

**INTERNATIONAL COURT OF JUSTICE**

THE PEACE PALACE  
THE HAGUE, THE NETHERLANDS



**THE CASE CONCERNING  
THE PROTECTION OF MAKO SHARKS AND TRADE RESTRICTIONS**

**THE FEDERAL STATES OF ALOPIAS  
(APPLICANT)**

**V.**

**THE REPUBLIC OF RHINCODON  
(RESPONDENT)**

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**MEMORIAL FOR RESPONDENT**  
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**STATEMENT OF JURISDICTION**

The Federal States of Alopias (“Applicant”) and the Republic of Rhincodon (“Respondent”) submit their dispute to this Honorable Court, pursuant to Art. 40 of the Statute of the International Court of Justice. On June 16, 2014, Applicant and Respondent have submitted a copy of the Special Agreement to the Registrar of the Court. See Special Agreement Between the Federal States of Alopias and the Republic of Rhincodon for Submission to the International Court of Justice of Differences Between Them Concerning Questions Relating to the Protection of Mako Sharks and Trade Restrictions, signed at George Town, Cayman Islands on June 16, 2014. The Registrar addressed notification to the parties on June 23, 2014.

**QUESTIONS PRESENTED**

- I. WHETHER ALOPIAS VIOLATED INTERNATIONAL LAW BY FAILING TO PREVENT ITS NATIONALS FROM FINNING AND SPINING MAKO SHARKS.
- II. WHETHER RHINCODON VIOLATED INTERNATIONAL LAW BY IMPOSING THE TRADE RESTRICTION ON ALOPIAS.

## **SUMMARY OF FACTS**

The Federal States of Alopias and the Republic of Rhincodon are located in the Varium Sea Region (R.1). Alopias is a developing State with approximately 5 million inhabitants, and is engaged in agriculture and fishing (R.2). Rhincodon is a developed State with approximately 250 million inhabitants (R.3) and receives 30% of the latter's exports (R.2). Mako sharks are indigenous to their territorial seas and Exclusive Economic Zones ("EEZ") (R.1).

In 1999, Alopias and Rhincodon signed the Trade Agreement between Rhincodon and Alopias ("TARA") (R.12). In 2001, Rhincodon enacted the HFA, expressly prohibiting shark finning and authorizing trade restrictions on all fish and fish products against a State engaging in shark finning (R.15). In 2002, Alopias enacted the SFPA, merely prohibiting landing fins not "naturally attached" to the shark (R.17).

Rhincodon expressed concern over Alopias' failure to prevent shark finning and offered educational programs on this matter (R.18). Alopias declined, invoking lack of resources to enforce its law (R.19). Environmental and animal welfare non-governmental organizations called for Alopias' desistance from shark finning and spining, and advocated for trade sanctions (R.21).

In 2011, the Alopian Supreme Court acquitted an Alopian fishing vessel charged with spining sharks, ruling that spining was legal (R.24). Alopias denied Rhincodon's request to expressly include shark spining in its law, citing economic concerns (R.25,26).

On February 2014, consistent with TARA, Rhincodon imposed a trade restriction on Alopias' fish and fish products for its failure to protect the sharks (R.29). After failed negotiations and mediation, Rhincodon and Alopias agreed to submit the dispute to the International Court of Justice (R.32,33).

**SUMMARY OF ARGUMENTS**

Alopias violated International Law by failing to prevent shark finning and spining. Shark spining is the practical, legal, moral equivalent of shark finning. Alopias violated its international obligations to conserve and ensure the sustainable use under United Nations Convention on the Law of the Sea (“UNCLOS”), the Convention on Biological Diversity (“CBD”) and TARA. Alopias also violated its obligation to conclude agreements under the Convention on Migratory Species of Wild Animals (“CMS”).

Meanwhile, Rhincodon’s trade restriction does not violate International Law. Its trade restriction is justified under Article 15 of the TARA and valid under the Convention on International Trade in Endangered Species of Wild Flora and Fauna (“CITES”). Moreover, it is a valid countermeasure as it complies with the requirements under International Law.

## **ARGUMENTS**

### **I. ALOPIAS VIOLATED ITS INTERNATIONAL OBLIGATIONS BY FAILING TO PREVENT ITS NATIONALS FROM FINNING AND SPINING MAKO SHARKS.**

A State's sovereign right to exploit the living natural resources within its EEZ must be exercised with due regard to (1) its international legal obligations and (2) the rights and duties of other States.<sup>1</sup> Alopias' failure to prevent its nationals from finning and spining mako sharks within its EEZ violates its treaty and customary obligations. And as the mako sharks are a highly migratory species<sup>2</sup> that are also found within Rhincodon's EEZ (R.1), Alopias' omissions also infringe upon Rhincodon's sovereign right to utilize living resources within its EEZ.

#### **A. AT THE OUTSET, SHARK SPINING IS THE PRACTICAL, LEGAL AND MORAL EQUIVALENT OF SHARK FINNING.**

While Alopias prohibited shark finning through the enactment of the Shark Finning Prohibition Act ("SFPA") (R.17), it effectively legalized spining by holding that the legal prohibition does not extend thereto and by refusing to amend the law to include its prohibition (R.24–26). Spining however, is the practical, legal and moral equivalent of finning.

Shark spining is practically equivalent to finning. Finning involves the cutting of shark's fins (R.22) whereas spining refers to the removal of its fins and tail, as connected by the spine.<sup>3</sup> Both methods manifest the same purpose and effect: to allow the storage of more shark fins in the vessel by dumping the body of the shark back into the sea (R.19,25).<sup>4</sup> This results in more

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<sup>1</sup> United Nations Convention on the Law of the Sea, Dec. 10, 1982, art. 56, 1833 U.N.T.S. 3 [UNCLOS].

<sup>2</sup> *Id.* annex I.

<sup>3</sup> Fendt, *Loophole seen in Costa Rican 'finning' law*, ECOAMÉRICAS (May 2014), <http://www.pretoma.org/wp-content/uploads/2014/06/ecoamericas-june-2014.pdf> (last accessed Oct. 18, 2014) [Fendt Loophole].

<sup>4</sup> *Id.*

sharks killed in each trip.<sup>5</sup> These similarities makes shark spining no different from finning. Spining is thus practically equivalent to finning.

Further, shark spining is legally equivalent to finning. States have passed laws prohibiting shark finning to address the significant decline in the shark's population by millions worldwide per year.<sup>6</sup> Said laws seek to curtail the increased catching of sharks brought on by only storing the shark's fins.<sup>7</sup> Meanwhile, shark spining is a technique devised to effect finning without directly violating the law.<sup>8</sup> Under the well-established general principle, *quando aliquid prohibetur ex directo, prohibetur et per obliquum*, an act that is directly prohibited must also be indirectly prohibited.<sup>9</sup> Prohibiting shark finning while allowing spining defeats the very purpose for which the laws were enacted. Following such principle, spining is legally equivalent to finning.

Lastly, shark spining is morally equivalent to finning: both methods are contrary to public morals. Following the European Union's ("EU") Regulation on Trade in Seal Products, animals must be protected from cruelty as they "can experience pain, distress, fear and other forms of suffering."<sup>10</sup> Finning is a cruel practice because the living, finless shark is dumped back into the sea to die or be eaten alive (R.25). The same can be said on shark spining because the shark's

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<sup>5</sup> *Id.*

<sup>6</sup> U.S. District Court, N.D. California v. Harris, 2014 WL 1245047, 1 (N.D.Cal.); FOWLER & SERET, SHARK FINS IN EUROPE: IMPLICATIONS FOR REFORMING THE EU FINNING BAN 47 (2010).

<sup>7</sup> Fendt Loophole, *supra* note 3.

<sup>8</sup> *Id.*

<sup>9</sup> Lawson v. Life of the South Insurance Company, 738 F. Supp. 2d 1376 (2010).

<sup>10</sup> Regulation (EC) 1007/2009 of the European Parliament and of the Council on Trade in Seal Products, O.J. L 286, ¶1 (Sept. 16, 2009).



flesh is carved away while it is still alive.<sup>11</sup> Accordingly, spining is morally equivalent to finning.

Even assuming that finning and spining are different, spining still violates existing treaty and customary obligations.<sup>12</sup>

**B. ALOPIAS VIOLATED ITS TREATY OBLIGATIONS.**

Alopias must comply with its treaty obligations in good faith, pursuant to the principle of *pacta sunt servanda*.<sup>13</sup> Alopias failed to observe this duty by legalizing spining and by not enforcing or enacting laws consistent with its treaty obligations.

**1. Alopias breached its duty to conserve and ensure the sustainable use of mako sharks under UNCLOS and CBD.**

Alopias and Rhincodon are required as States-parties to UNCLOS, CBD and TARA (R.6–8) to conserve and ensure the sustainable use of natural resources.<sup>14</sup> Here, Alopias violated such treaty obligations by failing to prevent the finning and spining of mako sharks.

**a. Alopias failed to enact measures protecting mako sharks from over-exploitation.**

Under UNCLOS' duty to conserve and manage living resources, coastal States must take measures to maintain or restore populations at levels that can produce the maximum sustainable yield and to ensure that living resources in the EEZ are not endangered by over-exploitation.<sup>15</sup>

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<sup>11</sup> Fendt, *Gruesome 'Spining' Loophole Aids Criminal Shark Finning in Costa Rica*, VICE NEWS (May 6, 2014), <https://news.vice.com/article/gruesome-spining-loophole-aids-criminal-shark-finning-in-costa-rica> (last accessed Oct. 21, 2014).

<sup>12</sup> See *infra* Part I(B)-(C).

<sup>13</sup> Vienna Convention on the Law of Treaties, art. 26, May 23, 1969, 1155 U.N.T.S. 331 [VCLT].

<sup>14</sup> UNCLOS, art. 61; Convention on Biological Diversity, arts. 8(f), 9(c), June 6, 1992, 1760 U.N.T.S. 79 [CBD].

<sup>15</sup> UNCLOS, arts. 56(1)(a), 56(3).

Excessive fishing through finning is particularly destructive.<sup>16</sup> Since shark populations increase by only 1–2% annually, such is inadequate to sustain their population<sup>17</sup> considering the unprecedented rate at which they are being exploited.<sup>18</sup>

By legalizing spining, a method practically equivalent to finning,<sup>19</sup> Alopias allowed the over-exploitation of mako sharks to continue, which would ultimately lead to their extinction if not prohibited.<sup>20</sup> Despite this, Alopias did not enact measures to restore their maximum sustainable population. Therefore, Rhincodon did not perform its duty to conserve and manage living resources under UNCLOS.<sup>21</sup>

**b. Alopias failed to adopt measures for the recovery and rehabilitation of threatened species.**

CBD mandates States to adopt measures for the recovery and rehabilitation of threatened species.<sup>22</sup> Both species of mako sharks (R.1) are listed in the IUCN Red List as “vulnerable”<sup>23</sup> to

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<sup>16</sup> Van Osch, *Save Our Sharks: Using International Fisheries Law within Regional Fisheries Management Organizations to Improve Shark Conservation*, 33 MICH. J. INT'L L. 383, 391 (2012).

<sup>17</sup> Edwards, *When Predators Become Prey: The Need For International Shark Conservation*, 12 OCEAN & COASTAL L.J. 305, 316 (2007).

<sup>18</sup> *Id.* at 307.

<sup>19</sup> *See supra* Part I(A).

<sup>20</sup> *See* Porter, *Unraveling the Ocean from the Apex Down*, 35 SPG ENVIRONS ENVTL. L. & POL'Y J. 231, 235 (2012); Herndon, et al., *The Case for an International Commission for the Conservation and Management of Sharks (ICCMS)*, 34 MARINE POL'Y 1239, 1246 (2010).

<sup>21</sup> UNCLOS, art. 61.

<sup>22</sup> CBD, art. 8(f).

<sup>23</sup> IUCN, *Isurus oxyrinchus*, <http://www.iucnredlist.org/details/summary/39341/0> (last accessed Oct. 18, 2014) [IUCN Shortfin]; IUCN, *Isurus paucus*, <http://www.iucnredlist.org/details/60225/0> (last accessed Nov. 18, 2014) [IUCN Longfin].

extinction.<sup>24</sup> Hence, as vulnerable species,<sup>25</sup> recovery and rehabilitation measures are imperative to restore their viable population. Among the recognized conservation methods for mako shark population recovery include the implementation of Total Allowable Catches and quotas, licenses and permits system.<sup>26</sup> None of these methods were adopted. Worse, Alopias thwarted the recovery of mako sharks as threatened species (R.18–19,26).

**2. Alopias breached its duty to protect the marine biodiversity by failing to comply with its obligation to adopt measures to avoid or minimize adverse impacts on biological diversity under CBD.**

The Principle of Preventive Action under CBD mandates States to adopt measures to avoid or minimize adverse impacts on biological diversity,<sup>27</sup> limiting activities which might cause such damage through regulation.<sup>28</sup>

Being apex predators, sharks are important in maintaining a balanced ecosystem.<sup>29</sup> They help increase overall fish biomass<sup>30</sup> by removing the “unhealthy members of predatory and prey species.”<sup>31</sup> Their extinction can cause disastrous effects including the death of coral reefs.<sup>32</sup>

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<sup>24</sup> IUCN, 2001 Categories & Criteria, [http://www.iucnredlist.org/static/categories\\_criteria\\_3\\_1](http://www.iucnredlist.org/static/categories_criteria_3_1) (last accessed Oct. 19, 2014) [IUCN Category].

<sup>25</sup> IUCN, GUIDELINES FOR APPROPRIATE USES OF IUCN RED LIST DATA 3 (2011).

<sup>26</sup> Fischer, et al., *Review of the Implementation of the International Plan of Action for the Conservation and Management of Sharks*, ¶66, FAO Fisheries and Aquaculture Circular No. 1076, FAO Doc. FIR/C1076 (2012).

<sup>27</sup> SANDS, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW 246–47 (2003).

<sup>28</sup> *Id.* at 246–47.

<sup>29</sup> Porter, *supra* note 20, at 238; Edwards, *supra* note 17, at 305.

<sup>30</sup> Porter, *supra* note 20, at 238.

<sup>31</sup> Edwards, *supra* note 17, at 306.

<sup>32</sup> GRIFFIN, ET AL., PREDATORS AS PREY: WHY HEALTHY OCEANS NEED SHARKS 9 (2008).

As a practical equivalent to finning,<sup>33</sup> spining likewise further accelerates the extinction of mako sharks. By allowing spining within its territory (R.24), Alopias' citizens are now able to continue to cause damage to the environment with impunity, in violation of its obligation to avoid or minimize adverse impact on biological diversity under CBD.

**3. Alopias failed to comply with its obligation under UNCLOS to protect a shared resource.**

In exercising the right to exploit shared resources, States must exercise “due regard to the rights of other States in the [EEZ].”<sup>34</sup> In *Shrimp/Turtle*, the United States' interest in conserving migratory and endangered sea turtles in Asian waters was recognized because sea turtles are an “exhaustible natural resource” that pass in and out of waters subject to the jurisdiction of various coastal States.<sup>35</sup>

Mako sharks are indigenous to Alopias and Rhincodon (R.1). As a highly-migratory species, their protection requires cooperation and coordination among States within its range.<sup>36</sup> Alopias' refusal to cooperate in protecting the mako sharks by allowing spining (R.21,24) effectively allowed their irreversible extinction. Alopias consequently violated its obligation to protect a shared resource and corollarily, the right of other States over such shared resource.

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<sup>33</sup> See *supra* Part I(A).

<sup>34</sup> 3 NORDQUIST, ET AL., THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY 533 (2002).

<sup>35</sup> United States–Import Prohibition of Certain Shrimp and Shrimp Products, Appellate Body Report, ¶133, WT/DS58/AB/R (Oct. 12, 1998) [*Shrimp/Turtle*].

<sup>36</sup> 3 NORDQUIST, ET AL., *supra* note 34, at xx.

**4. Alopias failed to comply with its duty to promote and encourage the conservation of biological diversity and to cooperate in developing educational programs under CBD.**

Article 13 of CBD requires States-parties to develop educational programs for the conservation and sustainable use of biological diversity.<sup>37</sup> Here, while Rhincodon offered to provide educational programs to Alopias on sharks (R.18), Alopias rejected such offer, arguing that the mako shark issue is not an educational matter (R.19).

**5. Alopias failed to comply with its obligation to conclude agreements under CMS.**

As a State-party to CMS, Alopias must “endeavour to conclude agreements” to protect animals listed in Appendix II,<sup>38</sup> which includes mako sharks.<sup>39</sup> Although Alopias signed the Memorandum of Understanding on the Conservation of Migratory Sharks (“MOU”) (C1.9), it acted contrary to its commitments, which requires, *inter alia*, cooperation among governments to conserve and manage mako sharks and build its enforcement capacity.<sup>40</sup> Instead, Alopias explicitly legalized spining (R.24,26), rejected Rhincodon’s offer of educational programs (R.18) and admittedly failed to enforce its current ban on finning (R.19). While the MOU is non-binding, Alopias is estopped<sup>41</sup> from non-compliance as the aforementioned commitments are also found in its treaty<sup>42</sup> and customary<sup>43</sup> obligations.

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<sup>37</sup> CBD, art. 13(b); GLOWKA, ET AL., A GUIDE TO THE CONVENTION ON BIOLOGICAL DIVERSITY 69 (1994).

<sup>38</sup> Convention on the Migratory Species of Wild Animals, June 3, 1979, arts. 2–4, 1651 U.N.T.S. 333 [CMS].

<sup>39</sup> Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals, appendix II, Feb. 23, 2012.

<sup>40</sup> Memorandum of Understanding on the Conservation of Migratory Sharks, ¶¶5–6, 12(d), 13(d), Feb.12, 2010.

<sup>41</sup> AUST, HANDBOOK OF INTERNATIONAL LAW 45–46 (2005).

<sup>42</sup> See *supra* Part I(B).

<sup>43</sup> See *infra* Part I(C).

**6. Alopias acted contrary to TARA's object or purpose.**

According to Aust, the material breach contemplated under VCLT includes violations of the treaty's object or purpose,<sup>44</sup> which can be found in the preamble.<sup>45</sup> TARA's preamble provides that States-parties must "enhance and enforce environmental laws and regulations," "undertake its activities in a manner that is consistent with environmental protection and conservation" and "promote sustainable development" (R.13). As discussed,<sup>46</sup> Alopias failed to comply with these obligations.

**C. ALOPIAS VIOLATED CUSTOMARY INTERNATIONAL LAW.**

The prohibition on shark finning and the Precautionary Principle have attained the status of custom in view of extensive State practice and *opinio juris*.<sup>47</sup> The Precautionary Principle is similarly enshrined in the Rio Declaration,<sup>48</sup> which Alopias participated in (R.10), and CBD<sup>49</sup> and UNCLOS<sup>50</sup> where Alopias is a State-party (R.6,8). In this case, Alopias' failure (1) to prohibit finning and spining, and (2) to take precautionary measures violates custom.

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<sup>44</sup> AUST, *supra* note 41, at 238–39.

<sup>45</sup> VCLT, art. 31(2),

<sup>46</sup> *See supra* Part I(B)(1).

<sup>47</sup> *See infra* Part I(C)(1)–(2).

<sup>48</sup> Rio Declaration on Environment and Development, prin. 15, U.N. Doc. A/CONF.151/5/Rev.1 (1992).

<sup>49</sup> CBD, preamble.

<sup>50</sup> UNCLOS, annex I.

1. **Alopias violated the customary prohibition on shark finning.**

a. **Acts of Regional Fisheries Management Organizations (“RFMOs”) and of States evince State practice.**

The prohibition on finning is customary as evidenced by State practice and *opinio juris*.<sup>51</sup> Custom is sufficiently established by the practice of interested States,<sup>52</sup> which includes their acts relating to international organizations and national legislations.<sup>53</sup> Here, the practice of prohibiting finning is evinced by the acts of States, particularly through RFMOs and domestic laws.

RFMOs are international organizations for fisheries management<sup>54</sup> composed of the representatives of States that formed them.<sup>55</sup> There are at least nine RFMOs worldwide,<sup>56</sup> and at least 100 States are members of RFMOs.<sup>57</sup> The prohibition on shark finning is a common feature in RFMOs (R.29). RFMOs prohibit shark finning<sup>58</sup> and adopt measures to counter

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<sup>51</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶64; North Sea Continental Shelf (Ger. v. Den.; Ger. v. Neth.), 1969 I.C.J. 3, ¶77.

<sup>52</sup> *North Sea*, 1969 I.C.J. at ¶73.

<sup>53</sup> SHAW, PUBLIC INTERNATIONAL LAW 82 (2008); SANDS & PEEL, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW 112 (2012).

<sup>54</sup> UNEP, TRAINING MANUAL ON INTERNATIONAL ENVIRONMENTAL LAW 226 ¶38, [http://www.unep.org/environmentalgovernance/Portals/8/documents/training\\_Manual.pdf](http://www.unep.org/environmentalgovernance/Portals/8/documents/training_Manual.pdf) (last accessed Oct. 28, 2014); Sydnese, *Regional Fishery Organizations: How and Why Organizational Diversity Matters*, 32 OCEAN DEV'T INT'L L. 349, 350 (2001).

<sup>55</sup> U.N. FAO Code of Conduct for Responsible Fisheries, FAO Doc. 95/20/Rev/1, ¶7.1.4 (Oct. 31, 1995).

<sup>56</sup> Humane Society International, *National Laws, Multi-lateral Agreements, Regional and Global Regulations on Shark Protection and Shark Finning*, [http://www.hsi.org/assets/pdfs/shark\\_finning\\_regs\\_2014.pdf](http://www.hsi.org/assets/pdfs/shark_finning_regs_2014.pdf) (last accessed Oct. 28, 2014) [HSI].

<sup>57</sup> U.N. FAO, *Regional Fishery Bodies Fact Sheet*, <http://www.fao.org/fishery/rfb/search/en> (last accessed Oct. 28, 2014).

<sup>58</sup> FOWLER & SERET, *supra* note 6, at 4.

them.<sup>59</sup> Further, more than 30 countries have domestic legislations prohibiting finning.<sup>60</sup> The overwhelming number of States acting through RFMOs and finning prohibitions through legislation prove extensive State practice.

**b. The adoption of UN General Assembly (“G.A.”) Resolutions and the abstention of States from shark finning evince *opinio juris*.**

G.A. Resolutions are themselves evidence of *opinio juris*.<sup>61</sup> Here, G.A. Resolution 68/71, which prohibits harvesting of sharks solely for their fins<sup>62</sup> was adopted by the UN G.A. *without a vote*.<sup>63</sup> This signifies that all States, including those in the Varium Sea Region (Cl.47), are in consensus<sup>64</sup> in approving the resolution without objection.<sup>65</sup> Other G.A. Resolutions also supplied the same restriction.<sup>66</sup> This manifests a clear support towards prohibiting shark finning out of a sense of legal obligation.

The conscious act of States to abstain from finning (Cl.10) as evinced by their support to relevant G.A. resolutions gives rise to a customary rule<sup>67</sup> prohibiting shark finning.

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<sup>59</sup> Van Osch, *supra* note 16, at 415.

<sup>60</sup> HSI, *supra* note 56.

<sup>61</sup> Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, ¶¶188–91; *Nuclear Weapons*, 1996 I.C.J. at ¶70; SHAW, *supra* note 53, at 88.

<sup>62</sup> G.A. Res. 68/71, ¶15, U.N. Doc. A/RES/68/71 (Dec. 9, 2013).

<sup>63</sup> United Nations Oceans and Law of the Sea, General Assembly Resolutions and Decisions, *available at* [http://www.un.org/depts/los/general\\_assembly/general\\_assembly\\_resolutions.htm](http://www.un.org/depts/los/general_assembly/general_assembly_resolutions.htm) (last accessed Nov.19, 2014).

<sup>64</sup> BOYLE & CHINKIN, *THE MAKING OF INTERNATIONAL LAW* 157 (2007).

<sup>65</sup> BOSCH, *VOTES IN THE UN GENERAL ASSEMBLY* 95 (1998).

<sup>66</sup> G.A. Res. 64/72, ¶14, U.N. Doc. A/RES/64/72 (Dec. 4, 2009); G.A. Res. 63/112, ¶14, U.N. Doc. A/RES/63/112 (Dec. 5, 2008); G.A. Res. 62/177, ¶12, U.N. Doc. A/RES/62/177 (Dec. 18, 2007); G.A. Res. 61/105, ¶10, U.N. Doc. A/RES/61/105 (Dec. 8, 2006); G.A. Res. 59/25, ¶73, U.N. Doc. A/RES/59/25 (Nov. 17, 2004); G.A. Res. 58/14, ¶48, U.N. Doc. A/RES/58/14 (Nov. 24, 2003).

<sup>67</sup> S.S. “Lotus” (Fr. v. Turk.) 1927 P.C.I.J. (ser. A) No. 10 at 28.



Consequently, Alopias' failure to prevent shark finning within its territory violated customary law.

**c. Alopias is not a persistent objector.**

A State that has continuously protested the custom from the onset cannot be bound by such custom.<sup>68</sup> The objection must be clear and the presumed acceptance of the rule rebutted.<sup>69</sup> Here, on the contrary, Alopias acted in furtherance of the customary rule prohibiting shark finning. While insufficient to comply with its international obligations, Alopias signed the MOU (R.8) and enacted the SFPA (R.17,19), both of which seeks to curtail shark finning. Therefore, Alopias is not a persistent objector and must accordingly comply with the customary prohibition on shark finning.

**2. Alopias violated the Precautionary Principle by failing to enact measures to prevent damage to the sharks.**

The Precautionary Principle, which is likewise enshrined in the MOU signed by Alopias and Rhincodon (R.9), is customary.<sup>70</sup> Such Principle requires (1) a threat of environmental damage (2) that is of serious or irreversible character and (3) scientific uncertainty.<sup>71</sup> All elements were satisfied.

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<sup>68</sup> Fisheries (U.K. v. Nor.), 1951 I.C.J. 116, 131; SHAW, *supra* note 53, at 90–91.

<sup>69</sup> CRAWFORD, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 28 (2012).

<sup>70</sup> ANTON & SHELTON, ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS 85 (2011); FITZMAURICE, ET AL., RESEARCH HANDBOOK ON INTERNATIONAL ENVIRONMENTAL LAW 195 (2010); Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (N.Z. v. Fr.), 1995 I.C.J. 228, 412 (Palmer, J., dissenting).

<sup>71</sup> IUCN Council, Guidelines for Applying the Precautionary Principle to Biodiversity Conservation and Natural Resource Management, *available at* [http://cmsdata.iucn.org/downloads/ln250507\\_ppguidelines.pdf](http://cmsdata.iucn.org/downloads/ln250507_ppguidelines.pdf) (last accessed Oct. 28, 2014).

**a. There is a threat of environmental damage.**

As discussed,<sup>72</sup> Alopias' unsustainable exploitation of sharks through finning and spining poses a threat of environmental damage not only to the mako sharks but also to biological diversity.

**b. The threat is serious and irreversible.**

Mako sharks are already listed as vulnerable<sup>73</sup> and at a high risk of extinction.<sup>74</sup> Alopias' continued finning and spining in an unsustainable manner will lead to their endangerment and eventual extinction. Worse, the loss of sharks as top predators may disrupt the balance of the ocean's ecosystem and threaten the survival of other species.<sup>75</sup> Considering that shark finning and spining in Alopias have become even more prevalent in the past 10 years (Cl.8), the threat of damage is indeed serious and irreversible.

**c. There is a lack of data regarding shark finning and spining in Alopias.**

The quantity of shark fins being landed in Alopias is uncertain (Cl.9). No data is also available on the number of vessels engaged in finning, considering the number of unregistered vessels fishing is unknown (Cl.8,41). Notwithstanding such uncertainty, Alopias should have adopted cost-effective measures addressing the threat to mako sharks. Instead, Alopias, although capable of preventing adverse effects to the sharks, did not implement measures to prevent environmental damage (R.26). Alopias therefore violated the Precautionary Principle.

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<sup>72</sup> See *supra* Part I(B)(1)–(2).

<sup>73</sup> IUCN Shortfin, *supra* note 23; IUCN Longfin *supra* note 23.

<sup>74</sup> IUCN Category, *supra* note 24.

<sup>75</sup> IUCN SSG, *Shark Specialist Group Finning Position Statement*, available at <http://www.pretoma.org/downloads/pdf/IUCNPosition.pdf> (last accessed Oct. 29, 2014).

**D. ALOPIAS' FAILURE TO COMPLY WITH ITS INTERNATIONAL OBLIGATIONS IS NOT JUSTIFIED UNDER INTERNATIONAL LAW.**

Alopias claims that shark finning is an economic matter, increasing the storage capacity of vessels (R.19). Although Alopias has the right to utilize natural resources within its waters,<sup>76</sup> such cannot be invoked in blatant disregard of its environmental obligations.

**1. Alopias cannot validly invoke economic incapacity and development to justify its failure to protect mako sharks.**

In *Deep Seabed*, the ITLOS ruled that developing countries have the same environmental obligations as developed countries.<sup>77</sup> Developing States are not accorded preferential treatment.<sup>78</sup> Otherwise, differentiated treatment would frustrate environmental protection since enterprises can simply avoid stricter regulations in developing countries.<sup>79</sup>

Notwithstanding Alopias' status as a developing country (R.2), it is obligated under International Law to effectively protect and conserve mako sharks. Alopias cannot simply invoke its lack of financial resources and budget concerns (R.19,26) to justify its non-compliance with its obligations.

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<sup>76</sup> CBD, art. 3.

<sup>77</sup> Responsibilities and Obligations of States Sponsoring Persons and Entities With Respect To Activities In The Area, Advisory Opinion, 2011 ITLOS, ¶158 [Deep Seabed].

<sup>78</sup> *Id.* ¶158.

<sup>79</sup> *Id.* ¶159.

**2. Alopias' sovereign right over natural resources is limited by its obligation to ensure conservation and sustainable use of resources.**

Although International Law recognizes a State's sovereign right to exploit its natural resources within its EEZ,<sup>80</sup> it is subject to certain environmental restraints.<sup>81</sup> Under Article 62 of UNCLOS, the utilization of living resources within the EEZ should be without prejudice to its obligations to conserve.<sup>82</sup> As discussed, Alopias' continued finning and spining of sharks violate its obligations to conserve and ensure sustainable use of resources.<sup>83</sup> Accordingly, Alopias cannot exploit natural resources in a manner that violates its positive obligation to conserve and ensure sustainable use under International Law.<sup>84</sup>

**II. RHINCODON DID NOT VIOLATE INTERNATIONAL LAW BY IMPOSING THE TRADE RESTRICTION ON THE IMPORTATION OF ALOPIAS' FISH AND FISH PRODUCTS.**

Considering Alopias' continuous breach of its international obligations, Rhincodon's restriction on the importation of Alopias' fish and fish products to its territory is consistent with treaty and customary laws.

**A. THE TRADE RESTRICTION IS JUSTIFIED UNDER ARTICLE 15 OF TARA.**

While Article 5 of TARA prohibits quantitative restrictions on importations of products from the territory of the other State-party, Article 15 nevertheless admits exceptions (R.13): the

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<sup>80</sup> UNCLOS, art. 56; Declaration of the United Nations Conference on the Human Environment, prin. 21, U.N. Doc. A/CONF.48/14/Rev.1 (1972).

<sup>81</sup> SANDS, *supra* note 27, at 246.

<sup>82</sup> UNCLOS, art. 62.

<sup>83</sup> *See supra* Part I(B).

<sup>84</sup> SANDS, *supra* note 27, at 237.

trade measure must be (1) one of the enumerated grounds, and (2) “made effective in conjunction with restrictions on domestic production or consumption” (R.13). Rhincodon’s trade restriction on Alopias’ fish and fish products complied with the Article 15 requirements.

**1. The trade restriction complied with Article 15 of TARA.**

Trade restrictions may be justified under Article 15 of TARA provided they are “(a) necessary to protect public morals; (b) necessary to protect human, animal or plant life or health; ... [or] (g) relating to the conservation of exhaustible natural resources” (R.13). Rhincodon has established these grounds.

**a. The measure is necessary to protect public morals.**

Importation may be restricted to (1) address a public moral concern, (2) that is necessary to protect said public morals.<sup>85</sup> Here, Rhincodon’s trade restriction is necessary to protect sharks’ welfare, an issue that is part of Rhincodon’s public moral concern.

**i. Rhincodon’s concern over animal welfare is an issue of public morals.**

In *EC–Seal Products*, animal welfare was recognized as a public moral concern within the EU due to its legislative history.<sup>86</sup> Rhincodon’s concern over the sharks’ welfare is as well-entrenched as the EU’s. To protect the species’ welfare, it enacted the Humane Fishing Act (“HFA”) (R.15), sent its opposition to Alopias’ Supreme Court decision allowing spining (R.24–25,27), and negotiated to change its practices (R.15,17,23,27,32). However, these efforts proved insufficient from stopping Alopias’ violations. Rhincodon was therefore left without alternative but to impose the restriction to protect this public moral concern.

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<sup>85</sup> Appellate Body Report, *European Communities–Measures Prohibiting the Importation and Marketing of Seal Products*, ¶5.169, WT/DS400/AB/R (May 22, 2014) [*EC–Seal Products Appellate*].

<sup>86</sup> Panel Report, *European Communities–Measures Prohibiting the Importation and Marketing of Seal Products*, ¶¶7.409–7.411, WT/DS400/R (Nov. 25, 2013).

The allegation on the existence of concentrated animal feeding operations (“CAFO”) within Rhincodon’s territory (R.30) does not prevent Rhincodon’s concern over the welfare of sharks to qualify as part of its public morals. States may set different levels of protection in response to similar issues of moral concern,<sup>87</sup> including recognizing different levels of animal welfare risks to various practices.<sup>88</sup> Therefore, Rhincodon’s public moral concern on the welfare of sharks cannot be dismissed by an allegedly existing CAFO.

**ii. Rhincodon’s trade restriction is necessary.**

Determining whether a measure is necessary involves the less trade restrictive approach, accompanied by the weighing and balancing of a series of factors.<sup>89</sup>

For a measure to be necessary under the less trade restrictive approach, the alternative measure, whether consistent with the GATT provisions or not, must be a measure reasonably expected to be employed.<sup>90</sup> Here, there is no other available measure to Rhincodon except restricting the importation of fish and fish products. A restriction on shark’s fin and fin products would be futile since Rhincodon does not import these products (Cl.40). Therefore, using the less trade restrictive approach, the trade restriction is necessary to protect public morals.

In determining necessity, the importance of the protected interest of the imposing State, the measure’s contribution in enforcing the regulation, and its trade impact<sup>91</sup> must also be weighed and balanced against the trade interest of the responsible State.<sup>92</sup>

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<sup>87</sup> Panel Report, *United States–Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, ¶6.461, WT/DS285/AB/R (Nov. 10, 2004), cited in *EC–Seal Products Appellate*, WT/DS400/AB/R at ¶5.200.

<sup>88</sup> *EC–Seal Products Appellate*, WT/DS400/AB/R at ¶5.200.

<sup>89</sup> WTO, TRADE AND ENVIRONMENT AT THE WTO 52 (2004).

<sup>90</sup> *Id.*; Report of the Panel, *United States–Section 337 of the Tariff Act of 1930*, ¶5.26, L/6439 (Nov. 7, 1989), GATT BISD 36S/345 at 45 (1989).

<sup>91</sup> WTO, *supra* note 89, at 52.

Here, the HFA and the trade restriction espouses the protection of the sharks' welfare from environmentally unsustainable practices,<sup>93</sup> which is of utmost concern to Rhincodon due to its deleterious effects on the environment (R.15,18,29). Also, the trade restriction effectively addresses the end of protecting sharks by compelling Alopias to prevent finning and spining (R.27,29). Moreover, Rhincodon's trade restriction only has a slight trade impact since fish and fish products only comprise less than 30% of the products exported to Rhincodon (R.2,C1.43). Thus, Rhincodon's interest of protecting the Sharks outweighs Alopias' trade interest. Rhincodon's trade restriction is therefore necessary.

**b. The measure was necessary to protect animal life or health.**

A measure protecting animal life or health must seek to protect the animal<sup>94</sup> from a risk to their life or health.<sup>95</sup> In this case, the measure seeks to protect sharks from the increased risk of being killed for its fins due to the failure of Alopias to prevent finning and spining (R.21–22,24,27). Where shark finning kills around 100 million annually,<sup>96</sup> and has rendered mako sharks vulnerable<sup>97</sup> to extinction,<sup>98</sup> spining will indubitably increase the risk to the sharks' lives,

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<sup>92</sup> Marwell, *Trade and Morality: the WTO Public Morals Exception After Gambling*, 81 N.Y.U. L. REV. 802, 806 (2006).

<sup>93</sup> See *infra* Part I(A)–(B).

<sup>94</sup> Committee on Trade and Environment, *Note by the Secretariat: Gatt/WTO Dispute Settlement Practice Relating to GATT Article XX, Paragraphs (B), (D) and (G)*, ¶23, WT/CTE/W/203 (Mar. 8, 2002).

<sup>95</sup> Panel Report, *European Communities–Measures Affecting Asbestos and Asbestos–Containing Products*, ¶8.171, WT/DS135/R (Sept. 18, 2000).

<sup>96</sup> Worma, et al., *Global catches, exploitation rates, and rebuilding options for sharks*, 40 MARINE POL'Y 194, 194 (2013).

<sup>97</sup> IUCN Shortfin, *supra* note 23; IUCN Longfin, *supra* note 23.

<sup>98</sup> IUCN Category, *supra* note 24.

causing its endangerment and eventual extinction.<sup>99</sup> Accordingly, the measure protects the sharks' life.

And as previously discussed, Rhincodon's trade restriction is necessary to protect animal life or health as there are no other less trade restrictive means reasonably available to Rhincodon.<sup>100</sup>

**c. The measure relates to the conservation of exhaustible natural resources.**

An exhaustible natural resource contemplates living resources<sup>101</sup> vulnerable to depletion and extinction.<sup>102</sup> Here, mako sharks are exhaustible natural resources.<sup>103</sup>

In complying with TARA's Article 15(g), the restriction only needs to be primarily aimed at the sharks' conservation.<sup>104</sup> In this case, the trade restriction is aimed at conserving mako sharks since it seeks to end finning and spining.<sup>105</sup> Accordingly, the trade restriction relates to the conservation of mako sharks.

**2. The trade restriction complied with the chapeau under TARA.**

Under the introductory clause or chapeau of TARA's Article 15, a trade restriction must be "made effective in conjunction with restrictions on domestic production or consumption" (R.13). Conversely, a State must impose domestic restrictions that reinforce that State's

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<sup>99</sup> See *supra* Part I(B).

<sup>100</sup> See *supra* Part II(A)(1)(a)(ii).

<sup>101</sup> *Shrimp/Turtle*, WT/DS58/AB/R at ¶131.

<sup>102</sup> *Id.* ¶128.

<sup>103</sup> See IUCN Shortfin, *supra* note 23; IUCN Longfin, *supra* note 23; IUCN Category, *supra* note 24.

<sup>104</sup> Report of the Panel, *Canada—Measures Affecting Exports of Unprocessed Herring and Salmon*, ¶4.6, L/6268 (Nov. 20, 1987), GATT BISD 35S/98 at 12 (1988).

<sup>105</sup> See *supra* Part II(A)(1)(a)(ii).



international trade restriction.<sup>106</sup> In this case, Rhincodon's trade restriction complied with TARA's chapeau as it enacted the HFA and domestically banned the consumption of shark fins whose bodies are not landed (R.15–16).

**3. The chapeau under Article XX of GATT does not apply.**

**a. The difference in wording of the chapeaus between TARA and GATT evinces the intent of the parties to deviate from GATT.**

While the chapeau in Article XX of GATT requires that the measure must not be arbitrary, unjustifiably discriminatory, or “a disguised restriction on international trade,”<sup>107</sup> TARA's chapeau merely required that the measure be “made effective in conjunction with restrictions on domestic production or consumption” (R.13).

Following the principle of *expression unius est exclusion alterius*,<sup>108</sup> it can be reasonably inferred<sup>109</sup> that Alopias and Rhincodon intended to exclude the other requirements in Article XX of the GATT. Hence, the different wording of the chapeau in TARA's Article 15 evinces the intent to deviate from the restrictions under GATT.

**b. Alopias, a mere observer, cannot validly invoke GATT.**

The principle of *pacta tertiis nec nocent nec prosunt* states that a third party can neither invoke nor be held liable to comply with the treaty.<sup>110</sup> At the outset, Alopias merely possesses

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<sup>106</sup> Appellate Body Report, *China—Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum*, ¶5.132, WT/DS431/AB/R (Aug. 7, 2014).

<sup>107</sup> General Agreement on Tariffs and Trade, art. XX, Oct. 30, 1947, 55 U.N.T.S. 194.

<sup>108</sup> *Ford v. U.S.*, 273 U.S. 593, 611 (1927).

<sup>109</sup> *Corfu Channel (U.K. v. Alb.)*, 1949 I.C.J. 4, 18.

<sup>110</sup> VCLT, art. 34.

an observer status (R.11) and has yet to accede to WTO.<sup>111</sup> Following said principle, Alopias cannot invoke GATT to impose the obligations enshrined thereto upon Rhincodon.<sup>112</sup>

**c. Even assuming GATT applies, Rhincodon's trade restriction complies with its provisions.**

In this case, the measure is neither arbitrary nor unjustifiably discriminatory. Rhincodon imposed the restriction on Alopias, since it is the only State that practices finning and spining in the Varium Sea region (Cl.10).

Similarly, Rhincodon's measure is not a disguised restriction. In *US–Canadian Tuna*, the Panel held that a measure is not a disguised restriction if it is publicly announced as such.<sup>113</sup> Here, Rhincodon publicly announced the importation restriction as a trade measure (R.27,29).

**B. THE IMPOSITION OF THE TRADE RESTRICTION IS ALLOWED UNDER CITES.**

Article XIV(1)(b) of CITES provides that domestic measures may be made to restrict or prohibit trade of species not included in its appendices.<sup>114</sup> Given that both species of the mako shark are not listed under any of CITES' appendices (R.7), the trade restriction—a domestic measure<sup>115</sup> implemented by Rhincodon—is valid under CITES.

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<sup>111</sup> WTO, *Membership, alliances and bureaucracy*, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org3\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org3_e.htm) (last accessed Nov. 12, 2014).

<sup>112</sup> VCLT, art. 34.

<sup>113</sup> Report of the Panel, *United States–Prohibition of Imports of Tuna and Tuna Products from Canada*, ¶4.8, L/5198–29S/91 (Dec. 22, 1981).

<sup>114</sup> Convention on International Trade in Endangered Species of Wild Flora and Fauna, art. XIV(1)(b), Mar. 3, 1973, 993 U.N.T.S. 243.

<sup>115</sup> *Stricter Domestic Measures*, CITES SC54 Doc. 37 (Rev. 1), at 1 (2006).

**C. THE IMPOSITION OF THE TRADE RESTRICTION IS A VALID COUNTERMEASURE UNDER INTERNATIONAL LAW.**

For the countermeasure to be valid, *first*, it must be in response to an internationally wrongful act; *second*, the injured State must have called upon the responsible State to discontinue its internationally wrongful act; *third*, the countermeasure must be proportional; *fourth*, it must be reversible; and *fifth*, it must be temporary in character.<sup>116</sup> Rhincodon complied with these requirements.

**1. The countermeasure is taken in response to a breach attributable to Alopias.**

Under the *first* condition, Article 49(1) of ASR requires that the countermeasure be (1) directed against a State that committed an internationally wrongful act in order (2) to induce that State's compliance with its international obligations.<sup>117</sup>

**a. Alopias committed an internationally wrongful act by allowing shark finning and spining.**

For an internationally wrongful act to exist, the conduct: (1) must be attributable to the State and (2) constitutes a breach of international obligation.<sup>118</sup>

On the *first* element, a State organ's conduct is attributable to that State.<sup>119</sup> Here, Alopias' Congress refused to amend its law to include spining (R.27). Its Supreme Court also legalized spining (R.24). These conducts of State organs are attributable to Alopias.

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<sup>116</sup>Articles on the Responsibility of States for Internationally Wrongful Acts, G.A. Res. 56/83, U.N. GAOR, 56th Sess., Supp. No. 49, U.N. Doc. A/RES/56/83, arts. 49–53 (Dec.12, 2001) [ASR]; Gabcikovo-Nagymaros (Hung. v. Slov.), 1997 I.C.J. 7, 55–57.

<sup>117</sup> ASR, art. 49 (1); CRAWFORD, *supra* note 69, at 284–85.

<sup>118</sup> *Id.* art. 2.

<sup>119</sup> *Id.* art. 4.

Moreover, acts of private persons become attributable to the State when that State acknowledges and adopts them as its own.<sup>120</sup> In *Tehran*, this Court declared that Iran's endorsement through statements and inaction translated the militant's acts into that of the State.<sup>121</sup> Here, Alopias acknowledged and adopted its nationals' continued shark finning activities (R.18–19). Despite the SFPA, Alopias admitted in a diplomatic note that it is lucrative trade and has consequently not been able to fully enforce its law (R.18–19).

On the *second* element, as discussed, Alopias violated its treaty and customary obligations by failing to prevent finning and spining.<sup>122</sup> Both elements being present, Alopias committed an internationally wrongful act.

**b. The countermeasure is directed against Alopias to induce its compliance with its international obligations.**

A valid countermeasure must be taken against the responsible State to induce its compliance with its obligations.<sup>123</sup> The trade restriction intended to induce Alopias to prevent shark finning and spining. Rhincodon intends to cease from imposing the countermeasure upon Alopias' compliance with International Law (R.27,29). Clearly, the trade restriction is solely for this purpose.

**2. Rhincodon called upon Alopias to discontinue its internationally wrongful act.**

Before resorting to countermeasures, the injured State must call on the responsible State to cease its violations.<sup>124</sup> In *Gabcikovo*, this requirement was satisfied when Czechoslovakia

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<sup>120</sup> *Id.* art. 11.

<sup>121</sup> United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. 3, 35.

<sup>122</sup> See *supra* Part I(B)–(C).

<sup>123</sup> ASR, art. 49(1); *Gabcikovo-Nagymaros*, 1997 I.C.J. at 56–57.

<sup>124</sup> ASR, art. 52(1)(a); CRAWFORD, *supra* note 69, at 298.

informed Hungary that it would impose measures if Hungary continues to violate International Law.<sup>125</sup> Similarly, Rhincodon called upon Alopias to comply with its international obligations on finning and spining (R.25,27). Rhincodon even requested the amendment of its domestic law to include spining and offered educational assistance, which Alopias declined (R.18–19,25).

**3. The countermeasure is proportional to and necessary for the interest of mako sharks' life, health and conservation.**

Article 51 of ASR requires that countermeasures be proportional in character.<sup>126</sup> Proportionality must be assessed based on (1) the interest protected by the rule violated; (2) the extent of injury and seriousness of breach;<sup>127</sup> and (3) the necessity to induce the responsible State to comply with its obligations.<sup>128</sup>

In this case, Alopias is obligated to conserve and ensure sustainable utilization of sharks. However, as discussed, Alopias patently violated its obligations by not preventing finning and spining.<sup>129</sup> Its finning activities contribute to the endangerment of the already threatened mako shark population. Considering Alopias' inaction, it became necessary for Rhincodon to impose the countermeasure.

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<sup>125</sup> *Gabcikovo-Nagymaros*, 1997 I.C.J. at 56.

<sup>126</sup> ASR, art. 51.

<sup>127</sup> CRAWFORD, *supra* note 69, at 296; Air Services Agreement of 27 March 1946 (U.S. v. Fr.), 18 R.I.A.A. 417, 444.

<sup>128</sup> CRAWFORD, *supra* note 69, at 296; CASSESSE, INTERNATIONAL LAW 306 (2005).

<sup>129</sup> See *supra* Part I(B)–(C).

**4. The countermeasure is reversible and permits Rhincodon to resume performance of its obligations.**

The countermeasure must also be reversible: it must allow the imposing State to resume performing its international obligation that was suspended due to the countermeasure.<sup>130</sup> Here, the countermeasure is reversible since Rhincodon will resume importations once Alopias complies with its obligations (R.27,29).

**5. The countermeasure is temporary.**

Following Article 49(2) of ASR,<sup>131</sup> the countermeasure is temporary as Rhincodon expressly declared its cessation upon Alopias' compliance with its international obligations to protect mako sharks (R.29).

Considering the existence of the foregoing requisites required for a valid countermeasure, the trade restriction on Alopias' fish and fish products does not violate International Law.

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<sup>130</sup> ASR, art. 49(3); CRAWFORD, *supra* note 69, at 286.

<sup>131</sup> ASR, art. 49(2); CRAWFORD, *supra* note 69, at 286.

**CONCLUSION AND PRAYER FOR RELIEF**

Respondent, the Republic of Rhincodon, respectfully requests the court to adjudge and declare that:

1. Alopias violated International Law by failing to prevent its nationals from finning and spining mako sharks.
2. Rhincodon did not violate International Law by imposing the trade restriction on Alopias.

RESPECTFULLY SUBMITTED,

**AGENTS OF RESPONDENT**