Team No. 1740

IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

THE CASE CONCERNING

QUESTIONS RELATING TO OCEAN FERTILIZATION AND MARINE BIODIVERSITY

THE FEDERAL STATES OF AEOLIA

APPLICANT

v.

THE REPUBLIC OF RINNUCO

RESPONDENT

MEMORIAL FOR THE RESPONDENT

THE 2016-2017 STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION

NOVEMBER 2016

TABLE OF CONTENTS

INDEX OF AUTHORITIES

TREATIES AND CONVENTIONS

U.N. DOCUMENTS & OTHER INTERNATIONAL DOCUMENTS

JUDICIAL DECISIONS

BOOKS

ESSAYS, ARTICLES, AND JOURNALS

QUESTIONS PRESENTED

I. WHETHER THE INTERNATIONAL COURT OF JUSTICE HAS JURISDICTION OVER THIS DISPUTE BETWEEN RINNUCO AND AEOLIA.

II. WHETHER RINNUCO VIOLATED INTERNATIONAL LAW BY IMPLEMENTING ITS OCEAN FERTILIZATION PROJECT IN THE MUKTUK OCEAN.

STATEMENT OF JURISDICTION

Pursuant to Article 79, paragraph 1, of the International Court of Justice Rules of Court (1978), the Republic of Rinnuco ("Respondent") has filed a timely preliminary objection as to this Honorable Court's jurisdiction over the subject matter of the dispute between Respondent and the Federal States of Aeolia ("Applicant"). *See* Preliminary Objection of the Republic of Rinnuco, Dated 10 May 2016. In accordance with Statute of the International Court of Justice, art. 36(6), T.S. No. 993 (1945), this Court has jurisdiction to settle the matter of jurisdiction.

If this Court determines that it does have jurisdiction to decide the subject matter of the dispute, this Court would have jurisdiction over this matter pursuant to Statute of the International Court of Justice, art. 40(1), T.S. No. 993 (1945), since Applicant submitted an application instituting proceedings. *See* Application Instituting Proceedings, Dated 4 April 2016.

STATEMENT OF FACTS

A. The Parties And Dispute

The Republic of Rinnuco and the Federal States of Aeolia are developed, sovereign coastal countries located in Scheflutti.[1] Both countries have developed economies with large fishing and ecotourism industries.[2]

In November 2014, Rinnuco conducted an extensive environmental impact assessment regarding the effects of a potential ocean fertilization project.[3] After completing the assessment, Rinnuco announced plans to implement its project, which Rinnuco anticipated would stimulate phytoplankton "blooms" in the Muktuk Ocean[4] and, in turn, could stimulate fish production, generate potential carbon offsets, and mitigate climate change.[5] Rinnuco's project advances in controlled stages over the course of several years[6] and has already provided much-needed data on short- and long-term benefits of ocean fertilization.[7]

In December 2014, Rinnuco informed Aeolia of the planned project.[8] Aeolia expressed concern that Rinnuco's project could negatively impact the environment.[9] Rinnuco acknowledged Aeolia's concerns and reassured Aeolia that Rinnuco conducted

[1] R. at 4.
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*

an extensive environmental impact assessment and that Rinnuco's project could actually benefit the environment.[10]

Rinnuco's legislature subsequently passed a law approving and funding the project.[11] In January 2015, Rinnuco implemented the project's initial phase and placed approximately 16.5 tons[12] of iron sulfate powder into the Muktuk Ocean over the course of six weeks.[13] The powder was placed approximately 175 miles from Rinnuco's coast—within Rinnuco's Exclusive Economic Zone[14]—over an area spanning 2,000 square kilometers.[15] The project is designed such that Rinnuco can continuously monitor it.[16]

After Rinnuco began the project, Aeolia reiterated its concerns.[17] On 13 February 2015, in response, Rinnuco voluntarily suspended the project after completing its initial phase.[18] Rinnuco continues to collect and analyze data but has not made final determinations regarding the project's results.[19]

On 22 April 2015—more than two months after Rinnuco voluntarily suspended its project—nine dead narwhals were discovered off Rinnuco's coast.[20] Rinnuco agreed to allow Aeolia to conduct necropsies, which were inconclusive regarding the cause of the narwhals' deaths.[21] For over one year, Rinnuco and Aeolia negotiated and mediated

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[10] R. at 6.
[11] *Id.*
[12] 16.5 tons is approximately 15,000kg. *See* R. at 7.
[13] R. at 6.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] R. at 7.
[18] *Id.*
[19] R. at 8.
[20] *Id.*
[21] *Id.*; IEMCC Clarifications at 4.

regarding Rinnuco's project, but the dispute remains unresolved.[22] Rinnuco has not resumed its project.[23]

On 21 March 2016, Aeolia requested that Rinnuco submit this dispute to the ICJ in accordance with Article 287 of UNCLOS,[24] but Rinnuco refused.[25] Aeolia nonetheless submitted this dispute to the ICJ on 4 April 2016.[26]

B. Applicable International Laws

Rinnuco and Aeolia are Members of the United Nations and parties to the Statute of the International Court of Justice (ICJ).[27] Aeolia recognizes the ICJ's jurisdiction as compulsory, but Rinnuco does not.[28] Rinnuco and Aeolia are also parties to the Vienna Convention on the Law of Treaties.[29]

Rinnuco and Aeolia are contracting parties to the Convention on Biological Diversity (CBD), the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention), and the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Protocol).[30] When Rinnuco adopted the London Protocol, Rinnuco also stated that it must consent to the London Protocol's arbitral procedures before they control any

[22] R. at 9.
[23] *Id.*
[24] IEMCC Clarifications at 2; R. at 10.
[25] R. at 10.
[26] *Id.*
[27] R. at 4.
[28] *Id.*
[29] *Id.*
[30] *Id.*

dispute regarding the interpretation or application of articles 3.1 and 3.2 of the London Protocol.[31]

Rinnuco and Aeolia are parties to the Convention on the Conservation of Migratory Species of Wild Animals (CMS). Narwhals have an unfavorable conservation status pursuant to the CMS, and both Rinnuco and Aeolia are range states for narwhals.[32]

Both States are parties to the United Nations Convention on the Law of the Sea (UNCLOS).[33] When Rinnuco and Aeolia signed UNCLOS, both States provided written consent allowing the ICJ to settle disputes concerning UNCLOS's interpretation or application.[34] But on 28 March 2016, Rinnuco properly revoked its consent to the ICJ's jurisdiction pursuant to Article 287 of UNCLOS, stating that Rinnuco would not submit disputes regarding the interpretation or application of UNCLOS to the ICJ.[35]

Rinnuco and Aeolia are parties to the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol to the UNFCCC (Kyoto Protocol), and both have signed, but not ratified, the Paris Agreement.[36] Rinnuco and Aeolia submitted written declarations stating that any disputes regarding the interpretation or application of the UNFCCC or the Kyoto Protocol would be submitted to the ICJ.[37]

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[31] *Id.*
[32] *Id.*
[33] R. at 5.
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*

Pursuant to the Kyoto Protocol, Rinnuco and Aeolia committed to "reduce greenhouse gas emissions by at least 8% below 1990 levels" by 2012.[38] Rinnuco met this goal; Aeolia did not.[39] Under the Doha Amendment to the Kyoto Protocol, Rinnuco also agreed to reduce its greenhouse gas emissions by at least 20% by 2020.[40] Rinnuco has indicated that, under the Paris Climate Change Conference, it will cut its greenhouse gas emissions in half by 2030.[41]

Rinnuco and Aeolia have attended and fully participated in several climate change conferences, and Rinnuco has consistently abstained from voting at any conference or meeting that would prohibit Ocean Iron Fertilization outright.[42]

[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] R. at 9.
[42] R. at 5–8.

SUMMARY OF THE ARGUMENT

I. The ICJ does not have jurisdiction over this dispute because Rinnuco has not agreed to submit this dispute to the ICJ, and none of the relevant, controlling international agreements require Rinnuco to do so. This Court should acknowledge the parties' disagreement, hold that it does not have jurisdiction to adjudicate this dispute, and allow the parties to settle their dispute via mutually agreeable means.

II. Even if this Court has jurisdiction over this dispute, Rinnuco did not violate international law by implementing its project. Rather, by acting aggressively and responsibly to combat climate change; acting in accordance with the precautionary principle; and fulfilling its duty not to cause transboundary harm, Rinnuco fully complied with its international law obligations.

ARGUMENT

I. THE ICJ DOES NOT HAVE JURISDICTION OVER THIS DISPUTE.

A. The Court Does Not Have Jurisdiction Pursuant To UNCLOS.

1. Because it is contrary to subsequent binding agreements' principles of settling disputes by mutually agreeable procedures, UNCLOS's dispute settlement procedures should not control.

In *Southern Bluefin Tuna (New Zealand-Japan, Australia-Japan)*, the Arbitral Tribunal considered New Zealand's and Australia's claims alleging Japan overharvested Southern Bluefin tuna, a highly migratory fish that many South Pacific countries harvest every year.[43] Japan objected, arguing that the tribunal did not have jurisdiction to hear the dispute because the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) applied, which does not provide for the Arbitral Tribunal's jurisdiction.[44] Moreover, Japan argued that UNCLOS did not apply.[45] The tribunal held that both CCSBT and UNCLOS applied to the dispute, but the tribunal could not exercise its jurisdiction under CCSBT.[46]

When evaluating whether UNCLOS provided the tribunal with jurisdiction, it held that "UNCLOS falls significantly short of establishing a truly comprehensive regime of compulsory jurisdiction entailing binding decisions."[47] The tribunal reasoned, in part, that many international maritime agreements adopted after UNCLOS require dispute

[43] *See Southern Bluefin Tuna (New Zealand-Japan, Australia-Japan)*, 2000 Arbitral Tribunal 1 (Aug. 4).
[44] *Id.* at 22.
[45] *Id.*
[46] *Id.* at 40.
[47] *Id.* at 45.

settlement by *mutually agreeable* procedures.[48] Moreover, the tribunal stated, holding that "disputes implicating obligations under both UNCLOS" and a later agreement must be adjudicated under UNCLOS's compulsory procedures would substantially deprive dispute settlement provisions from later agreements "which prescribe dispute resolution by means of the parties' choice."[49] Thus, the Arbitral Tribunal held it did not have jurisdiction to hear the dispute.[50]

The Arbitral Tribunal in *Southern Bluefin Tuna* was referring, in part, to the London Protocol, because that protocol specifically states that disputes regarding its interpretation or application shall be resolved by mediation, negotiation, conciliation, or by "other peaceful means" chosen by the parties.[51] Holding that UNCLOS's dispute settlement procedures are binding on Rinnuco and Aeolia would discard the London Protocol's principle that States should settle disputes by mutually agreeable procedures. Rinnuco has not agreed to submit this dispute to the ICJ.[52] Thus, this Court should acknowledge the parties' disagreement, hold it does not have jurisdiction to adjudicate this dispute, and allow the parties to settle their dispute via mutually agreeable means.

[48] *Id.* at 45–46.
[49] *Id.* at 46.
[50] *Id.*
[51] Protocol to the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 7 Nov. 1996, 2006 ATS 11 art. 16.1, [London Protocol].
[52] R. at 10.

2. Pursuant to the Vienna Convention on the Law of Treaties, the London Protocol controls because it was adopted after UNCLOS.

Even if this Court holds that UNCLOS's dispute settlement procedures are binding on Rinnuco and Aeolia, this Court still lacks jurisdiction. According to the Vienna Convention, when multiple similar treaties apply to a dispute between parties to those treaties, "the earlier treaty applies only to the extent that its provisions are compatible" with the later treaty.[53] UNCLOS and the London Protocol both involve applicable subject matter to this dispute, and Rinnuco and Aeolia are parties to both agreements.[54]

The London Protocol superseded the London Convention for parties that contracted to both the Protocol and the Convention, and the Protocol is binding.[55] Rinnuco and Aeolia are contracting parties to both agreements, so the London Protocol controls.[56]

The London Protocol seeks to preserve the marine environment from pollution by dumping.[57] Likewise, UNCLOS provides a wide-ranging legal regime seeking to protect the Earth's oceans.[58] Article 210 of UNCLOS specifically provides for regulations regarding ocean "pollution by dumping" and requires that contracting States adopt laws

[53] Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331 art. 30.3 [Vienna Convention].
[54] R. at 4–5.
[55] 2 ALEKA MANDARAKA-SHEPPARD, MODERN MARITIME LAW 826 (3d ed. 2013); London Protocol, *supra* note 51, at art. 23.
[56] R. at 4.
[57] London Protocol, *supra* note 51, at art. 2.
[58] United Nations Convention on the Law of the Sea, 10 Dec. 1982, 1833 U.N.T.S. 3, 30 [UNCLOS], available at http://www.un.org/depts/los/convention_agreements/pamphlet_unclos_at_30.pdf (last visited Nov. 12, 2016).

and regulations to prevent such dumping.[59] Moreover, when the London Protocol was established, it considered applicable international agreements and noted that UNCLOS was especially relevant.[60]

This dispute involves Rinnuco's ocean fertilization project, by which Rinnuco placed iron sulfate into the Muktuk Ocean.[61] Because this dispute concerns placing materials into the ocean and the potential resulting effects on the marine environment,[62] Article 210 of UNCLOS and the London Protocol both apply.

UNCLOS opened for signature in 1984,[63] but the London Protocol did not open for signature until 1996.[64] Rinnuco and Aeolia signed and adopted both agreements in the first year they were open for signature.[65] As such, pursuant to Article 30 of the Vienna Convention, UNCLOS only applies to the extent that its provisions are compatible with the London Protocol's provisions.[66] Thus, the London Protocol's dispute settlement provisions take precedent.

The London Protocol's dispute settlement provisions provide that parties must first engage in negotiation, mediation, conciliation, or other peaceful means agreed on by the parties.[67] If after twelve months no resolution is possible, arbitral procedures should settle the dispute, unless the parties agree to use procedures set forth in Article 287 of

[59] *Id.* at art. 210.1.
[60] *See* London Protocol, *supra* note 51, at Introduction.
[61] R. at 7.
[62] R. at 4–12.
[63] *See* UNCLOS, *supra* note 58.
[64] *See* London Protocol, *supra* note 51.
[65] IEMCC Clarifications at 1.
[66] *See* Vienna Convention, *supra* note 53, at art. 30.3.
[67] London Protocol, *supra* note 51, at art. 16.1.

UNCLOS.[68] Rinnuco and Aeolia participated in negotiations and mediation for over one year—from January 2015 until March 2016—but were unable to settle their dispute. [69] Additionally, Rinnuco and Aeolia did not agree to use Article 287's dispute settlement procedures,[70] so pursuant to the London Protocol, only arbitral procedures or other agreed-upon measures should settle this dispute.[71] Thus, the ICJ does not have jurisdiction over the dispute.

3. Even if this Court finds that UNCLOS applies, Rinnuco properly revoked its consent to the ICJ's jurisdiction.

The Statute of the ICJ dictates that the ICJ adjudicates disputes in which (1) parties refer the matter to the ICJ, or (2) the ICJ's jurisdiction is specifically provided for in applicable, binding treaties and conventions.[72] "The ICJ's jurisdiction only exists within the limits of which it has been accepted,"[73] and Rinnuco and Aeolia did not agree to refer this dispute to the ICJ.[74] Aeolia recognizes the ICJ's jurisdiction as compulsory for disputes concerning interpretation of treaties and questions of international law, but Rinnuco does not.[75] Therefore, this Court can only secure jurisdiction over Rinnuco through Rinnuco's consent to submit disputes to the ICJ via an applicable, binding agreement.

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[68] *Id.* at art. 16.2.
[69] R. at 9.
[70] IEMCC Clarifications at 2.
[71] London Protocol, *supra* note 51, at art. 16.2. Rinnuco's consent is required before a dispute can be settled by arbitral procedures set forth in Annex 3 of the London Protocol. R. at 4.
[72] Statute of the International Court of Justice, art. 36(1), 26 June 1945, T.S. 993.
[73] *Fisheries Jurisdiction (Spain v. Can.)*, Judgment, 1998 I.C.J 45, 48 (Dec. 4).
[74] R. at 10.
[75] R. at 4.

Under Article 287 of UNCLOS, States are free to choose means of settling disputes regarding the interpretation or application of UNCLOS, including submitting the dispute to the ICJ.[76] But a State may revoke its chosen means of dispute settlement unless a dispute is already pending before its chosen court.[77] Under the ICJ's rules regarding "How the Court Works," the date the Registrar of the Court receives the application for instituting proceedings "marks the opening of proceedings before the Court."[78]

Aeolia argues that this Court has jurisdiction pursuant to Article 287 of UNCLOS.[79] When Rinnuco and Aeolia signed UNCLOS, each State, by written declarations, chose the ICJ to settle their disputes.[80] But on 28 March 2016, Rinnuco properly deposited a notice of revocation pursuant to Article 287.7 of UNCLOS, stating that it would not submit disputes about the application or interpretation of UNCLOS to the ICJ.[81] Aeolia did not submit its application to institute proceedings against Rinnuco with the ICJ until 4 April 2016, which is when the proceedings became pending.[82] Because Rinnuco revoked its consent to the ICJ's jurisdiction before Aeolia instituted proceedings, Rinnuco acted in accordance with Article 287 of UNCLOS and properly

[76] UNCLOS, *supra* note 58, art. 287.1.
[77] *See id.* at art. 287(7).
[78] *How the Court Works*, ICJ, available at http://www.icj-cij.org/court/index.php?p1=1&p2=6 (last visited Nov. 16, 2016).
[79] R. at 11.
[80] R. at 5.
[81] R. at 5.
[82] R. at 2; *see How the Court Works*, *supra* note 78 and accompanying text.

revoked its consent to the ICJ's jurisdiction.[83] Consequently, this Court lacks jurisdiction over this dispute pursuant to UNCLOS.

B. This Court Does Not Have Jurisdiction Under The CBD Because The CBD Does Not Relate To This Dispute.

To acquire jurisdiction under a treaty, the court whose jurisdiction is at issue must determine whether the parties' claims "reasonably relate" to the "legal standards of the treaty" at issue.[84] In its determination, the court must focus on how the parties formulate the dispute, by examining their final submissions, diplomatic exchanges, and other relevant evidence.[85]

The CBD focuses on conserving biological diversity through finding sustainable ways to use the Earth's wealth of living organisms.[86] The CBD's objectives are to conserve the variability of living organisms[87] through sustainable use of the oceans' resources and equitable sharing of the marine environment's benefits.[88] The CBD does not concern States' research-based ocean fertilization projects, and it makes no mention of placing materials in the ocean.[89]

This dispute does not concern fair use and variability of the Earth's wealth of living organisms. Rather, it concerns Rinnuco's ocean fertilization project and placement

[83] *See* UNCLOS, *supra* note 58, at art. 287(7).
[84] *Southern Bluefin Tuna (New Zealand-Japan, Australia-Japan)*, 2000 Arbitral Tribunal 1, 38–39 (Aug. 4).
[85] *Id.* at 39.
[86] Convention on Biological Diversity, 6 June 1992, 1760 U.N.T.S. 79, Executive Summary [CBD].
[87] *Id.* at art. 2.
[88] *Id.* at art. 1.
[89] *See generally id.*

of iron sulfate into the Muktuk Ocean.[90] Aeolia may argue that the deaths of narwhals near Rinnuco's coast relates to the use of marine life.[91] But this argument lacks merit because no evidence suggests that the narwhal deaths were related to Rinnuco's ocean fertilization project.[92] Thus, the CBD is not relevant to this dispute.

Conversely, the London Protocol focuses on preserving "the marine environment from all sources of pollution" by dumping.[93] The London Protocol has "been the most advanced international regulatory instrument[]" addressing ocean fertilization.[94] It involves parties' obligations in depositing materials into the oceans.[95]

The London Protocol relates to this dispute because the dispute concerns Rinnuco's iron placement in the Muktuk Ocean and its obligations in doing so.[96] In evaluating all relevant evidence submitted by both parties, including diplomatic exchanges, it is evident Aeolia also believes the London Protocol applies to this dispute.[97] In its first diplomatic note to Rinnuco, Aeolia alleged Rinnuco was "most notably" in violation of the London Protocol.[98] In a subsequent diplomatic note, Aeolia again alleged that Rinnuco's project violates the London Protocol.[99] This evidence suggests that

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[90] R. at 5–7.
[91] *See* R. at 8.
[92] R. at 8–9.
[93] London Protocol, *supra* note 51, at art. 2.
[94] *Note by the International Maritime Organization to the thirty-fifth session of the Subsidiary Body for Scientific and Technical Advice (SBSTA 35)*, INTERNATIONAL MARITIME ORGANIZATION (Nov. 2011), http://www.imo.org/en/OurWork/Environment/PollutionPrevention/AirPollution/Documents/COP%2017/Submissions/Final%20note%20on%20CCS%20and%20OF%20Nov%202011.pdf.
[95] London Protocol, *supra* note 51, at art. 3.1.
[96] R. at 5–7.
[97] *See infra* notes 98–99 and accompanying text.
[98] R. at 7.
[99] R. at 8.

Rinnuco and Aeolia agree the London Protocol is most relevant to this dispute. Thus, because the London Protocol applies directly to this dispute, and the CBD does not, this Court should hold it does not have jurisdiction under the CBD to adjudicate this matter.

Even if this Court decides both the CBD and the London Protocol apply, the well-established principle of *lex specialis* provides that, where two treaties apply to the same subject-matter conflict, priority should be given to the more specific treaty.[100] *Lex specialis* applies to a treaty's dispute settlement provisions as well as its substantive content.[101]

Lex specialis demands that the Court apply the London Protocol because it relates specifically to this dispute. The London Protocol focuses on ocean preservation and ocean dumping,[102] and this dispute relates to Rinnuco's placement of iron sulfate into the Muktuk Ocean.[103] The London Protocol is more applicable than the CBD, which focuses generally on how best to make use of the Earth's living organisms.[104] Thus, because the London Protocol applies to this dispute more specifically than the CBD does, this Court lacks jurisdiction pursuant to the CBD.

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[100] Silvia Borelli, *The (Mis)-Use of General Principles of Law: Lex Specialis and the Relationship Between International Human Rights Law and the Laws of Armed Conflict*, 46 IUS Gentium 265, 266 (2015).
[101] *Southern Bluefin Tuna (New Zealand-Japan, Australia-Japan)*, 2000 Arbitral Tribunal 1, 3 (Aug. 4).
[102] London Protocol, *supra* note 51, at art. 2.
[103] R. at 5–7.
[104] CBD, *supra* note 86, at art. 1.

C. This Court Does Not Have Jurisdiction Under The Kyoto Protocol Or The UNFCCC Because Neither Relates To This Dispute.

To acquire jurisdiction under the UNFCCC and the Kyoto Protocol, both agreements' legal standards must reasonably relate to this dispute.[105] The Kyoto Protocol and the UNFCCC both focus on combating climate change.[106] The UNFCCC aims to stabilize atmospheric greenhouse gases.[107] The Kyoto Protocol further implements the UNFCCC's objectives by committing its parties to internationally binding emission reduction targets.[108] Neither the UNFCCC nor the Kyoto Protocol involves ocean fertilization projects.[109]

This dispute is not reasonably related to either the UNFCCC or the Kyoto Protocol. While Rinnuco is very concerned with climate change and believes its ocean fertilization project will provide much-needed research and potentially mitigate climate change's harmful effects,[110] climate change is not the subject of this dispute. This dispute relates to whether Rinnuco's placement of iron sulfate into the Muktuk Ocean violates Rinnuco's international law obligations.[111] Thus, this Court lacks jurisdiction over this dispute pursuant to the UNFCCC and the Kyoto Protocol.

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[105] *See Southern Bluefin Tuna*, at 38–39.
[106] *See generally* United Nations Framework Convention on Climate Change, 9 May 1992, 1771 U.N.T.S. 107 [UNFCCC]; Kyoto Protocol to the UN Framework Convention on Climate Change, 11 Dec. 1997, 2303 U.N.T.S. 148 [Kyoto Protocol].
[107] UNFCCC, *supra* note 106, at art. 2.
[108] *See generally* Kyoto Protocol, *supra* note 106.
[109] *See generally* UNFCCC, *supra* note 106; Kyoto Protocol, *supra* note 106.
[110] R. at 6.
[111] R. at 4–12.

II. EVEN IF THE COURT HAS JURISDICTION OVER THIS DISPUTE, RINNUCO DID NOT VIOLATE INTERNATIONAL LAW.

A. Pursuant To Its Climate Treaty Obligations, Rinnuco Is Acting Aggressively And Responsibly To Combat Climate Change.

Anthropogenic climate change is a scientific certainty.[112] It is the most significant risk to humanity and the environment.[113] Current efforts to mitigate its effects—which include ocean acidification[114] and species extinction—are insufficient.[115] Climate change requires global cooperation.[116] Mitigation research must be promoted,[117] and efforts to combat climate change must be "urgent and ambitious."[118]

The UNFCCC is the key instrument for addressing climate change, and both Rinnuco and Aeolia have committed to achieving that instrument's goal of stabilizing atmospheric greenhouse gases.[119]

Rinnuco has consistently taken the lead with respect to protecting the environment. Under the Kyoto Protocol, Rinnuco and Aeolia committed to reducing greenhouse gas emissions by 8% below 1990 levels.[120] But only Rinnuco met that

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[112] Emma Huertas et al., *Warming will affect phytoplankton differently: evidence through a mechanistic approach*, THE PROCEEDINGS OF THE ROYAL SOCIETY B 1 (2005).
[113] Grant Wilson, *Murky Waters: Ambiguous International Law for Ocean Fertilization and Other Geoengineering*, 49 TEX. INT'L L.J. 507, 510 (2014).
[114] Scott C. Doney et al., *Ocean Acidification: The Other CO2 Problem*, 1 ANN REV. MARINE SCI. 169, 170 (2009).
[115] Jesse L. Reynolds & Floor Fleurke, *Climate Engineering Research: A Precautionary Response to Climate Change?* 7 CARBON & CLIMATE L. REV. 101, 102 (2013).
[116] U.N. Rio+20 Conference on Sustainable Development, June 20-22, 2012, The Future We Want, U.N. Doc. A/CONF.216/L.1 ¶ 190 (June 19, 2012), *available at* https://rio20.un.org/sites/rio20.un.org/files/a-conf.216l-1_english.pdf.pdf [Rio+20].
[117] Report of the United Nations Conference on the Human Environment, U.N. Doc. A/Conf.48/14/Rev. 1, Principle 20 (1973) [Stockholm Conference].
[118] Rio+20, *supra* note 116, at ¶ 25. (2012).
[119] Report of the World Summit on Sustainable Development, U.N. Doc. A/Conf.199/20, ¶ 38 (4 Sept. 2002) [Johannesburg World Summit].
[120] R. at 5.

commitment.[121] Further, under the Doha Amendment to the Kyoto Protocol, Rinnuco committed to reducing its greenhouse gas emissions by at least 20% below 1990 levels.[122] Aeolia did not ratify the Doha Amendment.[123] Finally, both Rinnuco and Aeolia signed the Paris Agreement, but only Rinnuco submitted its Intended Nationally Determined Contribution (INDC), wherein Rinnuco committed to reducing greenhouse gas emissions to 50% below 1990 levels.[124] This is one of the most aggressive INDCs in the world.[125]

1. Rinnuco's project will create a carbon sink and produce much-needed research.

A carbon "sink" is a natural environment, such as an ocean or forest, that sequesters atmospheric carbon.[126] The ocean is the most important sink[127] because phytoplankton—photosynthetic organisms that live near the ocean's surface[128]—trap approximately half of Earth's atmospheric carbon.[129] Iron sulfate, when placed in the sea, spurs phytoplankton growth.[130] This process, called Ocean Iron Fertilization (OIF), increases phytoplankton populations and thus improves the ocean's ability to sequester

[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] R. at 5, 9.
[125] *Climate Action Tracker*, http://climateactiontracker.org/indcs.html (last visited Nov. 12, 2016).
[126] *Phytoplankton Blooms: The Basics*, available at http://floridakeys.noaa.gov/scisummaries/wqpb.pdf (last visited Oct. 23, 2016).
[127] Jorge Vinuales, *The Paris Climate Agreement: An Initial Examination*, http://www.ejiltalk.org/the-paris-climate-agreement-an-initial-examination-part-ii-of-iii/ (last visited Nov. 12, 2016).
[128] *Phytoplankton Blooms*, *supra* note 126.
[129] Jennie Dean, *Iron Fertilization: A Scientific Review with International Policy Recommendations*, ENVIRONS ENVTL. L. & POL'Y J. 321, 324–25 (2009).
[130] Wilson, *supra* note 113, at 534–35.

atmospheric carbon.[131] Sequestration is vital because even if all future carbon emissions were eliminated, extant atmospheric carbon levels "may persist for centuries."[132]

2. Climate agreements encourage sequestration and innovation.

The UNFCCC and the Paris Agreement encourage the use of sinks to remove greenhouse gases.[133] Those instruments also underscore technology's important role in combating climate change,[134] which is why Rinnuco is committed to innovative OIF projects and research.[135]

B. Rinnuco Acted In Accordance With The Precautionary Principle.

The precautionary principle provides that, "[w]here there are threats of serious or irreversible damage, lack of . . . scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." [136]

Climate change threatens serious and irreversible damage.[137] And OIF is uniquely inexpensive.[138] Thus, by taking cost-effective, precautionary measures to combat climate

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[131] *See* Michael Branson, *A Green Herring: How Current Ocean Fertilization Regulation Distracts from Geoengineering Research*, 54 SANTA CLARA L. REV. 163, 168–69 (2014).
[132] UNEP, TRAINING MANUAL ON INTERNATIONAL ENVIRONMENTAL LAW 111 (2006).
[133] Paris COP Decision & Paris Agreement, arts. 4, 5, U.N. Doc. FCCC/CP/2015/L.9/REV.1 (12 Dec. 2015); UNFCCC, *supra* note 106, at Preamble.
[134] *See* UNFCCC, *supra* note 106, at art. 10.
[135] *See* R. at 9.
[136] Rio Declaration on Environment and Development, 14 June 1992, UN Doc. A/CONF.151/126 Principle 15; *see also* UNFCCC, art. 3 (using similar language).
[137] Curtis Moore, *Existing Authorities in the United States for Responding to Global Warming*, 40 ENVTL. L. REP. NEWS & ANALYSIS 10185 (2010).
[138] Dean, *supra* note 129, at 321, 326. There is general international consensus, even among OIF detractors, that OIF is cost-effective. *See, e.g.*, Jagat Adhiya & Sallie W. Chisholm, *Is Ocean Fertilization a Good Carbon Sequestration Option?*, https://energy.mit.edu/wp-content/uploads/2001/09/MIT-LFEE-02-001.pdf (last visited Nov. 12, 2016).

change—notwithstanding lack of scientific certainty regarding OIF—Rinnuco is acting in accordance with the precautionary principle.

Moreover, Rinnuco's project is *de facto* precautionary. Rinnuco conducted a voluntary, rigorous impact assessment.[139] Rinnuco planned the project *after* completing the assessment.[140] In good faith, Rinnuco notified Aeolia of its plans.[141] Notification is an "essential part" of risk assessment.[142] Such assessments are integral to the precautionary principle[143] because they exemplify precaution and embody the "obligation of watchfulness and anticipation."[144]

Furthermore, Rinnuco's project is inherently precautionary: it begins small and expands, under monitored increments, over the course of *years*.[145] The first phase alone took six weeks to implement.[146] During each phase, Rinnuco collects data regarding the project's effects;[147] thus, the project is essentially an ongoing impact assessment.[148] Rinnuco has not yet made any determinations regarding the results,[149] so Aeolia's objections are premature. And, importantly, Rinnuco voluntarily suspended the project

[139] R. at 6.
[140] *Id.*
[141] R. at 5.
[142] *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, 2010 I.C.J. 1, 61 (Apr. 20).
[143] Karen N. Scott, *International Law in the Anthropocene: Responding to the Geoengineering Challenge*, 34 MICH. J. INT'L L. 309 (2013).
[144] *Gabcikovo-Nagymaros Project (Hung. v. Slov.)*, 1997 I.C.J. 1, 7 (Sept. 25) (separate opinion of vice-president Weeramantry).
[145] R. at 7.
[146] *Id.*
[147] *Id.*
[148] R. at 8.
[149] *Id.*

only five weeks after learning of Aeolia's concerns, which shows that Rinnuco can quickly halt the project.[150]

C. Rinnuco Did Not Violate Its Duty Not To Cause Transboundary Harm.

Sovereign States have the "right to exploit their own resources" and the responsibility not to damage other States' environments.[151] Rinnuco maintains sovereign rights and jurisdiction over marine research[152] within its Exclusive Economic Zone (EEZ),[153] which extends 200 nautical miles from the territorial sea.[154] Rinnuco conducted its project 150–200 miles from its coast,[155] within its EEZ.

Moreover, as to Rinnuco's responsibility not to damage another State's environment, Aeolia cannot carry its burden of proving that Rinnuco *caused* transboundary harm.[156] *Pulp Mills* is informative. In that case, Argentina objected to Uruguay building pulp mills on the River Uruguay[157] and alleged that the mills caused pollution and harm to both the river and organisms living therein.[158] The ICJ held that parties asserting certain facts must "establish the existence of such facts," and the

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[150] *Id.*
[151] Stockholm Conference, *supra* note 117, at Principle 21.
[152] A. A. KOVALEV, CONTEMPORARY ISSUES OF THE LAW OF THE SEA: MODERN RUSSIAN APPROACHES 55 (W.E. Butler ed.) (2004).
[153] UNEP, *supra* note 132, at 222.
[154] Nilufer Oral, *1982 Unclos +30: Confronting New Complexities in the Protection of Biodiversity and Marine Living Resources in the High Seas*, 106 AM. SOC'Y INT'L L. PROC. 403, 403 (2012).
[155] R. at 7.
[156] *See, e.g.*, *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, 2010 I.C.J. 1, 225 (Apr. 20) (emphasizing the importance of "clear evidence").
[157] *See generally id.*
[158] *See id.* at ¶ 49.

"[a]pplicant should . . . submit the relevant evidence to substantiate its claims."[159] Thus, because Argentina did not carry its burden, the ICJ held in Uruguay's favor.[160]

Here, Aeolia merely speculates, without proof, that Rinnuco's project *may* have caused harm.[161] Further, Rinnuco fulfilled its duty to cooperate regarding evidence in its possession[162] when it voluntarily sent the narwhals to Aeolia for necropsies.[163] Thus, because Rinnuco fulfilled its duty to cooperate and Aeolia cannot meet its burden of proof, Rinnuco did not violate its duty not to cause transboundary harm.

D. Rinnuco Did Not Violate The CMS.

The CMS seeks to conserve migratory species, especially species like narwhals[164] whose conservation status is unfavorable.[165] Narwhal remains were found off of Rinnuco's coast nearly *ten weeks* after Rinnuco halted its OIF project.[166] Rinnuco and Aeolia are both range states[167] and, in the spirit of cooperation,[168] Rinnuco sent the narwhals to Aeolia for necropsies, which were inconclusive.[169] There is no evidence that Rinnuco's project harmed the narwhals,[170] and thus Rinnuco has not violated the CMS.

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[159] *Id.* at ¶ 162.
[160] *Id.* at ¶ 276.
[161] R. at 8 (emphasis added).
[162] *Pulp Mills*, 2010 I.C.J. at 163.
[163] R. at 8.
[164] R. at 4.
[165] *See* Convention on the Conservation of Migratory Species of Wild Animals, 23 June 1979, 1651 U.N.T.S. 333 art. III, [CMS].
[166] *Id.*
[167] R. at 4.
[168] UNEP, *supra* note 132, at 29.
[169] R. at 8; IEMCC Clarifications at 4.
[170] *See Pulp Mills on the River Uruguay (Arg. v. Uru.)*, 2010 I.C.J. 1, 162 (Apr. 29).

Even if Rinnuco's project did harm the narwhals, it is imperative to recall climate change's effects on *all* life, especially humans: "Of all things in the world, people are the most precious."[171] Furthermore, developing nations suffer climate change's harmful effects disproportionately,[172] which is why developed countries—like Rinnuco and Aeolia—must take the lead in combating climate change.[173]

Climate change also threatens many migratory species.[174] The most significant long-term threats to narwhals, for example, are climate change and habitat alteration[175] due to climate change's adverse effects on Arctic phytoplankton populations.[176] Thus, because Rinnuco's OIF project aims to mitigate climate change, it could benefit migratory species, including narwhals.[177]

E. Rinnuco Did Not Violate The CBD.

The CBD does not mention OIF; however, certain non-binding CBD "decisions" do.[178] These decisions recommend halting OIF projects[179] unless they are for small-scale scientific research and subject to an impact assessment.[180] Although "small-scale"

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[171] Rio+20, *supra* note 116, at ¶ 5.
[172] Claire McGuigan, et al., *Poverty and Climate Change: Assessing Impacts in Developing Countries and the Initiative of the International Community*, Address before the London School of Economics Consultancy Project for The Overseas Development Institute (May 2002).
[173] UNFCCC, *supra* note 106, at art. 3.
[174] *The Impact of Climate Change on Species and Their Habitat*, L. OF ENVT'L. PROT. § 21:6.
[175] Alison Rieser, *Whales, Whaling, and the Warming Oceans*, 36 B.C. ENVTL. AFF. L. REV. 401 (2009).
[176] *See generally* TODD MCLEISH, NARWHALS: ARCTIC WHALES IN A MELTING WORLD (2013).
[177] *See* Brooke Glass-O'shea, *Watery Grave: Why International and Domestic Lawmakers Need to Do More to Protect Oceanic Species from Extinction*, 17 HASTINGS W.-N.W. J. ENVTL. L. & POL'Y 191 (2011).
[178] *See, e.g.*, Decision X/33 Adopted by the Conference of the Parties to the Convention on Biological Diversity at Its Tenth Meeting, U.N. DOC. UNEP/CBD/COP/DEC/X/33 (29 Oct. 2010).
[179] *Id.* at ¶ W.
[180] *Id.*

remains undefined, the first phase of Rinnuco's project placed approximately sixteen tons of iron sulfate into the ocean—significantly less than a recent controversial OIF project.[181] Rinnuco also conducted a rigorous impact assessment before planning its project,[182] and the project has produced valuable scientific data.[183] Thus, Rinnuco did not violate the CBD.[184]

F. The Ocean Treaties Do Not Prohibit OIF.

UNCLOS, the London Convention, and the London Protocol (collectively, the "Ocean Treaties") regulate "pollution resulting from dumping"[185] and seek to protect and preserve the marine environment.[186] But OIF is not "dumping," and iron sulfate is not "pollution."[187]

The Vienna Convention asserts that treaty interpretation should follow the "ordinary meaning" of words.[188] The Ocean Treaties prohibit "dumping" at sea.[189] "Dumping" is deliberate "disposal,"[190] and "disposal" is "getting rid of something."[191] Rinnuco did not "get rid of" iron sulfate, but placed it into the ocean for a particular

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[181] An unregulated 2012 OIF project deposited 100 tons of iron sulfate off of Canada's coast. Wendy Watson-Wright, *Statement by the Intergovernmental Oceanographic Commission of UNESCO Regarding Ocean Fertilization*, UNESCO (19 Oct. 2012).
[182] R. at 7.
[183] R. at 5.
[184] *See* CBD, *supra* note 86, at art. 14 (encouraging general principles of cooperation); *see* R. at 3; *see also* CBD, *supra* note 86, at art. 3.
[185] Dean, *supra* note 129, at 321, 335.
[186] UNCLOS, *supra* note 58, at art. 192.
[187] *See infra* notes188–96 and accompanying text.
[188] Vienna Convention, *supra* note 53, art. 31.
[189] *See* UNCLOS, *supra* note 58, at art. 210; *see generally* Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 29 Dec. 1972, 1046 U.N.T.S. 120 [London Convention]; London Protocol, *supra* note 51.
[190] London Protocol, *supra* note 51, at art. 1.
[191] OXFORD LIVING DICTIONARIES, available at http://oxforddictionaries.com/definition/english/disposal?q=disposal (last visited October 23, 2016).

purpose.[192] Furthermore, under the London Protocol, placement activities that are not contrary to the Protocol's "aims" are not considered "dumping" activities.[193] Like UNCLOS, the London Protocol aims to protect the marine environment from "pollution"[194] and "poisonous" substances.[195] Iron sulfate is not pollution, but rather a compound that spurs phytoplankton growth.[196] Thus, because OIF is not "dumping" and iron sulfate is not "pollution," Rinnuco's OIF project does not violate the Ocean Treaties.

G. Rinnuco's Project Is Permitted Under London Convention, London Protocol, And CBD Soft-Law Frameworks.

A number of non-binding[197] decisions and resolutions allow small-scale, research-based OIF projects.[198] CBD Decision IX/16, for example, permits research-based OIF projects that are not within "coastal waters."[199] Rinnuco's research-based project was not within "coastal waters" because it was conducted over 150 miles from shore.[200] Furthermore, CBD Decision XI/20 asserts that efforts to combat climate change should include using sinks to remove greenhouse gases,[201] which is exactly what Rinnuco's

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[192] R. at 5.
[193] London Protocol, *supra* note 51, at art. 1.
[194] *Id.* at art. 2.
[195] OXFORD LIVING DICTIONARIES, *supra* note 191.
[196] Wilson, *supra* note 113, at 534–35.
[197] *See* Marko Divac Öberg, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, 16 EUR. J. INT'L L. 879 (2005).
[198] *See, e.g.*, Resolution LP.4(8) on the Amendment to the London Protocol to Regulate the Placement of Matter for Ocean Fertilization and Other Marine Geoengineering Activities, LC 35/15, annex 4, at 4-1 (Oct. 18, 2013). Resolution LP.4(8) has not yet entered into force. *See id.*
[199] Decision IX/16 Adopted by the Conference of the Parties to the Convention on Biological Diversity at Its Ninth Meeting, U.N. DOC. UNEP/CBD/COP/DEC/IX/16 (9 Oct. 2008). This decision is also quoted in Resolution LC-LP.1 (2008) on the Regulation of Ocean Fertilization, 31 Oct. 2008, LC 30/16.
[200] *See* Melissa Eick, *A Navigational System for Uncharted Waters: The London Convention and London Protocol's Assessment Framework on Ocean Iron Fertilization*, 46 TULSA L. REV. 351 (2010).
[201] *See* Decision XI/20 Adopted by the Conference of the Parties to the Convention on Biological Diversity at Its Eleventh Meeting, U.N. DOC. UNEP/CBD/COP/DEC/XI/20 (5 Dec. 2012).

project aims to accomplish.[202] And U.N. General Assembly Resolution 62/215 (2007) encourages States to support studies that will enhance scientific understanding of OIF. Resolution LP.4(8) also allows for OIF research projects that are enacted pursuant to "controls and regulatory mechanisms" and are not merely a "substitute for mitigation measures."[203] Rinnuco's project is a strictly controlled,[204] valuable addition to Rinnuco's other mitigation measures, such as aggressive emission reduction.[205]

Additionally, Resolution LC-LP.1 asserts that research-based OIF is not "disposal"[206] if it is "found acceptable under [an] assessment framework."[207] The assessment framework prohibits non-scientific experiments, but allows "monitored small-scale research."[208] It ensures that OIF projects are neither commercial[209] nor contrary to the London Convention's or the London Protocol's aims.[210] Rinnuco's small-scale, incremental, and closely monitored[211] OIF project is for rigorous environmental research and combating climate change, and it has the potential additional benefit of increasing fish production—which could benefit both Rinnuco and Aeolia.[212] Thus, not only does Rinnuco's OIF project conform to its climate treaty obligations, but it also complies with these resolutions and decisions.

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[202] *See supra* notes 126–32 and accompanying text.
[203] Resolution LP.4(8), *supra* note 198.
[204] *See* R. at 7.
[205] *See* R. at 5.
[206] Resolution LC-LP.1, *supra* note 199.
[207] *Id.*
[208] Branson, *supra* note 131, at 186.
[209] Harald Ginzky & Robyn Frost, *Marine Geo-Engineering: Legally Binding Regulation Under the London Protocol*, 8 CARBON & CLIMATE L. REV. 82, 84 (2014).
[210] *Id.*
[211] R. at 7.
[212] R. at 5. Fish production could benefit Aeolia's large fishing industry. *See* R. at 4.

In addition, this Court has held that each state, through domestic legislation, may determine "the specific content of the environmental impact assessment."[213] Rinnuco's impact assessment fully complied with its domestic laws.[214] Furthermore, Rinnuco has consistently abstained from voting at meetings or conferences that would prohibit OIF outright;[215] therefore, it cannot be bound by any such obligations.[216]

H. The Court Should Balance the Potential Environmental Risks Involved.

"But let us not be deceived, when looking at a clear blue sky, into thinking that all is well. All is not well. Science tells us that if we do not take the right action now, climate change will bring havoc."[217] Climate change is a holistic problem requiring a holistic solution.[218] By focusing on one limited aspect of the environment—such as the ocean—international agreements that do not account for climate change may actually exacerbate climate change's harmful effects.[219] This Court should weigh speculative harm to marine biodiversity against certain, imminent harm to the entire planet,[220] and thus hold that Rinnuco has not violated international law.

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[213] *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, 2010 I.C.J. 1, 120 (Apr. 20).
[214] IEMCC Clarifications at 3.
[215] R. at 8.
[216] *See Fisheries (U.K. v. Nor.)*, 1951 I.C.J. 116, 131.
[217] Johannesburg Conference, *supra* note 119, Statement of Kofi Annan, UN Secretary General (Sept. 2, 2002).
[218] *Id.*
[219] Matthias Honegger et. al., *Tackling Climate Change: Where Can the Generic Framework Be Located?*, 7 Carbon & Climate L. Rev. 125 (2013).
[220] *See supra* notes 112–19 and accompanying text.

CONCLUSION AND PRAYER FOR RELIEF

Respondent, the Republic of Rinnuco, respectfully requests the Court to adjudge and declare that:

1. This Court does not have jurisdiction over this dispute; rather, principles of international law require that the parties settle their dispute via mutually agreeable terms.

2. Rinnuco did not violate international law when it carefully implemented its research-based fertilization project within its EEZ in the Muktuk Ocean.

RESPECTFULLY SUBMITTED,

AGENTS OF RESPONDENT