In the matter of an arbitration under the UNCITRAL Rules (2021)

SEA SEARCH-ARMADA, LLC
Claimant

and

THE REPUBLIC OF COLOMBIA
Respondent

PCA Case No. 2023-37

Colombia's Submission pursuant to Article 10.20.5 of the Trade Promotion Agreement between the Republic of Colombia and the United States of America

22 July 2023

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GLOSSARY OF RELEVANT TERMS

Defined Term / Abbreviation	Description
10th Civil Court of Barranquilla Circuit	10th Civil Court of Barranquilla
1982 Confidential Report	Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia
1994 Judgment	6 July 1994 Judgment from the 10th Civil Court of Barranquilla
1994 Press Release	7 July 1994 Press Release issued by the Colombian Government
1994 *Secuestro* Decision	12 October 1994 *Secuestro* Decision from the 10th Civil Court of Barranquilla
2007 CSJ Decision	5 July 2007 Decision from the Colombian Supreme Court of Justice
APA	Assets Purchase Agreement between Armada Company, acting on behalf of SSA Cayman Islands and Sea Search Armada, LLC
Civil Action	Civil lawsuit filed by SSA Cayman against the Nation/DIMAR on 13 January 1989
Columbus Report	4 August 1994 final report submitted by Columbus Exploration
CSJ	Colombian Supreme Court of Justice
Court of Appeals	United States Court of Appeals for the District of Columbia
DC District Court	United States District Court for the District of Columbia
Decree No. 2349	Decree No. 2349 of 1971
Decree No. 12	Decree No. 12 of 1984
Decree No. 2324	Decree No. 2324 of 1984
Decree No. 1512	Decree No. 1512 of 2000
Decree No. 1516	Decree No. 1516 of 2002
Decree No. 5057	Decree No. 5057 of 2009
DIMAR	General Maritime and Ports Directorate
GMC Inc.	Glocca Morra Company Inc.
Hypothesis	Hypothesis of the discovery of the "Galeón San Jose" in the area of the 1982 coordinates
IACHR	Inter–American Commission on Human Rights
ICJ	International Court of Justice
Resolution 0048	Resolution 0048 of 1980
Resolution 753	Resolution 753 of 1980
Resolution 066	Resolution 066 of 1981
Resolution 0025	Resolution 0025 of 1982
Resolution 0249	Resolution 0249 of 1982
Resolution 0354	Resolution 0354 of 1982
Resolution 204	Resolution 0204 of 1983

SSA Cayman Islands	Sea Search Armada Cayman Islands
Superior Court of Cartagena	Superior Court of the Judicial District of Cartagena
"Treaty" or "TPA"	Trade Promotion Agreement between the Republic of Colombia and the United States of America

I. INTRODUCTION

1. Pursuant to Article 10.20.5 of the Trade Promotion Agreement between the Republic of Colombia and the United States of America ("**TPA**"), which Colombia invokes for the first time, Respondent submits objections against the jurisdiction of the Tribunal to entertain the dispute submitted by Sea Search Armada, LLC.

2. International experts have determined that the Galeón San José is the biggest treasure in the history of humanity. The Galeón San José was found by the Republic of Colombia in 2015 and its location is, of course, a matter of national security.

3. In 1980, Glocca Morra Company was granted by the General Maritime and Ports Directorate ("**DIMAR**") with limited rights to search for treasures over a specific area, clearly identified with precise coordinates. In 1982, Glocca Morra Company reported to DIMAR to have allegedly discovered a possible treasure, but never even suggested that the potential treasure was the Galeón San José.

4. In 1994 serious scientific evidence demonstrated not only that the Galeón San José was not located within such coordinates, but that what Claimant had reported back in 1982 were merely pieces of wood corresponding to a root from the modern age. Such findings prompted a public denial by the Colombian Government that the Galeón San José had been found by Glocca Morra Company.

5. In an unchallenged decision in 2007 from the Colombia Supreme Court of Justice ("**2007 CSJ Decision**"), long before the TPA became effective, it was confirmed that any rights Glocca Morra Company may have had as a reporter, were limited to the specific coordinates reported back in 1982. Those coordinates were precisely the ones where the scientific evidence had proven that there were no traces of the Galeón San José.

6. Importantly, even if it were true that, as Sea Search Armada, LLC alleges, the 2007 CSJ Decision is not the act that rendered Glocca Morra Company's property rights over the Galeón San José valueless but, on the contrary, the basis of the property rights it now claims, the Tribunal would still lack jurisdiction given that:

    i) First, as early as 2010, that is, prior to the TPA's entry into force, Claimant pleaded before a DC District Court, that due to a long contempt of the 2007 CSJ Decision, an expropriation of its property rights had already been perfected.

ii) Second, as early as 2013, Sea Search Armada, LLC alleged before the Inter-American Commission of Human Rights that Colombia's definitive conduct of not complying with the 2007 CSJ Decision crystalized on 26 November 2012, the claim being therefore covered by the TPA's 3-year limitation period.

iii) Third, as the Tribunal will readily observe, a judgment entered in judicial proceedings is not a protected investment under the TPA.

7. Moreover, although Sea Search Armada, LLC, the Claimant, seeks protection as a foreign investor under the TPA, it cannot even prove that it secured any property rights over Glocca Morra Company's investment in Colombia. Additionally, Claimant cannot prove it ever invested in the territory of Colombia to acquire whatever property right Glocca Morra Company was entitled to claim. As a result, Sea Search Armada, LLC does not have a protected investment, nor can it claim to be a protected investor under the TPA.

8. Despite that neither the law nor the scientific findings granted Claimant any rights over the Galeón San José; that the acts of the government allegedly related to the Galeón San José occurred long before the TPA became effective; and that Claimant unsuccessfully filed claims before the courts of Colombia and the United States, Sea Search Armada, LLC now appears before this Tribunal in a desperate attempt to claim property rights that it never had, in what constitutes an impermissible abuse of the Investor-State arbitration system.

9. Confronted with the indisputable legal limitations in its rights, with scientific evidence defeating Claimant's hypothesis that it had found the Galeón San José, and with the passage of time that barred its unsupported claims, Claimant seeks to manufacture a post-treaty claim based on a regulation from the Ministry of Culture that not only is of general application, but that can hardly apply to non-existent rights.

10. The only possible explanation for the absurdity of this claim is Claimant's abusive attempt to use both the TPA and Investor-State arbitration system to access the coordinates where the Galeón San José is really located. This is unacceptable. The international jurisdiction should not be abused for the purpose of accessing a State's classified sovereign information.

11. The purpose underlying Colombia's invocation of Article 10.20.5 is consistent with the legitimate objective pursued by the drafters of this and previous treaties with an identical language, namely, to provide States with an expedited preliminary review mechanism to prevent flagrantly frivolous claims to advance to the merits stage, thereby making them incur in unnecessary costs.

12. As the Tribunal will readily observe:

    (i) It lacks jurisdiction *ratione personae* because Sea Search Armada, LLC is not a protected investor pursuant to Article 10.28 of the TPA.

    (ii) It lacks jurisdiction *ratione temporis* over Claimant's claims because they are based on alleged State acts or omissions that took place well before the TPA's entry into force on 15 May 2012.

    (iii) In any case, it lacks jurisdiction *ratione voluntatis* since, in flagrant violation of the conditions of consent enshrined in Article 10.18.1 of the TPA, the claim was submitted to arbitration more than 3 years after the date on which the claimant first acquired or should have acquired knowledge of the alleged breach and knowledge that it has incurred loss or damage.

    (iv) In any case, it lacks jurisdiction because Sea Search Armada does not possess a protected investment.

13. This submission is structured as follows. **Part II** contains the summary of key facts relevant to the substantiation of Colombia's objections to jurisdiction. **Part III** shows that Colombia's submission meets the requirements of Article 10.20.5 of the TPA. **Part IV** describes the proceedings following the submission pursuant to Article 10.20.5 of the TPA. **Part V** substantiates Colombia's objections to jurisdiction. **Part VI** contains Colombia's position on costs and submission on security for costs. Finally**, Part VII** contains Colombia's prayer for relief and proposal for a procedural calendar.

II. SUMMARY OF KEY FACTS

14. Below, Respondent will summarily present the main facts of the dispute in order to contextualize the aforementioned preliminary objections. Should this proceeding progress to the merits stage, Respondent reserves its right to expand the statement of facts contained in this Memorial.

1. DIMAR'S AUTHORITY REGARDING MARINE EXPLORATION ACTIVITIES

15. The authority and functions of the DIMAR were originally defined in Decree No. 2349 of 3 December 1971, which created DIMAR ("**Decree No. 2349)**. Pursuant to Article 3, those functions included the power to:[1]

> 17. To regulate, control and authorize the marine and coastal exploration and construction.
>
> […]
>
> 21. To regulate and authorize the recovery of shipwrecked species.

16. In turn, Article 4 of Decree No. 2349 of 1971 assigns, *inter* alia, the following functions to the Director General of DIMAR:[2]

> 5. To issue resolutions to:
>
> […]
>
> b) Authorize the activity and operation of foreign ships in Colombian waters and ports.
>
> […]
>
> d) Authorize the maritime and ports exploration, investigation, construction and exploitation.

17. Decree No. 2349 was superseded by Article 196 of Decree 2324 of 1984 that re-organized DIMAR ("**Decree No. 2324**")[3].

[1] **Exhibit R-001,** Decree No. 2349 of 1971.
[2] **Exhibit R-001,** Decree No. 2349 of 1971.
[3] **Exhibit C-0018**, Decree No. 2324 of 1984.

18. Article 194 of Decree No. 2324 reaffirmed DIMAR's authority to grant exploration permits, receive the reports of findings and decide upon them, and provide it with the authority to carry out the necessary steps for entering and perfecting salvage contracts:

> Article 194. **Competent authority**. **The General Maritime and Ports Directorate shall have the competence to grant exploration permits, to learn about the reports referred to in the previous articles, and to decide about them, as well as to carry out the procedures for entering into and perfecting the contracts that the norms in this Decree may give rise to**, all with the previous concept of the Administrative Department of the Presidency of the Republic. The contracts will be entered into by the Minister of National Defense in the terms of the presidential delegation. (Emphasis added) (Independent translation)

19. Decree No. 2324 was partially superseded by Decree No. 1561 of 2002 ("**Decree No. 1561**"), which partially modified the structure of the Ministry of National Defense.[4] Importantly, Article 12 of Decree No. 1561 expressly provided that it did not supersede Article 194 of Decree 2324:

> Article 12. **Legal force**. This decree enters into force on the date of its publication, modifies in what is pertinent Decree 1512 of 2000 and supersedes any contrary provisions, particularly chapters III and IV of Decree 2324 of 1984 and article 71 of Law 336 of 1996.

20. On 30 December 2009, Decree 5057 partially modified the structure of DIMAR ("**Decree No. 5057**").[5] Decree No. 5057 superseded those provisions of Decree No. 1561 which were contrary to it.[6] Importantly, Decree 5057 did not supersede the general authority of DIMAR over marine exploration. Finally, Decree No. 5057 assigned the Director General of DIMAR with authority to advice the National Government in matters concerning underwater cultural heritage.[7]

2. DIMAR'S AUTHORIZATIONS TO CONDUCT UNDERWATER EXPLORATION ACTIVITIES

21. On 22 October 1979, Glocca Morra Company Inc. ("**GMC Inc.**"), pursuant to the laws in force at the time, requested DIMAR to issue an authorization to carry out

[4] **Exhibit R-014**, Decree No. 1561 of 2002.
[5] **Exhibit R-016**, Decree No. 5057 of 2009.
[6] **Exhibit R-016**, Decree No. 5057 of 2009, Article 11.
[7] **Exhibit R-016**, Decree No. 5057 of 2009, Article 2 (9).

underwater explorations within specific coordinates in the Colombian sea.[8] GMC Inc. expressed that its purpose was to seek for the existence of shipwrecked species, treasures, or any other elements of historic, scientific, or commercial value.

22. On 29 January 1980, DIMAR issued Resolution No. 0048 of 1980 ("**Resolution No. 0048**"), authorizing GMC Inc. to carry out underwater explorations in specific areas –delineated by specific coordinates– of the Colombian sea for a period of two years.[9] Resolution No. 0048 established "*that the exploration work is limited exclusively to the areas indicated in the operative part* [of this Resolution] *under the supervision of the General Maritime and Port Directorate*".[10]

23. On 18 October 1980, upon request by GMC Inc.,[11] DIMAR issued Resolution No. 753 ("**Resolution No. 753**"),[12] authorizing GMC Inc. to transfer the rights previously granted by Resolution No. 0048 of 1980 to Glocca Morra Company, incorporated under the laws of the Cayman Islands[13], British West Indies. Resolution No. 753 established the obligation upon Glocca Morra Company to comply with all the commitments acquired by the GMC Inc. through Resolution No. 0040.[14]

24. On 4 February 1981, upon request by Glocca Morra Company, DIMAR issued Resolution No. 066 of 1981 ("**Resolution No. 066**"), authorizing to extend the areas granted to Glocca Morra Company in Resolution No. 0048 of 29 January 1980.[15]

25. On 29 January 1982, upon request by Glocca Morra Company, DIMAR issued Resolution No. 0025 of 1982 ("**Resolution No. 0025**"), extending for a term of 3 months resolutions No. 0048 of 29 January 1980, 066 of 4 February 1981, and 0075 of 29 October 1981. In Resolution No. 0025, DIMAR required Glocca Morra

[8] **Exhibit R-002,** Exploration Permit Request from Glocca Morra Company Inc. to DIMAR, 22 October 1979.
[9] **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")
[10] **Exhibit C-0002**, DIMAR, Resolution No. 0048 of 29 January 1980, p. 3.
[11] **Exhibit R-003,** Request AF 01196877 from Glocca Morra Company Inc. to DIMAR, 09 September 1980.
[12] **Exhibit C-0005,** DIMAR Resolution No. 753, 13 October 1980, Article 1.
[13] **Exhibit C-0004**, Memorandum of Association of GMC Cayman Islands.
[14] **Exhibit C-0005,** DIMAR Resolution No. 753, 13 October 1980.
[15] **Exhibit C-0006**, DIMAR, Resolution No. 066 of 4 February 1981.

Company to report the findings made and not to proceed with any type of extraction without having obtained the relevant authorization. Finally, it emphasized the company's obligation to establish a branch with domicile in the national territory, following the provisions of articles 471 and 474 of the Colombian Code of Commerce.[16]

3. THE 1982 CONFIDENTIAL REPORT, DIMAR RESOLUTION NO. 0354 AND THE ASSIGNMENT OF RIGHTS TO SSA CAYMAN ISLANDS

26. On 26 February 1982, Glocca Morra Company submitted to DIMAR a 15-page document entitled "*Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia*" ("**1982 Confidential Report**").[17] The 1982 Confidential Report concluded:[18]

> Glocca Morra Co. believes from an operational point of view that the next step in the plan for a successful conclusion of the venture, will be either a submersion team, backed with a full support team, or a submersible (?) tied up with a man, that could be brought to the site of the shipwreck. **Sea Search Armada is willing to assist with the substantial additional capital needed to carry out the identification and rescue of the shipwreck as soon as you reach an agreement with the Maritime and Port Director General**, to start such an operation in the vicinity of target 'A'. (Emphasis added) (Independent translation)

27. It is undisputed that the 1982 Confidential Report did not mention the Galeón San José.

28. The 1982 Confidential Report was submitted when the authorization granted to Glocca Morra Company by DIMAR was about to expire.[19] Consequently, Glocca

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[16] **Exhibit C-0008**, DIMAR, Resolution No. 0025 of 29 January 1982.

[17] **Exhibit C-0010**, Confidential Report on Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982. For the convenience of the Tribunal, the original version of the Report in English is appended as **Exhibit R-004**. Respondent relies on the original text in English in this submission. Importantly, however, contemporary decisions by DIMAR relied on the translation into Spanish provided by Glocca Morra Company, which corresponds to **Exhibit C-0010**. Respondent does not dispute the authenticity of the translation but clarifies that the numbering of the two documents is different. This is important since contemporary decisions by the Colombian authorities, including DIMAR and the Colombian Supreme Court of Justice refer to the Spanish version of the Confidential Report.

[18] **Exhibit R-004**, Confidential Report on Underwater Exploration by Glocca Morra Company in the Caribbean Sea, 26 February 1982, pp. 5-6.

[19] Through Resolution No. 0025 of 1982, DIMAR decided to extend for 3 months the terms granted by Resolutions No. 0048 of 29 January 1980, 066 of 4 February 1981, and 0075 of 29 October 1981, that is, until 19 April 1982. **Exhibit C-008**, DIMAR, Resolution No. 0025 of 29 January 1982, p. 1.

Morra Company requested another extension. On 22 April 1982, DIMAR issued Resolution No. 0249 ("**Resolution No. 0249**") granting a 3-month extension.[20]

29. On 12 March 1982, Glocca Morra Company sent a letter to the National Navy Command, proposing certain conditions for a salvage contract. In the letter, Glocca Morra Company expressed that:[21]

> Glocca Morra is an official subsidiary of "Sea Search-Armada a Cayman Island Limited Partnership", which has provided the financial, technical, equipment and personnel resources, as well as the Submarine "August Picard", means with which we have located the Spanish Galleon 'San José' in the area authorized in the aforementioned license; **to this date more than US$ 6'000.000 have been invested in this search operation and we have an additional US$ 5'000,000 to advance in the salvage operations**. (Emphasis added) (Independent translation)

30. Other than the mere reference to the Galeón San José in the letter, no conclusive evidence was provided about alleged finding of the Galeón San José.

31. On 1 June 1982, DIMAR issued Resolution No. 0354 of 1982 ("**Resolution No. 0354**"), recognizing Glocca Morra Company as reporter of treasures or shipwrecked species. Article 1 of Resolution No. 0354 provides as follows:[22]

> ARTICLE 1o. To recognize GLOCCA MORRA COMPANY, incorporated under the laws of the Cayman Islands (British West Indies), **as reporter of treasures or shipwrecked species in the coordinates referred to in the "Confidential Report** on the Underwater Exploration by GLOCCA MORRA Company in the Caribbean Sea, Colombia 26 February 1982" Page 13 No. 49195 Berlitz Translation Service. (Emphasis added) (Independent translation).

32. Resolution No. 0354 did not mention the Galeón San José much less granted property rights over it.

33. On 24 March 1983, upon request by Glocca Morra Company, DIMAR issued Resolution No. 204 ("**Resolution No. 204**"), authorizing Glocca Morra Company to transfer the rights granted in Resolutions No. 0048, 0066, 0025, 0249 and 0354 to Sea Search Armada, a company incorporated under the laws of the

[20] **Exhibit C-0012**, DIMAR, Resolution No. 0249 of 22 April 1982, p. 1.
[21] **Exhibit R-005,** Communication from Glocca Morra Company to DIMAR, 12 March 1982.
[22] **Exhibit C-0013**, DIMAR Resolution No. 0354 of 3 June 1982, p. 1.

Cayman Islands ("**SSA Cayman Islands**").[23] Resolution No. 204 also detailed the specific obligations of SSA Cayman Islands as assignee.[24]

4. DECREES NO. 12 AND 2324 OF 1984 AND UNSUCCESSFUL NEGOTIATIONS TO ENTER INTO A SALVAGE CONTRACT

34. On 10 January 1984, the President of Colombia issued Decree No. 12 of 1984, which regulated articles 710 of the Civil Code and 110 and 111 of Decree 2349 of 1971 ("**Decree No. 12**").[25]

35. Pursuant to Article 1 of Decree No. 12:

> Article 1. The shipwrecked species that were to or had been rescued in the terms prescribed in Article 710 of the Civil Code, shall be considered shipwrecked antiques [and] will have the special nature described in that article.

36. Articles 2 and 3 of the Decree No. 12 defined shipwrecked antiques as follows:

> Article 2. For the purposes of this Decree shipwrecked antiques are the ships and their endowment, as well as the movable goods that would have been part of them, lying within them or disseminated in the sea bottom, **whether manmade or not, regardless of the nature of the goods and whatever the cause and time of the sinking**.
>
> Article 3. The shipwrecked antiques referred to in this Decree are those found in the Territorial Sea as defined in articles 3 and 4 of Law 10 of 1978, in the Continental Shelf, identified in article 1 of Law 9 of 1961 and in the Exclusive Economic Zone as referred to in article 7 and 8 of Law 10 of 1978. (Emphasis added) (Independent translation)

37. Article 4 of Decree No. 12 provided that a recognized reporter of shipwrecked species was entitled to 5% of the gross value of what is recovered in the reported coordinates:[26]

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[23] **Exhibit C-0017**, DIMAR Resolution No. 204 of 24 March 1983.
[24] **Exhibit C-0017**, DIMAR Resolution No. 204 of 24 March 1983, Article 4.
[25] **Exhibit R-006**, Decree No. 12 of 1984.
[26] **Exhibit R-006**, Decree No. 12 of 1984, Article 4.

> Article 4. Every natural or legal person, national or foreign, has the right to request the competent authorities a permit or concession to explore in search of shipwrecked antiques in the areas referred to in the previous article, provided that the authorities deem sufficient the geographical, historic, nautical and other reasons presented by the applicant.
>
> And, if in the exercise of the permit or concession, a finding is made, the person shall report it to the competent authorities indicating the geographical coordinates where it is located [and] presenting satisfactory evidence of the identification. **Should the person be recognized as a reporter, pursuant to the legal norms in force, it will be entitled to a participation of five per cent (5%) over the gross value of what is subsequently found in the coordinates**.
>
> The payment of this participation will be in charge of the person with whom the salvage is hired, should that be the case pursuant to article 6 and, for fiscal purposes, it will constitute an ordinary income.
>
> If the salvage is carried out directly by the Nation, the five percent (5%) participation to the reporter will be paid by the former. The Government will establish the terms and modalities of this payment.
>
> […] (Emphasis added) (Independent translation)

38. In turn, Article 5 of Decree No. 12 provided that reporters of discoveries did not enjoy a preferential right to enter into a salvage contract:[27]

> Article 5. **The granting of a permit or concession of exploration does not create a right or privilege of any kind for the concessionaire**, in relation with the eventual salvage of the reported shipwrecked antiques. (Emphasis added) (Independent translation)

39. Article 7 of Decree No. 12 granted DIMAR authority to grant exploration permits, receive the reports of findings and decide upon them, and to carry out the necessary steps for entering into and perfecting salvage contracts:

> Article 7. **The General Maritime and Ports Directorate shall have the authority to grant exploration permits, to learn about the reports**

[27] **Exhibit R-006**, Decree No. 12 of 1984, Art. 5.

> **referred to in the previous articles, and to decide on them, as well as to carry out the procedures for entering into and perfecting the contracts that the norms in this Decree may give rise to**, all with the previous concept of the Administrative Department of the Presidency of the Republic. The contracts will be entered into by the Minister of National Defense in the terms of presidential delegation. (Emphasis added) (Independent translation)

40. Finally, article 8 of Decree No. 12 provided that the shipwrecked antiques referred to in this Decree constitute historic heritage of Colombia:

> Article 8. **The shipwrecked antiques referred to in this Decree have the character of historic heritage, for all the effects of Law No. 163 of 1959**. (Emphasis added) (Independent translation)

41. On 2 February 1984, in a letter sent to DIMAR, SSA Cayman Islands expressed its interest to enter into a salvage contract with regards to the areas granted by DIMAR through Resolution No. 0048 and subsequent resolutions.[28]

42. On 13 February 1984, DIMAR replied to SSA Cayman Islands noting that the "*national government currently studies the terms of reference for the elaboration of a new contract*" but clarified that "*the reporting of a shipwrecked antique and its recognition by the General Maritime and Ports Directorate does not imply any right to recovery for the reporter*".[29]

43. On 18 September 1984, the President of Colombia issued Decree No. 2324 ("**Decree No. 2324**"), reorganizing DIMAR. Title X of Decree No. 2324 concerns "Shipwrecked antiques".[30]

44. Decree No. 2324 defined shipwrecked antiques as follows:

> Article 188. **Definition**. The shipwrecked species that had not been rescued in the terms referred to in article 710 of the Civil Code, will be considered shipwrecked antiques, will have the special nature described in the following article and belong to the Nation.

[28] **Exhibit R-007**, Letter 2541 sent by SSA Cayman Islands to DIMAR, 2 February 1984.
[29] **Exhibit R-008**, Letter 415 sent by DIMAR to SSA Cayman Islands, 13 February 1984.
[30] **Exhibit C-0018**, Decree No. 2324 of 1984, article 194.

Article 189. **Scope**. For the purposes of this Decree shipwrecked antiques are the ships and their endowment, as well as the movable goods lying within them or disseminated in the sea bottom, **whether manmade or not, regardless of the nature of the goods and whatever the cause and time of the sinking**. (Emphasis added) (Independent translation)

The same character shall be enjoyed by the remains or parts of ships or endowments or of the movable goods that are in the circumstances of the shipwrecked antiques referred to in the previous paragraph.

Article 190. The shipwrecked antiques referred to in this Decree are those found in the Territorial Sea as defined in articles 3 and 4 of Law 10 of 1978, in the Continental Shelf, identified in article 1 of Law 9 of 1961 and in the Exclusive Economic Zone as referred to in article 7 and 8 of Law 10 of 1978. (Emphasis added) (Independent translation)

45. Decree No. 2324 regulated the exploration permits and report in similar terms as Decree No. 12:

Article 191. **Exploration permit and report**. Every natural or legal person, national or foreign, has the right to request the competent authorities a permit or concession to explore in search of shipwrecked antiques in the areas referred to in the previous article, as long as the authorities deem sufficient the geographical, historic, nautical and other reasons presented by the applicant.

And, if in the exercise of the permit or concession, a finding is made**, the person shall report it to the competent authorities indicating the geographical coordinates where it is located [and] presenting satisfactory evidence of the identification**. **Should the person be recognized as a reporter, pursuant to the legal norms in force, it will be entitled to a participation of a five per cent (5%) over the gross value of what is subsequently found in the coordinates**.

The payment of this participation will be in charge of the person with whom the salvage is hired, should that be the case pursuant to article 193 and, for fiscal purposes, it will constitute an ordinary income.

If the salvage is carried out directly by the Nation, the five percent (5%) participation to the reporter will be paid by the former. The Government will establish the terms and modalities of this payment.

[…] (Emphasis added) (Independent translation)

46. Decree No. 2324 reaffirmed the DIMAR's competence to grant exploration permits, receive the reports of findings and decide upon them, as well as to carry out the necessary steps for entering into and perfecting salvage contracts:

> Article 194. **Competent authority**. **The General Maritime and Ports Directorate shall have the competence to grant permits of exploration, to learn about the reports referred to in the previous articles, and to decide about them, as well as to carry out the procedures for entering into and perfecting the contracts that the norms in this Decree may give rise to**, all with the previous concept of the Administrative Department of the Presidency of the Republic. The contracts will be entered into by the Minister of National Defense in the terms of the presidential delegation. (Emphasis added) (Independent translation)

47. Finally, Decree No. 2324 reaffirmed that the shipwrecked antiques defined in the Decree constitute historic heritage of Colombia:

> "Article 195. **The shipwrecked antiques referred to in this Decree have the character of historic heritage, for all the effect of Law 163 of 1959**. (Emphasis added) (Independent translation)

48. On 2 November 1984, DIMAR sent a letter to SSA Cayman Islands in reply to a previous suggestion related to aspects of participation of the recovered elements and the areas of exploration of the possible remains of the Galeón San José, as contained in previous letters.[31]

49. In the 2 November 1984 letter, DIMAR clarified that SSA Cayman Islands only had the privileges granted by the law in force to a reporter with regards to the "*reported species*", and that it was simply another bidder.[32] DIMAR also granted SSA Cayman Islands 15 business days to confirm its acceptance to the terms contained in the letter, those being the basis for perfecting a "*possible contract*".[33]

[31] **Exhibit C-0019**, Letter No. 3315 from DIMAR to Sea Search Armada, 2 November 1984, p. 1.
[32] **Exhibit C-0019**, Letter No. 3315 from DIMAR to Sea Search Armada, 2 November 1984, p. 2.
[33] **Exhibit C-0019**, Letter No. 3315 from DIMAR to Sea Search Armada, 2 November 1984, p. 2.

50. On 9 November 1984, SSA Cayman Islands indicated that it would agree to DIMAR's terms, and asked DIMAR to send the final draft of the salvage contract.[34]

51. There is no evidence that DIMAR ever sent the final draft of a salvage contract.

52. On 13 January 1989, a civil lawsuit filed by SSA Cayman Islands against the Nation/DIMAR ("**Civil Action**") was admitted by the 10th Civil Court of the Barranquilla Circuit ("**10th Civil Court of Barranquilla**").[35] The purpose of the Civil Action was:[36]

> **To obtain, against the Nation, the recognition of 50% or the Totality of the right of property over the assets of economic, historical, cultural or scientific value that possess the quality of treasures that are located in the coordinates and contiguous areas referred to in the 'Confidential Report on Underwater Exploration'** in the Caribbean Sea of Colombia, dated 16 February 1982, submitted by the company Glocca Morra Company, which makes integral part of resolution number 0354 of 3 June 1982 of the General Maritime and Ports Directorate that recognized the rights of the reporter to said company. (Emphasis added) (Independent translation)

53. The Civil Action did not refer to the Galeón San José but to the assets possessing the quality of a treasure that are located in the coordinates referred to in the 1982 Confidential Report.[37]

54. The Civil Action also referred to the alleged frustration of SSA Cayman Islands' interests for not having the possibility of entering into a salvage contract with the Colombian Nation. According to SSA Cayman Islands, it had a preferential access to the said salvage contract.[38]

55. On 10 March 1994, the Colombian Constitutional Court issued constitutionality judgment C-102 of 1994, declaring the unconstitutionality of Articles 188 and 191 of Decree No. 2324.[39]

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[34] **Exhibit C-0020**, Letter from SSA Cayman Islands to DIMAR, 9 November 1984.
[35] **Exhibit C-0025**, 10th Civil Court of the Circuit of Barranquilla, Judgment of 6 July 1994, p. 2.
[36] **Exhibit C-0025**, 10th Civil Court of the Circuit of Barranquilla, Judgment of 6 July 1994, p. 1.
[37] **Exhibit R-009**, Sea Search Armada's Civil Action before the Civil Circuit Judge of Barranquilla, 13 January 1984.
[38] **Exhibit C-0025**, 10th Civil Court of the Circuit of Barranquilla, Judgment of 6 July 1994, p. 2.
[39] **Exhibit C-0024**, Colombian Constitutional Court, Case File No. D-379, Judgment No. C-102/94, 10 March 1994.

56. On 6 July 1994, the 10th Civil Court of Barranquilla partially agreed with SSA Cayman Islands' claims ("**1994 Judgment**"):[40]

> 2.) To declare that it belong in common and *proindiviso,* in equal parts (50%) to the Colombian Nation and the company Sea Search Armada, the assets of economic, historic, cultural and scientific value that have the quality of treasures located within the coordinates and surrounding areas referred to in the 'CONFIDENTIAL REPORT ON UNDERWATER EXPLORATION' in the Caribbean Sea of Colombia submitted by the company Glocca Morra Company, dated 16 February 1982, which makes part of Resolution number 0354 of 3 June 1982 of the General Maritime and Ports Directorate that granted to the said company the rights of reporter of said assets; regardless of the fact that those coordinates and their surrounding areas are located or correspond to the territorial sea, or the continental shelf or the exclusive Economic zone of Colombia (pursuant to the definition established in articles 1°, 3°, 4°, and 7° of Law 10 of 1978 and 1° of Law 9 of 1961.
>
> 3°) To Recognize that mister Danilo Devis Pereira is entitled to 10% of the rights declared in this decision in favor of Sea Search Armada. (Independent translation).

5. THE 1994 COLUMBUS REPORT AND COLOMBIA'S DENIAL OF THE SHIPWRECK HYPOTHESIS

57. On 21 October 1993, Colombia signed Contract No. 544 with Columbus Exploration, for the purpose of developing an oceanographic investigation in the coordinates established in the Confidential Report.[41]

58. On 7 July 1994, the Colombian Government issued a press release ("**1994 Press Release**") with regards to the results of the analysis conducted by Columbus Exploration over the evidence presented by Glocca Morra Company in 1982.[42] The Press Release reads as follows:[43]

> **The Government of Colombia, after reviewing the evidence presented by Columbus Exploration, Inc. following their exploration of the area**

[40] **Exhibit C-0025**, 10th Civil Court of the Circuit of Barranquilla, Judgment of 6 July 1994, p. 33, operative paragraph 2.
[41] **Exhibit R-010,** Contract No. 544 of 1993 between Colombia and Columbus Exploration, 21 October 1993.
[42] **Exhibit R-011,** Letter from President's Office to DIMAR informing of Press Release, 8 July 1994.
[43] **Exhibit R-011**, Letter from President's Office to DIMAR informing of Press Release, 8 July 1994, pp. 2-3.

> **whose coordinates were furnished by the Nation to the contractor, being the same coordinates informed in 1982 by the Glocca Morra Company, Inc. (Sea Search Armada), has concluded that no shipwreck is located thereto (and consequently no traces of the Galeón San José either)**.
> […]
> The scientific analysis of the area resulted in identifying a rather flat ocean bed of very old and consolidated clay, covered by a thin layer of white non-consolidated mud. **The nonexistence of a shipwreck in the area was evident.** (Emphasis added) (Independent translation)

59. On 5 August 1994, Columbus Exploration submitted the final report dated 4 August 1994, containing the results of the oceanographic study developed by virtue of Contract No. 544 of 1993 ("**Columbus Report**").

60. The general structure (table of contents) of the Columbus Report is the following:[44]

1. INTRODUCTION
1.1 **The Hypothesis**
1.2 Questions to be answered
1.3 Methodology
1.4 Organization of the Final Report

2. PRELIMINARY OPERATIONS
2.1 Operational Platform
2.2 Navigation System
2.3 Sonar
2.4 ROV (Remote Operation Vehicle)
2.5 Bathymetric Study of the Subsoil
2.6 Tests in Port
3. PROCEDURES AND METHODS
3.1 Research Plan
3.2 Implementation of the Navigation System
3.3 Phase I Study Operations at Sea
Side Sweeping Sonar Study
Study with the ROV
Bathymetric Study of the Subsoil
3.4 Phase II Study Operations at Sea

[44] **Exhibit R-012**, Columbus Exploration, Final report regarding the oceanographic study, 4 August 1994, p. 2.

3.5 Recovery of the Systems from the Sea bottom
3.6 End of Operations at Sea
3.7 Tests subsequent to the Study

4. OBSERVATION AND ANALYSIS
4.1 Phase I and Phase II – Findings
4.2 Geological Factor and Marine Sediments
4.3 Analysis of the Provided Wood Sample

5. Executive Summary. (Emphasis added) (Independent translation)

61. The Columbus Report indicates that[45] Columbus Exploration was hired by the Colombian government to test the Hypothesis of the discovery of the Galeón San José in the area of the 1982 coordinates ("**Hypothesis**"):[46]

> The hypothesis presented by the Nation ('the Hypothesis') and investigated by Columbus Exploration, was that the "Galeón San José" (the 'target') had been found within the area of the coordinates. Besides the general proposition that the target was located in the area, the Hypothesis included certain elements, which had been furnished as evidence that the San José was located in the area of the coordinates, including:
>
> - A video that was allegedly recorded during a previous investigation of the target.
> - Batymetric readings presented as the depth of the target.
> - Geological and other characteristics of the sea bottom that were presented as existing in the site of the target.
> - Marine life and incrustations present in the site of the target.
> - A wood sample that was allegedly taken from the target.
>
> A video and wood sample that were held in the custody of the Nation. (Independent translation)

62. The conclusions of the Columbus Report are the following:[47]

> **5. Executive Summary**

[45] **Exhibit R–012**, Columbus Exploration, Final report regarding the oceanographic study, 4 August 1994, p. 3.
[46] **Exhibit R–012,** Columbus Exploration, Final report regarding the oceanographic study, 4 August 1994, p. 3.
[47] **Exhibit R-012**, Columbus Exploration, Final report regarding the oceanographic study, 4 August 1994, pp. 15-16.

Columbus Exploration examined written documents, videos, and a sample of materials furnished by the Nation, and expressed as part of the Hypothesis.

To examine the Hypothesis, Columbus Exploration **carried out an *in situ* study** using a ship from the Colombian Navy (the ARC *Malpelo*), **subsoil profiles, bathymetric sounding, sideway sonar, an ROV equipped with cameras and a side sweeping sonar by target sectors, and carried out an examination of a wood sample that was proposed as part of the target**.

A comparison of the data collected during the study with the approaches of the Hypothesis reveal:

- The sea is significantly deeper in the coordinates than the depths in the videos presented with the Hypothesis. There are not, **either in the area of the coordinates or near them**, depths matching those appearing in the video recordings.
- No sonar target was found, **either in the area of the coordinates or near them**, **equal to the relief, size and reflectivity that was expressed in the Hypothesis**.
- **The visual inspection and of side sweeping sonar by sectors with the ROV did not reveal evidence to corroborate the Hypothesis nor of any shipwreck** and confirmed that the depth of the sea bottom in the area of the coordinates differ from the depth expressed in the Hypothesis.
- In the area of the coordinates, Columbus Exploration found a seabed mainly composed of a calcareous hard clay formation, that provides an environment for the digging local fauna. The multiple traces, footprints and excavations that are visible through the ROV cameras show that the sediment has been penetrated by a multitude of small animals, which is not consistent with the conditions of impenetrable incrustations expressed in the hypothesis.
- **The wood sample presented in the Hypothesis does not correspond to a species used in the construction of ships: it is not oak, pine tree, beech tree or fir tree. The most probable thing is that it is a root**.
- **The wood sample was alive and grew up subsequently at the beginning of the atmospheric tests with atomic bombs dating the 1950s. It corresponds to the modern age**.

- The sediment extracted from the sides of the piece of wood presented in the Hypothesis is not similar to the sediment taken from the area of the coordinates, **nor to the sediment collected from the nearby islands**. **The absence of marine calcium carbonate shows that it does not belong to the area of the coordinates and also shows that it is probable that does not belong to any marine environment** (salt water). ((Emphasis added) (Independent translation)

6. THE 1994 "*SECUESTRO*" DECISION

63. On 12 October 1994, the 10th Civil Court of Barranquilla imposed a *secuestro*[48] ("**1994 *Secuestro* Decision**") on the assets of economic, historical, cultural, or scientific value that have the quality of treasure, located within the coordinates and surrounding areas referred to it in the 1982 Confidential Report.[49]

64. In the 1994 *Secuestro* Decision, the 10th Civil Court of Barranquilla clarified that those proceedings did not relate to the salvage, finding or discovery of the location of the so-called "Galeón San José", or whether or not it was located in the reported coordinates or in its surrounding areas. The 10th Civil Court of Barranquilla noted that the proceedings seek to establish, according to Colombian law, whether the discovery reported by Glocca Morra Company granted property rights over the assets (treasure) found in the reported site, regardless of whether they were the remains of the Galeón San José or any other ship:[50]

> The Court deems it convenient to clarify a situation of a procedural legal nature, which due to the public image given to these proceedings has helped to create a confusion around it and that now the parties intend to include or bring to the file; **these proceedings are not about the salvage, finding or discovery of the site of the shipwreck or the remains of the so-called "Galeón San José" or whether or not it is located at the reported coordinates or in its surroundings or in a place other or different from the indicated by those coordinates.** The Secuestro Decision was about establishing, according to the Colombian law, whether the report of the discovery of assets achieved

[48] In its Notice of Arbitration and Statement of Claim (¶29), Claimant refers to the request and decision as an "embargo". The actual term used by the 10th Civil of Court of Barranquilla is "secuestro".
[49] **Exhibit C-0026,** 10th Civil Court of the Circuit of Barranquilla, Judgment of 12 October 1994, p. 5 ¶ 5 of the Operative Section. For the convenience of the Honorable Tribunal, the original version of Judgment of 12 October 1994 of the Civil Court of Circuit of Barranquilla is appended as **Exhibit R-013.**
[50] **Exhibit C-0026,** 10th Civil Court of the Circuit of Barranquilla, Judgment of 12 October 1994, p. 2.

by Glocca Morra Company and accepted by Colombia (through resolution 0354 of 1982), granted this foreign company and its assignees the property rights over the assets (treasures) that were to be found in the reported site, **regardless of whether they concern the remains of the mentioned galleon or of any other ship**.

For the purposes of these proceedings, it is immaterial whether the remains that are claimed to be located at that site correspond to that vessel or to any other that may have sunk in that location during the colonial era, the speculations or assertions made by the parties regarding these circumstances cannot be considered by the court, even if this official had become aware of them prior to issuing the ruling on August 17th. The interview referred to by the Nation's attorney is not part of the proceedings, not even now that a copy of the corresponding magazine has been submitted to the record." (Emphasis added) (Independent translation)

7. THE 1997 APPEAL JUDGMENT AND THE 2007 "CASSATION" JUDGMENT OF THE COLOMBIAN SUPREME COURT OF JUSTICE

65. On 7 March 1997, the Superior Court of the Judicial District of Barranquilla confirmed the 6th of July 1994 decision from the 10th Civil Court of Barranquilla.[51]

66. On 5 July 2007, the Colombian Supreme Court of Justice[52] (the "**CSJ**") partially overturned the decision from the Superior Court of the Judicial District of Barranquilla, and thus the decision of the court of first instance, considering that the latter had manifestly disregarded the Colombian law by failing to apply article 14 of Law 163 of 1959, thus not providing "*full and unequivocal protection to the cultural, historical, (...) heritage, including the submerged one*".[53] In addition, the CSJ specified that the assets indicated in its decision only referred to those located within the specific coordinates recognized in the Confidential Report, "*without including, therefore, different spaces, zones or areas*".[54]

67. The operative paragraphs of the 2007 CSJ Decision read as follows:[55]

[51] **Exhibit C-0027**, Superior Court of the Judicial District of Barranquilla, Civil-Family Decision Chamber, Ruling of 7 March 1997, p. 63, ¶ 3 of the operative section.
[52] **Exhibit C-0028**, Colombian Supreme Court of Justice, Decision of 5 July 2007, ¶ 1.
[53] **Exhibit C-0028**, Colombian Supreme Court of Justice, Decision of 5 July 2007, p. 234 (Independent translation).
[54] **Exhibit C-0028**, Colombian Supreme Court of Justice, Decision of 5 July 2007, p. 235.
[55] **Exhibit C-0028**, Colombian Supreme Court of Justice, Decision of 5 July 2007, p. 233-235.

DECISION

In light of the above, the Supreme Court of Justice, Civil Cassation Chamber, administering justice in the name of the Republic, taking into account and into consideration the denounced and manifest juridical error incurred in by the *ad quem*, consisting in failing to apply to the present matter article 14 of Law 163 of 1959, an omission that clearly breached the special protection regime envisaged in favor of the cultural, historical, artistic heritage, including the submerged one, **OVERTURNS** the decision of 7 March 1997, issued by the Superior Court of the Judicial District of Barranquilla, Civil-Family Chamber, in this ordinary proceeding in reference and, in second instance, **RESOLVES:**

FIRST: TO DISPENSE full and unequivocal protection to the cultural, historical, artistic and archeological national heritage, including the submerged one, a reason why it is expressly excluded from the declaration of ownership contained in the second point of the operative part of the decision of first instance, issued by the 10th Civil District Court of the aforementioned city [Barranquilla] on 6 July 1994, all and each one of the assets that correspond or may correspond to 'movable monuments', pursuant to the description and reference enshrined in article 7° of Law 163 of 1959, which are subject and governed by the protectionist regime provided therein, as well as by the constitutional and legal norms that, with that same and specific purpose, have been subsequently issued, characterized by the ample and general character of the protection conferred.

SECOND: In conformity with the previous resolution, the aforementioned point second of the judgment of first instance is **MODIFIED**, **in the understanding that the property there conferred, in equal parts, in favor of the Nation and the claimant, is referred only and exclusively to the assets that**, **on one side**, by their characteristics and own features, in conformity with the circumstances and directions indicated in this decision, a**re still susceptible of being qualified juridically as a treasure**, in the terms of Article 700 of the Civil Code and the restriction or limitation that placed upon it article 14 of Law 163 of 1959, among other applicable legal provisions **and, on the other side, to the assets referred to by Resolution 0354 of 3 June 1982, issued by the General Maritime and Ports Directorate, namely, those, that are found in 'the coordinates referred to in the 'Confidential Report on Underwater Exploration carried out by the Company' GLOCCA MORRA in the Caribbean Sea, Colombia 26 February 1982' Page 13 No. 49195 Berlitz Translation Service.', without including, therefore, different spaces, zones or areas.**

THIRD: Without prejudice to the determinations adopted in the previous two points, **CONFIRM** in the remaining and pertinent, the said decision of first instance.

FOURTH: To condemn in costs the claimant *Sea Search Armada* since the writ of cassation filed by it was not successful. Costs will be quantified in its opportunity. Without costs for the Nation and the Procuraduría General de la Nación, due to the success of the extraordinary actions presented. (Emphasis added only in the second operative paragraph (commencing in "and, on the other side") (Independent translation)

68. As can be seen, pursuant to operative paragraph 2 of the 2007 CSJ Decision, any property rights of Glocca Morry Company, as a recognized reporter, were conditioned on compliance by the relevant assets with two cumulative criteria:

(i) *first,* on the assets being in the area of "*the coordinates referred to in the Confidential Report on Underwater Exploration … without including, therefore, different spaces, zones or areas*; and
(ii) *second*, on the assets still being susceptible of being "*qualified juridically as a treasure*".

8. THE 2008 ASSET PURCHASE AGREEMENT BETWEEN SSA CAYMAN AND SEA SEARCH ARMADA, LLC

69. On 18 November 2008, Armada Company, incorporated under the laws of the Cayman Islands, allegedly acting on behalf of SSA Cayman Islands and its partners, entered into an Asset Purchase Agreement (hereinafter, "**APA**") with Sea Search Armada, LLC, a Delaware limited liability company,[56] pursuant to which the latter would have acquired certain of the former's assets and liabilities, subject to the fulfillment of certain conditions.

70. SSA Cayman Islands never requested authorization from DIMAR to assign its rights under the relevant resolutions to Sea Search Armada, LLC. Therefore, the only entity registered before DIMAR as of the date of this submission is SSA Cayman Islands who is not a party to these proceedings.

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

9. THE 2009-2010 SEA SEARCH ARMADA, LLC'S REQUESTS AND CORRESPONDENCE

71. On 17 October 2009, Mr. Jack Harbeston, then President of Sea Search Armada, LLC, in an interview with "*El Espectador*", a Colombian newspaper, incorrectly stated that Sea Search Armada, LLC had ownership rights over the Galeón San José, based on the 2007 CSJ Decision:[57]

> **We have the title of property by excellence, which is a judgment of the Supreme Court that, with the effect of *res judicata*, declared SSA as owner of half of the treasures that may be found in the shipwreck**. This entitles us to access and dispose of what belongs to us without anyone's permission, within what is established by the 1958 Continental Shelf Geneva Convention. However, the ideal would be to salvage the shipwreck through common agreement, with previously established rules and in conformity with the guidelines established by the Supreme Court. (Emphasis added) (Independent translation)

72. On 16 March 2010, Sea Search Armada, LLC proposed a joint salvage operation with the Government of Colombia and informed that, **if it did not receive any response within 30 days, it would unilaterally initiate preparations to recover what the CSJ had supposedly declared to be its property**.[58]

73. On 24 March 2010, the Legal Secretary of the Office of the Colombian Presidency replied to Sea Search Armada, LLC restating previous communications from 18 February 2008 and 16 May 2008, and informing that:[59]

> 1. **Nowhere does the mentioned Supreme Court Decision order claimant to have "access to the shipwreck"** as the petitioner claims, but on the contrary, at page 21 the H. Supreme Court Of Justice establishes, with regards to the recovery of the reported assets, that this petition "has not yet had concretion or definition of any kind, nor does it concern this controversy -neither directly nor indirectly-", **the ruling does not order any recovery as it is claimed**.

[57] **Exhibit R-015**, El Espectador "Proyectamos el Rescate por cuenta nuestra", 17 October 2009, p. 5.
[58] **Exhibit R-017**, Letter from Colombia to Sea Search Armada, LLC, OFI10-00027876 / AUV 13200, 24 March 2010.
[59] **Exhibit R-017**, Letter from Colombia to Sea Search Armada, LLC, OFI10-00027876 / AUV 13200, 24 March 2010.

> 2. On the other hand, [the Government] does not share your opinion that there are no assets that are part of the cultural heritage of the Nation in the shipwreck, but on the contrary, and as can be deduced from the same ruling, in the case of a shipwreck with historical or archaeological value, their goods are national heritage subject to the regime of "movable monuments", according to the description and reference enshrined in the law. (Emphasis added) (Independent translation)

10. THE JUDICIAL PROCEEDINGS BEFORE THE DISTRICT COURT OF THE DISTRICT OF COLUMBIA

74. On 7 December 2010, Sea Search Armada, LLC filed a suit against the Government of Colombia before the United States District Court for the District of Columbia ("**DC District Court**"), alleging a breach of contract and an expropriation of its ownership rights. Sea Search Armada, LLC claimed damages for USD 17,000,000,000.[60]

75. Before the DC District Court, Sea Search Armada, LLC equated the rights recognized in the 2007 CSJ Decision with property rights over the Galeón San José,[61] and complained that Colombia allegedly had refused to comply with this ruling.[62]

76. Before the DC District Court, Sea Search Armada, LLC noted that, on 27 April 2010, the Legal Secretary of the Office of the Colombian Presidency had informed Sea Search Armada, LLC that it was prohibited from visiting its alleged property without prior approval from the Government. Moreover, it stated that the Office of the Colombian Presidency expressed that, considering that these matters concern "*the defense of the integrity of Colombian territory, as well as assets owned by the Nation, the National Armed Forces will prevent the realization of unauthorized activities in jurisdictional maritime areas*".[63]

77. Before the DC District Court and with regards to the alleged ownership of the Galeón San José, Sea Search Armada, LLC stated that Colombia was

[60] **Exhibit R-018**, Sea Search Armada's Claim against Colombia before the District of Columbia Court. Civil Action No. 1:10-cv-02083, 7 December 2010.
[61] **Exhibit R-018**, Sea Search Armada's Claim against Colombia before the District of Columbia Court. Civil Action No. 1:10-cv-02083, 7 December 2010, ¶ 91, 100.
[62] **Exhibit R-018**, Sea Search Armada's Claim against Colombia before the District of Columbia Court, Civil Action No. 1:10-cv-02083, 7 December 2010, ¶ 78 – 83.
[63] **Exhibit R-018**, Sea Search Armada's Claim against Colombia before the District of Columbia Court, Civil Action No. 1:10-cv-02083, 7 December 2010, ¶ 75.

misappropriating its property.[64] In particular, Sea Search Armada, LLC stated that:[65]

> **By its actions Colombia has intentionally exercised dominion and control over SSA's chattels which intentional dominion by Colombia so seriously interferes with SSA's right to control the chattels that SSA is deprived of its chattels**. (Emphasis added)

78. On 24 October 2011, the DC District Court rejected Sea Search Armada´s claims and stated:

> **According to the facts alleged by SSA, Colombia breached the contract in 1984 at the latest**. See Compl. ¶¶ 11 – 12 (indicating that Colombia denied SSA permission to perform full salvage operation at the *San Jose* site no later than 1984); ¶ 24 (**stating that Colombia declared that it owned the entirety of the *San Jose* site in 1984**). **Any breach – of – contract action brought by SSA against Colombia after 1987 would therefore be time–barred.** Since SSA did not file its Complaint until December 7, 2010 –over 20 years after the statute of limitation had expired– its breach of contract claims is untimely.[66] (Emphasis added)
>
> **SSA contends that its action for breach did not accrue until 2007, when the Colombia Supreme Court held that Colombia and SSA each owned 50% of the *San Jose* treasures**. See Opp. At 16; Compl., ¶ 16. In support, SSA cites to the District's discovery rule, which tolls the statute of limitation when the plaintiff does not know, and should not reasonably have known, that an injury has been suffered due to the defendant's wrongdoing. See Opp. At 16; Lee v. Wolfson, 265 F. Supp. 2d 14, 17 (D.D.C. 2003) (statute of limitations begin to run when "the plaintiff has knowledge of (or by the exercise of reasonable diligence should have knowledge of) (1) the existence of the injury, (2) its cause in fact, and (3) some evidence of wrongdoing.") (Citing Bussineau v. President and Directors of Georgetown College, 518 A.2d. 423, 425 (D.C. 1986)). The discovery rule does not change the outcome in this case, however, because **SSA clearly knew of the alleged breach in 1984, when the**

[64] **Exhibit R-018**, Sea Search Armada's Claim against Colombia before the District of Columbia Court. Civil Action No. 1:10-cv-02083, 7 December 2010, ¶ 88.
[65] **Exhibit R-018**, Sea Search Armada' Claim against Colombia before the District of Columbia Court. Civil Action No. 1:10-cv-02083, 7 December 2010, ¶ 94.
[66] **Exhibit R-019**, United States District Court for the District of Columbia. Civil Action No. 10-2083 (JEB)–2083, Memorandum Opinion, 24 October 2011, p.5.

> **Colombian Parliament enacted a law "eliminating all of SSA's property rights in the treasure."** Compl., ¶ 12. **In fact, SSA actually filed suit against Colombia in 1989, complaining about the loss of its rights**. Id., ¶ 13. The time has run out. (…)"[67] (Emphasis added)
>
> […]
>
> **Even if the statute of limitations here did not begin to run until the date of the Colombia Supreme Court's decision, as SSA also contends, its breach-of-contract claim is still time-barred. The Colombia Supreme Court's ruling was issued on July 5, 2007.** See Compl., ¶ 16; Opp. at 16. **Using that as the accrual date, the three-year statute of limitations would have expired on July 5, 2010.** Since that is more than 150 days before SSA filed its Complaint with this Court, Plaintiff's claim would be time-barred even using Plaintiff's own accrual date.[68] (Emphasis added)

79. The expropriation claim was also rejected by the DC District Court:[69]

> Plaintiff's conversion claim also carries a three-year statute of limitations. See D.C. Code § 12-301(2); Malewicz, 571 F. Supp. 2d at 335; see also Gilson, 682 F.2d at 1025 n.7 ("The applicable statute of limitations [in a case arising under the FSIA] is determined by the local law of the forum."). **When a defendant acquires the property unlawfully in the first instance, as Plaintiff alleges here, a conversion claim accrues immediately.** See Malewicz, 571 F. Supp. 2d at 335; Compl., ¶ 24 (**stating that Colombia's 1984 decree that it owned the San Jose site in its entirety was declared illegal at every stage of the Colombian judicial process**). **Since Colombia's first attempts to take full ownership of the San Jose site occurred in 1984, SSA's conversion claim accrued at that time**. See Compl., ¶ 12 **("[I]n 1984 the Colombian Parliament enacted a law giving Colombia all rights to treasure salvaged from the San Jose site eliminating all of SSA's property rights in the treasure**."); ¶ 24 ("**During 1984, the [Government of Colombia] decreed that the property discovered by SSA was owned entirely by Colombia**."). The statute of limitations for the

[67] **Exhibit R–019**, United States District Court for the District of Columbia. Civil Action No. 10-2083 (JEB)–2083, Memorandum Opinion, 24 October 2011, p.5–6.
[68] **Exhibit R–019**, United States District Court for the District of Columbia. Civil Action No. 10-2083 (JEB)–2083, Memorandum Opinion, 24 October 2011, p.7.
[69] **Exhibit R–019**, United States District Court for the District of Columbia. Civil Action No. 10-2083 (JEB)–2083, Memorandum Opinion, 24 October 2011, p. 7-8.

conversion claim, accordingly, expired in 1987. Since Plaintiff did not file its conversion claim until 2010, it is similarly time-barred.

Plaintiff asserts that its claim is timely because it is "based on the Defendant's actions since the [Colombia Supreme Court's] decision in 2007." Opp. at 17. **While it is true that Count II of the Complaint refers to the 2007 Colombia Supreme Court ruling and mentions actions taken thereafter**, see Compl., ¶¶ 90-95, **Plaintiff cannot skirt around the fact that the allegations throughout the rest of the Complaint show that the conversion, if it occurred, began in 1984**. See id., ¶¶ 12, 24-26. **SSA even states in its Complaint that it was denied access to its properties for 23 years – presumably referring to the time period between 1984 and the Colombia Supreme Court ruling in 2007**. Id., ¶ 24. And it filed suit in 1989 on the identical claim. Id., ¶ 35; see also TermoRio, 421 F. Supp. 2d at 97.

Even were the conversion claim somehow to turn on Colombia's alleged refusal to comply with the Colombia Supreme Court's ruling, Plaintiff has failed to provide any dates for the Court to assess the timeliness of its Complaint. The only relevant date provided anywhere in the Complaint or Opposition is the date of the Colombia Supreme Court decision: July 5, 2007. Id., ¶ 16. Since three years from that date is July 5, 2010, and Plaintiff did not file its Complaint until December 2010, the Court can only conclude that Plaintiff's conversion claim is untimely" (Emphasis added)

80. Sea Search Armada, LLC unsuccessfully tried to appeal this decision (*see paragraph 85 below*).

11. THE ENTRY INTO FORCE OF THE TPA

81. On 15 May 2012, the TPA entered into force.

12. THE 2013 PETITION BEFORE THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS AND THE 2013 DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

82. On 29 March 2013, Sea Search Armada, LLC filed a petition before the Inter-American Commission on Human Rights ("**IACHR**") alleging that Colombia had breached its rights to private property and to judicial protection.[70]

83. In the 2013 Petition, Sea Search Armada, LLC qualified Colombia´s conduct as an expropriation:[71]

> Naturally, **that extreme resistance to the exercise of such powers by the owner implies the confiscation of the private property without the payment of fair compensation**. And it implies the consequent violation of that other commitment acquired by the Colombian State through Article 21 of the American Convention on Human Rights, which states that "No person may be deprived of his property except upon payment of fair compensation, for a public purpose or social interest and in the situations and according to the forms established by law. (Independent Translation) (Emphasis added)

84. According to Sea Search Armada, LLC the expropriation took place on 26 November 2012 when, in bad faith, Colombia rejected the access to the shipwreck in any form[72]:

> **The bad faith of this last and definitive manifestation of rebellion against the ruling of the Supreme Court becomes evident** if it is taken into account that such ruling was issued on July 5, 2007, and the lawsuit before the Federal Court of Appeals of the District of Columbia was filed on 6 December 2010, 3 years and 5 months later, during which no judicial process took place. **And throughout that entire time, the Republic of Colombia refused to even engage in conversations with SSA regarding the possibility of a joint rescue of the common property**.
>
> **It was precisely for that reason that SSA sued before the Federal Court, in order to be compensated for the damages caused by the opposition to SSA's access to its treasure, even threatening to prevent it with the force of its National Navy**.

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[70] **Exhibit R-021**, Sea Search Armada, LLC's Petition against Colombia before the IACHR, 15 April 2013, p. 1.
[71] **Exhibit R-021**, Sea Search Armada, LLC's Petition against Colombia before the IACHR, 15 April 2013, ¶ 36.
[72] **Exhibit R-021**, Sea Search Armada, LLC's Petition against Colombia before the IACHR, 15 April 2013, pp. 18-19.

> Now it is asserted, without any hesitation, that the reason for not complying with that ruling is because SSA sued before that Federal Court. Therefore, the Republic of Colombia will wait for the termination of the process "to be able to adopt the necessary decisions." That is, to decide whether or not to comply with a Supreme Court ruling that became res judicata since 2007.
>
> **And, as this process would take 10 or more years to reach its conclusion, the response on 26 November 2012, was the notification of the Republic of Colombia's definitive intention not to comply with the Supreme Court ruling. This necessarily implies, furthermore, the notification of the definitive confiscation of its treasure, without payment of fair compensation.**
>
> 39.- **With that notification of the definitive purpose of not complying with that ruling, along with the resulting confiscation of the discoverer's property treasures, the intention expressed on 11 June 2011 by the President of Colombia, to submit to its provisions was buried**. And since that 26 November 2012, the term referred to in Article 46, numeral 1, letter 'a' of the Convention began to run, which requires the complaint *to be submitted within a six month period from the date on which the alleged victim's rights violations has been notified of the final decision.*[73] (Emphasis added) (Independent Translation)

85. On 8 April 2013, the United States Court of Appeals for the District of Columbia Circuit (the "**Court of Appeals**") decided Sea Search Armada, LLC's appeal, stating that the District Court properly granted Colombia's motion to dismiss:[74]

> With regards to all other claims of the appellant, the district court correctly ruled that they are barred by the three-years statute of limitation. **The district court correctly ruled that a conversion claim, if any, accrued in 1984, far outside the statute of limitation period**. Although appellant argues that the district court incorrectly stated that appellant provided no dates for wrongdoing after July 5, 2007, any misleading statement by the court on that subject is immaterial. **As the district court correctly ruled, any conversion claim by Sea Search arose in 1984, when Colombia first attempted to take full ownership of the wrecked galleon**. Sea Search Armada, 821 F.

[73] **Exhibit R-021**, Sea Search Armada, LLC's Petition against Colombia before the IACHR, 15 April 2013, p. 19–20.
[74] **Exhibit R-020**, United States Court of Appeals for the District Columbia Circuit, Decision, 8 April 2013, p. 1. ¶ 2 - 4 of the Operative Section.

> Supp. 2d at 273. Under D.C. law, a conversion claim accrues at the moment a defendant unlawfully acquires property. See *Malewicz v. City of Amsterdam,* 517 F. Supp. 2d 322, 335 (D.D.C. 2007) *(*citing Shea v. Fridley, 123 A. 2d 358, 361 (D.C. 1956)). Any further allegations of later conduct cannot change the accrual date of the alleged claim for conversion. (Emphasis added)

13. THE NEW LEGAL ACTION BEFORE US COURTS, COLOMBIA'S CONDITIONS FOR ANY DIALOGUE AND SEA SEARCH ARMADA'S ACKNOWLEDGEMENT THAT IT KNEW THERE WAS NO TREASURE IN THE 1982 COORDINATES

86. On 23 April 2013, Sea Search Armada, LLC filed a new civil action against Colombia, again before the United States District Court for the District of Columbia, claiming that:[75]

> 28. The Defendant's actions and threat as expressed in its letter, dated April 27, 2010, demonstrate Defendant's intent to cause SSA's partners to breach their agreements with SSA and terminate their business relationships with the Plaintiff.
>
> 29. **As a result of the GOC's actions, SSA has suffered damages including the loss of amounts invested in the preparation for salvage operations as well as funds expended in responding to the GOC's actions and threats**". (Emphasis added)

87. On 20 November 2014, Sea Search Armada, LLC invited Colombia to attempt a negotiated solution regarding the enforcement of the 2007 CSJ Decision.[76]

88. On 22 December 2014, Colombia informed Sea Search Armada, LLC that no conversations were possible unless the legal actions against Colombia were terminated:[77]

> In this regard, I would like to restate the position that the Colombian Government has taken for several years in the sense that **there is no possibility of dialogue until the judicial actions of any kind are definitively terminated**. Therefore, it is not enough to request the suspension of any process, as stated in the annexes to your communication, but rather

[75] **Exhibit R–022**, United States District Court for the District of Columbia. Civil Action No. 13-564, 23 April 2013, ¶ 28-29, and 35-36.
[76] **Exhibit C-0032**, Letter from the Minister of Culture to Sea Search Armada, LLC, 22 December 2014.
[77] **Exhibit C-0032**, Letter from the Minister of Culture to Sea Search Armada, LLC, 22 December 2014.

that such processes must be terminated. (Emphasis added) (Independent Translation)

89. On 19 January 2015, Sea Search Armada, LLC informed Colombia that it agreed to the withdrawal of the proceedings before the DC District Court and the IACHR:[78]

> Since it is a matter of putting an end to a quarter of a century of legal proceedings and through dialogue to agree on the enforcement or execution of the ruling that resolved the litigation, which is the fundamental issue in this matter, Sea Search Armada agrees to withdraw the proceedings before the District Court of the District of Columbia and the Inter-American Commission on Human Rights, so that, in accordance with its position, with the termination of those proceedings, the dialogues referred to above may begin.

90. On 30 January 2015, the DC District Court granted Colombia's motion to dismiss.[79]

91. On 4 February 2015, Sea Search Armada, LLC's legal counsel renewed the communication of 19 January 2015:[80]

> As you know the Court's ruling, dated January 30, 2015, is subject to appeal and modification; therefore, the circumstances surrounding your client's proposal to my client remain in place. Again, my client confirms its commitment to end the litigation in the District of Columbia, in order to satisfy the condition imposed by the Colombian government for initiating negotiation in regards to the implementation or execution of the judgment of the Colombian Supreme Court on July 5, 2007, which resolved the dispute over ownership of San Jose.

92. Despite its previous communications informing Colombia that it would end the litigation, on 9 February 2015 Sea Search Armada, LLC submitted a "*motion to alter or amend the Court's Judgment and statement of points and authorities in support thereof*".[81]

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[78] **Exhibit C-0033**, Letter from Sea Search Armada, LLC to the Minister of Culture, 19 January 2015.
[79] **Exhibit R–024**, SSA Motion to Alter or Amend the Court's Judgment and statement of points and authorities in support thereof, 9 February 2015.
[80] **Exhibit R–023**, Letter from Sea Search Armada's legal counsel to Colombia's legal counsel, 4 February 2015.
[81] **Exhibit R–024**, SSA Motion to Alter or Amend the Court's Judgment and statement of points and authorities in support thereof, 9 February 2015.

93. On 19 May 2015, Sea Search Armada, LLC met with the Minister of Culture.[82]

94. Following that meeting, on 20 May 2015, Sea Search Armada, LLC sent the Minister of Culture a report summarizing their position regarding the interpretation of the 2007 CSJ Decision and the reasons why they considered the CSJ could not have excluded the surrounding areas from its ruling.[83]

95. On 24 August 2015, Sea Search Armada, LLC requested to meet with Colombia's Shipwrecked Antiquities Commission. When explaining how the conversations had developed with the Colombian Government, Sea Search Armada, LLC: (i) noted that the Minister of Culture had conditioned any dialogue on the existence of the shipwreck in the 1982 coordinates; and, (ii) clearly acknowledged that, for years (in fact since 18 March 1982, just days after Glocca Morra Company's Confidential Report), it had known that there was no shipwreck in the 1982 Coordinates:[84]

> But out those dialogues only a first and only meeting was held on May 19, because on July 28 they were canceled by the Minister of Culture, **when she conditioned their continuity to the verification of the existence of a fact whose non-existence is known by all since March 18, 1982**, when, according to the then in force article 112 of decree law 2349 of 1971, which authorized margins of error in the indication of the coordinates, **the discoverer reported its finding, leaving perfectly and clearly established that the shipwreck was not in the coordinates he indicated**, but in its immediate vicinity. **And it is precisely in those exact coordinates, in which we all know that the reported shipwreck is not found**, where its existence will be verified. (Emphasis added) (Independent translation)

96. On 5 October 2015, Sea Search Armada, LLC informed Colombia's Shipwrecked Antiquities Commission of its position regarding the location of the shipwreck. Again, Sea Search Armada, LLC alleged that the 2007 CSJ Decision could not and did not modify its alleged rights as reported in 1982, that is, including the surrounding areas.[85]

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[82] **Exhibit C-0035**, Letter from SSA to the Minister of Culture, 20 May 2015.
[83] **Exhibit C-0035**, Letter from SSA to the Minister of Culture, 20 May 2015.
[84] **Exhibit R–025**, Letter from Sea Search Armada, LLC to Colombia's Shipwrecked Antiquities Commission, 24 August 2015.
[85] **Exhibit R–025**, Letter from Sea Search Armada, LLC to Colombia's Shipwrecked Antiquities Commission, 24 August 2015.

97. On 19 November 2015, Sea Search Armada, LLC informed the Minister of Culture that it was inevitable for alleged new disputes to arise given the Government's negotiations with third parties for the purpose of salvaging the treasure. In this communication, Sea Search Armada, LLC expressed that it had no interest in participating in a verification of the shipwreck in the coordinates reported in 1982 since it new, from the start, that the shipwreck was not located the 1982 Coordinates:[86]

> SSA reiterates what it stated in its communication of 19 October, regarding **its non-participation in the verification of the shipwreck at the coordinates referred to in the 18 March 1982 report, on the grounds that since that day the reporter left perfectly and clearly established the location of his finding in a place different from the coordinates where the verification will be carried out**. Therefore, it does not make sense to propose to it that, assuming its costs, it verifies **the same thing that he has repeated for 33 years, that is, that its discovery is not in those coordinates** but in its immediate vicinity.
>
> (…) the Minister of Culture suspended these dialogues, warning that they would not be resumed if the same thing that the discoverer had established since 1982 when he reported the shipwreck was verified, **and which was verified in 1994 by Nation's contractors, that is, the non-existence of shipwrecks in the exact coordinates referred to in the "Confidential Report on Submarine Exploration**. (Emphasis added) (Independent translation)

98. In addition, Sea Search Armada, LLC expressly warned Colombia of these allegedly new disputes, stating that the Nation's "*only task now would be its defense, both domestically and internationally, and at its own expense, of a salvage contract with a third party*".[87] In the end, it concluded that the purpose of the communication was to establish the "*facts, cause and features of the new and undesirable confrontation ahead*".[88]

14. THE 2015 DISCOVERY OF THE GALEÓN SAN JOSÉ BY THE COLOMBIAN GOVERNMENT; SEA SEARCH ARMADA'S REQUEST TO BE TAKEN TO THE SITE OF THE DISCOVERY; REPORT OF THE RESULTS OF THE VERIFICATION IN THE 1982 COORDINATES; AND A NEW REJECTION BY

[86] **Exhibit R–027**, Letter from Sea Search Armada, LLC to the Minister of Culture, 19 November 2015.
[87] **Exhibit R–027**, Letter from Sea Search Armada, LLC to the Minister of Culture, 19 November 2015.
[88] **Exhibit R–027**, Letter from Sea Search Armada, LLC to the Minister of Culture, 19 November 2015.

COLOMBIA REMINDING THE CONTENTS OF THE 2007 CSJ DECISION AND THE 1994 COLUMBUS REPORT

99. On 5 December 2015, the President of Colombia publicly announced that, on 27 November of that same year, an archaeological site corresponding to the Galeón San José had been found.[89]

100. On 10 December 2015, Sea Search Armada, LLC requested the President of Colombia to be taken to the site where the Government had announced the discovery of the Galeón San José, in order to determine whether it was effectively on the site, and whether the shipwreck was located beyond the areas indicated in the Confidential Report.[90]

101. On 17 June 2016 the Minister of Culture informed Sea Search Armada, LLC that the Colombian Government was prepared to authorize and accompany them to the coordinates indicated in the 2007 CSJ Decision. Colombia was clear that, as historically informed, the 2007 CSJ Decision granted no rights over the Galeón San José:[91]

> The accompaniment to Sea Search Armada that the Colombian Government is willing to provide, is without prejudice to the position of the Colombian Government with respect to the possible rights of Sea Search Armada, which would be exclusively limited to those referred to by the Supreme Court of Justice in the terms and conditions indicated therein.
>
> We have expressed this position in several communications, and we reiterate it now.
>
> **The Supreme Court of Justice's ruling is clear, it does not admit interpretations and no alleged rights over the Galeón San José can be inferred from it, as you claim**.
>
> **It refers to possible rights over the possible shipwreck that may exist in the coordinates reported by you and which are established in the confidential report of 1982, without them being related to a specific shipwreck.** (Emphasis added) (Independent translation)

[89] **Exhibit C-0037**, Statement by President Santos on the discovery of the San José Galleon, 5 December 2015.
[90] **Exhibit C-0038**, Letter from SSA to the President of Colombia, 10 December 2015.
[91] **Exhibit R–028**, Letter from the Minister of Culture to Sea Search Armada, 17 June 2016.

102. On 30 November 2016 the Minister of Culture once again informed Sea Search Armada, LLC that no shipwreck was found in the coordinates reported in 1982, and categorically stated that, therefore, the condition established in the 2007 CSJ Decision to acquire any property rights was not met:[92]

> For this reason, **the Colombian Government has the scientific evidence that allows it to categorically state that the condition established by the Colombian Supreme Court of Justice in the July 5, 2007 ruling was not met**. Therefore, there is no place for any alleged rights that would allow Sea Search Armada to claim 50% of what would not be considered the Nation's Cultural Heritage of the shipwreck that could eventually be found in the coordinates established in the confidential report.
>
> Moreover, although the Colombian Supreme Court of Justice was absolutely clear in affirming that the rights of Sea Search Armada were limited to the coordinates reported in the confidential report "without including, therefore, spaces, zones or diverse areas", **we can affirm without any doubt that in the areas described in the graph provided in the confidential report, there is no vestige of any shipwreck either**. (Emphasis added) (Independent translation)

103. On 4 September 2017, Sea Search Armada, LLC acknowledged that for the past 34 years, it knew that there was no shipwreck in the coordinates reported in the 1982 Confidential Report.[93]

104. Moreover, in the same communication dated 4 September 2017, Sea Search Armada, LLC stated that, since 2014, the Ministry of Culture of Colombia had justified the alleged contempt for the 2007 CSJ Decision by claiming that the CSJ had removed the immediate vicinity of the coordinates from the 1982 Confidential Report to impose the precise coordinates as the location of the discovery.[94]

105. On 30 October 2017, the Third Civil Court of Barranquilla revoked the *Secuestro* imposed on 12 October 1994.[95]

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[92] **Exhibit R–029**, Letter from Minister of Culture to Sea Search Armada, 30 November 2016.
[93] **Exhibit R–030**, Letter from Sea Search Armada, LLC to Colombia, 4 September 2017.
[94] **Exhibit R–030**, Letter from Sea Search Armada, LLC to Colombia, 4 September 2017.
[95] **Exhibit C-0040,** Superior Court of the Judicial District of Barranquilla, Judgment, p.1, ¶.

106. On 8 August 2018, Sea Search Armada, LLC informed the President of Colombia that unless a peaceful solution was achieved regarding the ongoing litigation between them for over three decades, new judicial actions would be taken.[96]

107. On 20 December 2018, contradicting its prior admissions and conduct, Sea Search Armada, LLC informed the Vice President of Colombia that it would waive any claim if, after a joint verification expedition, it was concluded that the Galeón San José was not located in the areas reported in 1982.[97]

108. On 12 March 2019 Sea Search Armada, LLC reaffirmed its proposal of reaching a consensual solution regarding the enforcement of the 2007 CSJ Decision, as well as performing a joint verification expedition of the areas reported in 1982.[98]

109. On 29 March 2019, the Superior Court of the Judicial District of Cartagena ("Superior Court of Cartagena") decided favorably Sea Search Armada, LLC's appeal against the Third Civil Court of Barranquilla's ruling of 31 October 2017, thereby reinstating the *secuestro*.

110. On 17 June 2019, the Vice President of Colombia replied to Sea Search Armada, LLC's proposal to find a consensual solution regarding the 2007 CSJ Decision. In its communication, it once again reminded Sea Search Armada, LLC of the two conditions clearly established by in 2007 CSJ Decision, and of the results of the 1994 Columbus Report, therefore reiterating what had been the consistent position of Colombia, that Sea Search Armada, LLC had no right over the Galeón San José:[99]

> 1. The ruling of 5 July 2007 issued by the Supreme Court of Justice written by Justice Carlos Ignacio Jaramillo within the file 08001-3103-010-1989-09134-01, **limited the right of Sea Search Armada to those assets [1] that have the character of treasure in the terms of article 700 of the Civil Code and [2] that are located in the specific coordinates reported by Glocca Morra in 1982, without including rights over different spaces or areas, as stated in the second point of the resolutive part:**
>
> *"(…) the property there conferred, in equal parts, in favor of the Nation and the claimant, is referred only and exclusively to the assets that, on one side, by*

[96] **Exhibit R–031**, Letter from Sea Search Armada, LLC to Colombia, 8 August 2018.
[97] **Exhibit R–032**, Letter from Sea Search Armada, LLC to Colombia, 20 December 2018.
[98] **Exhibit R–033**, Letter from Sea Search Armada, LLC to Colombia, 12 March 2019.
[99] **Exhibit C-0040**, Letter from Vice-President of Colombia to SSA, 17 June 2019, pp. 1-2, 4.

their characteristics and own features, in conformity with the circumstances and directions indicated in this decision, are still susceptible of being qualified juridically as a treasure, in the terms of Article 700 of the Civil Code and the restriction or limitation that placed upon it article 14 of Law 163 of 1959, among other applicable legal provisions and, on the other side, to the assets referred to by Resolution 0354 of 3 June 1982, issued by the General Maritime and Ports Directorate, namely, those, that are found ***in 'the coordinates referred to in the 'Confidential Report on Underwater Exploration carried out by the Company' GLOCCA MORRA in the Caribbean Sea, Colombia 26 February 1982' Page 13 No. 49195 Berlitz Translation Service.', without including, therefore, different spaces, zones or areas.***

2. Regarding the verification of the coordinates reported in 1982, such task was already carried out within the framework of contract No. 544 of 1993, the results of which led to the conclusion that in the site of the coordinates reported by Glocca Morra Company (today Sea Search) **there is NO shipwreck, much less any trace of the Galeón San José. Only a piece of wood was found at the site, which after being examined, led to the conclusion that it did not belong to any shipwreck**.

In light of the above, the Sea Search Armada (SSA) does not have any right over the Galeón San José or its content because it is not located at the coordinates reported by that company.

[…]

3. According to the Dimar certification attached to this document, **the coordinates reported by Maritime Archaelogy Consultants Switzwerland (MACS) do not correspond to those reported by Glocca Morra Company and do not overlap with these coordinates**". (Emphasis added) (Independent translation)

111. On 12 July 2019, Sea Search Armada, LLC responded to Colombia's rejection in a letter to the Vice President of Colombia once again admitting that since 1982 it had known that there was no shipwreck in the area of the coordinates:[100]

For such rejection you invoke **a fact recognized by all since 1982: the non-existence of shipwrecks in the specific coordinates mentioned in that**

[100] **Exhibit C-0041**, Letter from SSA LLC to the Vice-President of Colombia, 12 July 2019.

> **report**, in which it was perfectly established that the discovery was not made in those coordinates, but in their immediate vicinity (...).
>
> The joint **verification** of the maritime areas reported in 1982 was also rejected on the basis of **another one carried out in 1994 by Columbus Exploration Inc**., in which the presence of a SSA observer was denied, and **was carried out exclusively in the precise coordinates included in their report, to conclude the same thing that we have all known for 37 years: that there is nothing in those coordinates**. (Emphasis added) (Independent translation).

112. As the Tribunal can easily conclude, up to this point the Claimant had claimed, in different instances and before different courts in Colombia and the United States and before the Inter-American Commission on Human Rights, that different acts of the Republic of Colombia and its alleged reluctance to comply with the 2007 CSJ Decision had resulted in an expropriation of Claimant´s alleged rights. The vast majority of those acts occurred before the TPA became effective. But even assuming, *quod non*, that the last act of the Republic of Colombia was the letter of the Vice President of the Republic of Colombia of 17 June 2019 (which simply reiterated the position of Colombia expressed in the acts that Claimant had unsuccessfully challenged in different courts), any claim under the TPA is time barred.

15. THE 2020 RESOLUTION OF THE MINISTRY OF CULTURE AND THE 2022 VERIFICATION EXPEDITION

113. On 23 January 2020, the Colombia's Ministry of Culture issued Resolution 0085 of 2020, which "[d]eclare[d] *the Shipwreck of the Galeón San José as an Asset of National Cultural Interest*".[101]

114. In May 2022, Colombia conducted a verification that reaffirmed that no shipwreck was located in the reported area. The 2022 Verification Campaign Report concluded that:[102]

[redacted]

[101] **Exhibit C-0042**, Ministry of Culture of the Republic of Colombia, Resolution 0085 of 2020."
[102] **Exhibit R-034**, Report on the 2022 Verification Campaign over the 1982 Coordinate reported by Glocca Morra Company, Inc., 25 May 2022 **[CONFIDENTIAL]**.

[redacted]

[redacted]

III. COLOMBIA'S SUBMISSION MEETS THE REQUIREMENTS OF ARTICLE 10.20.5 OF THE TPA

116. Article 10.20.5 of the TPA reads as follows:

> 5. *In the event that the respondent so requests* within 45 days after the tribunal is constituted, *the tribunal shall decide* on an expedited basis an objection under paragraph 4 *and any objection that the dispute is not within the tribunal's competence*. *The tribunal shall suspend* any proceedings on the merits *and issue a decision or award* on the objection(s), stating the grounds thereof, *no later than 150 days after the date of the request*. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause delay issuing its decision or award by an additional brief period, which may not exceed 30 days. (Emphasis added)

117. The applicability of Article 10.20.5 is subject to one and only one condition: that Respondent files objections that the dispute is not within the tribunal's jurisdiction "*45 days after the tribunal is constituted*".

118. It is undisputed that the Tribunal was constituted on 7 June 2023, when the Permanent Court of Arbitration informed that Mr. Stephen Drymer, "*does not have any conflicts, is available to serve on the Tribunal, and is willing to accept the appointment as President*."

119. This submission under Article 10.20.5 is filed on 22 July 2023, namely, within 45 days after the Tribunal was constituted.

120. Accordingly, Colombia is entitled to rely on Article 10.20.5 and requests: (1) an expedited decision on its objection to the jurisdiction of the Tribunal; (2) a suspension of any proceedings on the merits; and (3) the issuance of an award no later than 150 days after the day of this request, with the option of additional 30 days in light of a disputing party's request for a hearing, or by decision of the Tribunal on a showing of extraordinary cause.

IV. THE PROCEEDINGS FOLLOWING THE SUBMISSION PURSUANT TO ARTICLE 10.20.5 OF THE TPA

121. Due to Colombia's valid invocation of Article 10.20.5 of the TPA, and unlike a request for bifurcation which is generally within the discretion of arbitral

tribunals, in this case the Tribunal is under the obligation (shall, as such term must be interpreted in accordance with the rules of treaty interpretation) to proceed as provided in said article. Therefore, once a request pursuant to Article 10.20.5 is made within 45 days after the tribunal is constituted:

122. First, the Tribunal is obliged to "*decide on an expedited basis any objection that the dispute is not within the tribunal's competence*".

123. Second, the Tribunal is obliged to "*suspend any proceedings on the merits*".

124. Third, the Tribunal is obliged to "*issue a decision or award on the objection(s), stating the grounds thereof, no later than 150 days after the date of the request*". In any case, the Tribunal is allowed to take 30 additional days, should any party request a hearing or the Tribunal so decides, on a showing of extraordinary cause

125. The historic drafting process of the US Model BIT (2004), and particularly of Draft Article 28.5, a provision identical to Article 10.20.5 of the TPA, confirms the above. As noted in an influential piece commenting on US investment agreements:[103]

> Article 28(5) provides for an expedited treatment of a preliminary objection raised under Article 28(4) or any objection to the tribunal's jurisdiction. If the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide the objection on an expedited basis. Specifically, the tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection no later than 150 days after the date of the request. The decision or award shall state the grounds upon which it is based. If a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Further, regardless of whether a hearing is requested, on a showing of extraordinary cause, a tribunal may delay its decision or award by an additional brief period of time not to exceed 30 days.

126. As confirmed by the negotiators of the US Model (2004), Article 10.20.5 of the TPA mandates an expedited procedure in respect of objections as to the tribunal's competence to entertain the dispute, if the invocation of the possibility enshrined in Article 10.20.5 is made within 45 days after the constitution of the tribunal.

[103] **Exhibit RLA-009,** Kenneth J. Vandevelde, U.S. INTERNATIONAL INVESTMENT AGREEMENTS (Oxford University Press 2009), pp. 608-9.

127. In accordance with the foregoing, the Republic of Colombia respectfully requests the Tribunal to:

i) First, order the suspension of any proceedings on the merits.
ii) Second, open a jurisdictional phase pursuant to Article 10.20.5 of the TPA.
iii) Third, set a procedural calendar that allows it to decide the objections to jurisdiction on an expedited basis, and in any case, no later than 180 days after this request.

V. THE TRIBUNAL LACKS JURISDICTION TO ENTERTAIN CLAIMANT'S CLAIMS

128. Pursuant to Article 10.20.5 of the TPA, Colombia submits 4 preliminary objections. Each objection demonstrates that the Tribunal lacks jurisdiction to entertain the claim presented by Sea Search Armada, LLC. This section substantiates each of those jurisdictional objections (**subsections V.1 to V.4**).

129. As a threshold matter, the Republic of Colombia must stress that Claimant bears the burden of proving that the Tribunal has jurisdiction to entertain its claim. However, Claimant has manifestly failed to meet its burden of proof.

130. It is a fundamental principle of international law and arbitral practice that a claimant must establish all elements of its case, including the jurisdictional requirements of the treaty on which the claims are based.[104] As a corollary of the burden of proof principle, a claimant "*must adduce evidence of the facts on which they base their claims to succeed*."[105]

131. Moreover, as one tribunal noted, the evidence must be convincing: "*it is important to keep in mind that the burden of proof is not necessarily satisfied by simply producing evidence*"; rather, "*a party having the burden of proof must not only bring evidence in support of his allegations, but must also convince the*

[104] **Exhibit RLA–010,** *SGS Société Générale de Surveillance S.A. v. The Republic of Paraguay*, ICSID Case No. ARB/07/29, Decision on Jurisdiction, 12 February 2010, ¶ 57.
[105] **Exhibit RLA–012,** Jan Oostergetel and Theodora Laurentius v. The Slovak Republic, UNCITRAL, Final Award, 23 April 2012, ¶ 148; see also **Exhibit RLA–011,** Perenco Ecuador Ltd. v. The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador, ICSID Case No. ARB/08/6, Decision on Jurisdiction, 30 June 2011, ¶ 105.

Tribunal of their truth, lest they be disregarded for want, or insufficiency of proof."

132. Finally, the tribunal "*cannot take all the facts alleged by the Claimant as granted facts*", especially when its jurisdiction "*rests on the existence of certain facts, they have to be proven*."[106]

133. None of these basic requirements of evidence have been met by Claimant.

1. THE TRIBUNAL LACKS JURISDICTION *RATIONE PERSONAE* BECAUSE SEA SEARCH ARMADA, LLC HAS NEVER INVESTED IN COLOMBIA'S TERRITORY AND, ACCORDINGLY, IS NOT A PROTECTED FOREIGN INVESTOR UNDER ARTICLE 10.28 OF THE TPA

134. Pursuant to Article 10.28 of the TPA, an 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. (Emphasis added)

135. The TPA therefore clearly conditions the notion of "*investor of a Party*", to an enterprise of a Party that "*has made an investment in the territory*" of Colombia.[107] Under the plain text of Article 10.28 of the TPA, it is insufficient for an enterprise to allege it has rights on a sea area on which there may be an asset theoretically capable of constituting an investment, because the TPA expressly requires said enterprise to have actually made an investment in the territory of the other State party to the TPA.

136. Importantly, Colombia has previously argued in investor-State arbitration proceedings that the mere fact of receiving shares or property rights over certain assets in an offshore company does not constitute the making of an investment,[108] let alone suffice to constitute making an investment in the territory of the other State party to the treaty.

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[106] **Exhibit RLA–008,** *Phoenix Action Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, ¶¶ 60-61.
[107] Sea Search Armada is not claiming an attempt to make an investment or that it is making an investment but that it "*has made an investment*".
[108] **Exhibit RLA–022,** *Red Eagle Exploration Limited v. Republic of Colombia* (ICSID Case No. ARB/18/12), Memorial on Jurisdiction, 2 November 2020, ¶ 28.

137. Sea Search Armada, LLC claims to be a protected investor solely by quoting from the definition of "*claimant*", "*investor of a Party*", "*enterprise*" and "*enterprise of a Party*" in the TPA,[109] and by arguing that it "*has made an investment in Colombia*".[110] However, Claimant seeks to comply with the relevant requirement by merely stating it owns or controls directly permits granting the right to explore an area where there may be an asset theoretically capable of constituting an investment pursuant to the TPA and by seeking that the Tribunal reinterprets the 2007 CSJ Decision:[111]

> 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 CSJ Decision confirmed the rights granted by these legal instruments.110

138. This is patently insufficient. Notably, Claimant argues it made an investment in Colombia, but makes no effort to demonstrate, as required by Article 10.28 of the TPA, that it acquired what it considers the asset constitutive of a protected investment by investing in the territory of Colombia. In fact, in its Notice of Arbitration and Statement of Claim, Sea Search Armada, LLC only argues that in late 2008, it acquired all of SSA Cayman Islands' assets and liabilities, including the alleged right to 50% of the discovered treasure:[112]

[109] Notice of Arbitration and Statement of Claim, ¶ 61, quoting from Articles 10.28 and 1.3, respectively.
[110] Notice of Arbitration and Statement of Claim, ¶ 62 (references omitted).
[111] Notice of Arbitration and Statement of Claim (references omitted).
[112] Notice of Arbitration and Statement of Claim (references omitted).

> 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.

139. What the record shows is that Sea Search Armada, LLC entered into an APA with Sea Search Armada Limited Partnership (referred in these proceedings as SSA Cayman Islands),[113] whereby the former promised to secure control over certain assets, subject to compliance with certain conditions:

> WHEREAS Purchaser desires to acquire from Seller, and Seller desires to sell to Purchaser, in exchange for Purchaser's assumption of certain of Seller's liabilities, substantially all of the assets of Seller used in Seller's Business upon the terms **and subject to the conditions contained therein**, it being the intention of Purchaser to employ such purchased assets in conjunction with its own business and not as a successor to, or a continuation of Seller's Business. (Emphasis added)

140. However, Claimant provides no evidence that the APA, through which Claimant allegedly secured the purported investment, either required it to effectively invest in Colombia or resulted in an investment by Claimant in Colombia. The reason for not advancing any further in seeking to meet the explicit requirement in Article 10.28 of the TPA is plain and simple: Sea Search Armada, LLC cannot prove that it invested in Colombia in order to acquire ownership or control over DIMAR Resolution No. 0048 of 29 January 1980 and/or DIMAR Resolution No. 0354 of 3 June 1982.

141. Accordingly, the Tribunal lacks jurisdiction *ratione personae*.

[113] **Exhibit C-0030,** Asset Purchase Agreement between Armada Company and Sea Search-Armada, LLC, 18 November 2008, p. 1. No evidence is provided that the conditions were satisfied, that the promised transaction closed or that a price was paid.

2. THE TRIBUNAL LACKS JURISDICTION *RATIONE TEMPORIS* OVER CLAIMANTS' CLAIMS BECAUSE THE ALLEGED STATE ACTS OR OMISSIONS TOOK PLACE BEFORE THE TPA'S ENTRY INTO FORCE

142. The Tribunal lacks jurisdiction over the claims submitted to arbitration by Sea Search Armada, LLC because such claims are based on State conduct that took place well before the entry into force of the TPA on 15 May 2012.

143. As a declaration of a rule of customary international law, Article 28 of the 1969 Vienna Convention on the Law of Treaties prohibits the retroactive application of treaties:[114]

> Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

144. As previously advocated by Colombia in investor-State proceedings under the TPA,[115] the principle of non-retroactivity is well-rooted in customary international law and prevents the application of the TPA to State conduct that took place prior to its entry into force.

145. This customary international rule is consistent with the general rule of intertemporal law under customary international law. The latter rule is codified in Article 13 of the Articles on Responsibility of States for Internationally Wrongful Acts, according to which "*[a]n act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs*."[116] The commentary to Article 13 of the Articles on Responsibility of States for Internationally Wrongful Acts clarifies that:[117]

> Article 13 provides an important guarantee for States in terms of claims of responsibility. Its formulation ('does not constitute…unless…') is in keeping with

[114] **Exhibit RLA–002**, United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331.
[115] **Exhibit RLA–021**, *Astrida Benita Carrizosa v. Republic of Colombia* (ICSID Case No. ARB/18/5), Colombia's Counter-Memorial on Jurisdiction, 23 October 2019, ¶ 162-168. **Exhibit RLA–020,** *Alberto Carrizosa Gelzis, Enrique Carrizosa Gelzis, Felipe Carrizosa Gelzis v. Republic of Colombia*, PCA Case No. 2018-56, ¶ 166-172.
[116] **Exhibit RLA–004**, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, Art. 13 [Draft ILC Articles on State Responsibility].
[117] **Exhibit RLA–004**, Draft ILC Articles on State Responsibility, Art. 13.

the idea of a guarantee against the retrospective application of international law in matters of State responsibility.

146. Consistent with the abovementioned rules of customary international law, Article 10.1.3 of the TPA provides as follows:

> Section A: Investment
>
> Article 10.1: Scope and Coverage1
>
> 3. For greater certainty, **this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement**. (Emphasis added)

147. Accordingly, the Tribunal lacks jurisdiction over the pre-treaty acts invoked by Claimant, which are in fact its basis to the alleged breaches of the TPA. As a corollary, the Tribunal lacks jurisdiction over any dispute arising over such pre-treaty acts.

a. Claimant's claims are in fact based on State acts that predate the entry into force of the TPA.

148. In its Notice of Arbitration and Statement of Claim, Sea Search Armada, LLC describes the dispute as follows:

> 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.[118]

149. Pertinent to the description of the alleged breach by Sea Search Armada, LLC are paragraphs 6 and 45 of the Notice of Arbitration and Statement of Claim:[119]

> 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

[118] Notice of Arbitration and Statement of Claim.
[119] Notice of Arbitration and Statement of Claim (references omitted).

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

[…]

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 CSJ 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 CSJ 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

150. As described by Sea Search Armada, LLC the breach of the TPA would result from:

i) Colombia's denial that a "treasure" exists in the coordinates reported by Glocca Morra Company back in 1982,
ii) Colombia's denial to disclose the coordinates of the 2015 discovery, and
iii) Colombia's refusal to recognize Sea Search Armada LLC's rights notwithstanding the relevant judicial decisions, particularly through Colombia's position that the rights recognized in the 2007 CSJ Decision, were limited to the area of the precise coordinates, and not the surrounding areas.

151. However, well before the TPA entered into force, Colombia had:

i) Unequivocally challenged and scientifically defeated the Hypothesis that the Galeón San José was located in the area of the 1982 coordinates and adopted a conduct capable of depriving Claimant's alleged property rights of any value.
ii) Unequivocally denied any right to the recovery of the shipwreck, including the purported rights deriving from the 2007 CSJ Decision.

iii) Unequivocally refused to comply with the 2007 CSJ Decision in the manner requested by Sea Search Armada, including through State conduct capable of depriving Claimant's alleged property rights of any value.

i) Well before the TPA entered into force Colombia had unequivocally challenged and scientifically defeated the Hypothesis that the Galeón San José was located in the area and adopted conduct capable of depriving Claimant's alleged property rights of any value.

152. Prior to the TPA's entry into force, Colombia had already unequivocally denied that there was a treasure in the coordinates reported by Glocca Morra Company in 1982.

153. The 1994 Press Release clearly contains the Colombian State's view that, based on scientific evidence, particularly, the results of the analysis carried out by Columbus Exploration, no shipwreck, let alone the Galeón San José, could be found in the coordinates informed by Glocca Morra Company in the 1982 Confidential Report:[120]

> **The Government of Colombia, after reviewing the evidence presented by Columbus Exploration, Inc. following their exploration of the area whose coordinates were furnished by the Nation to the contractor, being the same coordinates informed in 1982 by the Glocca Morra Company, Inc. (Sea Search Armada), has concluded that no shipwreck is located thereto (and consequently no traces of the Galeón San José either)**.
> […]
> The scientific analysis of the area resulted in identifying a rather flat ocean bed of very old and consolidated clay, covered by a thin layer of white non-consolidated mud. **The nonexistence of a shipwreck in the area was evident.** (Emphasis added) (Independent translation)

154. The 5 August 1994 Columbus Report, fully endorsed by Colombia, exhaustively analyzed the Hypothesis of the shipwreck, including through an *in situ study*, concluding, among others, that:[121]

[120] **Exhibit R-011**, Letter from President's Office to DIMAR informing of Press Release, 8 July 1994, pp. 2-3.
[121] **Exhibit R-012**, Columbus Exploration, Final report regarding the oceanographic study, 4 August 1994, pp. 15-16.

- No sonar target was found, **either in the area of the coordinates or near them**, **equal to the relief, size and reflectivity that was expressed in the Hypothesis**.

  […]

- **The visual inspection and of side sweeping sonar by sectors with the ROV did not reveal evidence to corroborate the Hypothesis nor of any shipwreck** and **confirmed that the depth of the sea bottom in the area of the coordinates differ from the depth expressed in the Hypothesis**.

- **The wood sample presented in the Hypothesis does not correspond to a species used in the construction of ships: it is not oak, pine tree, beech tree or fir tree. The most probable is that it is a root**.

- **The wood sample was alive and grew up** subsequently at the beginning of the atmospheric tests with atomic bombs dating the 1950s. It **corresponds to the modern age**. (Emphasis added)

155. Moreover, on 5 July 2007, the CSJ settled the dispute between SSA Cayman Islands and the Nation regarding the alleged property rights deriving from the DIMAR resolutions pursuant to the legal provisions in force. The CSJ overturned the previous judgments of the lower courts of Barranquilla on the basis that they incurred in manifest juridical errors in breach of the special protection envisaged in favor of cultural, artistic heritage, including the submerged one. In particular, the CSJ resolved that:[122]

> **SECOND:** In conformity with the previous resolution, the aforementioned point second of the judgment of first instance is **MODIFIED**, **in the understanding that the property there conferred, in equal parts, in favor of the Nation and the claimant, is referred only and exclusively to the assets that**, **on one side**, by their characteristics and own features, in conformity with the circumstances and directions indicated in this decision, a**re still susceptible of being qualified juridically as a treasure**, in the terms of Article 700 of the Civil Code and the restriction or limitation that placed upon it article 14 of Law 163 of 1959, among other applicable legal provisions **and, on the other**

[122] **Exhibit C-0028**, Colombian Supreme Court of Justice, Decision of 5 July 2007, p. 233-235.

side, to the assets referred to by Resolution 0354 of 3 June 1982, issued by the General Maritime and Ports Directorate, namely, those, that are found in 'the coordinates referred to in the 'Confidential Report on Underwater Exploration carried out by the Company' GLOCCA MORRA in the Caribbean Sea, Colombia 26 February 1982' Page 13 No. 49195 Berlitz Translation Service.', <u>without including, therefore, different spaces, zones or areas</u>. (Emphasis added only in the second operative paragraph (commencing in "and, on the other side") (Independent translation)

156. As can be seen, pursuant to operative paragraph 2 of the 2007 CSJ Decision, any property rights of Glocca Morry Company, as a recognized reporter, were conditioned on compliance by the relevant assets with two cumulative criteria: *first,* on the assets being in the area of "*the coordinates referred to in the 'Confidential Report on Underwater Exploration'*" , "*without including, therefore, different spaces, zones or areas*"; and *second*, on the assets still being susceptible "*of being qualified juridically as a treasure*" pursuant to the applicable law.

157. The interaction between the 1994 Columbus Report and Press Release, on the one hand, and the 2007 CSJ Decision, on the other, is clear and unambiguous: on 5 July 2007, through unequivocal State conduct of the highest authorities of the Executive and Judicial powers of the Republic of Colombia, any rights SSA Cayman Islands could possibly claim to a potential shipwreck in the area of the 1982 coordinates or its contiguous areas were clearly defined and delimited, the result being that any alleged shipwreck located in the limited areas defined by the State conduct had no value.

ii) Well before the TPA's entry into force, Colombia had clearly, unequivocally and materially denied Sea Search Armada, LLC any right to recover the shipwreck, including as deriving from the 2007 CSJ Decision.

158. In light of the 5 July 2007 CSJ Decision and its interaction with the 1994 Columbus Report and Press Release, any further discussion about the alleged denial of the Colombian authorities to provide Sea Search Armada, LLC with the 2015 coordinates becomes irrelevant.[123] Well before 15 May 2012, the date of the TPA's entry into force, Colombia had unequivocally denied Sea Search

[123] The same is true for any debate about the qualification of the Galeón San José as an asset of national cultural interest.

Armada, LLC any right of access to the shipwreck, including from the 2007 CSJ Decision.

159. On 24 March 2010, in response to a 16 March 2010 request from Sea Search Armada, LLC for a joint salvage operation,[124] the Legal Secretary of the Office of the Colombian Presidency restated previous communications from 18 February 2008 and 16 May 2008, and informed that:

> 1. **Nowhere does the mentioned Supreme Court Decision order that claimant have "access to the shipwreck"** as the petitioner claims, but on the contrary, at page 21 the H. Supreme Court of Justice establishes, with regards to the recovery of the reported assets, that this petition "has not yet had concretion or definition of any kind, nor does it concern this controversy -neither directly nor indirectly-", the ruling does not order any recovery as it is claimed.

160. As the Tribunal can readily observe, even if Claimant can point to conduct of the Republic of Colombia post-dating the TPA's entry into force whereby it denied Sea Armada, LLC any access to the coordinates, the underlying State conduct is simply a reinstatement of the repeated pre-entry into force denial of any right to access the shipwreck pursuant to the 2007 CSJ Decision.

161. That in the post-entry into force stage Colombia had continued to deny Sea Search Armada, LLC's access to coordinates other than the ones defined by the 2007 CSJ Decision –including denial of access to the 2015 Coordinates– simply confirms the pre-entry into force State definitive position that Sea Search Armada, LLC had no right to access any shipwreck not located within the coordinates defined by the 2007 CSJ Decision. This position can be traced back to 2007 when, given the interaction with the 1994 Columbus Report and Press Release, it became clear that Colombia did not recognize Sea Search Armada, LLC any property rights whatsoever over the Galeón San José.

iii) Well before the TPA's entry into force, Colombia unequivocally refused to interpret the 2007 CSJ Decision in the expansive and incorrect manner requested by Sea Search Armada, a State conduct capable of depriving the alleged Claimant's property rights of any value.

[124] **Exhibit R–017**, Letter from Colombia to Sea Search Armada, LLC, OFI10-00027876 / AUV 13200, 24 March 2010.

162. Claimant's general position has been, and is now, that through different measures Colombia had been in breach of Claimant's purported rights resulting from the 2007 CSJ Decision. Now, in a blatant contradiction with its previous conduct, Claimant attempts to fabricate a post-entry into force conduct. However, by Claimant's own admission, Colombia's position not to interpret the 2007 CSJ Decision, in the manner requested by Sea Search Armada, LLC, with the alleged effect of depriving its purported property rights of any value, fully crystallized before the TPA's entry into force.

163. This is eloquently exemplified in the lawsuit filed by Sea Search Armada on 7 December 2010 before the DC District Court.[125] The USD 17,000,000,000 claim was based on Claimant's wrongful assimilation of purported the rights deriving from the 2007 CSJ Decision with property rights over the Galeón San José,[126] and Colombia's alleged failure to comply with such judgment.[127]

164. Before the DC District Court, Sea Search Armada, LLC noted that, on 27 April 2010, the Legal Secretary of the Office of the Colombian Presidency had informed Sea Search Armada, LLC that it was prohibited from visiting its alleged property without prior approval from the Government. Moreover, it stated that the Office of the Colombian Presidency expressed that, considering that these matters concern "*the defense of the integrity of Colombian territory, as well as assets owned by the Nation, the National Armed Forces will prevent the realization of unauthorized activities in jurisdictional maritime areas*".[128]

165. In the 2010 lawsuit before the DC District Court Claimant admitted with no hesitation that, as of 27 April 2010, not only had Colombia already denied the existence of any shipwreck in the area of the coordinates or its proximities, but had also claimed ownership of the Galeón San José. What is relevant for the purpose of this arbitration and Colombia's submission is that Sea Search Armada, LLC explicitly claimed that a misappropriation of property had occurred as early as 2007 or, in any event, no later than 2010:[129]

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[125] **Exhibit R–018**, Sea Search Armada's Claim against Colombia before the District of Columbia Court. Civil Action No. 1:10-cv-02083, 7 December 2010.
[126] **Exhibit R–018**, Sea Search Armada's Claim against Colombia before the District of Columbia Court. Civil Action No. 1:10-cv-02083, 7 December 2010, ¶ 91, 100.
[127] **Exhibit R-018**, Sea Search Armada's Claim against Colombia before the District of Columbia Court, Civil Action No. 1:10-cv-02083, 7 December 2010, ¶ 78 – 83.
[128] **Exhibit R–018**, Sea Search Armada's Claim against Colombia before the District of Columbia Court, Civil Action No. 1:10-cv-02083, 7 December 2010, ¶ 75.
[129] **Exhibit R–018**, Sea Search Armada' Claim against Colombia before the District of Columbia Court. Civil Action No. 1:10-cv-02083, 7 December 2010, ¶ 94.

By its actions Colombia has intentionally exercised dominion and control over SSA's chattels which intentional dominion by Colombia so seriously interferes with SSA's right to control the chattels that SSA is deprived of its chattels. (Emphasis added)

166. This means that, by 2010, Sea Search Armada, LLC had already explicitly claimed that a misappropriation of property had already occurred.

167. Moreover, although Sea Search Armada, LLC argued that the misappropriation had taken place as a result of the issuance of Decrees No. 12[130] and 2324 of 1984,[131] which were later declared unconstitutional by the Colombian Constitutional Court,[132] **Claimant also alleged that the "*conversion*" or taking of property rights had crystallized as a result of the long non-compliance with the 2007 CSJ Decision**.

168. In its decision rejecting the expropriation claim raised by Sea Search Armada, LLC, the DC District Court recalled that one part, an important part of the argument raised by Claimant to overcome the statute of limitations was precisely the long non-compliance with the 2007 CJS Decision:[133]

Even were the conversion claim somehow to turn on Colombia's alleged refusal to comply with the Colombia Supreme Court's ruling, Plaintiff has failed to provide any dates for the Court to assess the timeliness of its Complaint. The only relevant date provided anywhere in the Complaint or Opposition is the date of the Colombia Supreme Court decision: July 5, 2007. Id., ¶ 16. Since three years from that date is July 5, 2010, and Plaintiff did not file its Complaint until December 2010, the Court can only conclude that Plaintiff's conversion claim is untimely" (Emphasis added)

169. As has been demonstrated, any alleged expropriation of Claimant's property rights, as well as the purported arbitrary frustration of its alleged legitimate expectation to a 50% of the value of the Galeón San José, and any other alleged treaty breach, crystallized prior to 15 May 2012 through clear and unambiguous

[130] **Exhibit R–006**, Decree No. 12 of 1984.
[131] **Exhibit C-0018**, Presidential Decree No. 2324, 18 September 1984, article 194.
[132] **Exhibit C-0024**, Colombian Constitutional Court, Case File No. D-379, Judgment No. C-102/94, 10 March 1994.
[133] **Exhibit R–019**, United States District Court for the District of Columbia. Civil Action No. 10-2083 (JEB)–2083, Memorandum Opinion, 24 October 2011, p. 7-8.

State conduct. These are not the words of the Republic of Colombia, but the words of Sea Search Armada, LLC before the DC District Court in 2010.

b. Claimant's reference to post-treaty State conduct, including Resolution No. 0085 of 23 January 2020, is immaterial.

170. The undisputed facts above make the issuance of Resolution No. 0085 of 23 January 2020, by which the Ministry of Culture declared that the entirety of the Galeón San José was an asset of national cultural interest, immaterial for purposes of this dispute. The alleged effects of such resolution, which refers to a finding in 2015 by the Republic of Colombia, is merely a fabrication by Sea Search Armada, LLC, for the clear purpose of avoiding the application of the non-retroactivity and intertemporal law principles. Claimant cannot conveniently rewrite the fact that it admitted before the courts what it considered as acts of the Republic of Colombia that constituted expropriation, and after 23 years recharacterize the allege breach by invoking a resolution related to a different discovery.

171. Claimant asserts that the issuance of Resolution No. 0085 sought to deny the 2007 CSJ Decision which recognized that SSA was entitled to 50% of the shipwreck reported in the 1982 Confidential Report:[134]

> 49. On 23 January, 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 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.
> […]
> 52. As previously discussed, the 2007 CSJ 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 Cultural*

[134] Notice of Arbitration and Statement of Claim (references omitted).

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

172. Claimant cannot deny, and in fact admitted in the various claims that it filed against the Republic of Colombia, that in the pre-TPA stage, and as early as 2007, Colombia had already unequivocally denied Sea Search Armada, LLC any ownership rights over the Galeón San José. The Republic of Colombia expressed its clear and unambiguous position that Claimant did not have any related right to the Galeón San José and that the 2007 CSJ Decision unambiguously imposed cumulative requirements that the alleged rights of Sea Search Armada, LLC based on the 1982 Confidential Report, did not meet.

173. Moreover, throughout its consistent acts, Colombia never recognized any rights whatsoever over the Galeón San José and insisted in its interpretation of the 2007 CSJ Decision. There is no single act of the Republic of Colombia where it has proposed or accepted a different interpretation of the 2007 CSJ Decision. Colombia has always held that said decision conferred Claimant limited rights over a specific area located within specific coordinates. Therefore, it is irrelevant that in 2020 Colombia had declared the Galeón San José, which it found in 2015, an asset of national cultural interest.

174. When Resolution No. 0085 was issued, there was no doubt about the position that Colombia had already taken long before the TPA became effective with respect to the 2007 CSJ Decision. Colombia´s interpretation of said decision had definitively denied Sea Search Armada, LLC any property rights over the Galeón San José in the pre-treaty stage, thereby crystallizing any alleged treaty violations. Resolution No. 0085 does not and cannot change the *status quo* of Sea Search Armada, LLC, nor can it be analyzed in isolation to trigger a declaration of State responsibility as if it were the first time that Colombia had denied the rights allegedly granted to Sea Serch Armada LLC by the 2007 CSJ Decision.

175. When faced with similar attempts to re-characterise and manipulate time-barred disputes as new claims on the basis of follow-on measures that purportedly give rise to new disputes, international courts and arbitral tribunals have dismissed such claims where the central facts continued to the same that gave rise to the pre-treaty dispute.

176. In *Lucchetti v. Peru*, the tribunal found that:[135]

> **[T]he critical element in determining the existence of one or two separate disputes is whether or not they concern the same subject matter.** The Tribunal considers that, whether the focus is on the 'real causes' of the dispute or on its 'subject matter', **it will in each instance have to determine whether or not the facts or considerations that gave rise to the earlier dispute continued to be central to the later dispute**.
>
> […]
>
> The subject matter of the earlier dispute thus did not differ from the municipality's action in 2001 which prompted Claimants to institute the present proceedings. In that sense, too, the disputes have the same origin or source: the municipality's desire to ensure that its environmental policies are complied with and Claimants' efforts to block their application to the construction and production of the pasta factory. The Tribunal consequently considers that the present dispute had crystallized by 1998. The adoption of Decrees 258 and 259 and their challenge by Claimants merely continued the earlier dispute. (Emphasis added)

177. In this case, the dispute fabricated by the Claimant as a new dispute is really a dispute based on the following central facts that took place in the pre-treaty stage:

i) The 1994 Press Release clearly contains the Colombian State view that, based on scientific evidence, particularly, the results of the analysis carried out by Columbus Exploration, no shipwreck, let alone the Galeón San José, could be found in the coordinates informed by Glocca Morra Company in the 1982 Confidential Report.[136]

ii) The 5 August 1994 Columbus Report, fully endorsed by Colombia, contains the scientific basis that allowed Colombia to challenge and defeat the Hypothesis that the Galeón San José was located in the 1982 Coordinates.

iii) The 2007 CSJ Decision clearly and definitively conditioned any property rights of Glocca Morra Company, as a recognized reporter pursuant to the 1982 Confidential Report, to the assets being in the area of the

[135] **Exhibit RLA–005,** *Empresas Lucchetti, S.A. and Lucchetti Peru, S.A. v. Republic of Peru*, ICSID Case No. ARB/03/4, Award, 7 February 2005, ¶¶ 53, 59.
[136] **Exhibit R–011**, Letter from President's Office to DIMAR informing of Press Release, 8 July 1994, pp. 2-3.

coordinates indicated therein, without including, therefore, different spaces, zones or areas.

iv) The interaction between the 1994 Columbus Report and Press Release, the 2007 CSJ Decision and the interpretation thereof by the Republic of Colombia is clear and unambiguous: on 5 July 2007, through the unequivocal State conduct of the highest authorities of the Executive and Judicial powers, any property rights SSA Cayman Islands could possibly claim to a potential shipwreck in the area of the 1982 coordinates, including in the contiguous areas, were clearly limited, and scientific evidence determined that they had no value.

v) On 24 March 2010, in response to a 16 March 2010 request by Sea Search Armada, LLC for a joint salvage operation,[137] the Legal Secretary of the Office of the Colombian Presidency restated previous communications from 18 February 2008 and 16 May 2008, and informed that the 2007 CSJ Decision did not grant Glocca Morra Company a right to have access to the shipwreck. This is an unequivocal recognition that in Colombia's view, Glocca Morra Company was not the owner of the Galeón San José.

vi) The alleged long contempt with the 2007 CSJ Decision which, by Claimant's own admission, as can be seen in the action before the DC Court, had already perfected an expropriation of its property rights as early as 2010.[138]

178. Hence, any discussion about the interpretation of the 2007 CSJ Decision or any alleged property rights over the Galeón San José necessarily goes back to the pre-treaty State determination that Glocca Morra Company had no property rights over the Galeón San José, because no shipwreck was found in the coordinates reported in the 1982 Confidential Report. For the sake of clarity, not only under the repeated and consistent interpretation of the Republic of Colombia, the 2007 CSJ Decision did not recognize any property rights in areas different to the 1982 coordinates, but the Columbus Report also concluded that there was no shipwreck in the contiguous areas.

179. Moreover, several tribunals have upheld jurisdictional objections *ratione temporis* over acts that post-date the entry into force of the treaty in circumstances in which such acts were rooted in pre-treaty conduct.

[137] **Exhibit R–017**, Letter from Colombia to Sea Search Armada, LLC, OFI10-00027876 / AUV 13200, 24 March 2010.
[138] **Exhibit R–019**, United States District Court for the District of Columbia. Civil Action No. 10-2083 (JEB)–2083, Memorandum Opinion, 24 October 2011, p. 7-8.

180. For example, the tribunal in *Spence v. Costa Rica* adopted a test that, we suggest, is relevant and apposite in the present case. The test seeks to determine whether:

i) The act that post-dates the treaty fundamentally changed the *status quo* of the claimant's investment; and
ii) Such act is "*independently actionable*", such that the "*alleged breach [can] be evaluated on the merits without requiring a finding going to the lawfulness of pre-[treaty] conduct*[.]"[139]

181. Since (i) no act postdating the TPA fundamentally changed the *status quo* of Claimant's investment, and (ii) no act postdating the TPA can be evaluated on its merits without requiring a finding going to the lawfulness of the pre-treaty conduct, the Tribunal lacks jurisdiction *ratione temporis*.

i) Resolution 0085 of 23 January 2020 did not alter the status quo of Claimant's investment.

182. In situations in which a claimant alleges treaty breaches based on a series of acts *that* straddle the relevant date –in this case, 15 May 2012– tribunals have assessed the post-treaty acts to determine whether those acts produced a separate effect on the claimant's investment,[140] or whether the post-treaty act is instead "*rooted*" in the pre-treaty conduct, such that it did not materially change the circumstances that existed at the time of the treaty's entry into force.[141] If the post-treaty act has not changed the *status quo*, it cannot be used as a Trojan horse to claim for grievances that were already fully configured before the treaty's entry into force. In other words, the post-treaty act cannot be used to manufacture jurisdiction *ratione temporis* where none would otherwise exist.

183. As was already shown, the State acts capable of constituting an expropriation of the alleged rights to a treasure in the 1982 Coordinates or its proximities, as

[139] **Exhibit RLA–018,** Spence International Investments et al. v. Republic of Costa Rica, Interim Award of the Tribunal on Jurisdiction, ¶ 237(b) [*Spence v. Costa Rica*].
[140] **Exhibit RLA–017,** *Corona Materials, LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/14/3, Award on the Respondent's Expedited Preliminary Objections In Accordance with Article 10.20.5 of the DR-CAFTA, 31 May 2016 ¶ 212 (analyzing whether the act after the relevant date "was understood by the Claimant itself at that time as not producing any separate effects on its investment other than those that were already produced by the initial decision") [**Corona (Award on Preliminary Objections**)].
[141] **Exhibit RLA–018,** *Spence v. Costa Rica*, ¶ 245-6 (observing that "[t]he appreciations that lie at the core of every allegation that the Claimants advance can be traced back to pre-10 June 2010 conduct, and indeed to pre-1 January 2009 conduct, by the Respondent.").

well as a breach of any other standard in the TPA, including the alleged breach of a legitimate expectation to 50% of the value over the Galeón San José –even though the Galeón was not reported by Claimant or its alleged predecessor in 1982–, all pre-date 15 May 2012, the date of entry into force of the treaty. This means Resolution No. 0085 of 2020 was uncapable of having altered the *status quo* of Sea Search Armada, LLC.

184. Pursuant to the operative paragraph 2 of the 2007 CSJ Decision, any property rights of Glocca Morra Company, as a recognized reporter, were conditioned on compliance by the relevant assets with two cumulative criteria: *first,* on the assets being in the area of "*the coordinates referred to in the 'Confidential Report on Underwater Exploration'*", "*without including, therefore, different spaces, zones or areas*"; and *second*, on the assets still being susceptible "*of being qualified juridically as a treasure*" pursuant to the applicable law.

185. The conduct of Colombia, prior to the entry into force of the TPA, reflects State decisions at the highest level that clearly and unequivocally deny Glocca Morra Company's compliance with the one of the cumulative requirements in the 2007 CSJ Decision, namely, the existence of the object in the 1982 Coordinates, as well as denying any rights outside those exact coordinates. The allegation of Claimant in its Notice of Arbitration of a purported difference between the finding as a "treasure", "cultural heritage", "asset of national cultural interests", or any other culture-related designation is an impermissible attempt to recharacterize a dispute that is time barred.

186. As mentioned before, the interaction between the 1994 Columbus Report and Press Release, the 2007 CSJ Decision and its interpretation by the Republic of Colombia is clear and unambiguous. It created a *status quo* uncapable of being altered by means of Resolution No. 0085 of 2020. Indeed, prior to 15 May 2012, and as early as 2007, Colombia had already unequivocally denied, based on serious scientific evidence, one of the fundamental and cumulative pre-requisites for any claim of property rights pursuant to the 2007 CSJ Decision. As a corollary, any further discussion about the qualification of the Galeón San José as an asset of national cultural interest –much less a decision issued more than 20 years after the acts of the State took place– turns irrelevant.

ii) Resolution 0085 of 23 January 2020 is not independently actionable.

187. The general principle of non-retroactivity described above mandates that a treaty be in force for a State to be liable for violating that treaty. Accordingly, tribunals have consistently held that "[p]re-entry into force acts and facts cannot…constitute a cause of action."[142] As a result, "*to move beyond a jurisdictional assessment, any such alleged breach must relate to independently actionable conduct within the permissible period*."[143] In other words, "pre-*entry into force conduct cannot be relied upon to establish the breach in circumstances in which the post-entry into force conduct would not otherwise constitute an actionable breach in its own right*."[144]

188. In determining whether a post-treaty act can "*serve as an independent basis for a claim*,"[145] tribunals have considered whether "*the claim that is alleged [based on the post-treaty act] can be sufficiently detached from pre-entry into force acts and facts so as to be independently justiciable*."[146]

189. The *Spence* tribunal reasoned that:[147]

> [a]n alleged breach will not come within the jurisdiction of the Tribunal if the Tribunal's adjudication would necessarily and unavoidably require a finding going to the lawfulness of conduct judged against treaty commitments that were not in force at the time.

190. On that basis, the Spence tribunal concluded that "*it ha[d] no jurisdiction to entertain the Claimants claims*."[148]

191. In *Astrida Carrizosa v. Colombia*, acting under the TPA in resolving a jurisdictional objection *ratione temporis* that the post-entry into force acts were not independently actionable, the tribunal endorsed the position of the tribunal in *Spence*.[149] The Astrida Carrizosa tribunal reaffirmed that for a post-treaty

[142] **Exhibit RLA–018,** *Spence v. Costa Rica*, ¶ 217.
[143] **Exhibit RLA–018,** *Spence v. Costa Rica*, ¶ 221.
[144] **Exhibit RLA–018,** *Spence v. Costa Rica*, ¶ 217.
[145] **Exhibit RLA–013,** ST-AD GmbH v. Republic of Bulgaria, PCA Case No. 2011-06 (Stern, Klein, Thomas), Award on Jurisdiction, 18 July 2013, ¶ 308. ["ST-AD (Award on Jurisdiction)].
[146] **Exhibit RL–013,** ST-AD (Award on Jurisdiction), 332.
[147] **Exhibit RLA–018,** *Spence v. Costa Rica*, ¶ 222.
[148] **Exhibit RLA–018,** *Spence v. Costa Rica*, ¶ 247.
[149] **Exhibit RLA–023,** *Astrida Benita Carrizosa v. Republic of Colombia* (ICSID Case No. ARB/18/5), Award, 19 April 2021, ¶ 155.

conduct to be considered to constitute an actionable breach in its own right,[150] it would be "*necessary to assess whether the claim that is alleged can be sufficiently detached from pre-treaty into force acts and facts so as to be independently justiciable.*"[151]

192. Moreover, the Astrida Carrizosa tribunal espoused the view expressed in *Mondev*, to the effect that:[152]

> The mere fact that earlier conduct has gone unremedied or unredressed when a treaty enters into force does not justify a tribunal applying the treaty retrospectively to that conduct.

193. In assessing the post-entry into force conduct, the Astrida Carrizosa tribunal noted that nowhere had the claimant "*raised any specific allegation that impugn the lawfulness of the 2014 Order separately from her complaints about the 1998 Measures and the 2011 Decision*."[153] Moreover, that tribunal noted that in the position of the claimant:[154]

> The 2014 Constitutional Court's opinion had the effect of finally removing, without compensation, Claimant's entitlement to the value of her investment in Granahorrar that had been embodied in the 2007 CSJ Decision that he Council of State had rendered.

194. In rejecting claimant's argument and declaring that it lacked jurisdiction, the Astrida Carrizosa tribunal corroborated that the judicial proceedings that ended with the post-entry into force judgment:[155]

> Necessarily called for a finding about the lawfulness of the 2011 Decision. It was the 2011 Decision that –to borrow the Claimants words– would have 'removed 'the Claimant's alleged investment embodied in the 2007 Judgment,

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[150] **Exhibit RLA–018,** *Spence v. Costa Rica,* ¶ 217.
[151] **Exhibit RLA–023,** *Astrida Benita Carrizosa v. Republic of Colombia* (ICSID Case No. ARB/18/5), Award, 19 April 2021, ¶ 155 quoting from **Exhibit RLA–018,** *Spence* at ¶ 222.
[152] **Exhibit RLA–023,** *Astrida Benita Carrizosa v. Republic of Colombia* (ICSID Case No. ARB/18/5), Award, 19 April 2021, ¶ 157 quoting from **Exhibit RLA–024,** Mondev International Ltd. v. United States of America, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002 ("Mondev v. USA"), ¶ 70.
[153] **Exhibit RLA–023,** *Astrida Benita Carrizosa v. Republic of Colombia* (ICSID Case No. ARB/18/5), Award, 19 April 2021, ¶ 158.
[154] **Exhibit RLA–023,** *Astrida Benita Carrizosa v. Republic of Colombia* (ICSID Case No. ARB/18/5), Award, 19 April 2021, ¶ 160.
[155] **Exhibit RLA–023,** *Astrida Benita Carrizosa v. Republic of Colombia* (ICSID Case No. ARB/18/5), Award, 19 April 2021, ¶ 161.

assuming a judgment can embody an investment. If the 2011 Decision was lawful, the 2014 Order, which refused to annul it, would inevitably also be lawful, as the Claimant has alleged no independent violation perpetrated through the proceedings leading to the 2014 Order, such as a denial of justice, through the order itself.

195. In the present case, the Tribunal cannot decide whether the issuance of Resolution 0085 of 23 January 2020 breached the TPA without first reviewing the acts preceding the entry into force of the TPA, including the conduct of Claimant and whether Colombia legally denied Sea Search Armada, LLC any right over the Galeón San José during the pre-entry into force period.

196. If Colombia's decision to deny Glocca Morra Company any property rights over the Galeón San José was lawful *vis-à-vis* Glocca Morra Company, then Colombia's decision to characterize the Galeón San José an asset of national cultural interest is: either absolutely irrelevant *vis-à-vis* Glocca Morra Company, or necessarily lawful *vis-à-vis* Glocca Morra Company.

197. Conversely, even if Colombia's decision to deny Glocca Morra Company any property rights over the Galeón San José was unlawful, it took place prior to 15 May 2012, and the legal relevance of Colombia's characterization of the Galeón San José as an asset of cultural national interest *vis-à-vis* Glocca Morra Company could not be assessed, without first assessing whether Glocca Morra Company had any property right over it.

198. It is undeniable that any analysis on the legality of Resolution 0085 of 2020 is not detached, but rather dependent upon the pre-entry into force decisions by Colombia to deny Glocca Morra Company any right over the Galeón San Jose. Conversely, it is patent that adjudication over Resolution No. 0085 would necessarily and unavoidably require a finding going to the lawfulness of Colombia's decision to deny Glocca Morra Company any rights over the Galeón San José, judged against treaty commitments that were not in force at the time.

199. Indeed, a designation of the shipwreck as an asset of cultural interest cannot possibly trigger State responsibility for breach of the TPA *vis-à-vis* Sea Search Armada LLC, without first passing judgment on whether Colombia validly denied Gloca Morra Company, any right to the Galeón San José.

200. In light of the above, the Tribunal lacks jurisdiction *ratione temporis*.

3. IN ANY CASE, THE TRIBUNAL LACKS JURISDICTION *RATIONE VOLUNTATIS* TO ENTERTAIN THE DISPUTE SINCE THE CLAIM WAS SUBMITTED TO ARBITRATION MORE THAN THREE YEARS AFTER THE DATE ON WHICH THE CLAIMANT FIRST ACQUIRED OR SHOULD HAVE ACQUIRED KNOWLEDGE OF THE ALLEGED BREACH AND KNOWLEDGE THAT IT HAS INCURRED LOSS OR DAMAGE (ARTICLE 10.18.1 OF THE TPA)

201. Pursuant to Article 10.18.1 of the TPA:

> **Article 10.18: Conditions and Limitations on Consent on Each Party**
>
> 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 acquired, knowledge of the breach** 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 10.161.(b) **has incurred loss or damage**." (Emphasis added).

202. Sea Search Armada, LLC submitted this claim to arbitration on 18 December 2022 ("***dies ad quem***"). Pursuant to Article 10.18 of the TPA, the claim submitted by Sea Search Armada, LLC is time-barred if it first acquired or should have acquired knowledge of the breach of the TPA, and that it has incurred loss or damage, at any time before 18 December 2019 ("***dies a quo***").

203. It is well established under international law that a dispute arises when a "*disagreement on a point of law or fact, a conflict of legal views or of interests between two persons*" occurs.[156] This notion was recently endorsed by the arbitral tribunal in AFC Solutions S.L. v. Colombia.[157] Whether such a conflict arises is a matter for "objective determination".[158] In the words of the International Court of Justice ("**ICJ**") in *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, "*in determining whether a dispute exists or not, "[t]he matter is one of substance, not of form*."[159]

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[156] **Exhibit RLA–001,** *Mavrommatis Palestine Concessions (Greece v. U.K.)*, P.C.I.J. Series A No. 2 (1924), 30 August 1924, p. 11.
[157] **Exhibit RLA–016,** *AFC Investment Solutions S.L. v. Republic of Colombia* (ICSID Case No. ARB/20/16), ¶ 213.
[158] **Exhibit RLA–015,** *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, ICJ Reports 2016, 17 March 2016, p. 27, ¶ 50.
[159] **Exhibit RLA–015,** *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, ICJ Reports 2016, 17 March 2016, p. 33, ¶ 72, citing *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, ICJ Reports 2011, p. 84, ¶ 30.

204. It is also common ground that international tribunals have the power and authority to look beyond the claimants' self-serving characterization of the dispute. In *Chagos Marine*, following ICJ's approach in *Fisheries*,[160] the tribunal asked itself "*where the relative weight of the dispute" lay, what the dispute "primarily concern*[ed]" and what the "*real issue in the case*" and the "*object of the claim*" were.[161] Arbitral tribunals must assess the existence of the underlying dispute because, absent such an assessment, investors could simply re-characterize their claim to circumvent any temporal limitation in the treaty.[162]

205. Sea Search Armada, LLC describes its dispute as follows:[163]

> 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.

206. As previously noted, pertinent to the description of the alleged breach by Sea Search Armada, LLC is also paragraph 6, which Sea Sea Armada, LLC, connects to paragraph 45 of its Notice of Arbitration:[164]

> 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
> […]

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[160] **Exhibit RLA–003,** *Fisheries Jurisdiction Case (Spain v. Canada)*, Jurisdiction Judgment, ICJ Reports 1998, 4 December 1998, ¶¶ 30-31.
[161] **Exhibit RLA–014,** *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award, 18 March 2015, ¶¶ 208, 211, 220.
[162] **Exhibit RLA-005,** Empresas Lucchetti, S.A. and Lucchetti Peru, S.A. v. Republic of Peru, ICSID Case No. ARB/03/4, Award, 7 February 2005, ¶ 50; **Exhibit RLA–007,** Industria Nacional de Alimentos, S.A. and Indalsa Perú S.A. v. The Republic of Peru, ICSID Case No. ARB/03/4, Decision on Annulment, 5 September 2007, ¶¶ 118-119. See also **Exhibit RLA–019,** Kingdom of Lesotho v. Swissbourgh Diamond Mines (Pty) Limited and others, Judgment of the High Court of the Republic of Singapore, 14 August 2017, ¶ 176.
[163] Notice of Arbitration and Statement of Claim.
[164] Notice of Arbitration and Statement of Claim (references omitted).

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

207. As described by Sea Search Armada, LLC the dispute as to the breach of the TPA would result from:

i) Colombia's denial that a "treasure" exists in the coordinates reported by Glocca Morra Company back in 1982;
ii) Colombia's denial to disclose the coordinates of the 2015 discovery; and
iii) Colombia's refusal to recognize Sea Search Armada, LLC's rights notwithstanding the relevant judicial decisions, particularly through Colombia's position that the rights recognized in the 2007 CSJ Decision, were limited to the area of the precise coordinates, and not the surrounding areas.

208. As will be seen, Sea Search Armada, LLC knew or should have known of the breach and damage arising from Colombia's conduct well before 18 December 2019 (a), and the reference to Resolution No. 0085 of 23 January 2020 is immaterial (b).

a. Sea Search Armada, LLC knew or should have known of the breach and damage before 18 December 2019.

209. Well before 18 December 2019, Sea Search Armada, LLC acquired knowledge, or should have acquired knowledge that, in Colombia's clear and explicit view:

i) There was not treasure in the coordinates reported by Glocca Morra Company back in 1982, and therefore it lacked any property rights over the Galeón San José
ii) There was no basis pursuant to the 2007 CSJ Decision to claim access right and, accordingly, Colombia had not obligation to disclose the coordinates of the 2015 discovery; and
iii) The 2007 CSJ Decision granted no right to any object outside the 1982 Coordinates.

210. Accordingly, well before 18 December 2019, Sea Search Armada, LLC knew or should have known that through its conduct, Colombia had not recognized property rights over the Galeón San José, considered that the alleged findings of Claimant had no value, defeated any alleged legitimate expectation to a 50% of the value of the shipwreck and its cargo, and triggered any other possible breach of the treaty based on the 2007 CSJ Decision.

211. Colombia has already demonstrated that any conduct that may have resulted in international liability occurred before the TPA's entry into force. But even in the event that, *quod non*, the only acts related to the dispute were the ones that took place after the entry into force of the TPA, the claims would be time barred. The record is full of documentary evidence that shows that, after the entry into force of the TPA and prior to 18 December 2019, Sea Search Armada, LLC acquired knowledge of the alleged breach and of the resulting damage.

212. On 29 March 2013, Sea Search Armada, LLC filed a petition against Colombia before the IACHR. Importantly, the 2013 Petition shows that, in Claimant's view, the taking of property and arbitrary treatment had already crystalized and caused damage:[165]

> Naturally, **that extreme resistance to the exercise of such powers by the owner implies the confiscation of the private property without the payment of fair compensation**. And it implies the consequent violation of that other commitment acquired by the Colombian State through Article 21 of the American Convention on Human Rights, which states that "No person may be deprived of his property except upon payment of fair compensation, for a public purpose or social interest and in the situations and according to the forms established by law. (Independent Translation) (Emphasis added)

[165] **Exhibit R–021**, Sea Search Armada, LLC's Petition against Colombia before the IACHR, 15 April 2013 ¶ 36.

213. According to Sea Search Armada, LLC the expropriation took place on 26 November 2012 when, in **bad faith**, Colombia rejected the access to the shipwreck in any form[166]:

> **The bad faith of this last and definitive manifestation of rebellion against the ruling of the Supreme Court becomes evident** if it is taken into account that such ruling was issued on July 5, 2007, and the lawsuit before the Federal Court of Appeals of the District of Columbia was filed on 6 December 2010, 3 years and 5 months later, during which no judicial process took place. **And throughout that entire time, the Republic of Colombia refused to even engage in conversations with SSA regarding the possibility of a joint rescue of the common property**.
>
> **It was precisely for that reason that SSA sued before the Federal Court, in order to be compensated for the damages caused by the opposition to SSA's access to its treasure, even threatening to prevent it with the force of its National Navy**.
>
> Now it is asserted, without any hesitation, that the reason for not complying with that ruling is because SSA sued before that Federal Court. Therefore, the Republic of Colombia will wait for the termination of the process "to be able to adopt the necessary decisions." That is, to decide whether or not to comply with a Supreme Court ruling that became res judicata since 2007.
>
> **And, as this process would take 10 or more years to reach its conclusion, the response on 26 November 2012, was the notification of the Republic of Colombia's definitive intention not to comply with the Supreme Court ruling. This necessarily implies, furthermore, the notification of the definitive confiscation of its treasure, without payment of fair compensation.**
>
> 39.- With that notification of the definitive purpose of not complying with that ruling, along with the resulting confiscation of the discoverer's property treasures, the intention expressed on 11 June 2011 by the President of Colombia, to submit to its provisions was buried. And since that 26 November 2012, the term referred to in Article 46, numeral 1, letter 'a' of the Convention

[166] **Exhibit R–021**, Sea Search Armada, LLC's Petition against Colombia before the IACHR, 15 April 2013, pp. 19-20.

began to run, which requires the complaint *to be submitted within a six month period from the date on which the alleged victim's rights violations has been notified of the final decision.* (Emphasis added)

214. By merely reading he above, it can be easily concluded that before the IACHR, Sea Search Armada, LLC argued that prior to 18 December 2019, an expropriation and manifestly unjust treatment had already crystallized.

215. On 23 April 2013, Sea Search Armada, LLC filed a new civil action against Colombia, again before the United States District Court for the District of Columbia. In a clear admission of its knowledge that Colombia allegedly treated it unjustly and discriminatorily before 18 December 2019, Sea Search, LLC claimed it had been the victim of threats from the Colombian Government that had caused it damages:[167]

> 28. The Defendant's actions and threat as expressed in its letter, dated April 27, 2010, demonstrate Defendant's intent to cause SSA's partners to breach their agreements with SSA and terminate their business relationships with the Plaintiff.
>
> 29. **As a result of the GOC's actions, SSA has suffered damages including the loss of amounts invested in the preparation for salvage operations as well as funds expended in responding to the GOC's actions and threats**. (Emphasis added)

216. By Sea Search Armada, LLC's own admission, on 5 December 2015, well-before 18 December 2019, "*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*".[168]

217. In fact, on 10 December 2015, after the 5 December 2015 Presidential announcement of the finding of an archaeological site corresponding to the Galeon San José, Sea Search Armada, LLC requested the Colombian President to be taken to the site of the discovery:[169]

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[167] **Exhibit R–022**, United States District Court for the District of Columbia. Civil Action No. 13-564, 23 April 2013, ¶ 28-29, and 35-36.
[168] **Exhibit C-0037**, Statement from President Santos on the discovery of the San José Galleon, 5 December 2015, Notice of Arbitration, ¶ 6.
[169] **Exhibit C-0038**, Letter from SSA to the President of Colombia, 10 December 2015.

> […] in order to verify two things: 1) if it is that galleon; and 2) if the shipwreck is outside the maritime areas indicated as the location in the "Confidential Report on Submarine Exploration" filed on 18 March 1982, which contains the report of the discovery.

218. On 17 June 2016, the Minister of Culture informed Sea Search Armada, LLC that the Colombian Government was prepared to authorize and accompany them to the coordinates indicated in the 2007 CSJ Decision. Colombia was emphatic that, as repeatedly stated, the 2007 CSJ Decision granted no right over the Galeón San José:[170]

> The accompaniment to Sea Search Armada that the Colombian Government is willing to provide, is without prejudice to the position of the Colombian Government with respect to the possible rights of Sea Search Armada, which would be exclusively limited to those referred to by the Supreme Court of Justice in the terms and conditions indicated therein.
>
> We have expressed this position in several communications, and we reiterate it now.
>
> **The Supreme Court of Justice's ruling is clear, it does not admit interpretations and no alleged rights over the Galeón San José can be inferred from it as you claim**.
>
> **It refers to possible rights over the possible shipwreck that may exist in the coordinates reported by you and which are established in the confidential report of 1982, without them being related to a specific shipwreck**. (Emphasis added) (Independent translation)

219. On 30 November 2016 the Minister of Culture once again informed Sea Search Armada, LLC that no shipwreck was found in the coordinates reported in 1982, and categorically stated that, therefore, the condition established in the 2007 CSJ Decision to acquire any property rights was not met:[171]

> For this reason, **the Colombian Government has the scientific evidence that allows it to categorically state that the condition established by the Colombian Supreme Court of Justice in the July 5, 2007 ruling was**

[170] **Exhibit R–028**, Letter from the Minister of Culture to Sea Search Armada, 17 June 2016.
[171] **Exhibit R-029,** Letter from Minister of Culture to Sea Search Armada, 30 November 2016.

not met. Therefore, there is no place for any alleged rights that would allow Sea Search Armada to claim 50% of what would not be considered the Nation's Cultural Heritage of the shipwreck that could eventually be found in the coordinates established in the confidential report.

Moreover, although the Colombian Supreme Court of Justice was absolutely clear in affirming that the rights of Sea Search Armada were limited to the coordinates reported in the confidential report "without including, therefore, spaces, zones or diverse areas", **we can affirm without any doubt that in the areas described in the graph provided in the confidential report, there is no vestige of any shipwreck either**. (Emphasis added) (Independent translation)

220. On 4 September 2017, Sea Search Armada, LLC acknowledged that for the past 34 years, it knew that there was no shipwreck in the coordinates reported in the Confidential Report.[172] In the same communication, Sea Search Armada, LLC stated that, since 2014, the Ministry of Culture of Colombia had justified the alleged contempt for the 2007 CSJ Decision by claiming that the court had removed the immediate vicinity of the coordinates from the Confidential Report to impose the precise coordinates as the location of the discovery.[173]

221. On 17 June 2019, well-before 18 December 2019, in a communication attached to Claimant's notice of arbitration, Colombia replied to a request by Danilo Devis Pereira, counsel for Sea Search Armada, LLC regarding compliance with the 2007 CSJ Decision, as well as a request to carry out a joint verification of the maritime areas reported in 1982.

222. As can be seen in the 17 June 2019 communication, the Vice President of the Republic of Colombia explicitly and unequivocally informed Sea Search Armada that no shipwreck, let alone any trace of the Galeón San José, was found in the coordinates reported in 1982 and, accordingly, Sea Search Armada, LLC had no right over the Galeón San José or its cargo, because it was not even located within those coordinates: [174]

2. Regarding the verification of the coordinates reported in 1982, such task was already carried out within the framework of contract No. 544 of 1993, the results of which led to the conclusion that in the site of the coordinates reported

[172] **Exhibit R–030**, Letter from Sea Search Armada, LLC to Colombia, 4 September 2017.
[173] **Exhibit R–030**, Letter from Sea Search Armada, LLC to Colombia, 4 September 2017.
[174] **Exhibit C-0040,** Letter from the Vice-President of Colombia to SSA, 17 June 2019, §45, p. 2.

> by Glocca Morra Company (today Sea Search) **there is NO shipwreck, much less any trace of the Galeón San José. Only a piece of wood was found at the site, which after being examined, led to the conclusion that it did not belong to any shipwreck**.
>
> **In light of the above, the Sea Search Armada (SSA) does not have any right over the Galeón San José or its content because it is not located at the coordinates reported by that company**. (Emphasis added) (Independent translation)

223. On 12 July 2019, Sea Search Armada, LLC responded to Colombia's rejection in a letter to the Vice President of Colombia, once again admitting that since 1982 it had known that there was no shipwreck in the area of the coordinates:

> For such rejection you invoke **a fact recognized by all since 1982: the non-existence of shipwrecks in the specific coordinates mentioned in that report**, in which it was perfectly established that the discovery was not made in those coordinates, but in their immediate vicinity (...).
>
> The joint **verification** of the maritime areas reported in 1982 was also rejected on the basis of **another one carried out in 1994 by Columbus Exploration Inc**., in which the presence of a SSA observer was denied, and **was carried out exclusively in the precise coordinates included in their report, to conclude the same thing that we have all known for 37 years: that there is nothing in those coordinates**.[175] (Emphasis added) (Independent translation)

224. Importantly, Claimant posits, both in respect to the 5 December 2015 Declaration, and the 17 June 2019 communication, that Colombia refused to allow Sea Search Armada, LLC to visit the site to confirm whether the shipwreck Colombia found in 2015 was outside of the maritime areas reported in the 1982 Report, and that Colombia denied the scope of the 2007 CSJ Decision by limiting Claimant's rights to the exact coordinates reports in the 1982 Confidential Report.[176] To be clear, this is nothing but an admission that well before 18 December 2019, Claimant had knowledge of the alleged breach and of the loss and damage deriving from Colombia's conduct.

[175] **Exhibit C-0041**, Letter from SSA LLC to the Vice-President of Colombia, 12 July 2019.
[176] Notice of Arbitration, ¶ 45.

225. In addition, any refusal to grant access to the site was based on the historic and consistent understanding that, as established in the 1994 Columbus Report, the Galeón San José was not located in the coordinates reported in 1982 by Glocca Morra Company. Importantly, even though the 2007 CSJ Decision limited Glocca Morra Company's rights to the assets located in the area of the 1982 Coordinates, the Columbus Report did test and defeated the Hypothesis by analyzing areas proximate to the 1982 Coordinates. Moreover, the Columbus Report defeated the Hypothesis by also considering that the wood sample found in the site does not correspond to species used for the construction of ships.[177]

226. It is in that sense and context that Colombia informed Sea Search Armada, LLC, in the 17 June 2019 communication, that the coordinates reported back in 1982 did not correspond to the coordinates reported in 2015 by Maritime Archeology Consultants Switzerland.[178]

227. It is in that sense and context that Colombia concluded and informed Sea Search Armada, LLC in the 17 June 2019 communication, that pursuant to verifications made long time ago, there was no shipwreck in the coordinates reported by Glocca Morra Company back in 1982, and, accordingly, its request of compliance with the 2007 CSJ Decision, and to carry out a joint verification of the maritime areas reported in 1982, could not be granted.[179]

228. It is in that sense and context that Colombia expressed to Sea Search Armada, LLC in the 17 June 2019 communication that this position had already been communicated since 1994, a reason why Colombia could not understand why Sea Search Armada insisted in such a meritless claim.[180]

229. In light of the above, it is absolutely clear that the claims submitted by Sea Search Armada, LLC are time-barred.

230. Accordingly, Colombia respectfully submits that the Tribunal lacks jurisdiction.

[177] **Exhibit R-012**, Columbus Exploration, Final report regarding the oceanographic study, 4 August 1994.
[178] **Exhibit C-0040**, Letter from the Vice-President of Colombia to SSA, 17 June 2019, §45, p. 4.
[179] **Exhibit C-0040**, Letter from the Vice-President of Colombia to SSA, 17 June 2019, p. 4.
[180] **Exhibit C-0040,** Letter from the Vice-President of Colombia to SSA, 17 June 2019, §45, p. 4.

b. The reference to Resolution No. 0085 of 23 January 2020 is immaterial.

231. All of the above, must lead to the conclusion that the definition of the alleged breach by Sea Search Armada, LLC as the result of Colombia's issuance of Resolution 0085 of 23 January 2020, by which the Ministry of Culture declared that the entirety of the Galeón San José was an asset of national cultural interest, is unsupported and immaterial.

232. As extensively argued in this submission, the 2007 CSJ Decision conditioned any property rights to Glocca Morra Company Inc based on the 1982 Confidential Report, to two cumulative conditions:[181]

> **SECOND:** In conformity with the previous resolution, the aforementioned point second of the judgment of first instance is **MODIFIED**, **in the understanding that the property there conferred, in equal parts, in favor of the Nation and the claimant, is referred only and exclusively to the assets that**, **on one side**, by their characteristics and own features, in conformity with the circumstances and directions indicated in this decision, a**re still susceptible of being qualified juridically as a treasure**, in the terms of Article 700 of the Civil Code and the restriction or limitation that placed upon it article 14 of Law 163 of 1959, among other applicable legal provisions **and, on the other side, to the assets referred to by Resolution 0354 of 3 June 1982, issued by the General Maritime and Ports Directorate, namely, those, that are found in 'the coordinates referred to in the 'Confidential Report on Underwater Exploration carried out by the Company' GLOCCA MORRA in the Caribbean Sea, Colombia 26 February 1982' Page 13 No. 49195 Berlitz Translation Service.', without including, therefore, different spaces, zones or areas.** (Emphasis added only in the second operative paragraph (commencing in "and, on the other side") (Independent translation)

233. Accordingly, since it has already been established that, prior to 18 December 2019, Colombia had made clear, unequivocally and explicitly that the Galeón San José was not located in the 1982 Coordinates and that the 2007 CSJ Decision did not grant the property rights over the shipwreck claimed by Sea Search Armada, LLC, the alleged breach and damage materialized in full prior to the *dies a quo*.

[181] **Exhibit C-0028**, Colombian Supreme Court of Justice, Decision of 5 July 2007, p. 233-235.

234. Resolution 0085 of 23 January 2020 is completely immaterial for one simple reason: it limits its scope to the Galeón San José found by Colombia in 2015 and, as already mentioned, well before 18 December 2019 Colombia had informed Sea Search Armada, LLC that not only did it not have any right over the Galeón San José, but that no shipwreck was even located in the reported coordinates. Therefore, Resolution 0085 of 23 January 2020 has no effect on this case, as Sea Search Armada, LLC has no right and has never had any right with regards to the Galeón San José.

235. Colombia relies fully on its previous elaborations on the impossibility for Resolution No. 0085 of 2020 to trigger an independent dispute or an independently actionable measure. In short, given the cumulative requirements set forth in the 2007 CSJ Decision, the clear and unequivocal State conduct denying one of these requirements (the location in the 1982 coordinates), makes it completely irrelevant to examine the second requirement (the legal plausibility to qualify as a treasure).

236. In sum, the claim of Sea Search Armada LLC in this arbitration is based on an entirely false premise: that the CSJ 2007 Decision granted it rights over the Galeón San José, that Colombia never questioned such alleged rights, and that the purported rights were affected by Resolution No. 0085 of 2020.

237. Colombia respectfully submits that the Tribunal lacks jurisdiction to hear a disputed based on a patently false premise.

4. IN ANY CASE, THE TRIBUNAL LACKS JURISDICTION TO ENTERTAIN THE DISPUTE BECAUSE SEA SEARCH ARMADA, LLC DOES NOT OWN OR CONTROL THE ALLEGED INVESTMENT

238. Even if it is established that Sea Search Armada, LLC is a protected investor, *quod non*, the Tribunal lacks jurisdiction to entertain Claimant's claims because Sea Search Armada, LLC does not own or control the alleged investment. There is no evidence that Sea Search Armada owns or control the relevant DIMAR Resolutions (a); even if Sea Search Armada, LLC owns or controls the relevant DIMAR Resolutions, pursuant to an unclear intercompany transaction, such purported control was not transferred to Sea Seach Armada, LLC in compliance with Colombian law (b); and the 2007 CSJ Decision is not a protected investment under the TPA (c).

a. <u>There is no evidence that Sea Search Armada, LLC owns or control the relevant DIMAR Resolutions</u>

239. Sea Search Armada, LLC argues that it has a protected investment because it allegedly owns or control the DIMAR Resolution No. 0048 from 1980 and DIMAR Resolution No. 0354 of 1982:[182]

> 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

[182] Notice of Arbitration and Statement of Claim (references omitted).

240. What the record shows is that Sea Search Armada, LLC entered into an APA with an affiliated company, SSA Cayman Islands, to promise the transfer of certain assets subject to certain conditions:

> WHEREAS Purchaser desires to acquire from Seller, and Seller desires to sell to Purchaser, in exchange for Purchaser's assumption of certain of Seller's liabilities, substantially all of the assets of Seller used in Seller's Business upon the terms **and subject to the conditions contained therein**, it being the intention of Purchaser to employ such purchased assets in conjunction with its own business and not as a successor to, or a continuation of Seller's Business.[183] (Emphasis added)

241. This is patently insufficient to show that Sea Search Armada, LLC owns or controls a protected investment. Claimant has not shown that the conditions of the APA were met, and the transaction closed (i), or that it contributed capital to secure the investment (ii).

i) Claimant has not shown that the conditions of the APA were met and that the transaction closed.

242. Although the APA dated 18 November 2008 refers to the terms under which SSA Cayman Islands would assign some of its assets and obligations to Sea Search Armada, LLC., Claimant has provided no evidence that the agreed conditions were complied with, that the assets that are relevant to this arbitration were in fact part of the transaction, and that the transaction effectively closed.

243. First, Article 1.2 of the APA includes an express exclusion of certain assets from the agreement. Yet, there is no evidence that the relevant assets to this case were not excluded from the APA.[184]

244. Second, Article 2.1. of the APA provides that the assignment would be completed after a certain date, provided that the conditions agreed by the parties were met. Yet, there is no evidence that those conditions were met or that the assignment was ever completed.

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[183] **Exhibit C-0030,** Asset Purchase Agreement between Armada Company and Sea Search-Armada, LLC, 18 November 2008, p. 1.
[184] **Exhibit C-0030,** Asset Purchase Agreement between Armada Company and Sea Search-Armada, LLC, 18 November 2008, p. 15.

245. Since Claimant has not shown that the conditions established to secure control or ownership of the alleged investment were met, this Tribunal lacks jurisdiction to entertain its claims.

ii) Claimant has not shown it made a contribution of capital.

246. As a separate point, it being an explicit characteristic of the type of investment protected by the TPA,[185] Sea Seach Armada, LLC has not proven that it made a "*contribution of capital*" in order to obtain the alleged investment.

247. Claimant's actual "*contribution of capital*" could only be –theoretically– established through Sea Search Armada LLC's commitment, under the APA, to assume "*certain of Seller's liabilities"*. Yet, the "Assignment and Assumption Agreement", Exhibit D to the APA, circumscribes the obligations of Sea Search Armada, LLC as "*Assignee*" to amounts due and payable under the assigned contracts.[186]

248. In turn, the assumed liabilities are defined in the APA as follows:

> "1.3 Assumption of Specified Liabilities. On the terms and subject to the conditions set forth herein, effective as of the Closing Date, Purchaser shall assume and thereafter will pay, perform and discharge in accordance with their terms, as an when due, the Assumed Liabilities (as defined herein).
>
> As used herein, **the term 'Assumed Liabilities' shall mean only**:
>
> (i) to the extent not previously paid or performed, the payment and performance obligations of Seller arising prior to the Closing Date under the **Acquired Permits and the Acquired Contracts**.
>
> (ii) the payment and performance obligations of Purchaser arising from and after the Closing Date under the **Acquired Permits and the Acquired Contracts**; and

[185] **Exhibit RLA–006,** TPA, Article 10.28.
[186] **Exhibit C-0030,** Asset Purchase Agreement between Armada Company and Sea Search-Armada, LLC, 18 November 2008, "Exhibit D – Assignment and Assumption Agreement", p. 7 of the pdf.

(iii) distribution and allocation of profits and losses to the Economic Interest Holders pursuant to the Purchaser LLC Agreement (defined below)."[187] (Emphasis added)

249. Additionally, the APA describes the components of the purchase price to be paid by Sea Search Armada, LLC, as follows:[188]

1.5. Purchase Price. In consideration for the assignment of the Acquired Assets and in lieu of the payment of any cash or cash equivalents, at the Closing, Purchaser shall:

(a) **Assumed the Assumed Liabilities**;

[…]"

(b) Grant, pursuant to the Limited Liability Company Agreement of Purchaser dated --------, a copy of which is attached hereto as Exhibit B (the 'Purchaser LLC Agreement'), Economic Interests (as such term is defined in the Purchaser LLC Agreement) to the several parties identified as Economic Interest Holders, the relative priorities in and percentages or amounts of the 'Profits' and 'Losses' (as such terms are defined in the Purchaser LLC Agreement) associated with such Economic Interest as set forth in the Purchaser LLC Agreement.

[…]. (Emphasis added)

250. Importantly, however, Schedule 1.1(c) of the APA lists only one acquired contract:

Sea Search Armada – IOTA Partners Limited Partnership Venture Management Agreement, dated , 1988.[189]

251. There is no evidence that the "Sea Search Armada – IOTA Partners Limited Partnership Venture Management Agreement" from 1998 is an agreement

[187] **Exhibit C-0030,** Asset Purchase Agreement between Armada Company and Sea Search-Armada, LLC, 18 November 2008, pp. 15-16 of the pff.
[188] **Exhibit C-0030,** Asset Purchase Agreement between Armada Company and Sea Search-Armada, LLC, 18 November 2008, Exhibit C-0030, pp. 16-17 of the pdf.
[189] **Exhibit C-0030,** Asset Purchase Agreement between Armada Company and Sea Search-Armada, LLC, 18 November 2008, p. 31 of the pdf.

requiring the commitment of capital as a necessary condition to obtain the DIMAR resolution of 1980 and 1982.

252. As a result, there is simply no evidence in the record that Sea Search Armada, LLC contributed any capital to obtain the alleged investment. Therefore, the Tribunal lacks jurisdiction to entertain Claimant's claims.

b. Even if Sea Search Armada, LLC acquired any rights from Sea Search Cayman Islands under whatever applicable law, the alleged investment resulting therefrom did not grant rights to Claimant under Colombian law.

253. Paragraph (g) in Article 10.28 of the TPA provides as follows:[190]

> **Article 10.28: Definitions**
> […]
> **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:
>
> […]
>
> (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law;[14, 15] and

254. There should be no dispute that, when interpreted according to the general rule of treaty-interpretation, a prospective Claimant may not rely on paragraph (g) in Article 10.28 of the TPA, if the license, authorizations, permits or similar rights it claims to own or control, where not conferred to it "*pursuant to domestic law*".

[190] [14] Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.
[15] The term "investment" does not include an order or judgment entered in a judicial or administrative action.

255. Therefore, even if it is established that Sea Search Armada, LLC complied with the conditions of the APA and that the transaction closed, something Claimant has so far failed to prove, the Tribunal would still lack jurisdiction over the dispute, because Claimant cannot prove that the alleged investment was conferred to it pursuant to domestic law. In accordance with paragraph (g) in Article 10.28 of the TPA, the relevant law to be applied to decide this objection is Colombia law.

256. Pursuant to Colombia's domestic law, DIMAR has the exclusive power to grant authorizations to carry out marine exploration activities, including by authorizing the assignment of exploration of rights between private parties (i). This understanding of the applicable law has never been disputed and was confirmed by the contemporary conduct of GMC Inc., Glocca Morra Company and SSA Cayman Islands (ii). Any assignment of marine exploration rights from SSA Cayman Islands to Sea Search Armada, LLC lacks the express authorization by DIMAR and therefore, was not made in compliance with Colombian laws. This prevents the Tribunal from exercising jurisdiction.

i) Pursuant to Colombia's domestic law, DIMAR exclusively controls the granting of authorizations to carry out marine exploration activities.

257. Decree No. 2349 of 1971 granted DIMAR the exclusive authority to "*regulate, control and authorize the marine and coastal explorations and constructions*"[191] and to "*regulate and authorize the recovery of shipwrecked species*."[192] This authority was vested on DIMAR's General Director.[193] Importantly, DIMAR's General Director was also granted with the sole authority to "*[a]uthorize the activity and operation of foreign ships in Colombian waters and ports*".[194]

258. Naturally, Decree No. 2349 of 1971 is expressly invoked as the basis upon which the General Director of DIMAR issued Resolution No. 0048 of 29 January 1980 authorizing GMC Inc. to carry out underwater explorations in specific areas –and delineated by specific coordinates– of the Colombian sea for a period of two years.[195] Resolution No. 0048 also established "*that the exploration work is*

[191] **Exhibit R–001,** Decree No. 2349 of 1971, Article 3 (17).
[192] **Exhibit R–001,** Decree No. 2349 of 1971, Article 3 (21).
[193] **Exhibit R–001,** Decree No. 2349 of 1971, Article 4 (5) (d).
[194] **Exhibit R–001,** Decree No. 2349 of 1971, Article 4 (5) (b).
[195] **Exhibit C-0002,** DIMAR Resolution No. 0048, 29 January 1980, art. 1.

limited exclusively to the areas indicated in the operative part [of this Resolution] *under the supervision of the General Maritime and Port Directorate*".[196]

259. Notwithstanding the necessary reforms on the structure of DIMAR, on 18 November 2008, when the APA was entered into, DIMAR's general authority to regulate, control and authorize marine exploration activities, including the competence to receive the reports of findings and decide upon them, as well as to carry out the necessary steps for the entering into and perfecting salvage contracts, had remained unaltered. Indeed, neither Decree 2324 of 1984, nor Decree 1561 of 2002, or Decree 5057 of 2009 disposed DIMAR of this competence.

260. Accordingly, on 18 November 2008, when Sea Search Armada, LLC allegedly acquired ownership or control of DIMAR Resolutions No. 0048 of 1980 and No. 0354 of 1982 pursuant to the APA, DIMAR had the sole authority, under Colombian law, to authorize the assignment of the marine exploration rights to Sea Search Armada, LLC. In other words, pursuant to Article 10.28.g of the TPA, DIMAR was the sole authority capable of conferring Sea Search Armada, LLC, with the rights previously held by SSA Cayman Islands.

ii) The contemporary understanding of Colombian law by the previous holders of DIMAR resolutions confirms that any assignment of the rights conferred therein required DIMAR's express authorization.

261. The records show that the contemporary understanding of each and every single holder of the DIMAR resolutions previous to 2008 was that only DIMAR had the authority, under Colombian law, to authorize the assignment of the marine exploration rights to Sea Search Armada, LLC and that such authorization was necessary for the new holder to have the pertinent rights under Colombian law.

262. Importantly, it was pursuant to Decree No. 2349 of 1971:

i) That GMC Inc. requested from DIMAR an authorization to transfer the rights granted by Resolution 0048 of 1980 to Glocca Morra Company.[197]
ii) That on 18 October 1980, DIMAR issued Resolution 753 authorizing GMC Inc. to transfer the rights previously granted by Resolution 0048 of 1980

[196] **Exhibit C-0002**, DIMAR, Resolution No. 0048 of 29 January 1980, p. 3.
[197] **Exhibit R–003,** Request AF 01196877 from Glocca Morra Company Inc. to DIMAR, 09 September 1980.

to Glocca Morra Company,[198] and also obliged Glocca Morra Company to comply with all the commitments acquired by the GMC Inc. through Resolution No. 0040,[199]

iii) That over the two years that followed, Glocca Morra Company requested DIMAR to extend the authorizations' terms, as well as to expand the exploration areas authorized in Resolution 0048 of 1980,

iv) That through Resolution No. 066 of 1981, DIMAR decided to extend the areas granted to Glocca Morra Company in Resolution No. 0048 of 29 January 1980, to carry out underwater exploration operations aimed at establishing the existence of shipwrecked species within specific coordinates.[200]

v) That through Resolution No. 0025 of 1982, DIMAR:

a. Decided to extend for a term of 3 months Resolutions No. 0048 of 29 January 1980, 066 of 4 February 1981, and 0075 of 29 October 1981.

b. Required Glocca Morra Company to report to DIMAR the findings made and not to proceed with any type of extraction without having obtained the corresponding authorization.

c. Required Glocca Morra Company to establish a branch with domicile in the national territory, following the provisions of articles 471 and 474 of the Colombian Code of Commerce.[201]

vi) That on 26 February 1982, Glocca Morra Company submitted to DIMAR the Confidential Report on the Underwater Exploration.[202]

vii) That on 24 March 1983, upon request by Glocca Morra Company, DIMAR issued Resolution No. 204, authorizing Glocca Morra Company to transfer the rights granted in Resolutions 0048, 0066, 0025, 0249 and 0354 to SSA Cayman Islands.[203] Notably, the operative paragraphs of Resolution No. 204 contain specific obligations incumbent upon the assignee:[204]

> ARTICLE 1o. To authorize the company GLOCCA MORRA COMPANY to assign to the company SEA SEARCH ARMADA all the rights, privileges and obligations obtained through resolutions No. 0048 of 29 January 1980, 0066 if 4 February 1981, 0025 of 29 January 1982, 0249 of 22 April 1982, 0354 of 3 June 1982 and other resolutions through which the

[198] **Exhibit C-0005,** DIMAR Resolution No. 753, 13 October 1980, Article 1.
[199] **Exhibit C-0005,** DIMAR Resolution No. 753, 13 October 1980.
[200] **Exhibit C-0006**, DIMAR, Resolution No. 066 of 4 February 1981.
[201] **Exhibit C-0008**, DIMAR, Resolution No. 0025 of 29 January 1982.
[202] **Exhibit C-0010**, Confidential Report on Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982.
[203] **Exhibit C-0017**, DIMAR Resolution No. 204 of 24 March 1983.
[204] **Exhibit C-0017**, DIMAR Resolution No. 204 of 24 March 1983.

aforementioned resolutions have been successively extended up until the date of this decision.

ARTICLE 2o. To authorize the company SEA SEARCH ARMADA, to carry submarine exploration activities with the aim to locate treasures or shipwrecked species in Colombian jurisdictional waters in the Atlantic Ocean in the areas described in Article 1o. of resolutions No. 0048 of 29 January 1980 and 0066 of 4 February 1981.

[…]
ARTICLE 4o. To obligate the company SEA SEARCH ARMADA to comply with all and each one of the commitments acquired by the assignor company prior to this decision before this General Directorate.

[…]

Article 6o. All the terms and conditions referred to in resolutions No. 0048 of 29 January 1980, and 0066 of 4 February 1981, continue to be in force. (Independent translation).

263. All these companies, despite of their nationality and domicile, consistently understood and accepted that, pursuant to Colombia's domestic law, DIMAR fully controls marine exploration activities and had the exclusive power to authorize the assignments of marine exploration rights for such assignments to have effects in Colombia.

264. But in addition, the only credible explanation, consistent with the contemporary conduct of Sea Seach Armada, LLC, back in 2009, is that it did not seek DIMAR's authorization because it considered that its investment was the 2007 CSJ Decision, and not the DIMAR Resolutions. This is however fatal to Claimant's case, as will be explained in the next sub-section.

265. In conclusion, since Sea Search Armada, LLC did not acquire the DIMAR resolutions in conformity with Colombian domestic law, it cannot invoke Article 10.28 (g) of the TPA to claim that it has a protected investment.

iii) Since Search Armada, LLC did not establish control or property over the DIMAR Resolutions in conformity with Colombia's domestic law, it can only rely on the 2007 CSJ Decision, which is not a protected investment under the TPA.

266. Pursuant to footnote 15 to Article 10.28 (d) of the TPA, the term "investment" does not include an order or judgment entered in a judicial or administrative action.

267. As previously noted, Sea Search Armada, LLC cannot validly invoke Article 10.28 (g) of the TPA to argue that it owns or control a protected investment because it did not seek, let alone receive authorization from DIMAR of the alleged assignment of DIMAR resolutions pursuant to the 2008 APA.

268. Importantly, the contemporary evidence shows that, a reason not having requested an authorization that was consistently sought by all previous holders of DIMAR resolutions, was that Sea Search Armada, LLC was in fact not of the view that the legal basis of the alleged 50% ownership rights over the Galeón San José was the DIMAR resolutions. Rather, the evidence clearly shows that Sea Search Armada's contemporary understanding was that the only legal avenue to claim such rights was the 2007 CSJ Decision. Indeed, in its capacity as President of Search Armada, LLC, Mr. Harbeston explicitly declared in El Espectador, a widespread and highly influential newspaper in Colombia, that the title of property the company enjoyed derived from the 2007 Judgment:[205]

> **We have the title of property by excellence, which is a judgment of the Supreme Court that, with the effect of *res judicata*, declared SSA as owner of half of the treasures that may be found in the shipwreck**. This entitles us to access and dispose of what belongs to us without anyone's permission, within what is established by the 1958 Continental Shelf Geneva Convention. However, the ideal would be to salvage the shipwreck through common agreement, with previously established rules and in conformity with the guidelines established by the Supreme Court. (Emphasis added) (Independent translation)

269. That the contemporary understanding of the Sea Search Armada, LLC was that their property rights were based on the 2007 CSJ Decision is confirmed by the 2010 action before the DC District Court, where Sea Search Armada, LLC equated the rights recognized in the 2007 CSJ Decision with property rights over

[205] **Exhibit R-015**, El Espectador "Proyectamos el Rescate por cuenta nuestra", 17 October 2009, p. 5.

the Galeón San José,[206] and complained that Colombia allegedly had refused to comply with this ruling.[207]

270. Without further elaboration, since a judgment entered in a judicial action is expressly excluded as a form of investment by footnote 15 to Article 10.28 (g) of the TPA, Sea Search Armada, LLC does not have a protected investment under said instrument.

271. In conclusion, the claims and disputed presented by Search Armada, LLC are not within the jurisdiction of the Tribunal.

VI. COSTS AND SUBMISSION ON SECURITY FOR COSTS

272. Article 10.20.6 of the TPA provides as follows:

> 6. When it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fee incurred in submitting or opposing the objection. In determining whether such an award is warranted, **the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous and shall provide the disputing parties a reasonable opportunity to comment**. (Emphasis added)

273. Based on Article 10.20.6 of the TPA, some specific remarks are warranted regarding the conduct of Sea Search Armada, LLC, particularly concerning its threats of unilateral intervention in Colombian waters, and its decision to create a new round of litigation should Colombia fail to subject to its requests. These threats both predate and postdate the TPA's entry into force.

274. This is particularly troublesome since, in the post-treaty stage, Sea Search Armada, LLC has come to recognize that it always knew that the Galeón San José was not located in the area of the 1982 Coordinates.[208] As an example, on 4 September 2017, Sea Search Armada, LLC acknowledged that for the past 34 years, it knew that there was no shipwreck in the coordinates reported in the

[206] **Exhibit R-018**, Sea Search Armada's Claim against Colombia before the District of Columbia Court. Civil Action No. 1:10-cv-02083, 7 December 2010, ¶ 91, 100.
[207] **Exhibit R-018,** Sea Search Armada's Claim against Colombia before the District of Columbia Court, Civil Action No. 1:10-cv-02083, 7 December 2010, ¶ 78 – 83.
[208] **Exhibit R-029**, Letter from Minister of Culture to Sea Search Armada, 30 November 2016.

1982 Confidential Report.[209] The same admission was made on 24 August 2015, in a letter to Colombia's Shipwrecked Antiquities Commission.[210]

275. Moreover, on 16 March 2010, Sea Search Armada, LLC proposed a joint salvage operation with the Government of Colombia and informed that, if it did not receive any response within 30 days, it would unilaterally initiate preparations to recover what the CSJ had supposedly declared to be its property.[211] This prompted a response by the Colombian Government on 24 March 2010, reminding Claimant that the 2007 CSJ Decision had not recognized a right of access.[212]

276. On 24 August 2015, Sea Search Armada, LLC requested to meet with Colombia's Shipwrecked Antiquities Commission. When explaining how the conversations had developed with the Colombian Government, Sea Search Armada, LLC: (i) noted that the Minister of Culture had conditioned any dialogue on the existence of the shipwreck in the 1982 coordinates; and, (ii) admitted that, for years (in fact since 18 March 1982, just days after Glocca Morra Company's Confidential Report), it had known that there was no shipwreck in the 1982 Coordinates.[213]

277. Subsequently, on 5 October 2015, Sea Search Armada, LLC informed Colombia's Shipwrecked Antiquities Commission of its position regarding the location of the shipwreck. Again, Sea Search Armada, LLC alleged that the 2007 CSJ Decision could not and did not modify its alleged rights as reported in 1982, that is, including the surrounding areas.[214]

278. On 19 November 2015, Sea Search Armada, LLC informed the Minister of Culture that it was inevitable for new disputes to arise given the Government's negotiations with third parties for the purpose of salvaging the treasure. In this communication, Sea Search Armada, LLC expressed that it had no interest in

[209] **Exhibit R-030**, Letter from Sea Search Armada, LLC to Colombia, 4 September 2017.
[210] **Exhibit R-025**, Letter from Sea Search Armada, LLC to Colombia's Shipwrecked Antiquities Commission, 25 August 2015.
[211] **Exhibit R-017**, Letter from Colombia to Sea Search Armada, LLC, OFI10-00027876 / AUV 13200, 24 March 2010.
[212] **Exhibit R-017**, Letter from Colombia to Sea Search Armada, LLC, OFI10-00027876 / AUV 13200, 24 March 2010.
[213] **Exhibit R-025**, Letter from Sea Search Armada, LLC to Colombia's Shipwrecked Antiquities Commission, 24 August 2015.
[214] **Exhibit R-026**, Letter from Sea Search Armada, LLC to Colombia's Shipwrecked Antiquities Commission, 8 October 2015.

participating in a verification of the shipwreck in the coordinates reported in 1982 since it new, from the start, that the shipwreck was not located there.[215]

279. In addition to this, Sea Search Armada, LLC expressly warned Colombia of these allegedly new disputes, stating that the Nation's "*only task now would be its defense, both domestically and internationally, and at its own expense, of a salvage contract with a third party*".[216] Ultimately, it concluded that the purpose of the communication was to establish the "*facts, cause and features of the new and undesirable confrontation ahead*".[217]

280. On 5 December 2015, the President of Colombia announced the discovery of the Galeon San José in an area different to that reported in the 1982 Confidential Report.[218] Upon Colombia's rejection of Sea Search Armada, LLC's request to be taken to the site of the discovery,[219] accepting only to take it to the area of the exact 1982 coordinates,[220] this in the understanding that Colombia already had the scientific evidence to categorically deny that the Galeón San José was in the 1982 coordinates, Sea Search Armada, LLC launched a series of threats against the Colombian Government.

281. On 8 August 2018, Sea Search Armada, LLC informed the President of Colombia that unless a peaceful solution was achieved regarding the ongoing litigation between them for over three decades, new judicial actions would be taken:[221]

> If such a solution is not attempted, or if an agreement is not possible, and without benefit to anyone, **new, undesirable and more complex judicial confrontations will be inevitable**. (Emphasis added)

282. What new disputes could then emerge if, by Claimant's own admission, it has no property rights pursuant to the 2007 CSJ Decision because it had always known the shipwreck was not located in the area of the coordinates reported in 1982?

283. What new litigation could it reasonably be brought against the State of Colombia if, by its own admission before the District Court and the IACHR, the nullification

[215] **Exhibit R-027**, Letter from Sea Search Armada, LLC to the Minister of Culture, 19 November 2015.
[216] **Exhibit R-027**, Letter from Sea Search Armada, LLC to the Minister of Culture, 19 November 2015.
[217] **Exhibit R-027**, Letter from Sea Search Armada, LLC to the Minister of Culture, 19 November 2015.
[218] **Exhibit C-0037**, Statement by President Santos on the discovery of the San José Galleon, 5 December 2015.
[219] **Exhibit C-0038**, Letter from SSA to the President of Colombia, 10 December 2015.
[220] **Exhibit R-028**, Letter from the Minister of Culture to Sea Search Armada, 17 June 2016.
[221] **Exhibit R-031**, Letter from Sea Search Armada, LLC to Colombia, 8 August 2018.

of its alleged property rights over the Galeón San José had already been perfected as early as 2010 and 2012, respectively?

284. What new litigation could it reasonably brough if prior to 18 December 2019, Colombia had renewed, through communications at the highest possible level, that the 2007 CSJ Decision had not recognized any rights of access to the Galeón San José and that the Galeón San José was not located in the area of the 1982 Coordinates or its proximities?

285. Finally, what was the legal basis of Sea Search Armada, LLC's threats of unilateral intervention?

286. Colombia condemns this course of action by Sea Search Armada, LLC, as its only purpose is to hold a sovereign State hostage over the threat of continuous litigation and the manufacture of allegedly new disputes.

287. Pursuant to Article 10.20.6 of the TPA and given the frivolous character of the claim submitted to arbitration by Sea Search Armada, LLC Colombia respectfully asks the Tribunal to exercise its discretion to award, in favor of Colombia and against Claimant, all the arbitration costs, including Colombia's legal fees in this arbitration.

288. Finally, Colombia invokes its procedural right to have the reasonable costs spent in defending itself in this arbitration reimbursed. In particular, Colombia requests assurances that a most likely decision on costs against Claimant will be honored. Together with the blatantly frivolous character of Claimant's claims, there is simply no evidence that Claimant has any assets in Colombia against which an order of costs would be enforced against. Even if Claimant was able to prove it has assets elsewhere, a Respondent so strongly previously harassed by Claimant through a series of frivolous international claims should not be required to commit even more resources to seek satisfaction of an order of costs by this Tribunal. Moreover, as previously noted, there is no evidence that Claimant ever invested capital to secure the alleged investment or that it has ever invested in Colombia for those purposes. This being the latest of a series of frivolous claims raised by Sea Search Armada, LLC before international courts and foreign judges, Colombia simply cannot risk not recovering the costs invested in these arbitral proceedings.

VII. PRAYER FOR RELIEF

289. Colombia respectfully requests the Arbitral Tribunal to:

(i) Suspend any proceedings on the merits.
(ii) Declare that it lacks jurisdiction over the claim submitted to arbitration by Sea Search Armada, LLC.
(iii) Order Sea Search Armada, LLC to bear all the costs of this arbitration, including legal fees assumed by the Republic of Colombia.

290. Respondent requests that pending its decision on jurisdiction, the Tribunal orders Sea Search Armada, LLC, to post security for costs in the amount of no less than USD 300.000 to cover a potential award of costs in favor of the Republic of Colombia, to be deposited in an escrow account or provided as an unconditional and irrevocable bank guarantee.

291. In addition, Colombia respectfully suggests the following procedural calendar.

Submission	Date
Colombia's Submission pursuant to Article 10.20.5	22 July 2023
Claimants' response to Colombia's submission pursuant to Article 10.20.5	+ 30 days 21 August 2023
Colombia's reply to Claimant's response	+ 15 days 5 September 2023
Claimant's rejoinder in response to Colombia's reply	+ 15 days 20 September 2023
Hearing	No more than 45 days after

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