Cultural Property: The Protection of Cultural Property in the United States”, 75 *B.U. L. Rev.* 559.

¹⁰⁸ ¶ 11, p.4, Fact Sheet.

have been permitted to arrange by the Respondent. This will adversely affect the salvor's interest with respect to their broadcasting deal.¹⁰⁹ Also, the tours so arranged by Aquatic View are purely commercial and is aimed at creating large profits since an exorbitant amount of USD \$20,000 is charged for each of these trips, to view the shipwreck.¹¹⁰ It is submitted that such commercial aims not be given priority over the rights of members of the public to view the broadcast of the salvage operations.

9.4. AQUATIC VIEW'S ACTIONS IMPEDES THE CLAIMANT'S SALVAGE OPERATIONS

Though the 1989 Salvage Convention does not address the rights of the salvors to visual images and documentation of the vessels, in *Moyer v. The Wrecked and Abandoned Vessel, Known as the Andrea Doria*¹¹¹ the court granted an injunction against other divers who were searching for the same artefacts as the plaintiff; judicial consideration having been given to the protection of archaeological interests and the extensive effort invested in the project by the plaintiff, the meticulous documentation of the exercise, via video and photography. However, other salvors were allowed to visit the site of the wreck on the condition that their intrusion would not impede the plaintiff's efforts.

In the present case, the claimants had invested effort to carry out extensive research to locate the Coeur de l Ocean and also the exact location of the vessel had not been disclosed to the public for security reasons.¹¹² Since the discovery of the location of the wreck in 1993, the claimant has been diligent in carrying out its salvage operations in accordance with the Partnering Agreement, indicating that they are likely to persevere in the same, which makes exclusive access an imperative.¹¹³ The Respondent by permitting Aquatic View to conduct tours in the wreck site, having already sold 25 tickets¹¹⁴ for the same is actually allowing

¹⁰⁹ ID

¹¹⁰ ¶ 11 facts ID

¹¹¹ *Supra* note 26.

¹¹² ¶ 5, p.2, Facts Sheet.

¹¹³ *Bemis v. The R.M.S. Lusitania*, 884 F. Supp. 1042.

¹¹⁴ ¶ 11, p.4, Fact Sheet.

physical interference, when they are not even party to the contractual terms. This is a direct interference and will impede efforts to recover the valuable artefacts and even obstruct on site archaeological preservation. For the purpose of protection of these efforts, the Respondent must not permit Aquatic View to carry out such tours to view the wreck, as it will impede the salvage operations being carried out by the Claimant.

RELIEF REQUESTED

Therefore it is humbly prayed that this Hon'ble Tribunal may be pleased to find and declare that:

1. This Tribunal has jurisdiction to decide on this dispute.
2. The subject matter of the dispute is arbitrable.
3. That the State of Astoria had abandoned its title to the wreck
4. That the Claimant has acquired title to the property under the law of finds
5. Alternatively, that the Claimant is a salvor
6. That the claimant is entitled to possession and sale of the artefacts
7. Alternatively, That the claimant is entitled to the remuneration as laid down in the contract
8. That the acts of the State of Rolga, such as signing the Underwater Cultural Heritage Convention and the Agreement with Astoria, amounts to interference with the performance of the contract and salvage rights
9. That the claimant is the sole party entitled to photograph and document the wreck.
10. That Aquatic View may not be allowed to impede the Claimant's operations by interfering with their performance.
11. That an injunction may be granted against Aquatic View against the use of photographs and cinematographic works of the wreck.
12. That damages may be awarded to the Claimant for the copyright infringes so permitted by the Respondent.