

**IN THE MATTER OF AN ARBITRATION PURSUANT TO THE RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW**

SEA SEARCH-ARMADA, LLC

Claimant

and

THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA

Respondent

NOTICE OF ARBITRATION AND STATEMENT OF CLAIM

GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
United States of America

18 DECEMBER 2022

I.	Introduction.....	1
	A. The Dispute.....	1
	B. Parties To The Dispute.....	4
II.	Background to the Dispute.....	5
	A. Glocca Morra Company Discovers The Location Of The San José.....	5
	B. GMC Assigns Its Rights To SSA Cayman, Which Pursues Negotiations With Colombia For A Salvage Contract.....	9
	C. The Colombian Courts Confirm SSA Cayman’s Rights To Half Of The Treasure.....	11
	D. Colombia Fails To Enforce Claimant’s Rights Under The 2007 Supreme Court Decision	17
	E. Colombia’s Ministry Of Culture Issues Resolution No. 0085 And Its Agent Informs SSA That It Has No Ownership Rights.....	20
	F. SSA Issues Notice Of Intent And Attempts To Amicably Settle The Dispute	22
III.	Jurisdiction and Procedural Requirements.....	22
	A. SSA Initiates Arbitration Pursuant To Article 3 Of The UNCITRAL Rules	22
	B. The Requirements Of The TPA To Proceed To Arbitration Under The UNCITRAL Rules Have Been Satisfied.....	23
	C. Other Procedural Matters	26
IV.	Summary of Claims	27
	A. Colombia Has Unlawfully Expropriated SSA’s Investment	27
	B. Colombia Breached Its Obligations To Accord Fair And Equitable Treatment And Full Protection And Security	29
	C. Colombia Breached Its National Treatment and Most-Favored Nation Obligation	31
V.	Proposal as to Constitution of the Arbitral Tribunal.....	32
VI.	Proposals as to Place and Language of the Arbitration	33
VII.	Request for Relief.....	33

I. INTRODUCTION

1. Sea Search-Armada, LLC (“**SSA**” or “**Claimant**”), incorporated in the United States of America (the “**United States**” or “**U.S.**”), hereby commences arbitration and states its claims against the Republic of Colombia (“**Colombia**” or “**Respondent**” and, together with Claimant, the “**Parties**”) pursuant to the United States-Colombia Trade Promotion Agreement, which entered into force on 15 May 2012 (the “**TPA**”),¹ and Article 3 of the Arbitration Rules of the 2021 United Nations Commission on International Trade Law (“**UNCITRAL Rules**”).²
2. Claimant has duly authorized the undersigned to institute and pursue arbitration proceedings on their behalf against Colombia under the TPA.³

A. The Dispute

3. This dispute arises out of Colombia’s unlawful expropriation of and interference with SSA’s rights to approximately USD 10 billion worth of treasure found by SSA’s predecessors over 40 years ago.
4. In the early 1980s, SSA’s predecessor, Glocca Morra Company Inc. (“**GMC Inc.**”), backed by predominantly U.S. nationals, sought and obtained authorization from Colombia to search for and report any discoveries in Colombian waters of the shipwreck of a 300-year old galleon, the San José, which was estimated to have carried over USD 20 billion (in today’s value) of treasure.⁴ GMC Inc. later assigned its rights to Glocca Morra Company

¹ See **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force).

² See **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), art. 10.16(5) (“*The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.*”); **Exhibit CL-0002**, UNCITRAL Rules, 2021, art. 3 (“*Notice of Arbitration*”).

³ See **Annex A**, Authorization to Institute Arbitration and Power of Attorney Executed By Claimant, 14 December 2022.

⁴ See **Exhibit C-0002**, DIMAR Resolution No. 0048, 29 January 1980, arts. 1 (“*The company GLOCCA MORRA COMPANY INC. is AUTHORIZED to do underwater exploration in the areas hereafter set forth. .* .”), 5 (“*The term of effectiveness of the present authorization is two (2) years.*”) (Translation is our own).

(“GMC”),⁵ who after careful research and numerous underwater searches and dives using what was state-of-the-art technology at the time, found a large shipwreck corresponding to the San José and reported its finding to the Colombian authorities.⁶ Colombia later recognized GMC as the rightful “*claimant*” of its discovery.⁷ Under Colombian law, the discoverer of a treasure is entitled to 50% of its proceeds and preferential access to a salvage contract. GMC and Colombian authorities began negotiations for a salvage contract on this basis but discussions stalled.

5. For the next two decades, GMC, and then SSA (which acquired the rights to the treasure in 2008) litigated in Colombian courts and abroad to enforce their rights. Their efforts came to fruition when in 2007 the Colombian Supreme Court (the “**Supreme Court**”) confirmed the findings of the lower courts that SSA had rights to 50% of the treasure that it had discovered and reported.⁸ While the Supreme Court noted that any items of “*cultural heritage*” would not constitute “*treasure*”, Colombia had never designated the San José shipwreck as “*cultural heritage*”. Colombian courts moreover imposed an embargo on Colombia, preventing it from taking measures to acquire SSA’s discovery without SSA’s participation or approval.⁹

⁵ See **Exhibit C-0005**, DIMAR Resolution No. 753, 13 October 1980.

⁶ See **Exhibit C-0010**, Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982.

⁷ **Exhibit C-0015**, Letter No. 04264/CORAC from the Colombian National Navy to the Legal Advisor to the President, 18 July 1982. (Translation is our own).

⁸ See **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, pp. 234-235 (“*The property recognized therein, in equal parts, for the Nation and the plaintiff. . .*”) (Translation is our own).

⁹ See **Exhibit C-0026**, 10th Civil Court of the Circuit of Barranquilla, Judgment, 12 October 1994, pdf p. 5 (“*Order the embargo of the goods that qualify as treasures, that are recovered or extracted from the area determined by the coordinates indicated in the [1982 Report]. . .*”) (Translation is our own); **Exhibit C-0027**, Superior Court of the Judicial District of Barranquilla, Case File No. 20.166, Judgment, 7 March 1997, p. 63 (“*Given this circumstance, nothing will prevent the presiding judge from ordering the company with which the Nation contracts the recovery of the goods, to deposit them in the vault or safe deposit box of the Banco de la República in Cartagena, so that it be the place where, by the commissioned judge, the diligence is practiced. Of course, as a security measure for the interests of the plaintiff, the designated taking could be present at the very moment of the recovery, from the sea depths, of the corresponding goods.*”) (Translation is our own).

6. Notwithstanding the decisions of its courts, Colombia refused to recognize SSA's rights. Instead, in breach of the court's embargo orders, Colombia attempted to cast doubt on GMC's location for the San José, and claimed that it had found the shipwreck at different coordinates than those reported by GMC.¹⁰ Yet Colombia studiously avoided disclosing the coordinates of its supposed discovery to SSA, thus preventing SSA from being able to verify Colombia's assertions.¹¹ In any event, the Colombian courts had recognized SSA's rights to treasure not just at the specific coordinates GMC had reported, but also in the vicinity and surrounding areas of its finding.¹²
7. Faced with the prospect of having to recognize SSA's rights to proceeds from the San José, Colombia chose instead to expropriate wholesale SSA's rights. On 23 January 2020, the Ministry of Culture issued Resolution No. 0085, declaring that the entirety of the San José was not treasure but an "*Asset of National Cultural Interest*," and therefore exempt from the Supreme Court's ruling.¹³ Thus, overnight, SSA lost rights to 50% of its discovery, or approximately USD 10 billion, the value of which has been captured entirely by the Colombian State.
8. Colombia's actions breach its obligations under the TPA. Colombia's expropriation of SSA's rights is unlawful as Colombia has failed to compensate SSA for the deprivation of its investment.¹⁴ Colombia's actions also breach its obligations to accord fair and equitable treatment ("**FET**"), full protection and security ("**FPS**"), national treatment ("**NT**"), and most-favored nation status ("**MFN**").¹⁵ Resolution No. 0085 contravened SSA's legitimate

¹⁰ See **Exhibit C-0037**, Statement from President Santos on the discovery of the San José Galleon, 5 December 2015 ("At dawn on the past Friday, November 27. . .the Colombian Institute of Anthropology and History, with the help of the National Navy and international scientists, found in the vicinity of the Colombian Caribbean Coast, an archaeological site that corresponds to the Captain Ship Galleon San José.") (Translation is our own).

¹¹ See *infra* ¶ 45.

¹² See **Exhibit C-0041**, Letter from SSA to the Vice-President of Colombia, 12 July 2019.

¹³ **Exhibit C-0042**, Ministry of Culture Resolution No. 0085, 23 January 2020, art. 1 ("*Declare the San José Galleon Wreck as an Asset of National Cultural Interest.*") (Translation is our own).

¹⁴ See *infra* § IV.A.

¹⁵ See *infra* §§ IV.B-IV.C.

expectation that its right to 50% of the discovery would be recognized and upheld.¹⁶ Colombia's sudden reversal of its position also constitutes arbitrary and unreasonable conduct, in breach of its obligations under the TPA and customary international law.¹⁷

9. Below SSA sets out **(II)** the background to the dispute; **(III)** that it has met the TPA's jurisdictional and procedural requirements; **(IV)** a summary of its claims; **(V)** proposals as to the constitution of the arbitration tribunal; **(VI)** proposals as to the place and language of arbitration; and **(VII)** its request for relief.

B. Parties To The Dispute

1. Claimant

10. Claimant is a U.S. registered company, incorporated in the state of Delaware, with its business address at 9187 Clairemont Mesa Blvd., Suite 6, #334, San Diego, California, 92123.¹⁸
11. Claimant has taken all necessary internal actions to authorize the submission of this Notice of Arbitration and Statement of Claim.¹⁹
12. Claimant is represented in this arbitration by Gibson, Dunn & Crutcher LLP. For the purposes of this arbitration, correspondence to Claimant should be addressed to:

Rahim Moloo
Robert Weigel
Anne Champion
Jason Myatt
Pablo Garrido
Martina Monti
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
United States of America
Tel: +1 (212) 351-2413
Email: RMoloo@gibsondunn.com
RWeigel@gibsondunn.com

¹⁶ See *infra* ¶ 80.

¹⁷ See *infra* ¶¶ 81-82.

¹⁸ See **Exhibit C-0029**, Certificate of Formation of Sea Search-Armada, LLC, 1 October 2008.

¹⁹ See **Annex A**, Authorization to Institute Arbitration and Power of Attorney Executed By Claimant, 14 December 2022.

AChampion@gibsondunn.com

JMyatt@gibsondunn.com

PGarrido@gibsondunn.com

MMonti@gibsondunn.com

Ankita Ritwik

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue NW

Washington, D.C. 20036

United States of America

Email: ARitwik@gibsondunn.com

2. Respondent

13. Respondent in this arbitration is the Republic of Colombia. Pursuant to Annex 10-C of the TPA, delivery of notices and documents to Respondent should be made to the following address:

*Dirección de Inversión Extranjera y Servicios
Ministerio de Comercio, Industria y Turismo
Calle 28 # 13 A – 15
Bogotá D.C. - Colombia*

II. BACKGROUND TO THE DISPUTE

A. Glocca Morra Company Discovers The Location Of The San José

14. In 1708, a three-masted galleon called the San José sank in a battle off the coast of the Colombian port city of Cartagena.²⁰ At the time, it was carrying the most valuable cargo ever shipped from the New World, estimated to include over 7 million pesos, 116 steel chests full of emeralds, and 30 million gold coins.²¹ The current estimate of the value of the treasure aboard the ship is approximately USD 20 billion. For almost three hundred years, the ship and its contents remained on the ocean floor, lost to the world.

²⁰ See **Exhibit C-0014**, Colin Simpson, *Secret Salvage of £3,000m in Gold*, THE SUNDAY TIMES, 18 July 1982.

²¹ See **Exhibit C-0007**, Letter from Dr. Eugene Lyon, 21 September 1981; **Exhibit C-0014**, Colin Simpson, *Secret Salvage of £3,000m in Gold*, THE SUNDAY TIMES, 18 July 1982.

15. In 1979, GMC Inc., a U.S. company incorporated in Delaware, retained a team of researchers to determine the location of the San José and its lost treasure.²² Though it was never recovered, the contents of the shipwreck had been extensively documented by several Spanish and English sources, including historical archives, court records from cases that had arisen from the battle and the ship's sinking, and surviving fleet logs.²³ GMC Inc. was undertaking the search for more than mere curiosity—it expected under Colombian law at that time that any treasures it discovered would “*be divided equally between the owner of the land [i.e. Colombia] and the person who made the discovery [i.e. GMC Inc.]*” as long as GMC Inc. received authorization to search for the treasure from Colombia.²⁴ Accordingly, prior to beginning the search operation, GMC Inc. requested from Colombia “*an underwater exploration permit in Colombia's continental shelf, in order to establish the existence of shipwrecked artifacts, treasures, or any other item of historical, scientific, or commercial value*” within a specified area.²⁵
16. On 29 January 1980, Colombia's General Directorate of the Maritime and Port Authority (*Dirección General Marítima y Portuaria* or “**DIMAR**”) issued Resolution No. 0048 (i) authorizing GMC Inc. to search for shipwrecks by carrying out underwater exploration in areas specified in the resolution for a period of two years and (ii) requiring GMC Inc. to report all identified shipwrecks to DIMAR.²⁶ DIMAR also confirmed that Colombian law accorded GMC Inc. preferential status to negotiate terms of a salvage contract as long as

²² See **Exhibit C-0007**, Letter from Dr. Eugene Lyon, 21 September 1981.

²³ See **Exhibit C-0007**, Letter from Dr. Eugene Lyon, 21 September 1981; **Exhibit C-0014**, Colin Simpson, *Secret Salvage of £3,000m in Gold*, THE SUNDAY TIMES, 18 July 1982.

²⁴ **Exhibit C-0001**, Colombian Civil Code, 31 May 1873, art. 701 (“*The treasure found in someone else's land will be divided equally between the owner of the land and the person who made the discovery. But the latter will not have the right to its portion, except when the discovery is fortuitous, or when the treasure has been sought with the permission of the owner of the land. . .*”) (Translation is our own).

²⁵ **Exhibit C-0002**, DIMAR Resolution No. 0048, 29 January 1980, p. 1 (“*WHEREAS Dr. ANTONIO JOSE GUTIERREZ BONILLA, in representation of the company GLOCCA MORRA COMPANY INC. requests permission for underwater exploration of the Colombian Continental Shelf in the waters of the Caribbean to establish the existence of wrecks, treasury or any other element of historical, scientific or commercial value in the areas hereafter determined and indicated on the map enclosed with the application.*”) (Translation is our own).

²⁶ See **Exhibit C-0002**, DIMAR Resolution No. 0048, 29 January 1980, arts. 1 (“*The company GLOCCA MORRA COMPANY INC. is authorized to do underwater exploration in the areas hereafter set forth: . . .*”), 5 (“*The term of effectiveness of the present authorization is two (2) years.*”) (Translation is our own).

GMC Inc. duly reported its find.²⁷ Shortly thereafter, GMC, incorporated in the Cayman Islands,²⁸ was assigned GMC Inc.'s interests, which Colombia recognized and authorized on 13 October 1980.²⁹

17. For the next two years, GMC searched the area specified in Resolution No. 0048, which was later broadened by additional DIMAR resolutions.³⁰ GMC initially used a lateral sonar, subsoil profiler and TREC, an unmanned, remote controlled vehicle equipped with television and photo cameras, a specialized sonar for continuous scanning, a small sound manipulator and a basket for the recovery of small objects. Using its lateral sonar, GMC identified a number of potential targets for further investigation over the wide set of coordinates it was authorized to search.³¹ GMC then lowered the TREC to the ocean floor approximately twenty five times to gather additional data on targets of interest.³² During these submersions, the TREC found three to six areas with wood or other foreign objects that were spread over a larger area of approximately two square nautical miles.³³ Carbon dating of these wood samples indicated that the wood was likely 300 years old.³⁴

²⁷ **Exhibit C-0003**, DIMAR Letter No. 00854, 20 March 1980 (“... in order to enter into contract with the Nation, for the salvage of shipwrecked goods, the solicitor must have obtained an exploration permit, filed a claim of the purported find, and then, by preferential manner, begin to negotiate the terms or the respective contract in accordance to the laws”) (Translation is our own). This was later recognized in DIMAR Resolution No. 0149, which stated: “Of the discoveries of treasures or antiquities, the concessionaire will have the privilege of contracting with the State for their exploitation. This privilege will expire six (6) months after the end of the exploration period, except when the cause that would have prevented the contracting is attributable to the State.” (Translation is our own). See also **Exhibit C-0011**, DIMAR Resolution No. 0149, 12 March 1982, art. 3.

²⁸ See **Exhibit C-0004**, Memorandum of Association of GMC, 21 May 1980.

²⁹ See **Exhibit C-0005**, DIMAR Resolution No. 753, 13 October 1980.

³⁰ See **Exhibit C-0006**, DIMAR Resolution No. 0066, 1 February 1981, pdf p. 2. Moreover, by January 1982, the authorization granted by Resolution No. 0048 was set to expire. To continue explorations, DIMAR extended the validity of Resolution No. 0048 twice, through July 1982. See **Exhibit C-0008**, DIMAR Resolution No. 0025, 29 January 1982; and **Exhibit C-0012**, DIMAR Resolution No. 249, 22 April 1982.

³¹ See **Exhibit C-0010**, Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982, pp. 2-3.

³² See **Exhibit C-0010**, Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982, pp. 2-3.

³³ See **Exhibit C-0010**, Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982, pp. 3-4.

³⁴ See **Exhibit C-0010**, Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982, p. 9.

18. Given the limited recovery capabilities of the TREC, GMC commissioned the use of a manned submarine and surface ship to conduct further investigation of its initial findings.³⁵ The manned submarine had sophisticated equipment, including a lateral sonar, subsoil profiler, magnetometer, underwater television, a CTFM sonar, and also had windows for visual observation.³⁶ On 10 December 1981, the submarine identified a major target, which superficially appeared to be a natural rock formation.³⁷ Further investigation of its magnetic field, sedimentation patterns and other features, revealed that it was not a natural phenomenon.³⁸ Carbon dating of wood samples from the seabed within 50 to 100 meters of the target revealed that the samples were around 300 years old.³⁹ Moreover, measurements of the target indicated that it was a thousand-ton ship.⁴⁰ Accordingly, sonar recordings, magnetometer readings, visual observation, and videotapes of the wreck, all confirmed that GMC had located the San José.
19. On 18 March 1982, after a two-year search costing many millions of dollars,⁴¹ GMC reported the discovery of the shipwreck and its corresponding location to DIMAR in the “Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia” (the “**1982 Report**”).⁴² GMC reported that:

³⁵ See **Exhibit C-0010**, Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982, pp. 2-4.

³⁶ See **Exhibit C-0010**, Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982, p. 5.

³⁷ See **Exhibit C-0010**, Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982, p. 10.

³⁸ See **Exhibit C-0010**, Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982, p. 11.

³⁹ See **Exhibit C-0010**, Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982, pp. 11, 23-24.

⁴⁰ See **Exhibit C-0009**, Letter from Dr. Eugene Lyon to The Stearns Company, 11 February 1982 (“*Mike Costin has now reported that more precise measurements of the target mound have yielded an estimated size of 143.5’ by 35’. This corresponds with the size of a thousand-ton ship.*”)

⁴¹ By this time, GMC had spent over USD 6 million to support the search operation. See **Exhibit C-0010**, Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982, p. 11.

⁴² See **Exhibit C-0010**, Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982. The 1982 Report was later corroborated by the Colombian National Navy on two separate occasions: on 31 October 1983 and 29 September 1988. See **Exhibit C-0023**, Report by the Inspector on board the Heather Express to the Admiral Maritime and Port Director, 29

[T]here are several large and small targets of unknown composition in an area of just one mile per half mile. The main targets, in bulk and interest are slightly west of the 76th meridian and are just centered around the target “A” and its attendant parts **are located in the immediate vicinity of 76 degrees 00'20"W, 10 degrees 10'19"N.**⁴³

20. On 3 June 1982, DIMAR recognized GMC “as claimant of the treasures or shipwreck referred to in the” 1982 Report.⁴⁴ Colombian authorities internally acknowledged GMC’s rights to the shipwreck and its recovery under Colombian law. On 18 July 1982, the Commander of the National Navy wrote to the Legal Counsel to the President, and concluded, citing a legal opinion from DIMAR, that GMC, as “the discoverer[,] was entitled to one-half [of the treasure] and owner [Colombia] the other half, in light of Articles 701 and 703.”⁴⁵

B. GMC Assigns Its Rights To SSA Cayman, Which Pursues Negotiations With Colombia For A Salvage Contract

21. As the reporter of the shipwreck, GMC sought to negotiate a salvage contract, to which DIMAR had indicated GMC would have “*preferential*” access.⁴⁶ Accordingly, on 7 March 1983, Colombia provided GMC with a draft of the salvage contract to recover what GMC

September 1988, pdf pp. 4 (“[W]e were able to take out a piece of wood that was around the area; this wood shows a long time of permanence in the ocean. . .”); 20 (“An **object was found that, due to its shape, simulates the appearance of a canyon**, which is completely covered in coral and when hit by the R.O.V. we noted that it is from a constitution - solid.”) (Translation is our own) (Emphasis added); **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, pp. 164-166 (“In the first of such reports, additionally, it was expressed: that ‘The samples of wood found and coral with metal remains . . . indicate that under the thick layer of coral of the main target, there is indeed a possible shipwreck’; that ‘It was inspected and filmed with a T.V. camera. color the Galleon throughout, . . .’; that with the help of the ‘WASP’ they ‘reached the bottom at the height of the mid-cover’ and ‘**the Galleon was verified in its entire length... which is over 100’ long, there are sediments throughout the upper flat part. The stern is well defined, clearly square or rectangular, it takes time to go through it**’; that ‘some metallic samples’ were collected, as well as ‘wood’, among them two of ‘dark brown color, the largest could be the work of man’; that ‘definitely remains of wood and metal’ were found, establishing on the former that ‘it is noticeable that it is worked by man’ and on the latter that ‘When carefully inspecting some of the recovered coral stones, it was found that two of these contain pieces of metal’; and that ‘The possible canyon is located’, without achieving its effective recovery due to technical problems.”) (Translation is our own) (Emphasis added).

⁴³ **Exhibit C-0010**, Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982, pp. 12-13. (Translation is our own) (Emphasis added).

⁴⁴ **Exhibit C-0013**, DIMAR Resolution No. 0354, 3 June 1982, art. 1. (Translation is our own).

⁴⁵ **Exhibit C-0015**, Letter No. 04264/CORAC from the Colombian National Navy to the Legal Advisor to the President, 18 July 1982, p. 2. (Translation is our own).

⁴⁶ **Exhibit C-0003**, DIMAR Letter No. 00854, 20 March 1980. (Translation is our own).

had found within the coordinates of the 1982 Report,⁴⁷ anticipating a 50/50 division of the salvaged goods pursuant to Colombian law.⁴⁸

22. Shortly thereafter, GMC assigned its search and salvage rights, as granted by Resolution No. 0048, to SSA Cayman, an affiliated company, which DIMAR recognized through another resolution on 24 March 1983.⁴⁹ SSA Cayman took over negotiations of the salvage contract with Colombia, which continued through 1983 on the basis that SSA Cayman would receive 50% of the salvaged goods.
23. However, while Colombia was purporting to negotiate the salvage contract with SSA Cayman, it was also seeking to modify the domestic legal landscape relating to shipwreck treasure to attempt to diminish the value of the finder's interest. In 1984, Colombia issued Presidential Decree No. 2324,⁵⁰ purporting to, *inter alia*, (i) reduce the percentage share of treasure that the finder of a shipwreck would receive from 50% of the treasure itself to 5% of the gross value of whatever was salvaged;⁵¹ and (ii) eliminate any preferential rights to a salvage contract to discoverers with exploration authorization.⁵²

⁴⁷ See **Exhibit C-0016**, Draft Salvage Contract from Colombia to GMC, 7 March 1983, art. 1 (“*It is the object of this contract to advance the activities conducive to the recovery of salvage of all types of property of economic, historic, cultural, or scientific value which is found within the zone cited in No. 4 above [the 1982 Report] . . .*”) (Translation is our own).

⁴⁸ See **Exhibit C-0016**, Draft Salvage Contract from Colombia to GMC, 7 March 1983, art. 9 (“*The rescued species once appraised will be distributed in proportions of 50% for the Contractor and 50% for the Nation. This distribution must be effectuated at the latest every 15 days and the corresponding partial delivery will be made to the Contractor as it is provided for in the previous clause. The Council of Ministers will decide the distribution and delivery of the species which belong to the Nation.*”) (Translation is our own).

⁴⁹ See **Exhibit C-0017**, DIMAR Resolution No. 204, 24 March 1983.

⁵⁰ See **Exhibit C-0018**, Presidential Decree No. 2324, 18 September 1984.

⁵¹ See **Exhibit C-0018**, Presidential Decree No. 2324, 18 September 1984, art. 191 (“*When it has been recognized as a complainant of such a finding, subject to current legal regulations, it will be entitled to a participation of five percent (5%) of the gross value of what is later rescued in the coordinates.*”) (Translation is our own).

⁵² See **Exhibit C-0018**, Presidential Decree No. 2324, 18 September 1984, art. 193 (“*The Nation, previous initial evaluation of the finding, will decide the way to advance the historical and archaeological study of the site and to carry out the rescue or recovery. If it decides to hire, it will enter into a contract for the recovery of historical and archaeological values subject to the provisions of Decree 222 of 1983 and provisions that modify or replace it, with the following exceptions that arise from the nature of the contract: there will be no place for bidding, nor will registration be required budget, nor the clause on subjection of payments to budget appropriations.*”) (Translation is our own).

24. As these legislative changes could not retroactively impact SSA Cayman's rights, DIMAR did not invoke them in negotiations. Rather, on 2 November 1984, DIMAR offered to divide the salvaged treasure on a sliding scale that ran as low as 20% and as high as 50% for SSA Cayman based on the value of what was salvaged.⁵³ Even though it was entitled to 50% of the salvaged value under law applicable to it, on 9 November 1984, SSA Cayman indicated that it would agree to DIMAR's terms and asked DIMAR to send the final draft of the salvage contract.⁵⁴ DIMAR, however, failed to respond to SSA Cayman's acceptance of the salvage contract terms, despite multiple follow-up letters.
25. In the following years, SSA Cayman continued to attempt to negotiate, in good faith, a salvage contract with DIMAR. However, DIMAR rebuffed SSA Cayman's efforts and refused to engage in any further negotiations with the company. While Colombia never gave any reasons for suddenly giving SSA Cayman the cold shoulder, press reports indicated that Colombia was pursuing an agreement with the Government of Sweden to search for and recover the San José, but this deal fell apart after accusations of corruption and corporate piracy against Colombian and Swedish government officials involved in the scheme.⁵⁵

C. The Colombian Courts Confirm SSA Cayman's Rights To Half Of The Treasure

26. Given Colombia's refusal to honor SSA Cayman's rights, through the 1980s and the 1990s, SSA Cayman and its lawyers pursued its rights in Colombian courts. *First*, SSA Cayman's counsel sought to invalidate the sections of Presidential Decree No. 2324 of 18 September 1984, which purported to reduce a treasure discoverer's ownership stake to 5%, before the

⁵³ See **Exhibit C-0019**, Letter No. 3315 from DIMAR to Sea Search Armada, 2 November 1984, point 1 (“*The percentages of participation of the Colombian Government and the company who will make the salvage will obey the following table. Until 100 million dollars, 50% for the Nation and 50% for the contractor. Between 100 and 200 million dollars, 65% for the Nation and 35% for the contractor. Between 200 and 300 million dollars, 70% for the Nation and 30% for the contractor. Between 300 and 400 million dollars, 75% for the Nation and 25% for the contractor. Beyond 400 million dollars the participation will be constant at 80% for the Nation and 20% for the contractor.*”) (Translation is our own).

⁵⁴ See **Exhibit C-0020**, Letter from Sea Search Armada to DIMAR, 9 November 1984.

⁵⁵ See **Exhibit C-0021**, Michael Molinski, *Battle for Spanish Treasure Ship*, UNITED PRESS INTERNATIONAL, 3 August 1988; **Exhibit C-0022**, *The Retrieval of the Galleon San Jose – A Scandal Is Foreseen Among High Officials*, EL SIGLO, 24 August 1988.

Constitutional Court of Colombia (“**Constitutional Court**”), the final appellate court for matters involving interpretation of the Colombian Constitution with the power to determine the constitutionality of laws, acts, and statutes.⁵⁶ **Second**, SSA Cayman filed a lawsuit before the 10th Civil Court of the Circuit of Barranquilla (“**Civil Court**”), asking the court to confirm SSA Cayman’s right to 50% of any treasure it had discovered and reported in Colombia’s territorial waters.⁵⁷

27. SSA Cayman’s first action was successful when on 10 March 1994, the Constitutional Court ruled that Presidential Decree No. 2324 of 1984 violated the Colombian Constitution by purporting to amend the law in an unauthorized manner.⁵⁸ Accordingly, the Constitutional Court declared the relevant articles of Presidential Decree No. 2324 unconstitutional and without effect, invalidating Colombia’s attempt to modify the apportionment regime from 50/50 to 95/5.⁵⁹
28. SSA Cayman’s second action to declare its right to 50% of the treasure it had discovered was also successful. On 6 July 1994, the Civil Court hearing SSA Cayman’s claims found that the “*goods of economic, historic, cultural and scientific value that qualify as treasures,*

⁵⁶ See **Exhibit C-0024**, Colombian Constitutional Court, Case File No. D-379, Judgment No. C-102/94, 10 March 1994, pdf p. 2 (“*The citizen DANILO DEVIS PEREIRA, in exercise of the public action of unconstitutionality, requests the Court to declare unenforceable some sections of articles 188 and 191 of decree 2324 of 1984. . .*”) (Translation is our own).

⁵⁷ See **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, p. 1 (“*The plaintiff company requested to declare that it owned, in their entirety, ‘the goods of economic, historical, cultural or scientific value that have the quality of treasures’, that would be found in ‘the Colombian continental shelf or in its exclusive economic zone’, or ‘in common and undivided’ with the Nation, 50% for each, if they were found ‘in the Colombian territorial sea’, ‘within the coordinates and surrounding areas... referred to in the ‘Confidential Report on Submarine Exploration’. . .*”) (Translation is our own).

⁵⁸ See **Exhibit C-0024**, Colombian Constitutional Court, Case File No. D-379, Judgment No. C-102/94, 10 March 1994, pdf. pp. 16-17 (“*the Constitutional Court. . . will proceed to remove from the legal system, for exceeding the material limit set forth in the enabling law (19 of 1983), not only the accused sections of articles 188 and 191 of decree 2324 of 1984, but also the rest of the legal provisions of which they are a part, as they are covered by the same defect of unenforceability. Before concluding, the Court considers it convenient to note that. . . the violation of the Constitution that has been demonstrated here, related to the lack of competence on the part of the President of the Republic to issue said legal precepts, cannot be remedied by the ordinary legislator, even if he is the body that confers the powers.*”) (Translation is our own).

⁵⁹ See **Exhibit C-0024**, Colombian Constitutional Court, Case File No. D-379, Judgment No. C-102/94, 10 March 1994, pdf p. 17 (“*Declare INAPPLICABLE in their entirety the articles 188 and 191 of Decree 2324 of 1984, for exceeding the material limit set forth in the law of legislative authorization (19 of 1983). . .*”) (Translation is our own).

*found within the coordinates and surrounding areas referred to in the [1982 Report]” belonged to Colombia and SSA Cayman “in equal parts (50%). . .”.*⁶⁰ The Civil Court confirmed that SSA Cayman’s rights extended to not just the precise coordinates in the 1982 Report but also to their “*surrounding areas*” that belonged to “*the territorial sea, the continental platform, or the exclusive economic area of Colombia. . .*”.⁶¹

29. Based on this judgment, and to preserve and protect its rights, SSA Cayman sought (and was granted) an embargo on 12 October 1994 over the shipwreck’s treasure, estopping Colombia from taking any measures to claim the treasure and authorizing SSA Cayman to take hold of the treasure.⁶² The embargo was lifted on 31 October 2017 but was reinstated thereafter (on 29 March 2019) and remains in force to this day.⁶³
30. In the meantime, Colombia challenged the Civil Court’s decision, which was affirmed by the Superior Court of the Judicial District of Barranquilla on 7 March 1997.⁶⁴ Colombia then challenged the decision to the Supreme Court.
31. On 5 July 2007, the Supreme Court recognized that SSA Cayman was entitled to 50% of the treasure it had discovered (the “**2007 Supreme Court Decision**”). Rejecting the majority of Colombia’s arguments, the Supreme Court made a number of findings affirming SSA Cayman’s rights to its discovery.

⁶⁰ **Exhibit C-0025**, 10th Civil Court of the Circuit of Barranquilla, Judgment, 6 July 1994, pdf p. 33 (Translation is our own).

⁶¹ **Exhibit C-0025**, 10th Civil Court of the Circuit of Barranquilla, Judgment, 6 July 1994, pdf p. 33 (Translation is our own).

⁶² See **Exhibit C-0026**, 10th Civil Court of the Circuit of Barranquilla, Judgment, 12 October 1994, pdf p. 5 (“4.) Order the embargo of goods that qualify as treasure that are recovered o extracted from the area determined by the coordinates indicated in the [1982 Report]. . .”) (Translation is our own).

⁶³ See **Exhibit C-0039**, Superior Court of the Judicial District of Barranquilla, Judgment, 29 March 2019, p. 7 (“Revoke the order dated October 31, 2017 issued by the Third Civil Court of the Circuit of Barranquilla. . . [and] maintain the interim measure of embargo decreed by order of October 12, 1994.”) (Translation is our own).

⁶⁴ See **Exhibit C-0027**, Superior Court of the Judicial District of Barranquilla, Case File No. 20.166, Judgment, 7 March 1997, p. 64 (“2nd.) Confirm, in its entirety, the judgment dated twelve (12) of October of nineteen ninety four (1.994). . . 3rd.) Confirm, in its entirety, the judgment dated six (6) of July of nineteen hundred and ninety-four (1994). . .”) (Translation is our own).

32. **First**, the Supreme Court found that GMC had validly assigned its rights to explore, discover and partake in the discovered treasure to SSA Cayman. The Supreme Court noted that DIMAR itself had authorized the assignment of rights from GMC to SSA Cayman and therefore could not now ignore that assignment.⁶⁵
33. **Second**, the Supreme Court affirmed that the mere act of discovery vested SSA Cayman's rights to the treasure under extant Colombian law, and that SSA Cayman did not need a salvage contract to claim rights to the treasure it had discovered.⁶⁶ The Supreme Court concluded that SSA Cayman's rights had vested in the shipwreck with DIMAR Resolution No. 0354, which had recognized the discovery by GMC (SSA Cayman's legal predecessor).⁶⁷
34. **Third**, the Supreme Court rejected Colombia's argument that the treasure had not been located by GMC, again giving DIMAR's Resolution No. 0354 full effect. The Supreme Court noted that Resolution No. 0354 expressly recognized GMC as a reporter of a treasure

⁶⁵ See **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, pp. 65 (“Consequently, if the assignment made by the Glocca Morra Company to the Sea Search Armada, after reporting the treasure, is related to the real rights that may correspond to the former on the occasion of that discovery, subject to the provisions in articles 700 and 701 of the Civil Code. . .it is evident that there was no place to apply the provisions that concern the assignment of rights, even less if, as was indicated, DIMAR authorized the assignment in question through Resolution No. 204 of March 24, 1983, extensive to ‘all rights, privileges and obligations’ that had been recognized to the former ‘as reporter of treasures or shipwrecked species’.”), 69 (“the declaration of ownership requested or claimed was based on DIMAR Resolution No. 0354 of June 3, 1982. . .the mistake, if it existed, would not be in the contested judgment, but in the aforementioned Resolution, which the Court could not ignore, like this Corporation, by virtue of the presumption of legality and correctness that protects it.”) (Translation is our own).

⁶⁶ See **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, pp. 157 (“It is clear, therefore, that the right to a treasure is acquired by its discovery, lato sensu, and not by its material or physical apprehension (corpus), a concept that also includes reporting its location. . .”), 184 (“if the legislator allows the search for treasures on someone else's property and, in the case of those located at the bottom of the sea, makes their rescue subject to the prior execution of a contract. . .it is obvious that the property right over the treasure, both for it and for the owner, surfaces from the moment of discovery.”) (Translation is our own).

⁶⁷ See **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, p. 182 (“Deriving the right of ownership claimed by the plaintiff, from the very fact of the discovery of the assets that are the subject of this judicial controversy, insofar as they -of course- correspond to a treasure, a circumstance guaranteed in the legal sphere with the recognition that in this sense was made by the General Maritime and Port Directorate, according to Resolution 0354 of June 3, 1982. . .”) (Translation is our own).

in the location defined by the 1982 Report, which estopped Colombia from claiming that the location was unknown.⁶⁸

35. **Fourth**, the Supreme Court rejected Colombia's argument that the shipwreck did not qualify as "treasure" under Colombian law. It conducted an extensive historical and comparative analysis of the term "treasure" in Colombian law and noted that, as reported, the shipwreck constituted "treasure" under the meaning of Article 701 of the Colombian Civil Code because it was (i) manmade;⁶⁹ (ii) buried or lost for a long time;⁷⁰ and (iii) the owner was not known or could not be found at the time of the discovery.⁷¹ In assessing the third factor, the Supreme Court rejected arguments by Colombia that it was known, at the time of the discovery, that the shipwreck was owned by Colombia or, in the alternative, by Spain.⁷²

⁶⁸ See **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, p. 70 ("as in Resolution 0148 of March 10, 1982, it was provided that 'The concessionaire company is obliged to report the discoveries of treasures or antiquities that it makes indicating the exact position where they are found'. . . it should be understood that for the acknowledgment contained in. . . Resolution 0354 of June 3 of the same year, DIMAR met this requirement and that, for the same reason, this last act of the entity allows us to infer that the existence of the discovery was accredited in the precise coordinates that were provided."). (Translation is our own).

⁶⁹ See **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, pp. 89 ("Firstly, it must be movable things that have a value and are the product of human work or task, that is, that having been forged by man, have some economic significance in themselves considered, well, precious. . ."), 91 ("It is also important to highlight that the goods that constitute a treasure. . . must be the product of a human work, that is sons of man, that is, that their hand is reflected in them, in one way or another, as a bonus.") (Translation is our own).

⁷⁰ See **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, p. 97 ("Secondly, those assets, thus understood, must have been buried or hidden for a long time. In the words of Don Andrés Bello, they must have been 'buried since time immemorial and found... without the help of magic'."). (Translation is our own).

⁷¹ See **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, p. 107 ("Thirdly, in order to properly speak of a treasure, it is essential that there be no memory or indication of its owner."). (Translation is our own).

⁷² See **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, pp. 169-171 ("To affirm that by virtue of eminent domain, all the precious effects buried or hidden prior to the independence process, in the then Viceroyalty of New Granada, belong to the Colombian Nation. . . would imply affirming that, in Colombia, by itself, there cannot be treasures that have been "deposited" before independence, which conflicts with praxis, with legal reality. To the foregoing, it is added that this particular accusation has as its starting point that the assets discovered were the property of the Spanish Crown, a fact that was neither affirmed by the Court, nor does it appear accredited in the process. . . And this is of paramount importance because if the charges in cassation -not in the judgment carried out by the first and second degree judges- are outlined by direct means, then it is not possible to disagree with the vision that the judge had about the facts. . . In any case, it should be noted that the censorship does not explain why the aforementioned assets were really and effectively owned by the Spanish Crown, because

36. The Supreme Court upheld the Constitutional Court’s holding that “*not every sunken good is part of the national heritage, because it must be of historical or archaeological value to justify its incorporation into said heritage.*”⁷³ Colombia had argued that the Supreme Court should apply Law No. 397 of 1997 to the case,⁷⁴ which calls for the Ministry of Culture “*to carry out the corresponding evaluation*” to determine if a shipwreck has “*historical or archaeological value*” following which the Ministry of Culture, DIMAR and the Ministry of Defense must jointly authorize any third party seeking to search for a shipwreck under national waters.⁷⁵ The seeker is then entitled to “*a percentage of the gross value of the shipwreck’ . . .*”⁷⁶
37. This process did not take place in the 1980s, as the law in question was not even written at the time. Thus, noting that retroactive application of any law was not permissible,⁷⁷ the Supreme Court clarified that Law No. 397 of 1997 was “*not applicable*” to the dispute before it, which predated the law.⁷⁸ This was consistent with the fact that no Colombian agency or entity had characterized the discovery as protected national heritage despite its

although such a statement is made in it, no support was offered to it, leaving it deprived of all support. . .”) (Translation is our own).

- ⁷³ **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, p. 230 (Translation is our own).
- ⁷⁴ See **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, p. 79 (“*The Office of the Attorney General of the Nation accused the sentence for having directly violated. . . Law 397 of 1997.*”) (Translation is our own).
- ⁷⁵ **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, pp. 145-146 (Translation is our own).
- ⁷⁶ **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, p. 146 (Translation is our own).
- ⁷⁷ See **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, p. 178 (“*if the discoverer of a treasure on someone else’s property, acquires 50% of the property right from the very moment of discovery (year 1982), it is clear that subsequent regulations cannot disregard that right, already acquired, or, if preferred, that consolidated legal situation.*”) (Translation is our own).
- ⁷⁸ **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, pp. 127-128 (“*Without missing the fact that law 397 of 1997 ‘which elaborates on articles 70, 71 and 72 and other related articles in the Political Constitution, and dictates norms on the cultural heritage, promotion and stimulus to culture, and creates the Ministry of Culture, and some offices are moved’ is not applicable to decide the case which is matter of the controversy. . . since the facts that have generated the judicial debate are previous to its issuance and effect. . .*”) (Translation is our own).

contents being well documented.⁷⁹ Indeed, what was known about the shipwreck's contents indicated that it could not be entirely cultural patrimony as it included items such as gold coins and jewels, which under Colombian law, could not be characterized as items of cultural heritage past their first copy. Accordingly, the Supreme Court recognized that SSA Cayman was not required to follow the procedure set forth by Law No. 397 of 1997.

38. Taking into account all of the factors mentioned above, the net effect of the 2007 Supreme Court Decision was to confirm that SSA Cayman had rights to 50% of its discovery as reported in the 1982 Report.

D. Colombia Fails To Enforce Claimant's Rights Under The 2007 Supreme Court Decision

39. With its rights recently confirmed by the 2007 Supreme Court Decision, SSA Cayman reinitiated discussions with Colombia to salvage the shipwreck, though it had limited success.

40. On 18 November 2008, the Claimant, SSA, a U.S. registered company, acquired all of SSA Cayman's assets and liabilities.⁸⁰ SSA was therefore now the owner of rights to 50% of the discovered treasure. SSA accordingly took over and resumed discussions with the Colombian authorities to recover the shipwreck in accordance with its rights as recently recognized by the Supreme Court.

41. For the next three years, SSA continued to attempt to negotiate with Colombia.⁸¹ However, its efforts were met with continued resistance from the Colombian government, leading SSA to seek relief before various fora, including the U.S. District Court in Washington, D.C., and the Inter American Commission on Human Rights ("IACHR").

42. On 20 November 2014, while the U.S. court and IACHR proceedings were ongoing, SSA attempted, once again, to reinitiate discussions with the Colombian government. On 22

⁷⁹ See *supra* ¶ 5; see *infra* ¶ 76.

⁸⁰ See **Exhibit C-0030**, Asset Purchase Agreement between Armada Company and Sea Search-Armada, LLC, 18 November 2008.

⁸¹ See, e.g., **Exhibit C-0031**, Letter from SSA to the President of Colombia, 31 March 2011.

December 2014, the Minister of Culture confirmed Colombia's intent to negotiate a mutually beneficial solution, but stated that it would only do so if SSA withdrew its lawsuits.⁸² Determined to find an amicable resolution to these longstanding proceedings, SSA accepted the Ministry of Culture's conditions and permanently withdrew both the U.S. case and the IACHR petition.⁸³

43. Accordingly, on 19 May 2015, the Minister of Culture met with SSA representatives where the Parties discussed the coordinates and surrounding areas reported by SSA in the 1982 Report.⁸⁴ Following the meeting, SSA sent the Minister of Culture a report summarizing their position on the matter.⁸⁵
44. Two months later, however, in July 2015, SSA discovered that Colombia had secretly contracted with another foreign company to conduct an oceanographic survey to confirm the location of the San José.⁸⁶ SSA reminded Colombia that its actions violated the embargo order still in place enjoining Colombia from removing or claiming rights to the treasure without acknowledging SSA Cayman's rights.

⁸² See **Exhibit C-0032**, Letter from the Minister of Culture to SSA, 22 December 2014. The Minister of Culture also emphasized that the mere suspension of the proceedings would be insufficient, and that only the termination of proceedings would be deemed acceptable.

⁸³ See **Exhibit C-0033**, Letter from SSA to the Minister of Culture, 19 January 2015 (“*As it is about putting an end to a quarter of a century of judicial procedures and through dialogue agree on the application or realization of the decision that resolved the dispute. . .Sea Search Armada agrees to withdraw from the processes that are in progress before the Court of the District of Columbia and the Inter-American Commission on Human Rights, so that according to your position, with the termination of these proceedings, the aforementioned dialogues begin.*”) (Translation is our own); **Exhibit C-0034**, Letter from SSA to the President of Colombia, 20 January 2015.

⁸⁴ See **Exhibit C-0035**, Letter from SSA to the Minister of Culture, 20 May 2015 (“*According to what was said yesterday at your office. . .*”) (Translation is our own).

⁸⁵ See **Exhibit C-0035**, Letter from SSA to the Minister of Culture, 20 May 2015.

⁸⁶ See **Exhibit C-0036**, Ministry of Culture Resolution No. 1456, 26 May 2015, art. 1 (“*APPROVE the pre-feasibility and AUTHORIZE Maritime Archaeology Consultants Limited - MAC- the exploration in Colombian maritime waters to identify contexts likely to contain submerged cultural heritage under the parameters established in the present resolution.*”) (Translation is our own). See also **Exhibit C-0043**, Ministry of Culture Resolution No. 0113, 4 March 2022 (“*WHEREAS. . . That on 29 January 2015, the Ministry of Culture received an offer from MARITIME ARCHEOLOGY CONSULTANTS LIMITED -MAC-. . . to execute the activities made reference to in article 4 of Law 1675 of 2013 in the development of a project of submerged cultural patrimony named the “San José”. . . That through Resolution No. 1456 of 26 May 2015, the Ministry of Culture approved the prefeasibility presented by the Originator and authorized MARITIME ARCHEOLOGY CONSULTANTS LIMITED -MAC- to explore the Colombian maritime waters to identify areas susceptible to having submerged cultural patrimony.*”) (Translation is our own).

45. On 27 November 2015, this third party allegedly discovered a shipwreck and, on 5 December 2015, Colombia issued a press release announcing the alleged discovery of the San José.⁸⁷ SSA asked Colombia to take it to the site of its purported find to confirm whether the shipwreck Colombia had allegedly discovered was outside of the maritime areas reported in the 1982 Report.⁸⁸ Colombia, however, refused to disclose the coordinates of its 2015 find.⁸⁹ Colombia insisted that SSA’s discovery was limited only to treasure located at the exact coordinates mentioned in the 2007 Supreme Court Decision, ignoring the obvious fact that the remains of a 300-year-old, thousand-ton shipwreck would be scattered over a large surface area, and the Colombian courts’ recognition of SSA’s rights to not just the specific point identified in the 1982 Report, but to its surrounding areas.⁹⁰ The Supreme Court left untouched the Civil Court’s finding that SSA had rights to treasures “*found within the coordinates and the surrounding areas referred to in the*” 1982 Report.⁹¹

⁸⁷ See **Exhibit C-0037**, Statement from President Santos on the discovery of the San José Galleon, 5 December 2015 (“*At dawn on the past Friday, November 27. . .the Colombian Institute of Anthropology and History, with the help of the National Navy and international scientists, found in the vicinity of the Colombian Caribbean Coast, an archaeological site that corresponds to the Captain Ship Galleon San José.*”) (Translation is our own).

⁸⁸ See **Exhibit C-0038**, Letter from SSA to the President of Colombia, 10 December 2015 (“*In order to determine whether the discovery of the San José galleon. . .occurred in a maritime area other than the one denounced on March 18, 1982, and recognized by. . .resolution 0354 of June 3, 1982, I respectfully state that Sea Search Armada (SSA) is at your disposal for its representatives to be transferred to the site of the discovery announced on November 5, in order to verify two things: 1) if it is of that galleon; and 2) if the shipwreck is outside the maritime areas indicated as its location in the [1982 Report]. . .*”) (Translation is our own).

⁸⁹ It limited itself to stating that the coordinates reported by SSA in the 1982 Report were not the same as those reported in 2015. See **Exhibit C-0040**, Letter from the Vice-President of Colombia to SSA, 17 June 2019 (“*The General Maritime Directorate indicated that: ‘The coordinates reported in 1982 by the company Glocca Morra Company. . .delivered in the [1982 Report]. . .do not correspond to the same coordinates reported in 2015 by Maritime Archeology Consultants Switzerland.’*”) (Translation is our own).

⁹⁰ See **Exhibit C-0010**, Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982, pp. 12-13 (“*there are several large and small targets of unknown composition in an area of just one mile per half mile. The main targets, in bulk and interest are slightly west of the 76th meridian and are just centered around the target “A” and its attendant parts that are located in the immediate vicinity of 76 degrees 00’20”W, 10 degrees 10’19”N.*”) (Emphasis added).

⁹¹ **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, p. 7 (Emphasis added). See also **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, p. 235 (“***THIRD***: *Notwithstanding the determinations adopted in the two previous points, CONFIRM the rest and pertinent, the aforementioned judgment of first instance.*”) (Translation is our own).

46. On 17 June 2019, Colombia’s then-Vice-President wrote to SSA indicating that: (i) according to the 2007 Supreme Court Decision, SSA only had rights to the treasures found in the specific coordinates reported in the 1982 Report, rather than within the vicinity or surrounding areas of the coordinates; (ii) Colombia had conducted the site verification requested by SSA in 1993 and concluded that there was no shipwreck at the specific coordinates disclosed in the 1982 Report; and (iii) the coordinates where the San José was found did not correspond or overlap with those reported in the 1982 Report.⁹²
47. On 12 July 2019, SSA responded and explained that the 2007 Supreme Court Decision affirmed SSA’s rights not only to treasure found at those specific coordinates, but also to their vicinity or surrounding areas.⁹³ Neither the Vice-President nor any other government official responded to SSA’s July 2019 letter.

E. Colombia’s Ministry Of Culture Issues Resolution No. 0085 And Its Agent Informs SSA That It Has No Ownership Rights

48. While Colombia was continuing to obfuscate SSA’s attempts to enforce its rights following the 2007 Supreme Court Decision, not once had Colombia called into question that SSA was entitled to 50% of the shipwreck reported in the 1982 Report. Rather, Colombia was attempting to evade its obligations to SSA by disputing the location of the shipwreck. Having had its bluff called on trying to impugn whether GMC indeed found the shipwreck, Colombia came up with a different strategy to expunge SSA’s rights.
49. On 23 January 2020, the Ministry of Culture issued Resolution No. 0085, declaring that the entirety of the San José was an “*Asset of National Cultural Interest*.”⁹⁴ In a transparent bid to manipulate the 2007 Supreme Court Decision to its advantage, Colombia now attempted to recharacterize GMC’s discovery as “*cultural heritage*”, which the Supreme Court had

⁹² See **Exhibit C-0040**, Letter from Vice-President of Colombia to SSA, 17 June 2019.

⁹³ Moreover, SSA explained that Colombia’s alleged verification expedition was fatally flawed for several reasons: (i) it excluded observers from SSA; (ii) it was conducted only at the “specific coordinates” and not in the surrounding area; and (iii) the person who Colombia hired to conduct the mission, Mr. Thomas Thompson, was later convicted in the United States of crimes committed in relation to a different shipwreck. See **Exhibit C-0041**, Letter from SSA to the Vice-President of Colombia, 12 July 2019.

⁹⁴ **Exhibit C-0042**, Ministry of Culture Resolution No. 0085, 23 January 2020, art. 1 (“*Declare the San José Galleon Wreck as an Asset of National Cultural Interest*.”) (Translation is our own).

noted was distinct from “*treasure*” and not subject to 50/50 apportionment.⁹⁵ By retroactively declaring the entirety of the San José shipwreck an “*Asset of National Cultural Interest*”, Colombia eviscerated the entirety of the value of SSA’s legal rights.

50. Alarmed by Colombia’s actions, SSA sought additional discussions with Colombia, where Colombia was represented by the Director General, Dr. Camilo Gómez, of Colombia’s legal representatives (*Agencia Nacional de Defensa Jurídica del Estado* or “**ANDJE**”). During a meeting at the Colombian Embassy in Washington, D.C. on 13 October 2021, SSA requested that it be allowed to return to Colombia to salvage the discovery it had made in 1982. It even offered to transfer its ownership rights to Colombia at a reduced value, but Dr. Gómez rejected these proposals and asserted that SSA’s ownership rights were worthless in light of Resolution No. 0085.

51. At a follow up meeting on 24 June 2022, Dr. Gómez stated that Colombia was not willing to recognize SSA’s rights to the San José or even pay any of SSA’s expenses. Dr. Gómez asserted that, in May 2022, Colombia had conducted an additional search at the precise coordinates reported in the 1982 Report and had not identified any shipwreck there. This new search was conducted without the participation of, or notice to, SSA, in violation of the embargo preventing Colombia from taking measures to acquire SSA’s discovery without SSA’s participation or approval.⁹⁶

52. As previously discussed, the 2007 Supreme Court Decision confirmed that SSA has a 50% legal ownership right to any shipwreck treasure found in the area specified in the 1982 Report.⁹⁷ Since 1982, SSA has continuously attempted to negotiate a joint plan with Colombia to recover the treasure and to determine authoritatively its status as the shipwreck of the San José. After stringing Claimant along for over 40 years, Colombia expropriated Claimant’s investment by declaring the entirety of the San José an “*Asset of National*

⁹⁵ See **Exhibit C-0028**, Colombian Supreme Court of Justice, Case File No. 08001-3103-010-1989-09134-01, Judgment, 5 July 2007, pp. 234-235 (“*The property recognized therein, in equal parts, for the Nation and the plaintiff, refers solely and exclusively to assets that, on the one hand, due to their own characteristics and features, in accordance with the circumstances and the guidelines indicated in this ruling, may legally qualify as treasure. . .that is, to those that are in the [1982 Report]. . .*”) (Translation is our own).

⁹⁶ See *supra* ¶¶ 5, 29.

⁹⁷ See *supra* ¶¶ 31-38.

Cultural Interest.”⁹⁸ As such, Resolution No. 0085 has definitively deprived SSA of the value of, and rights to, its investment.

F. SSA Issues Notice Of Intent And Attempts To Amicably Settle The Dispute

53. In light of Resolution No. 0085, on 17 September 2022, SSA submitted a notice of its intent to submit a claim to arbitration pursuant to Article 10.16(2) of the TPA (“**Notice of Intent**”).⁹⁹

54. On 26 October 2022, Colombia answered the Notice of Intent and offered to discuss the matter.¹⁰⁰ On 14 November 2022, SSA sent a letter to Colombia informing them of a change in legal counsel and sharing their availability to meet to amicably solve the dispute.¹⁰¹

55. On 30 November 2022, counsel for SSA met with the ANDJE to discuss amicable settlement. The discussions with Colombia following the Notice of Intent have not yet produced a resolution, and accordingly Claimant is filing this Notice of Arbitration and Statement of Claim to initiate arbitration proceedings against Colombia.

III. JURISDICTION AND PROCEDURAL REQUIREMENTS

A. SSA Initiates Arbitration Pursuant To Article 3 Of The UNCITRAL Rules

56. As described in this Notice of Arbitration and Statement of Claim, this dispute arises from Colombia’s breaches of its obligations under the TPA with respect to treatment of Claimant’s investment in Colombia. Claimant hereby initiates arbitration of this dispute pursuant to the TPA and in accordance with Article 3 of the UNCITRAL Rules.

⁹⁸ See **Exhibit C-0042**, Ministry of Culture Resolution No. 0085, 23 January 2020, art. 1 (“*Declare the San José Galleon Wreck as an Asset of National Cultural Interest.*”) (Translation is our own).

⁹⁹ See **Exhibit C-0044**, Notice of Intent under the United States-Colombia Trade Promotion Agreement from SSA to Colombia, 17 September 2022.

¹⁰⁰ See **Exhibit C-0045**, Letter from ANDJE to SSA, 26 October 2022.

¹⁰¹ See **Exhibit C-0046**, Letter from SSA to ANDJE, 14 November 2022.

B. The Requirements Of The TPA To Proceed To Arbitration Under The UNCITRAL Rules Have Been Satisfied

1. The Parties Have Consented To Arbitration

57. Colombia has consented to arbitrate this dispute pursuant to the UNCITRAL Rules under Article 10.17(1) of the TPA.¹⁰²

58. SSA consents to arbitrate this dispute pursuant to Article 10.16(4), through the submission of the present Notice of Arbitration and Statement of Claim:

*A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration. . . (c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent. . .*¹⁰³

59. Thus, both Parties have expressly consented to arbitration under the UNCITRAL Rules.

2. SSA Is A Qualifying Investor

60. Article 10.28 of the TPA defines “claimant” and “investor of a Party” as follows:

claimant means an investor of a Party that is a party to an investment dispute with another Party;

...

*investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts through concrete action to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality. . .*¹⁰⁴

61. Article 1.3 of the TPA defines “enterprise” and “enterprise of a Party” as follows:

¹⁰² See **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), art. 10.17(1) (“Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.”).

¹⁰³ **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), art. 10.16(4).

¹⁰⁴ **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), art. 10.28.

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

*enterprise of a Party means an enterprise constituted or organized under the law of a Party. . .*¹⁰⁵

62. SSA is a company organized and existing under the laws of the United States and accordingly is an “*enterprise*” of the United States.¹⁰⁶ As an enterprise, SSA has made an investment in Colombia, as detailed further in the following section. Accordingly, SSA is an “*investor*” under Article 10.28 of the TPA.

3. SSA Has A Covered Investment

63. Article 1.3 of the TPA defines “*covered investment*” as follows:

*covered investment means . . . an investment, as defined in Article 10.28 (Definitions), in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter. . .*¹⁰⁷

64. Article 10.28 of the TPA defines “*investment*” as follows:

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments, and loans;

(d) futures, options, and other derivatives;

¹⁰⁵ **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 1: Initial Provisions and General Definitions, 15 May 2012 (entry into force), art. 1.3.

¹⁰⁶ See **Exhibit C-0029**, Certificate of Formation of Sea Search-Armada, LLC, 1 October 2008.

¹⁰⁷ **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 1: Initial Provisions and General Definitions, 15 May 2012 (entry into force), art. 1.3.

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges. .

¹⁰⁸

65. The definition of investment is broad, as it allows investments that are either “owned” or “controlled” by investors, irrespective of whether they do so “directly” or “indirectly.”

66. SSA “owns” and “controls” “directly”, among others, “licenses, authorizations, permits, and similar rights conferred pursuant to domestic law” which grant SSA the authorization to explore, discover, and acquire rights to discoveries in Colombian waters, including through:

- a. DIMAR Resolution No. 0048 of 29 January 1980 authorizing GMC Inc. to search for shipwrecks (later broadened and extended by DIMAR Resolutions, including Nos. 0066 of 1 February 1981; 0025 of 29 January 1982; 249 of 22 April 1982); and
- b. DIMAR Resolution No. 0354 of 3 June 1982 recognizing GMC as reporter of the shipwrecked treasures and artefacts and acknowledging GMC “as claimant of the treasures or shipwreck. . .”.¹⁰⁹

67. Moreover, the 2007 Supreme Court Decision confirmed the rights granted by these legal instruments.¹¹⁰

¹⁰⁸ **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), art. 10.28.

¹⁰⁹ See *supra* ¶ 20.

¹¹⁰ See *supra* ¶¶ 32-33.

C. Other Procedural Matters

1. Less Than Three Years Have Elapsed Since SSA First Acquired Knowledge Of Colombia's Breach And That SSA Has Incurred Damages

68. SSA has submitted its claim in accordance with all time periods under the TPA.
69. Pursuant to Article 10.18(1) of the TPA, SSA has submitted its claims within three years from the date on which it first acquired knowledge of Colombia's breach and knowledge that it has incurred loss or damage.¹¹¹ SSA first acquired knowledge of Colombia's breach when Colombia's Ministry of Culture issued Resolution No. 0085 on 23 January 2020, which is less than three years ago from the date of this Notice of Arbitration and Statement of Claim.
70. Similarly, pursuant to Articles 10.16(2) and 10.16(3) of the TPA, Claimant has submitted its claims 90 days after delivery of its Notice of Intent, which SSA delivered to Colombia on 17 September 2022, and more the six months after the events giving rise to its claims have elapsed.¹¹²

2. SSA Submits Its Waiver With This Notice

71. Pursuant to Article 10.18(2) of the TPA, SSA submits in writing, as **Annex B** to this Notice of Arbitration and Statement of Claim, its consent and waiver of its right to initiate or continue before any administrative tribunal or court under the law of any Party, or other

¹¹¹ See **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), art. 10.18(1) (“No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for claims brought under Article 10.16.1(b)) has incurred loss or damage.”).

¹¹² See **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), arts. 10.16(2) (“At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration. . .”), 10.16(3) (“Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1. . .”).

dispute settlement procedures, any proceeding with respect to any measure of Colombia that is alleged to constitute a breach referred to in TPA Article 10.16.¹¹³

IV. SUMMARY OF CLAIMS

72. Colombia is responsible for, among other things: **(A)** the unlawful expropriation of Claimant's investment in Colombia in breach of Article 10.7 (Expropriation and Compensation) of the TPA; **(B)** failing to accord SSA fair and equitable treatment and failing to provide full protection and security in breach of Article 10.5 (Minimum Standard of Treatment) of the TPA; and **(C)** breaching its obligation of treatment no less favorable than to its own investors under Article 10.3 (National Treatment) and investors of any other nation under Article 10.4 (Most-Favored-Nation Treatment).

73. Claimant reserves the right to supplement its claims as it continues to investigate the scope of Colombia's wrongdoing.

A. Colombia Has Unlawfully Expropriated SSA's Investment

74. Article 10.7 of the TPA provides in relevant part:

1. No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ('expropriation'), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

*(c) on payment of prompt, adequate, and effective compensation;
and*

(d) in accordance with due process of law and Article 10.5.

¹¹³ See **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), art. 10.18(2) ("No claim may be submitted to arbitration under this Section unless: (a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and (b) the notice of arbitration is accompanied, (i) for claims submitted to arbitration under Article 10.16.1(a), by the claimant's written waiver, and (ii) for claims submitted to arbitration under Article 10.16.1(b), by the claimant's and the enterprise's written waivers of any right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.16.").

2. *The compensation referred to in paragraph 1(c) shall:*

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ('the date of expropriation');

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

*(d) be fully realizable and freely transferable. . .*¹¹⁴

75. Colombia has unlawfully expropriated SSA's investment by issuing Resolution No. 0085 of 2020. By retroactively deeming the San José as "*Asset of National Cultural Interest*", Colombia eviscerated almost the entirety of the value of the SSA's investment. Colombia has taken SSA's ownership rights to 50% of its discovery.¹¹⁵ Thus the value of SSA's investment has been eviscerated, as Colombia's own representative, Dr. Gómez, confirmed when he declared that Resolution No. 0085 had made SSA's ownership rights worthless.¹¹⁶

76. Colombia's expropriation is unlawful as Colombia has refused to pay SSA "*prompt, adequate, and effective compensation*".¹¹⁷ Colombia's expropriation also fails to satisfy the other requirements of Article 10.7:

- a. Colombia did not issue Resolution No. 0085 for a public purpose, but rather to deprive SSA of any means to enforce its rights to 50% of the treasure as confirmed by the 2007 Supreme Court Decision.
- b. Colombia's actions were discriminatory as Colombia has worked with other discovery and salvage firms, refusing to recognize the preferential access it had promised SSA.¹¹⁸

¹¹⁴ See **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), art. 10.7.

¹¹⁵ See *supra* § II.E.

¹¹⁶ See *supra* ¶ 50.

¹¹⁷ See **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), art. 10.7.

¹¹⁸ See *supra* ¶ 51.

- c. Colombia's conduct did not accord SSA adequate due process as Colombia retroactively, and without notice to or consultation with SSA, deemed the San José as an "Asset of National Cultural Interest." At no point, including before granting authorization to GMC to search for the San José, nor after acknowledging that GMC had found a shipwreck, did any Colombian authority claim that GMC's discovery was cultural patrimony or heritage. On the contrary, Colombian authorities consistently acknowledged that GMC was authorized to search for and had found "treasures" in Colombian waters, and negotiated a salvage contract with GMC on this basis.¹¹⁹

77. Accordingly, Colombia has unlawfully expropriated SSA's investment.

B. Colombia Breached Its Obligations To Accord Fair And Equitable Treatment And Full Protection And Security

78. Article 10.5 of the TPA provides:

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of 'fair and equitable treatment' and 'full protection and security' do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) 'fair and equitable treatment' includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) 'full protection and security' requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.¹²⁰

¹¹⁹ See *supra* § II.A.

¹²⁰ See **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), art. 10.5.

79. Annex 10-A of the TPA, in connection to the Minimum Standard of Treatment states:

*The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 10.5 results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.*¹²¹

80. Colombia has breached its obligation to accord SSA FET and FPS. By issuing Resolution No. 0085 and rendering Claimant’s investment worthless, Colombia defied SSA’s legitimate expectation that its 50% ownership right to its discovery would be respected pursuant to DIMAR’s authorizations and subsequent confirmation by the 2007 Supreme Court Decision.¹²² This mutual understanding was affirmed by DIMAR’s legal opinion as conveyed to the Colombian President’s legal counsel.¹²³ Indeed, after DIMAR authorized GMC as the discoverer of the shipwreck, it entered into discussions over a salvage contract with GMC on the basis of a 50/50 apportionment regime.¹²⁴

81. Colombia’s conduct in issuing Resolution No. 0085 was also arbitrary, unreasonable and inconsistent as it contravened Colombia’s position over the last four decades that the shipwreck was “*treasure*” and subject to a 50/50 apportionment with the discoverer.¹²⁵ As discussed above, Colombia also issued Resolution No. 0085 without sufficient due process guarantees and for the purpose of depriving SSA of its rights to its discovery.¹²⁶

82. Moreover, Colombia’s conduct following the issuance of Resolution No. 0085 has failed to accord SSA fair and equitable treatment because it has acted arbitrarily.¹²⁷ Ignoring its

¹²¹ See **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), Annex 10-A.

¹²² See *supra* §§ II.A-II.E.

¹²³ See *supra* ¶ 20. See also **Exhibit C-0015**, Letter No. 04264/CORAC from the Colombian National Navy to the Legal Advisor to the President, 18 July 1982, p. 2.

¹²⁴ See *supra* § II.B.

¹²⁵ See *supra* §§ II.A-II.B.

¹²⁶ See *supra* § II.E.

¹²⁷ See *supra* §§ II.D-II.E.

own court's embargo, Colombia has sought to access and gain rights to the shipwreck discovered by SSA.¹²⁸ Acting arbitrarily by failing to follow one's own court orders breaches Colombia's FET and FPS obligations.

C. Colombia Breached Its National Treatment and Most-Favored Nation Obligation

83. Article 10.3, the TPA's NT provision, provides:

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

*2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments. . .*¹²⁹

84. Article 10.4, the TPA's MFN provision, provides:

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

*2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.*¹³⁰

85. Colombia has breached these obligations by singling SSA out and expressly and intentionally seeking to undermine it while favoring other domestic and foreign investors.

¹²⁸ See *supra* ¶¶ 29, 44-45, 51.

¹²⁹ **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), art. 10.3.

¹³⁰ **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), art. 10.4.

As recently as 2022, Colombia claimed to have engaged other operators to search precisely the same coordinates that had been reported in the 1982 Report.¹³¹

86. SSA reserves the right to amend or supplement the present Notice of Arbitration and Statement of Claim in accordance with the procedural schedule to be agreed with the Tribunal once constituted, to supplement its existing claims or make additional claims, and to request such additional or different relief as may be appropriate.¹³²

V. PROPOSAL AS TO CONSTITUTION OF THE ARBITRAL TRIBUNAL

87. Article 10.19 of the TPA provides:

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

*3. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.*¹³³

88. Accordingly, Claimant hereby appoints Stephen Jagusch KC, a national of New Zealand, as their party-appointed arbitrator. Mr. Jagusch's contact information is as follows:

Stephen Jagusch KC
Quinn Emmanuel Urquhart & Sullivan LLP
90 High Holborn
London

¹³¹ See *supra* ¶ 51.

¹³² See **Exhibit CL-0002**, UNCITRAL Rules, 2021, art. 22 (“During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.”)

¹³³ **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), art. 10.19.

WC1V 6LJ
United Kingdom
Tel: +44 20 7653 2050
Email: stephenjagusch@quinnemanuel.com

89. Claimant proposes the Secretary-General of the Permanent Court of Arbitration act as the administering authority in this case.
90. Claimant further proposes that, once the parties appoint their respected arbitrators, the President of the Tribunal be selected by agreement of the two party-appointed arbitrators in consultation with each party within 30 days after the nomination of Colombia's party-appointed arbitrator.
91. Claimant requests Colombia to confirm its agreement to the above proposal regarding the method of appointment of the Tribunal within 15 days of the date of this Notice of Arbitration and Statement of Claim.

VI. PROPOSALS AS TO PLACE AND LANGUAGE OF THE ARBITRATION

92. The TPA allows the parties to agree on the legal place of any arbitration under the arbitral rules applicable under Article 10.16(3). If the Parties fail to reach an agreement, the Tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place is in a territory of a "*State that is a party to the New York Convention.*"¹³⁴ The TPA does not otherwise specify the place or language for these proceedings.
93. Claimant proposes that the place of the proceedings be in London and the language of the proceedings be English. London is in the United Kingdom which is a party to the New York Convention.

VII. REQUEST FOR RELIEF

94. Claimant respectfully requests that the Tribunal:
- a) **DECLARE** that Colombia has breached its obligations under the TPA;

¹³⁴ **Exhibit CL-0001**, United States-Colombia Trade Promotion Agreement, Chapter 10: Investment, 15 May 2012 (entry into force), art. 10.20(1).

- b) **ORDER** the restitution of Sea Search-Armada, LLC's rights;
- c) In the alternative to b), **ORDER** Colombia to indemnify Claimant for all damages caused as a result of its breaches in an amount currently estimated to be USD 10 billion (not inclusive of interest);
- d) **ORDER** interest not covered in any damages awarded to Claimant, including post-award interest on all sums awarded at a rate to be established;
- e) **ORDER** Colombia to pay all costs of and associated with this arbitration, including Claimant's legal fees and expenses; witnesses', experts', and consultants' fees and expenses; administrative fees and expenses; Tribunal fees and expenses' and post-award interest on those costs so awarded; and
- f) **GRANT** such other and further relief as the Tribunal deems just and proper.

95. Claimant reserves the right to provide a more precise calculation of its damages and losses in due course. Claimant further reserves the right to supplement and modify the claims set forth in this Notice of Arbitration and Statement of Claim, to supplement its existing claims or make additional claims, to request such additional or different relief as may be appropriate, to submit memorials, documents, exhibits, witness statements, expert reports, and other evidence elaborating its case and the relief sought in the course of these proceedings.

Respectfully submitted for and on behalf of Sea Search-Armada, LLC.

Gibson, Dunn & Crutcher LLP

Gibson, Dunn & Crutcher LLP

Dated: 18 December 2022

Rahim Moloo
Robert Weigel
Anne Champion
Jason Myatt
Pablo Garrido
Martina Monti
Gibson, Dunn & Crutcher LLP

200 Park Avenue
New York, NY 10166
United States of America

Ankita Ritwik
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue NW
Washington, D.C. 20036
United States of America

ANNEX A

POWER OF ATTORNEY

Sea Search Armada, LLC, a corporation organized under the laws of Delaware, United States of America, with its place of business at 9187 Clairemont Mesa Blvd., Suite 6, #334, San Diego, California, United States, 92123, (the “**Company**”) herein represented by a duly authorized officer, grants a power of attorney with full power of substitution as follows:

1. The Company hereby appoints Rahim Moloo, Robert Weigel, Anne Champion, and Jason Myatt, of Gibson, Dunn & Crutcher LLP (**Gibson Dunn**) to be its true and lawful attorneys (each **Attorney**) with the full power and authority of the Company and in its name to do and execute all things which in their absolute discretion (unless otherwise expressly provided) to represent the Company relating to or in connection with the commencement and prosecution of arbitral proceedings against the Republic of Colombia under the Arbitration Rules of the United Nations Commission on International Trade Law (2021) including, but not limited to:
 - (a) submitting a Request for Arbitration;
 - (b) the full conduct of those proceedings, the preparing and filing of pleadings, appointing arbitrators, prosecuting the Company’s claims and defending any counterclaims, instructing other counsel or other external advisers or experts, corresponding with any arbitral tribunal, appointing institution, counterparty, any other organization, person or entity and any attorney or other legal counsel representing the Republic of Colombia; and
 - (c) negotiating and agreeing any compromise or settlement of any claims or defenses, provided that the Attorney may not directly or indirectly agree any compromise or settlement without, in each case, obtaining the prior written consent of the Company.
2. The Attorney may:
 - (a) delegate all or any of these powers to such persons who are partners of, or attorneys employed by, Gibson Dunn and may vary or revoke such delegation at any time; and
 - (b) appoint a substitute who is a partner of, or attorney employed by, Gibson Dunn to act as the Company’s attorney in his place and may revoke such appointment at any time.
3. The Company:
 - (a) indemnifies the Attorney against any cost, loss or liability suffered by it in acting as the Company’s attorney pursuant to and in accordance with this Power of Attorney except in circumstances of fraud, negligence or willful default by such Attorney;
 - (b) agrees to ratify anything done by the Attorney on behalf of the Company pursuant to and in accordance with this Power of Attorney.
4. This Power of Attorney authorizes each Attorney to represent the Company and perform all necessary, relevant, or appropriate acts and duties in connection with his/her legal representation of the Company, including but not limited to signing, completing and delivering any and all documents, agreements and instruments and further to agree any amendments to

be made to any such documents in connection with the arbitration. Each Attorney may act individually within the scope of this Power of Attorney. The Company hereby ratifies all that the Attorneys or any substitute or agent appointed by one or more of them have lawfully done, shall do or purport to do by virtue of these powers.

This Power of Attorney shall remain in force from the date of signature until the conclusion of the Arbitration proceedings and any related issues arising therefrom, or prior termination in writing by the Company.

This Power of Attorney is governed by and shall be constituted in accordance with the laws of New York and subject to the jurisdiction of the New York Courts.

Signed on {date}.

In the name and on behalf of Sea Search Armada, LLC.

 12/14/2022
.....

By: {##} MARK W. REGAN

Title: SEA SEARCH ARMADA MANAGING DIRECTOR

ANNEX B

Dirección de Inversión Extranjera y Servicios
Ministerio de Comercio, Industria y Turismo
Calle 28 # 13 A – 15
Bogotá D.C. - Colombia

1. Pursuant to Article 10.17 of the United States-Colombia Trade Promotion Agreement (“TPA”), Sea Search-Armada, LLC consents to arbitration in accordance with the procedures in the TPA.

2. Pursuant to Article 10.18 of the TPA, Sea Search-Armada, LLC waives its right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measures of Colombia alleged to constitute a breach referred to in Article 10.16(1) of the TPA, except that the Sea Search-Armada, LLC may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving Sea Search-Armada, LLC’s interests during the pendency of the arbitration.

Date: 12/15/2022



Sea Search Armada, LLC

By: MARK W. REGAN

Title: MANAGING DIRECTOR

SEA SEARCH ARMADA