QUESTIONS RELATING TO
OCEAN FERTILIZATION AND MARINE BIODIVERSITY

THE FEDERAL STATES OF AEOLIA
(APPLICANT)

v.

THE REPUBLIC OF RINNUCO
(RESPONDENT)

MEMORIAL FOR THE APPLICANT

2016
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MISCELLANEOUS


The Federal States of Aeolia (“Aeolia”) and the Republic of Rinnuco (“Rinnuco”) have submitted to the jurisdiction of the International Court of Justice (“ICJ”) by way of written declaration as provided for in the compromissory clauses of the United Nations Convention on the Law of the Sea (“UNCLOS”) and the Convention on the Conservation of Biological Diversity (“CBD”). As both states accepted the same manner of dispute settlement, Aeolia and Rinnuco have accepted the jurisdiction of the ICJ pursuant to Article 36(1) of the Statute.
QUESTIONS PRESENTED

I.

WHETHER THE ICJ HAS THE JURISDICTION TO DETERMINE THE MATTER.

II.

WHETHER RINNUCO VIOLATED INTERNATIONAL LAW BY CONDUCTING THE INITIAL PHASE OF ITS OCEAN FERTILIZATION PROJECT IN THE MUKTUK OCEAN AND THAT ANY RE-INITIATION OF THIS PROJECT WOULD VIOLATE INTERNATIONAL LAW.
STATEMENT OF FACTS

Surrounded by the Muktuk Ocean (“MO”), Aeolia and Rinnuco are developed coastal nations with diversified industrial economies, large fishing industries, and a strong ecotourism sector.

Narwhals, highly migratory species under the Convention on the Conservation of Migratory Species (“CMS”) and UNCLOS, are commonly found in the waters off the coasts of both countries and are imperative to the ecotourism and culture of Aeolia.


In the hopes of increasing the phytoplankton population in the MO, Rinnuco executed an Ocean Iron Fertilization (“OIF”) project. OIF is a geoengineering process that deliberately introduces nutrients to the upper ocean to increase marine food production and remove carbon dioxide from the atmosphere.

In 2014, Rinnuco passed a law approving and fully funding the OIF project. The project would be proceeded in phases over several years. In 2015, the initial phase was executed via dumping 15,000kg of ferrous sulfate powder over 6 weeks to a 2,000km² in Rinnuco’s Exclusive Economic Zone (“EEZ”). Each phase would become successively larger.

Prior to Rinnuco passing the law, Aeolia was informed of this project and requested an abandonment of the project due to environmental harm. Rinnuco acknowledged yet neglected this request.

Two weeks after the initial phase, nine dead narwhals were found off the coast of Rinnuco. Aeolia demanded Rinnuco to halt the OIF project to prevent further harm to the
marine biodiversity. Rinnuco suspended the initial phase of the project yet intends to resume the project later.

After failed attempts of negotiations and mediations, Aeolia submitted the matter before the ICJ. Rinnuco rejects ICJ jurisdiction.
ICJ has the jurisdiction to determine the matter between the States by fulfilling the following elements: the existence of an objective legal dispute and the consent to submit to the jurisdiction of the ICJ. Based on LC/LP and CMS, there is an objective legal basis that UNCLOS and CBD are applicable to the dispute. Furthermore, Rinnuco’s revocation of UNCLOS is invalid. Not submitting to the jurisdiction of the ICJ is violating the treaty.

Rinnuco violates UNCLOS, CBD, LC/LP, and CMS including the matters of pollution, marine biodiversity, transboundary harm, scientific research, and the environment. Rinnuco violated customary international law and general principles of international law by failing to negotiate and consult in good faith.
ARGUMENTS

I. ICJ HAS THE JURISDICTION TO DETERMINE THE MATTER.

The jurisdiction of the ICJ denotes the ability of the ICJ to make binding determinations by adjudication on disputes between States.\(^1\) The nature of the arbitration by an international court is in line with the intention of the member states to resolve disputes in a peaceful manner.\(^2\)

The elements to fulfill jurisdiction of the ICJ are the existence of an objective legal dispute,\(^3\) and consent from the parties.\(^4\)

Aeolia will establish that the ICJ has the jurisdiction to determine the matter by specifying that there is a legal dispute [A] and that there is mutual consent to submit to the ICJ [B]. Furthermore, Rinnuco’s act of revoking the jurisdiction of the ICJ under UNCLOS is invalid [C].

A. A LEGAL DISPUTE EXISTS BETWEEN AEOLIA AND RINNUCO CONCERNING THE INTERPRETATION OF UNCLOS AND CBD.

The jurisdiction of the ICJ in inter-State relationships is of an adversarial nature; it extends only to legal disputes,\(^5\) which are defined as disputes that are capable of being settled

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\(^3\) Statute of the International Court of Justice, T.S. No.993 art. 34(c) (1945). [hereinafter ICJ]


by the application of principles and rules of international law. The dispute must be objectively determined.

1. The treaties UNCLOS and CBD are applicable to the dispute.

Treaties are an integral part of international law. This dispute can be settled by the applicable treaties UNCLOS and CBD, fulfilling the element of a legal dispute.

   a. Provisions in UNCLOS and CBD are applicable to the matter.

      i. UNCLOS is applicable to the matter.

      UNCLOS encompasses a wide range of issues on the law of the sea, including the general obligation to protect and preserve the marine environment. Additionally, the topics of pollution, scientific research, transboundary harm, biodiversity, good faith principle, and specifically narwhals are all included in UNCLOS.

      In these issues, Aeolia has a dispute against Rinnuco claiming that Rinnuco is in contravention to the treaty, UNCLOS, which is applicable to the matter.

      ii. CBD is applicable to the matter.

      The provisions of CBD apply to components of biological diversity in the case of processes and activities.

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8 ICJ, supra note 3, art. 38 ¶1(a).

9 ICJ, supra note 6.

10 UNCLOS, preamble.

11 UNCLOS, supra note 10 art. 192.

12 UNCLOS, supra note 10 art. 64,65, 194, 238-265, 194 ¶2, 195, 210, Annex 1.

13 CBD, June 5,1992, art. 4 (a), (b), 31 I.L.M. 818.
The dispute between Aeolia and Rinnuco involves biological diversity and the process of OIF. CBD is applicable to the matter.

2. **Dispute between Aeolia and Rinnuco is objectively determined by the facts and the applicable treaties.**

Disputes between parties mean that there is a disagreement on a point of law or fact or a conflict of legal views or interests between two parties. The claim of one party must be positively opposed by the other. Moreover, it is not sufficient for one party to assert that there is a dispute. Both parties must have clear conflicting views on a legal matter.

Aeolia and Rinnuco have clear disagreements on both the facts and the teleological and textual interpretation or application of the treaties applicable to the matter.

a. **Conflicting views on the facts of OIF.**

OIF could be disastrous for the marine environment in and around the MO. The processes of OIF are still not fully understood. OIF interferes with natural processes, thereby bearing likelihood of unwanted change. The deaths of the nine narwhals, which occurred two months after the initial phase of the project, is invariably related. Furthermore, by polluting the waters of the MO, Rinnuco has caused transboundary harm to the neighboring coastal states.

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14 The Mavrommatis Palestine concessions (Greece v. United Kingdom), Series A, No.2, Permanent Court of International Justice, p.6, 11.


16 Andreas Zimmermann, supra note 5, p.598.

17 ICJ, supra note 3, art. 36.

18 Record, ¶13.


20 Id.

21 Record, ¶20.
Aeolia disputes Rinnuco’s claim that the project will benefit marine biodiversity since most research concerning OIF is tentative on the subject. Moreover, Rinnuco denies all claims of transboundary harm and the harming of the ocean environment.

b. **Conflicting views on teleological and textual interpretation or application of UNCLOS and CBD.**

There is a legal dispute on the point of law under the treaties UNCLOS and CBD. The teleological and textual interpretation or application of UNCLOS and CBD are supported by both LC/LP and CMS.

i. **Conflicting views on pollution in UNCLOS.**

States are obligated to take all measures that are necessary to prevent, reduce, and control pollution of the marine environment from any source as well as to include necessary measures to protect and preserve rare or fragile ecosystems and the habitat of depleted, threatened or endangered species and other forms of marine life.

Rinnuco dumped 15,000 kg of ferrous sulfate powder, which is the largest amount of material used for the purposes of OIF. Previously, the largest amount dumped was in the LOHAFEX experiment which dumped a total of 10,000 kg, and even then, it surpassed previous projects by a magnitude of 5. Dumping such a large amount of iron into the ocean

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22 *Id.*

23 Record, ¶14, 21.

24 *Id*, Record, ¶18.

25 UNCLOS, *supra* note 16, art. 194 ¶1;

26 Protocol to The Convention on The Preservation of Marine Pollution by Dumping Of Wastes And Other Matter (1997) 36 ILM 1, art. 2.

27 UNCLOS, *supra* note 16, art. 194 ¶5.

28 Record, ¶19.


30 *Id.*
can be deleterious to the ecosystem.\textsuperscript{31} Even Rinnuco admits to be unsure of the effects of such a project.\textsuperscript{32} Rinnuco has neither controlled its pollution, nor has it taken the appropriate measures to protect the fragile ecosystem.

\textit{ii. Conflicting views on marine biodiversity in UNCLOS and CBD.}

States are obligated to conserve\textsuperscript{33} and minimize adverse effects on biological diversity.\textsuperscript{34} States are obligated to promote the conservation of marine mammals,\textsuperscript{35} including narwhals, a highly migratory species.\textsuperscript{36} The conservation of highly migratory species\textsuperscript{37} and the need to avoid any migratory species from being endangered\textsuperscript{38} is further emphasized.

Rinnuco has not considered the conservation of marine biodiversity when it initiated OIF. Nine narwhals died two months after the initial phase was completed.\textsuperscript{39} Such an instance has never happened in which a whole pod of narwhals died at the same time within the MO.\textsuperscript{40} There is no certainty that such a disaster will not repeat on not only just narwhals, but also on other marine biodiversity, increasing the chances of the marine biodiversity becoming endangered.

\textit{iii. Conflicting views on transboundary harm in UNCLOS and CBD.}

\begin{itemize}
    \item \textsuperscript{31} Michelle Allsopp ET AL, A scientific critique of oceanic iron fertilization as a climate change mitigation strategy, 11 (2007).
    \item \textsuperscript{32} Record, ¶12, 14, 21.
    \item \textsuperscript{33} CBD, \textit{supra} note 13, art. 1; UNCLOS, \textit{supra} note 14, art. 64(1).
    \item \textsuperscript{34} CBD, \textit{supra} note 13 art. 14, 1(a).
    \item \textsuperscript{35} UNCLOS, \textit{supra} note 10, art. 65.
    \item \textsuperscript{36} UNCLOS \textit{supra} note 10, Annex 1.
    \item \textsuperscript{37} CMS, 1651 UNTS 333, 19 ILM 15, art. 2(1) (1980).
    \item \textsuperscript{38} CMS, \textit{supra} note 36, art. 2(2).
    \item \textsuperscript{39} Record, ¶20.
    \item \textsuperscript{40} Clarification, A27.
\end{itemize}
Activities such as pollution within the jurisdiction or control of its own territory shall not cause damage or the likelihood of damage\textsuperscript{41} to the environment of other States or areas beyond the limits of national jurisdiction.\textsuperscript{42} The damage should not spread beyond the areas where states exercise sovereign rights. When dumping into the EEZ, other coastal states should be given consideration and the request for approval in case of any adverse effects that may occur.\textsuperscript{43}

There is no guarantee that the pollution will not reach other coastal states in the MO, a shared resource with Aeolia.\textsuperscript{44} Furthermore, Rinnuco did not gain the prior approval of Aeolia before beginning the initial phase of the project. Even after a written disapproval to Rinnuco about the project, it dismissed all requests of termination\textsuperscript{45} and initiated the project, displaying a lack of good faith.

iv. \textit{Conflicting views on scientific research in UNCLOS.}

Scientific research must be conducted in a manner that is in accordance with the convention.\textsuperscript{46} Furthermore, scientific research must be conducted in compliance with the regulations concerning the protection and preservation of the marine environment.\textsuperscript{47}

Although scientific research should be promoted, Rinnuco did not act in good faith in the manner it conducted the OIF. Rinnuco’s national environment impact assessment,

\begin{enumerate}
\item[41] LP, \textit{supra} note 26, art. 3(3).
\item[42] CBD, \textit{supra} note 13, art. 3; UNCLOS, \textit{supra} note 10, art. 194(2); art. 195; LP, \textit{supra} note 26, art. 3(3).
\item[43] UNCLOS, \textit{supra} note 10 art. 210(5).
\item[44] Record, ¶1.
\item[45] Record, ¶13, 15.
\item[46] UNCLOS, \textit{supra} note 10, art. 240(b).
\item[47] UNCLOS, \textit{supra} note 10, art. 240(d).
\end{enumerate}
although followed thorough, did not take measures to ensure that the activity would not have significant adverse impacts on the biological diversity.

v. **Conflicting views on environment in UNCLOS and CBD.**

States have the obligation to protect and preserve the marine environment, including from all sources of pollution.\(^{48}\) Furthermore, they are obligated to promote the protection of ecosystems and natural habitats of populations of species in natural surroundings.\(^{49}\)

The influx of iron in the ocean can create harmful algal blooms, also known as red tides, which could cause ecological damage.\(^{50}\) Fishing and marine biodiversity are negatively affected by such red tides because they can cause deleterious harm to populations of fish. Aeolia strongly believes that Rinnuco has ignored these warnings and initiated the project, violating the obligation to protect the marine environment.

**B. THERE IS MUTUAL CONSENT TO SUBMIT TO THE ICJ.**

The basis of the ICJ’s jurisdiction is entirely based on the consent of states.\(^{51}\) Without it, the Court lacks the jurisdiction to determine any cases.

1. **Basis of the jurisdiction of the ICJ.**

The jurisdiction of ICJ is granted based on three ways.\(^{52}\) The first is special agreements,\(^{53}\) the second is to give *ipso facto* jurisdiction to the ICJ,\(^{54}\) and third is by an

\(^{48}\) UNCLOS, *supra* note 10, art. 192; LP, *supra* note 26, art. 2.

\(^{49}\) CBD, *supra* note 13, art. 8.

\(^{50}\) Michelle Allsopp ET AL., *supra* note 31, p.11.

\(^{51}\) Interpretation Peace Treaties with Bulgaria, *supra* note 7; Mohamed Sameh M. Amr, p.179.

\(^{52}\) ICJ, *supra* note 3, art. 36.

\(^{53}\) ICJ, *supra* note 3, art. 36(1).

\(^{54}\) ICJ, *supra* note 8, art. 36(2)
express or tacit agreement to submit a dispute to the court which are attained through the compromissory clauses in conventions and treaties.

Aeolia and Rinnuco have not made any special agreements to submit to the jurisdiction of the ICJ. Aeolia has recognized the compulsory jurisdiction of the court, but Rinnuco has not; therefore, there is no ipso facto jurisdiction of the ICJ. However, Rinnuco has accepted the jurisdiction of the ICJ through compromissory clauses for UNCLOS and for CBD. Therefore, the ICJ has the jurisdiction to determine the matter through the compromissory clauses of UNCLOS and CBD.

2. **Rinnuco has accepted the jurisdiction of the ICJ through the compromissory clauses of UNCLOS and CBD.**

The jurisdiction of the ICJ comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force. *Ante hoc* consent is the acceptance of the Court’s jurisdiction prior to the emergence of disputes by adhering to an international convention.

Aeolia and Rinnuco have consented to the jurisdiction of the ICJ under UNCLOS and CBD prior to the occurrence of this dispute concerning the interpretation or the application of the treaties.

a. **Rinnuco has accepted the jurisdiction of the ICJ through the compromissory clause of CBD.**

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55 ICJ, *supra* note 3, art. 36(1).

56 Mohamed Sameh M. Amr, *supra* note 4, p. 180-181; International Air Services Transit Agreement (adopted in Chicago, USA on 7 December 1944), art.2; Convention Relating to the Status of Refugees, July. 28 1951, 189 U.N.T.S. 137 art.28; Convention on Road Traffic and Road Signs and Signals, 8 November 1968, art. 44; The United Nations Economic Commission for Europe (UNECE).

57 Record, ¶4.

58 *Id.*

59 Record, ¶6, ¶9; UNCLOS, *supra* note 10 art. 287.1(b); CBD, *supra* note 13 art. 27, 3(b)

60 ICJ, *supra* note 3. art. 36 (1).

In the event of a dispute between contracting parties concerning the interpretation or application of CBD, the parties shall seek solution by negotiation and mediation. The contracting parties may declare in writing that they accept submission of a dispute to the ICJ at any time after becoming members of the convention for a dispute not resolved through negotiation and mediation.

Several attempts at negotiation and mediation were conducted. However, these failed to resolve the dispute regarding Rinnuco’s OIF. Aeolia and Rinnuco had, upon ratifying CBD, declared in writing that Rinnuco would submit to the jurisdiction of the ICJ to resolve disputes concerning the interpretation or application of CBD. Therefore, pursuant with Rinnuco’s obligation to submit to the jurisdiction of the ICJ and Aeolia’s submission of the application instituting proceedings against Rinnuco in relevance to CBD, the ICJ has the jurisdiction to determine the matter.

b. Rinnuco has accepted the jurisdiction of the ICJ through the compromissory clause of UNCLOS.

When signing, ratifying, or acceding to UNCLOS, a State shall be free to choose, by means of a written declaration, the ICJ for the settlement of disputes concerning the interpretation or application of this convention.

When Aeolia and Rinnuco signed UNCLOS, both parties made written declarations choosing the ICJ for the settlement of disputes concerning the interpretation or application of

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62 CBD, supra note 13, art. 27(1), 27(2).

63 CBD, supra note 13, art. 27(3).

64 Record, ¶22.

65 Id.

66 Record, ¶6.

67 UNCLOS, supra note 10, art. 287(1).
UNCLOS.\textsuperscript{68} Therefore, the dispute between Aeolia and Rinnuco shall be determined under the jurisdiction of the ICJ.

\textbf{C. RINNUCO’S ACT OF REVOKING THE JURISDICTION OF THE ICJ UNDER UNCLOS IS INVALID.}

1. \textit{Rinnuco is bound by pacta sunt servanda.}

The United Nations is clear on the concept of the sovereign equality of all its members.\textsuperscript{69} By this, states enjoy complete freedom in regards to the conduct of their foreign policy.\textsuperscript{70} However, it is also determined that to ensure the rights and benefits resulting from membership, states shall fulfil in good faith the obligations assumed by them\textsuperscript{71} through the various means of international laws.

Although, Rinnuco has the freedom to act in their sovereign right, it must fulfill all the obligations.

2. \textit{Rinnuco is in contravention with UNCLOS.}

States have the right to revoke the consent to be bound by a treaty.\textsuperscript{72} If, after three months after the receipt of notification of the revocation, no party has raised any objection, the revocation will be accepted.\textsuperscript{73} UNCLOS accepts this form of revocation as well.\textsuperscript{74} However, all rights or obligations stated in the conventions will remain in force until the

\textsuperscript{68} Record, ¶9.

\textsuperscript{69} U.N. Charter, supra note 2, art. 2(1).

\textsuperscript{70} Antonio Cassese, \textit{International Law} 11 (2nd ed. 2005).

\textsuperscript{71} U.N. Charter, supra note 2, art. 2(2).


\textsuperscript{73} VCLT, supra note 73, art.65(2).

\textsuperscript{74} UNCLOS, supra note 10, art. 287(6).
specified time.\textsuperscript{75} Moreover, a notice of revocation does not in any way affect proceedings pending before a court having jurisdiction under UNCLOS.\textsuperscript{76}

Rinnuco deposited a notice of revocation of its written declaration stating that Rinnuco would not submit disputes concerning the interpretation or application of UNCLOS to the ICJ.\textsuperscript{77} At the time of the application instituting proceedings against Rinnuco,\textsuperscript{78} all the rights and obligations of the convention are still in force since the three months have not yet expired. Furthermore, since these remain in force, the notice of revocation cannot in any way affect the dispute pending before the eye of the ICJ which has full jurisdiction under UNCLOS. Rinnuco’s claim that the ICJ does not have jurisdiction under UNCLOS is a contravention to the treaty and is therefore invalid.

II. RINNUCO VIOLATED INTERNATIONAL LAW BY CONDUCTING THE INITIAL PHASE OF ITS OIF PROJECT IN THE MUKTUK OCEAN AND ANY RE-INITIATION OF THIS PROJECT WOULD VIOLATE INTERNATIONAL LAW.

A. RINNUCO VIOLATED THE TREATIES OF INTERNATIONAL LAW.

1. Rinnuco violated UNCLOS on the matters of the conservation of the marine biodiversity, the conduct of marine scientific research, pollution, and usage of the EEZ.

   a. UNCLOS applies to Rinnuco and Aeolia as they are Contracting Parties to the treaty.

      i. Rinnuco has the obligation to protect and preserve the MO and the narwhals living there.

\textsuperscript{75} Id.

\textsuperscript{76} UNCLOS, supra note 10 art. 287(7).

\textsuperscript{77} Record, ¶9.

\textsuperscript{78} Record, ¶23.
The obligation to protect and preserve the marine environment exists in UNCLOS.\(^79\)

Rinnuco has the obligation to protect and preserve the MO and the narwhals.\(^80\)

\(\text{ii. Cooperation between states for the conservation of cetaceans is obligatory.}\)

Rinnuco should “cooperate with a view to the conservation” \(^81\) including “cetaceans.”

Annex 1\(^82\) of Highly Migratory Species lists narwhals under Cetaceans, Family Monodontidae.

\(\text{iii. Marine scientific research should be conducted in compliance with all relevant regulations adopted in conformity with UNCLOS.}\)

Marine scientific research should be conducted in “compliance with all relevant regulations adopted in conformity with this Convention including those for the protection and preservation of the marine environment.”\(^83\)\(^84\) Relevant regulations that UNCLOS has recognized is the treaty LC/LP, which comply on the matters of marine scientific research and dumping.

\(\text{iv. Rinnuco does not have sovereignty over its EEZ.}\)

Rules are specified on the use of the EEZ. Rinnuco merely has the sovereign rights to explore and exploit, not full sovereignty.\(^85\)\(^86\) The EEZ is still considered shared waters with Aeolia; therefore, duty of cooperation exists.

\(^79\) UNCLOS, supra note 10, art. 192.


\(^81\) UNCLOS, supra note 10, 65.

\(^82\) UNCLOS, supra note 10, at Annex I.

\(^83\) UNCLOS, supra note 10, art. 65, 192, 240(d).

\(^84\) Melissa Eick, supra note 81, p. 364, ¶2.

\(^85\) UNCLOS, supra note 10, art. 55, 56;

\(^86\) Cyril De Klemm, Natural Resources Journal, Migratory Species in International Law (1989), p. 938.
v. Climate harm should not be transferred to damage the marine biodiversity of the MO.

States are demanded to not directly or indirectly transfer pollution, harm, or hazards into the marine environment. One side effect of large-scale OIF is the additional carbon dioxide that would increase the ocean acidity. More side effects are concerned.

Cetaceans are highly sensitive to change. If change occurs, incidents have shown whales to commit suicide by beaching on coastal shores. Deaths of whales and narwhals should not be seen as a direct cause and effect relationship, but more so due to a sequence of events.

vi. Rinnuco is obligated to fulfill the Convention in good faith.

Rinnuco is obligated to fulfill in good faith the obligations assumed under the Convention.

2. Rinnuco violated LC/LP on the measures of precautionary approach, pollution, and the implementation of the Resolutions of the treaties regarding the OIF.

   a. LC/LP apply to both States as Contracting Parties to the treaties.

      i. LC/LP comply with UNCLOS on the matters of marine scientific research and dumping.

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87 UNCLOS, supra note 10, art. 1(4), 195.

88 Secretariat of the Convention on Biological Diversity, supra note 19, p.40, ¶.2.

89 Secretariat of the Convention on Biological Diversity, supra note 19, p.36-44, p.40, ¶2.


92 D.O. Cords, supra note 91.

93 UNCLOS, supra note 10, art. 300.
UNCLOS Art. 240(d) applies for LC/LP as a treaty which complies with UNCLOS on marine scientific research and dumping. LC/LP executes for more specific regulations on legitimate scientific research\(^{94}\) of OIF,\(^ {95}\) through its treaties and resolutions.\(^ {96}\)

ii. *Rinnuco should comply to the objectives of protecting and preserving the marine environment under LC/LP.*

The objectives of the treaties are in conserving the marine environment from all sources of pollutions and take effective measures to prevent, reduce, and eliminate pollution.\(^ {97}\) Pollution\(^ {98}\) is the introduction by human activity or is likely to result in deleterious effects. Substantial risk of OIF projects producing deleterious effects exist. The sudden multiple deaths of the narwhals\(^ {99}\)\(^ {100}\) should be brought into attention.

iii. *Rinnuco is obligated to applying the precautionary approach to environmental protection from dumping of wastes or other matter.*

The precautionary approach applies in which great caution should be exercised.\(^ {101}\) OIF projects deliberately intervene in the marine environment to alter the natural processes, and therefore great caution is demanded for larger scale projects.\(^ {102}\) Rinnuco’s large deposit of iron sulfate goes without any precautious, regulatory measures from LC/LP.\(^ {103}\)

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\(^{96}\) Melissa Eick, *supra* note 81, p. 352.

\(^{97}\) LP, *supra* note 26, art. 2.

\(^{98}\) LP, *supra* note 26, art. 1(10).

\(^{99}\) Record, ¶20.

\(^{100}\) Clarifications, A27.

\(^{101}\) LP, *supra* note 26, art. 3(1).

\(^{102}\) 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, Res. LC-LP.4(8) (2013), art. 2(1).
iv. Rinnuco is obligated to act in not transferring damage or the likelihood of damage from one part of the environment to another.

Rinnuco is obliged to not transfer any damage or the likelihood of damage into Aeolia’s environment. The EEZ waters of Rinnuco will flow into Aeolia’s environment, and will transfer the damage from the OIF that Rinnuco deposited. Continuation of the project will increase the likelihood of damage.

v. Rinnuco failed to follow the LC/LP Resolutions that should be applied to interpret the aims and treaties’ purposes and used to clarify on OIF.

VCLT 31(3) should be used to interpret LC/LP’s resolutions of protecting and preserving the MO’s marine environment, specifically concerning OIF. ‘Statement of concern’ for large-scale OIF should be endorsed upon Rinnuco’s OIF and should provide to the Contracting Parties of LC/LP the assessment of the OIF of Rinnuco to be legitimate scientific research. Only legitimate scientific research is allowed and is

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103 Record, ¶15.
104 LP, supra note 35, art. 3(3).
105 VCLT, supra note 12, art. 31(2)(b)
109 LP.4(8), supra note 103.
110 LC 29-17 – Report of the 29th meeting of LC and 2nd meeting of LP
111 Ocean iron fertilization and international law p. 228, ¶2
112 LP.4(8), supra note 103.
113 LC-LP.1, supra note 108.
determined under the Assessment Framework. Precautionary principle is incorporated through the conduct of following the resolutions of the LP.

3. **Rinnuco violated CBD by breaching its obligations to the conservation of the MO, the sustainable use of the resources, and not minimizing adverse risks.**

   a. **CBD applies to both States as they are Contracting Parties to it.**

      i. **Rinnuco infringed upon the objectives of CBD in conserving the biological diversity.**

Demands exist for contracting states to the conservation of the biological diversity and the sustainable use of its components. Narwhals are part of the biological diversity of the MO. Conservation means to preserve, protect or restore the natural environment, and sustainable is to conserve by avoiding depletion of natural resources. Rinnuco’s OIF project did not follow the demands of CBD regarding narwhals.

   ii. **Rinnuco did not fulfill its requirements of identifying significant adverse impacts on the conservation and sustainable use of the MO’s biodiversity and failed to minimize adverse impacts.**

States should identify processes and categories of activities which may bring significant adverse impacts. Once identified, they are required to regulate and manage them. Consultation is necessary on likely significant, adverse effects.

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114 LP.4(8), supra note 103.
115 Id.
117 CBD, supra note 22, art. 1.
120 CBD, supra note 22, art. 7(c).
121 Id.
122 CBD, supra note 22, art. 8(c).
iii. **Rinnuco violated Decisions of CBD that should be used to interpret CBD.**

Decisions of CBD regards to VCLT 31(3) note the importance of the adopted regulations of LC/LP and requests the Parties to follow the resolutions in achieving the purpose of conserving the biological diversity.\(^{124}\)\(^{125}\) Reaffirmation of the precautionary approach is implied for large-scale OIFs.\(^{126}\) Decisions note that environmental impact assessments still form an incomplete basis for global regulation.\(^{127}\) Marine geoengineering, the category which OIFs fall into,\(^{128}\) are generally banned until an adequate scientific basis can justify it.\(^{129}\) Rinnuco did not act in good faith\(^{130}\) to CBD when interpreting the treaty’s requirements for OIF.\(^{131}\)

4. **Rinnuco violated CMS.**

   a. **Aeolia and Rinnuco are Parties.**

      i. **Narwhals are listed on the Appendix II and should be preserved and protected.**

There have been no prior instances of multiple deaths off the shores of States\(^{132}\) until the OIF project. CMS Art. 4(1) requires international agreements with cooperation to be

\(^{123}\) CBD, *supra* note 22, art. 14(c).


\(^{125}\) Report of The Decision 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 10\(^{th}\) Sess. Agenda Item 5.6 (29 October 2010)

\(^{126}\) CBD Decision IX/16, *supra* note 27.


\(^{128}\) Harald Ginzky & Robyn Frost, *supra* note 95, p. 83

\(^{129}\) CBD Decision X/33, *supra* note 28, art. (w).

\(^{130}\) Record, ¶15, 16, 19.

\(^{131}\) VCLT, *supra* note 12, 26, 31(2).

\(^{132}\) Clarifications, A16.
made in the conservation of these highly migratory species. CBD Art. 4(3) obliges for Range States to endeavor concluding agreements and give priority to species in an unfavorable conservation status. The risk of killing more narwhals must be considered.

B. RINNUCO VIOLATED THE PRINCIPLE OF GOOD FAITH BY CONDUCTING THE OIF PROJECT.

1. Good faith was infringed by Rinnuco's failure to meet the standards for consultation and negotiation.
   a. Lac Lanoux case applies under ICJ Statute 38(d).
      i. Standards establishing a consultation and negotiation were not met by Rinnuco.

   Rinnuco did not show the consideration of Aeolia’s interests by not following the example set forth in the Lac Lanoux case on being willing to pay to have Aeolia’s interests safeguarded through consultations and negotiations. Consultations and negotiations between Aeolia and Rinnuco should be genuine, complying with the rules of good faith and not be mere formalities. Joint investigation and a conduct of suspending the OIF before the initial phase are examples of consideration with good faith. None were provided, and thus no favorable setting was made. Rinnuco did not consult with Aeolia on the effects of the OIF, but only informed through the EIA, and ceased the project after finishing their goals.

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134 Record, ¶14, 17.
135 Lac Lanoux (Fr. v. Spain), 12 R.I.A.A. 281 (1957), p.34, ¶3.
137 Lac Lanoux, supra note 135, p.5, ¶3 – p.6, ¶1.
138 Record, ¶12, 16, 19.
139 Lac Lanoux, supra note 135, p.28 ¶3.
in conducting the initial phase.\textsuperscript{140} No consideration can be seen; thus, no obligation towards good faith.\textsuperscript{141}

\textit{b. North Sea Continental Shelf and the Legality of the Threat or Use of Nuclear Weapons cases apply under ICJ Statute 38(d).}

\textit{i. Decisions from the court clarify in how good faith should be conducted with negotiations between States.}

It is the “obligation to enter into negotiations with a view to arriving at an agreement, not merely go through a formal process of negotiation as a sort of prior condition.”\textsuperscript{142} For good faith to be present in negotiations, a mere process should not be done.\textsuperscript{143} Diplomatic notes were the only processes done before the OIF project.\textsuperscript{144} Rinnuco already passed the law approving the OIF project after answering 10 days prior to Aeolia’s request to cease the project.\textsuperscript{145} No agreement was made. Negotiation’s definition is “discussion aimed at reaching an agreement” \textsuperscript{146} Rinnuco’s announcement of suspending the project after the initial phase was done, and even more, with the word temporarily. \textsuperscript{147} Rinnuco is to involve a precise conduct, “namely, the pursuit of negotiations on the matter in good faith”.\textsuperscript{148}

\section*{C. RINNUCO VIOLATED CUSTOMARY INTERNATIONAL LAW AND GENERAL PRINCIPLES OF INTERNATIONAL LAW THROUGH ITS OIF PROJECT AND WILL CONTINUE TO INFRINGE IF RINNUCO RE-INITIATES THE PROJECT.}

\textsuperscript{140} Record, ¶12, 19.

\textsuperscript{141} VCLT, \textit{supra} note 73, art. 26.


\textsuperscript{143} \textit{Id.}

\textsuperscript{144} Record, ¶13, 14.

\textsuperscript{145} Record, ¶13, 14, 15.

\textsuperscript{146} “Negotiation.” Oxford English Dictionary.

\textsuperscript{147} Record, ¶18.

\textsuperscript{148} The Legality of the Threat or Use of Nuclear Weapons, ICJ Reports, 1996, p98, ¶98-103.
1. Rinnuco breached customary international law and general principles of international law concerning the duty to cooperate, good neighborliness, and due diligence. Further infringements will exist if Rinnuco re-initiates OIF.

   a. The general principle of international law on the duty to cooperate applies to the negotiations and consultations between Rinnuco and Aeolia under ICJ Statute Article 38(c).

      i. Duty to cooperate is an obligation for neighboring States sharing the same sea space.

       EEZ is shared waters, limiting states to sovereign rights over it.149 A duty to consult with the other State in using the EEZ is an obligation150; no establishment of the obligation consisted before the initial phase of the OIF.

       ii. Cases of MOX Plant and Land Reclamation show the courts’ decisions on how States should consult in cooperation, and show Rinnuco’s inadequacy of cooperation.

       Duty to cooperate151 is defined as a fundamental principle of pollution under UNCLOS152 and general international law.153 Decisions are set for neighboring States that share the same sea space of the EEZ to cooperate.154 Duty includes the obligation for Rinnuco to consult with the other State, Aeolia, with respect to the planned activities. Notifying and consulting are imposed in court.155 More specifically, exchanging information and assessing the risks or effects together are the conducts of cooperation.156

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149 Id.

150 UNCLOS, supra note 10, art. 56.


152 UNCLOS, supra note 10, art. 56.


155 Case Concerning Land Reclamation by Singapore In and Around the Straits of Johor (Malay. v. Sing.) 2003 Arbitral Tribunal, p.13, ¶77.

156 Id. p.15, ¶99.
iii. Rinnuco’s cooperation with Aeolia lacked the elements of it which were defined by the Nuclear Test case.

For international co-operation to consist, the elements of trust and confidence need to exist.\(^{157}\) Rinnuco’s conducts of not using the Assessment Framework\(^ {158}\) to the request of Aeolia, not suspending the project and finishing the initial phase, and declaring the continuance of the current OIF\(^ {159}\) do not show any consideration of Aeolia’s concerns or requests; all elements of co-operation are lacking.

b. The customary international law of good neighborliness applies to Aeolia and Rinnuco under the Article of 38(b) of ICJ Statute.

i. Rinnuco must not cause damage to the environment of the neighboring state.

Good neighborliness consists of States having sovereign rights over their resources, but should not cause damage to environments of other States.\(^ {160}\) Narwhals are considered significant towards Aeolia’s ecotourism, and Aeolia has a research institute specifically for them.\(^ {161}\) Also, Aeolia holds an annual festival celebrating narwhals in a town off its coast.\(^ {162}\) Narwhals belong to the marine environment of the MO.\(^ {163}\) Change and deleterious effects\(^ {164}\) to the biodiversity of the MO cause damage upon Aeolia’s environment.

ii. Rinnuco disregarded the Draft Articles on Prevention of Transboundary Harm of Hazardous Activities in 2001 of the International Law Commission applied under ICJ


\(^{158}\) LP.4(8), supra note 103.

\(^{159}\) Record, ¶18, ¶19.

\(^{160}\) Malcom N. Shaw, supra note 158; Stockholm Declaration on the Human Environment, Principle 21, UN Doc. A/CONF. 48/14/Rev.1 (19730], Principle 21.

\(^{161}\) Record, ¶3.

\(^{162}\) Id.

\(^{163}\) Record, ¶3.

\(^{164}\) LP.4(8), supra note 103.
Statute 38(d), in defining good neighborliness and transboundary harm.

Risks of transboundary harm are as important if not more so than the injury that has already occurred. Art. 4 of Draft Articles obliges “States shall cooperate in good faith…in preventing significant transboundary harm or at any event in minimizing the risk thereof”. Minimization of risk by consulting and negotiating in good faith was in lacking.

iii. **Rinnuco's OIF lacks elements of good neighborliness.**

Rinnuco did not establish the elements of good neighborliness which are cooperating in good faith and seeking the assistance of another competent international organization. Re-initiation after the death of narwhals show that the risks of transboundary harm are disregarded; thus, there is no precautionary approach done by Rinnuco. Deaths of the narwhals are proof of the possibility of more change and disruptions in the MO which Aeolia shares directly with; therefore, causing more harm. Also, Rinnuco has announced to proceed with the OIF project with each stage larger in amount and area. Infringement on the obligation of good neighborliness is being conducted.

c. **The obligation to due diligence applies under ICJ Statute 38(c).**

i. **Rinnuco's OIF lacks elements of due diligence.**

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167 Consideration of Prevention, *supra* note 167, art. 4.
170 Consideration of Prevention, *supra* note 167, art. 2(a).
171 Record, ¶15; Clarifications, A27.
Two elements were not satisfied: taking all appropriate measures and cooperating with other States and competent international organizations.\textsuperscript{172} Rinnuco did not take all appropriate measures by not following the treaties and their resolutions and decisions towards OIF\textsuperscript{173} and did not cooperate in good faith\textsuperscript{174} with Aeolia. Showing non-compliance should be considered as a failure in protecting the environment of other States.


\textsuperscript{173} Record, ¶17; Record, ¶20.

\textsuperscript{174} VCLT, \textit{supra} note 73, art. 26, 31(2).
CONCLUSION AND PRAYER

For the foregoing reasons,

The Federal States of Aeolia respectfully requests that this Court adjudge:

1. that the ICJ has jurisdiction to determine the matter; and

2. that the Republic of Rinnuco has violated international law with respect to its ocean fertilization project.

Respectfully Submitted,

AGENTS FOR APPLICANT