

Team No. 1935A

**IN THE INTERNATIONAL COURT OF JUSTICE AT THE PEACE
PALACE**

THE HAGUE, THE NETHERLANDS



**THE CASE CONCERNING
QUESTIONS RELATING TO USE OF THE SARGASSO SEA
AND PROTECTION OF EELS**

Federal States of Alliguna

APPLICANT

v.

Republic of Revels

RESPONDENT

MEMORIAL FOR THE APPLICANT

**THE 2018-2019 STETSON INTERNATIONAL ENVIRONMENTAL
MOOT COURT COMPETITION**

NOVEMBER 2018

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LIST OF ABBREVIATIONS

ABNJ – Areas Beyond National Jurisdiction

ARSIWA – Articles on Responsibility of States for Internationally Wrongful Acts

CBD –Convention on Biological Diversity

CMS –Convention on the Conservation of Migratory Species of Wild Animals

CO₂– Carbon Dioxide

COP – Conference of the Parties

EBSA - Ecologically or Biologically Significant Marine Area

EEZ – Exclusive Economic Zone

EIA – Environmental impact assessment

ICJ – The International Court of Justice

ILA – International Law Association

ILC – International Law Commission

ITLOS – International Tribunal for the Law of the Sea

IUCN – International Union for Conservation of Nature

NDC – Nationally Determined Contributions

NGO – Non-governmental organization

SDG –Sustainable Development Goals

SEA- Strategic Environmental Assessment

UNCLOS –United Nations Convention on the Law of the Sea

UNFCCC –United Nations Framework Convention on Climate Change

UN GA – United Nations General Assembly

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Macroalgae as a Biomass Feedstock: A Preliminary Analysis, US Department of Energy 2010, p.8,
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STATEMENT OF JURISDICTION

The Federal States of Alliguna [hereinafter Alliguna or Applicant] on 21 April, 2018 submits the following dispute to the International Court of Justice [hereinafter this Court or ICJ]. Pursuant to Article 36 paragraph 1 of the Statute of the ICJ, jurisdiction of this Court comprises of all cases and matters provided in treaties and conventions in force. The present dispute arises out of CBD, CMS, UNCLOS, Paris Agreement and UNFCCC.

The Registrar acknowledged the receipt of the application instituting proceedings against the Republic of Revels [hereinafter Revels or Respondent] on 6 July 2018 and the preliminary objection submitted by the Revels dated 5 May 2018. The parties have agreed that the jurisdiction question be heard in the framework of the merits. The President of this Court, in light of the agreement reached by the parties, has decided to consider the question of jurisdiction and state responsibility simultaneously with the question of the merits.

QUESTIONS PRESENTED

- I. Whether the ICJ has jurisdiction to determine the matter and that the Republic of Revels is responsible for the conduct at issue;
- II. Whether the Republic of Revels violated international law by negatively impacting the European eel through the Sargassum harvesting project in the Sargasso Sea.

STATEMENT OF FACTS

The Federal States of Alliguna and the Republic of Revels are neighboring coastal sovereign states located on a small continent near the Sargasso Sea – Ugani. Alliguna is a developed state while Revels is a developing country with economy based mainly on fishing and agriculture. In July 2016 the SEA Corporation – a large privately owned company in Revels launched the biofuels initiative subsidized by Revels to meet its NDC commitment under the Paris Agreement and began harvesting Sargassum from the Sargasso Sea using its vessel, the Columbus.

In 2016 the Government of Revels issued a press release which highlighted the SEA Corporation Sargassum initiative success. Friends of the Eels formed in Alliguna in 1990 for conserving the species learned about harvesting of the Sargassum by the SEA Corporation and informed the Government of Alliguna.

Alliguna expressed its concern about the European eels – a catadromous migratory species listed as Critically Endangered on the IUCN Red List of Threatened Species. The species is important to Alliguna and its citizens because the eels feature prominently in Alliguna’s culture, religion and history. Moreover, Alliguna affirms that the Sargasso Sea is a unique and important ecosystem that plays an integral part in the life cycles of numerous species, including the European eels. Harvesting Sargassum removes part of the delicate ecosystem on which the eels rely and constitutes a violation of international law.

The diplomatic correspondence between the two states, lasting for several months, followed by mediation, failed to resolve the dispute regarding the harvesting of Sargassum in the Sargasso Sea and its effects on European eel.

SUMMARY OF ARGUMENTS

I. THIS COURT HAS THE JURISDICTION TO RESOLVE THE DISPUTE. The claim arises under the provisions of Paris Agreement, UNFCCC and CBD. Hence, Parties already gave their consent to the ICJ jurisdiction while signing the above mentioned treaties. CMS and UNCLOS shall not decide the forum. Moreover recourse to the dispute settlement mechanisms of these conventions may upset the final and timely settlement of the dispute.

II. THE CONDUCT OF THE SEA CORPORATION IS ATTRIBUTED TO REVELS as it is a flag state of Corporation's vessel Columbus that is harvesting Sargassum in the Sargasso Sea which negatively impact the delicate marine ecosystem. Additionally, a subsidy of the Government of Revels can be considered as a control over the project. So, Revels is responsible for the acts of the SEA Corporation.

III. REVELS HAS VIOLATED CUSTOMARY AND TREATY INTERNATIONAL LAW. Revels, controlling the SEA Corporation when harvesting Sargassum, failed to comply with principles of customary international law, namely, the duty to prevent transboundary harm, to act with due diligence and the precautionary principle. Also Revels violated obligations on conservation of marine biodiversity as the project may negatively impact the ecosystem of the sea and might have devastating effects on the European eel. All of mentioned invoke the responsibility of Revels.

ARGUMENTS

I. A DISPUTE MUST BE RESOLVED UNDER THE JURISDICTION OF THE HONORABLE COURT.

A. The International Court of Justice Has Jurisdiction To Adjudicate On The Claim Raised By Alliguna.

As the Claimant has recognized compulsory jurisdiction of the ICJ only in case of reciprocity of another State party to a dispute, Alliguna cannot state that ICJ has a compulsory jurisdiction ipso facto in this case. Nevertheless, there are other mechanisms for recognition of jurisdiction of ICJ.

According to the paragraph 1 of the Article 36 of the ICJ Statute, “the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force”. The ICJ is the only court with a universal jurisdiction which is open to all states and may decide all questions of international law.¹

The Statute of the ICJ specifically determines that the court has to decide itself whether it has or not the jurisdiction over any dispute.² In *Nottebohm* the Court held that it had a general unlimited jurisdiction to decide on its own jurisdiction, as required by the general principles of international law.³ The Court points out that the establishment of jurisdiction is not a matter for the parties but for the Court itself.⁴

In *Fisheries Jurisdiction* the Court held that: “the establishment of the Court's jurisdiction is a question of law to be resolved in the light of the relevant facts.”⁵ These specific actions which gave rise to the present dispute are: the harvesting of the Sargassum in the Sargasso Sea by the Columbus, a vessel flying under the flag of the Republic of Revels, which is in breach of its

¹Multiplication of International Courts and Tribunals and Conflicting Jurisdiction – Problems and Possible Solutions, Karin Oellers-Frahm, Max Planck Yearbook of United Nations Law, Volume 5, 2001 [p. 75]

²ICJ Statute, Article 36, ¶ 6

³ 1953 ICJ Reports at p. 119.

⁴Fisheries Jurisdiction (Spain v. Canada) [1998] ICJ Rep 1998, ¶ 38; Forum Shopping before International Tribunals: (Real) Concerns, (Im)Possible Solutions, Joost Pauwelyn, Luiz Eduardo Salles, Cornell International Law Journal, Issue I Winter 2009 Vol. 42 [p. 96]

⁵Id. ¶ 37

obligations under international law, including, but not limited to, violations of customary international law and several multilateral environmental agreements. The international conventions, such as CBD, CMS, Paris Agreement and UNFCCC which govern this situation, constitute a legal basis for the determination of the Court's jurisdiction.

Alliguna also asks the Court to take into consideration that the Parties exhausted all the means of peaceful settlement of the dispute including diplomatic correspondence, Alliguna proposal to organize a meeting of representatives, rejected by Revels.⁶ Additional negotiations followed by mediation have been conducted during several months but they were not crowned with success.⁷ Therefore, Alliguna decided to submit this dispute to the ICJ.

B. The Subject Matter Of This Dispute Arises Under CBD, UNFCCC and Paris Agreement.

1. The parties gave their consent for the ICJ jurisdiction while signing CBD, UNFCCC and Paris Agreement.

Parties already gave their consent to the ICJ jurisdiction while signing CBD, Paris Agreement and UNFCCC. The acceptance of the Court's jurisdiction under Article 36 (1) may be in any form which enables the Court to determine the existence of mutual consent to the exercise of its competence. This mutual consent in our case is the written declarations of the both Parties while ratifying CBD, Paris Agreement and UNFCCC. In their written declarations Parties stated that in case of any dispute concerning interpretation or application of these conventions they would submit their dispute to the jurisdiction of the ICJ⁸. This implies that the consent to the ICJ jurisdiction was given by both Parties under the treaties which are applicable to the dispute as will be illustrated below.

⁶ Record, p. 9 ¶ 19

⁷ Id. p. 10, ¶ 24

⁸ Id. p. 4 ¶ 7, p. 5, ¶ 10

2. Subject matter of the dispute concerns the obligations under CBD, thus its dispute settlement provisions shall apply.

Revels violated their obligation under CBD to conserve biological diversity, to ensure that their activities do not cause damage to the environment, to cooperate with other Parties in the matter of conservation of biological diversity, as well as the obligation of in-situ conservation and the obligation of sustainable use of components of biological diversity.⁹

According to the principle of interdependence¹⁰, every human activity affecting one branch of the whole ecosystem, affects the whole chain of biological resources. As the harvesting of Sargassum is itself an activity concerning biological diversity of marine flora, Court should apply CBD to govern this issue, because the whole ecosystem depends on its precious components. Harvesting the Sargassum directly influences other components of flora and fauna of the Sargasso Sea, including the European eel, thus one cannot influence the habitat without affecting its species.¹¹

3. Subject matter of this dispute falls within the scope of the Paris Agreement, UNFCCC.

Revels admitted¹² that the conduct which may threaten European eels in the Sargasso Sea and the biodiversity of this unique marine ecosystem is tightly connected with their obligations under Paris Agreement. Practically the NDC is the argument by which the Respondent attempts to justify their activity in the Sargasso Sea. Performance of NDCs under Paris Agreement shouldn't be performed at the cost of protection of biodiversity and sustainable development must be the guiding principle while carrying out this activity.¹³ The Court should decide whether it is an appropriate way to

⁹CBD, Art. 1, 3, 5, 8, 10

¹⁰Manuel Judiciaire de Droit de l'Environnement. Sous la rédaction de Guy Canivet, Luc Lavrysen & Dominique Guihal. Programme des Nations Unies pour l'environnement. Nairobi, 2006, p. 25

¹¹ Protection and management of the Sargasso Sea: <https://www.cbd.int/cop/cop-11/doc/vtable/Sargasso.Report.-cop11-iucn1.pdf>

¹² Record, ¶ 23

¹³Gabčíkovo-Nagymaros. Separate Opinion of Vice-President Weeramantry, p. 89

perform the obligations under Paris Agreement by the means which are potentially harmful for the biodiversity of the Sargasso Sea and the existence of European eels.

C. CMS And UNCLOS Shall Not Decide The Forum In This Case.

The obligations of Revels under CMS were violated, as well as obligations under UNCLOS. However, the most comprehensive and wide obligations are contained in CBD and Paris Agreement, as may be clearly seen from the character of the activity of the Respondent.

The jurisdiction of the Court comprises all cases concerning international agreements. The Respondent breached its obligations by harvesting the Sargassum. CMS, CBD, Paris Agreement, UNCLOS, UNFCCC were breached, and only the ICJ can resolve this dispute. It does not follow that in deciding a dispute under a treaty over which it does have compulsory jurisdiction an international tribunal cannot incidentally determine questions arising under other treaties where it is necessary to do so in order to determine the dispute which is properly before it.¹⁴ Where a tribunal does have compulsory jurisdiction over a dispute concerning interpretation and application of a treaty, other rules of international law and other treaties may be part of the applicable law.¹⁵

1. Alliguna contests the dispute settlement procedure under CMS.

Alliguna claims that CMS Articles II and IV were violated. This fact does not automatically mean that CMS dispute settlement mechanisms can be applied by the Parties to settle the dispute in all its complexity. The mechanism under CMS will not provide the Parties with the exhaustive and overall decision. If we apply only CMS, this would narrow the scope of issues involved and lead to non-objective and non-comprehensive examination of the problem.

¹⁴ Asserting Jurisdiction: International and European Legal Perspectives. Edited by Patrick Capps Malcolm Evans and Stratos Konstadinidis, Hart Publishing, 2003, p. 252

¹⁵ Id. p. 253; Shrimp-Turtle (WTO, 1998) or Gabčíkovo-Nagymaros (the ICJ, 1997)

COP12 proposed by Revels is not a forum for dispute settlement, rather it is the mechanism for cooperation and it is a decision-making organ in the sphere of conservation of migratory species.¹⁶

According to CMS, the dispute between the parties may be submitted, by mutual consent, to the arbitration.¹⁷

PCA rules of procedure were designed on the basis of the UNCITRAL Arbitration Rules, which were originally designed for commercial arbitration.¹⁸ The PCA had in its practice only two interstate cases, and only one pending case between States at the present time.¹⁹ Moreover, UNCLOS is the only governing law of these disputes. This court has never examined any dispute between States concerning environmental issues, climate change or biodiversity, so we cannot consider it as an appropriate dispute settlement forum. At the same time, the ICJ has on the contrary examined different environmental aspects in its practice.²⁰

The variety of questions examined and resolved by the Court demonstrates that the ICJ clearly has full competence over all aspects of international environmental law.²¹

2. UNCLOS cannot define the jurisdiction of the dispute settlement.

UNCLOS recognizes the jurisdiction of the ICJ over any dispute concerning the interpretation or application of an international agreement related to the purposes of UNCLOS²². Thus, the ICJ is the relevant forum to decide as well on the basis of UNCLOS.

Moreover, the Statute of ITLOS provides that: “the jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters

¹⁶CMS, Art. VII

¹⁷Id. Art. XIII, ¶ 2

¹⁸PCA. Optional Rules for Arbitrating Disputes between Two States. p. 43

¹⁹Cases of PCA.< <https://pca-cpa.org/en/cases/>>

²⁰ Nuclear Test (1974), Nauru (1993), Nuclear Weapons Advisory Opinion (1996), Gabčíkovo-Nagymaros (1997), Pulp Mills (2010), Whaling in the Antarctic (2014), Costa Rica v. Nicaragua (2018)

²¹ International Environmental Disputes. International forums for non-compliance and dispute settlement in environment-related cases. Duncan Brack, Royal Institute of International Affairs March 2001, p. 4

²² UNCLOS, Art. 288, ¶ 2

specifically provided for in any other agreement which confers jurisdiction on the Tribunal.”²³ However, the list of agreements which may be the basis for the jurisdiction of ITLOS doesn’t specifically comprise CMS, CBD or Paris Agreement.²⁴ ITLOS is not the relevant forum for this dispute because its jurisdiction arises primarily under UNCLOS and some other international agreements which are not relevant in this dispute.

The Court should decide not only on the questions concerning the conservation of migratory species, but also concerning the threats to the whole biodiversity of the Sargasso Sea ecosystem. Furthermore, the question of climate change mitigation and the methods of meeting the NDCs under Paris Agreement must be resolved herein.

In addition, the decision of the Court has no binding force except between the parties and in respect of that particular case.²⁵ *Fisheries Jurisdiction* and *Southern Bluefin Tuna* cases have different subject matter and factual background, as well as problems concerning jurisdiction have completely another nature, so Revels cannot refer to these cases to support their position.

The ICJ has the broadest scope of jurisdiction and may combine dispute settlement under CBD, UNFCCC and Paris Agreement as well as other international agreements. Separation may upset the final settlement of dispute.

II. A CONDUCT OF THE SEA CORPORATION IN THE SARGASSO SEA IS ATTRIBUTED TO THE REVELS.

Every internationally wrongful act of a State entails the international responsibility of that State and gives special obligations. A conduct of the state constitutes the internationally wrongful act if there

²³ ITLOS Statute, Art. 21

²⁴International Agreements Conferring Jurisdiction on ITLOS. <<https://www.itlos.org/en/jurisdiction/international-agreements-conferring-jurisdiction-on-the-tribunal/>>

²⁵ Statute of the ICJ, Art. 59

are two elements, namely, act or omission is attributed to the state and such an act or omission constitutes a breach of international obligations of that state.²⁶

Firstly, according to Article 8 of the ARSIWA, “a conduct of private persons may be attributed to a state if these private persons act on the instructions of or under the direction or control of that state.”²⁷ In this respect, in the *Trail Smelter* the International tribunal held Dominion of Canada responsible in international law for the conduct of the Trail Smelter and affirmed it’s the duty to see that conduct of the Trail Smelter should be in conformity with the obligation of the Dominion under international law.²⁸ Article 94 of UNCLOS says that: “Every state shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying their flag.”²⁹ Additionally, States shall ensure compliance by vessels flying their flag with applicable international rules and shall accordingly adopt laws and regulations and take other measures necessary for their implementation. Flag States shall provide for the effective enforcement of such rules, standards, laws and regulations, irrespective of where a violation occurs.³⁰

The SEA Corporation used its vessel for harvesting Sargassum in the Sargasso Sea, which is in violation of international law. The vessel sailed under the flag of Revels.³¹ This is the evidence of the real relation between the Revels and SEA Corporation.

Secondly, SEA Corporation acted under the control of Revels, as it received a subsidy for the Sargassum initiative from the Government of Revels.³² In the context of Article 8 of ARSIWA,³³ the subsidy can be considered as a control, because it is well-known fact that without the subsidy the project would not be possible.³⁴

²⁶ ARSIWA, 2001, Art. 2

²⁷ Id. Art. 8

²⁸ Trail Smelter, p. 1965

²⁹ UNCLOS, 1982, Article 94, [58], see also Advisory Opinion on the Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, 2 April 2015, ¶116-120

³⁰ UNCLOS, 1982, Art.217

³¹ Record ¶ 13

³² Id. ¶ 14

³³ ARSIWA, Art. 8

³⁴ Clarifications, A. 18

Abovementioned facts are the evidence that the conduct of the SEA Corporation is attributed to Revels and constitutes the international wrongful act, which entails the international responsibility of Revels.

III. THE REPUBLIC OF REVELS VIOLATED THE INTERNATIONAL LAW WITH RESPECT TO THE HARVESTING OF SARGASSUM IN THE SARGASSO SEA BY THE SEA CORPORATION.

A. The Republic of Revels Violated Customary International Law.

1. Revels violated its duty to prevent transboundary harm.

Duty to prevent transboundary harm applies to activities which involve the risk of causing significant transboundary harm to other states and areas beyond its national jurisdiction (ABNJ). This duty is a part of customary international law.³⁵ Additionally, this duty can be considered as erga omnes obligation.³⁶

The prevention of transboundary harm from hazardous activities must be seen in the context of the general principles incorporated in the Rio Declaration.³⁷ Additionally, the State of origin shall take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof.³⁸ The issue of transboundary harm has origins from *Trail Smelter*, in which Canada was held responsible for the conduct of private person and was ordered to take measures to prevent or reduce future injury which is the primary purpose of modern environmental treaties.³⁹

The activity of the SEA Corporation involves the risk of causing significant transboundary harm and therefore, the Revels must comply with the obligation to prevent future transboundary

³⁵ Transboundary articles, UN Doc A/56/10, Pulp Mills, para. 101, 118; ICJ Reports (1996) 226 ¶ 29. See also Iron Rhine Arbitration, PCA (2005) ¶ 222-3

³⁶ Charney, in Francioni and Scovazzi, *Intrnational Responsibility for Environmental Harm*, and see supra section 3 (2) on erga omnes obligations

³⁷ Rio Declaration, Principles 2, 15

³⁸ Transboundary Articles, Art.3

³⁹ *International law & Environment*, Patricia Birnie, Alan Boyle, Catherine Redgwell, p.147

environmental harm to the unique ecosystem of the Sargasso Sea. The duty to prevent or minimize the risk of significant transboundary harm imply an obligation to act with due diligence.⁴⁰

2. Revels did not act with due diligence.

Currently the obligation of due diligence “is part of the corpus of international law relating to the environment.”⁴¹ Further this obligation was confirmed in the Sub-Regional Fisheries Commission Advisory Opinion.⁴² Under international law, states are obliged to exercise due diligence, which require States to ascertain whether there is a risk of significant transboundary harm prior to undertaking the activity.⁴³ Similar indications were given by the ILC in the commentary to Article 3 of the 2001 Transboundary Harm Articles.⁴⁴ Going to the procedural elements of due diligence, in the First Report of ILA Study Group on Due Diligence in International Law Tim Stephens says that the procedural elements of due diligence is as follows⁴⁵:

- Providing public with all relevant information concerning the operation of a project or any activity which is likely to cause damages;
- Notifications and consultations from the State of origin to the potentially affected states;
- EIA for all activities that may be reasonably thought of raising the risk of environmental damage.

Public was provided with information in press release and report discussing the progress and success of the program as well as the topic was widely covered by news media⁴⁶.

⁴⁰ ILC Report (2000) GAOR A/55/10, ¶ 718

⁴¹ Pulp Mills, para. 101; Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I), p. 242, ¶ 29

⁴² Advisory Opinion on the Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, 2 April 2015, ¶ 131

⁴³ Nicaragua v. Costa Rica (Certain activities and construction of the road) ¶ 156

⁴⁴ Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, 2001. p.153

⁴⁵ ILA Study Group on Due Diligence in International Law, First Report, 2014, [28], See also, Convention on Environmental Impact Assessment in Transboundary Context, 1991, Art. 2, 3

⁴⁶ Record, ¶ 15, 16

The obligation to inform was recognized by the ICJ in *Pulp Mills* as necessary in order to fulfill the obligation of prevention.⁴⁷ Besides, Principle 19 of the Rio Declaration speaks of timely notification.⁴⁸

Alliguna was not aware of conducting any activity in the Sargasso Sea by the SEA Corporation or any alternatives to the project and was informed by NGO Friends of the Eels.⁴⁹

The obligation to carry out EIA is a procedural element of the due diligence. It is a requirement under general international law to undertake EIA where there is a risk that proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, in shared resources.⁵⁰ EIA is a procedure that seeks to ensure the acquisition of adequate and early information on likely environmental consequences of development projects, on possible alternatives and on measures to mitigate harm.⁵¹

The SEA Corporation conducted EIA and the results concerning the impact on the marine biodiversity, including European Eel were uncertain.⁵² Besides, the uncertainty of the impact on the marine biodiversity is the evidence that this EIA cannot be relied on.⁵³

Being aware of the uncertain result, the SEA Corporation continued performing the project. Although, Alliguna contacted the Revels and asked for the negotiations concerning the Sargassum harvesting, which indicated the discomposure with the situation, the Revels did not do any project's monitoring. In its judgment in *Pulp Mills* the ICJ stated that the obligation to carry out EIA is a continuous one and that monitoring of projects effects on the environment shall be undertaken, where necessary, throughout life of the project.⁵⁴ Also "to preserve aquatic environment to prevent pollution by prescribing appropriate rules and measures" is the obligation to act with due diligence.

⁴⁷ *Pulp Mills*, ¶.102

⁴⁸ Rio Declaration, 1992, Principle 19

⁴⁹ Record. ¶ 17

⁵⁰ *Pulp Mills* case, ¶ 204

⁵¹ International environmental law, Alexandre Kiss and Dinah Shelton, 2004, p.50

⁵² Clarifications, A.17

⁵³ Oxford Dictionary ["uncertain" – not able to be relied on] <https://en.oxforddictionaries.com/definition/uncertain>

⁵⁴ *Pulp Mills* case, ¶.205

It entails exercising control over public and private operators, such as monitoring of such activities.⁵⁵ Moreover, the Court noted that EIA must be notified by the party concerned to another party.⁵⁶ EIA submitted by the originator must include, among other elements, the alternatives to the proposed activities. Party of origin should consider possible alternatives to the proposed activity and measures to mitigate significant adverse impacts.⁵⁷

In light of these facts, the Revels did not fulfill the obligation to conduct EIA in its entirety. Although Revels informed the public, it failed to perform all elements of due diligence.

Moreover, due diligence entails the use of “best available techniques” or “best environmental practices”⁵⁸ Even EIA did not prove that the methods of harvesting Sargassum are the best available in Revels.

Revels did not comply with due diligence obligations to notify, make appropriate EIA and subsequent monitoring. In conclusion, the Revels breached the principle not to cause the transboundary harm.

3. Revels did not comply with precautionary principle.

The essence of the precautionary principle is that lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation where there are threats of serious or irreversible damage.⁵⁹ The idea that uncertainty regarding the causes and effects induced by parties shall not be an excuse for not adopting policies on prevention or regulating activities involving risks of environmental degradation.⁶⁰ Furthermore, the principle is recognized in the CBD

⁵⁵Id. ¶ 197

⁵⁶ Id. ¶ 119

⁵⁷ International environmental law, Alexandre Kiss, Dinah Shelton, 2004, p.132

⁵⁸ International law and the environment, Patricia Birnie, Alan Boyle, and Catherine Redgwell, 2009, [148], see Article 5(f) and Annex C(f) the 2002 POPs Convention. See also 1992 OSPAR Convention for the Protection of the Marine Environment of the Northeast Atlantic, Article 2(3) and BAT standards adopted by the OSPAR Commission, *infa*, Ch 8

⁵⁹ Rio Declaration, Principle 15

⁶⁰ The preambles of the Ozone Layer Protection Convention and the Montreal Protocol, Art.2(5) of the UNECE Water Convention, Art. 1 of the POPs Convention and the preamble and Art. 3 of the UNFCCC.

Preamble.⁶¹ Thus, the principle obliges authorities to take precautionary measures where there is a lack of certainty about the consequences of its action and minimize the possible degradation of nature. It requires a forward-looking stance of taking care for the future in the sense of actively preparing, planning and providing for it. Also, the sponsoring state has an obligation to ensure that the conduct of sponsored contractor is in conformity with obligations of the sponsoring state.⁶² Besides, the obligations of the sponsoring state are not limited only to “due diligence” as to ensure the certain behavior of the contractor (to take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof), but also direct obligations, among which the obligation to apply a precautionary approach; the obligation to apply best environmental practices and the obligation to conduct environmental impact assessments).⁶³ Additionally, the IUCN even developed in 2007 the Guidelines for applying the precautionary principle to biodiversity conservation and natural resources management, emphasizing the importance of the principle.⁶⁴

In *the Gabčíkovo-Nagymaros*, it was confirmed that “in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage.”⁶⁵

Species are genetically unique and irreplaceable – their loss is irreversible. The European Eel is a migratory species and is listed as Critically Endangered on the IUCN Red List of Threatened Species.⁶⁶ Sargasso Sea is a unique and important ecosystem that plays an integral role in the life

⁶¹ Convention on Biological Diversity, 1992, [1]; See also Rio Declaration, 1992, Principle 15

⁶² Advisory Opinion on Responsibilities and obligations of States with respect to activities in the Area, 1 February 2011, ¶ 103

⁶³ Id. at ¶ 122, 124-150; Advisory Opinion on the Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, 2 April 2015, ¶125-129

⁶⁴ Guidelines for applying the precautionary principle to biodiversity conservation and natural resources management, IUCN 2007

⁶⁵ *Gabčíkovo-Nagymaros*, ¶ 140

⁶⁶ Record ¶ 4

cycles of numerous species, including the European Eel.⁶⁷ Thus, harvesting large amount of Sargassum might cause the imbalance in the ecosystem and negatively impact the population of the European Eel. Revels, despite the uncertainty of the project,⁶⁸ did not take any precautionary measures before conducting such a risky activity.

Notwithstanding that Revels alleged that precautionary principle wages in favor of project, it did not provide evidence in this regard. Due to the lack of the data on life-cycle assessment of the Sargassum initiative, Revels cannot actually prove that the project contributes to the climate changes mitigation. The carbon footprint may include, among others, logistics (fuel expenses), equipment (e.g. production of nets), production of biofuel and its consumption (bioethanol pending its burning in an internal combustion engine emits CO₂) etc. These factors may cumulatively lead to more negative emissions impact, contrary to what is declared by Revels. Even in terms of climate change mitigations efforts the Sargassum initiative may be more harmful than useful.

Therefore, taking into account the uncertainty of the project's impact on the ecosystem of the Sargasso Sea, the Revels must have fulfilled the obligation to take all appropriate measures in the context of the precautionary principle.

B. The Republic Of Revels Violated Treaty International Law.

1. Revels may cause or have already caused severe harm to the marine biodiversity of Sargasso Sea in violation of the CBD.

Sargasso Sea is threatened by many human activities, inter alia, physical damage to the Sargassum.⁶⁹ Harvesting Sargassum removes part of this delicate ecosystem on which the eels rely, which is contrary to the objectives of CBD⁷⁰ and definition of sustainable use⁷¹. Sargassum is home to more than 145 invertebrate species and more than 127 species of fish, the mats act as important

⁶⁷ World Heritage Reports , World Heritage in the High Seas: An Idea Whose Time Has Come, 2016, p.38

⁶⁸ Clarifications, A. 17

⁶⁹ First World Ocean Assessment, Edition: 1, Chapter: Sargasso Sea, United Nations, Chapter 50

⁷⁰ CBD Art.1

⁷¹ Id. Art.2

spawning, nursery and feeding areas for species. In deeper water, the Sargasso Sea is the only known spawning area for both the European and American Eels⁷², which Revels shall protect.⁷³

Revels breached its obligation on cooperation concerning ABNJ of mutual interest⁷⁴, such as Sargasso Sea. Revels did not manage to establish a regulatory framework that would oblige private sector to use methods compatible with sustainable use of biological resources in ABNJ.⁷⁵ Besides, Revels did not monitor harvesting Sargassum by the SEA Corporation which is likely to have significant adverse impacts on the conservation and sustainable use of biological diversity and monitor their effects.⁷⁶

The Sargasso Sea has been designated as an ecologically or biologically significant marine area (EBSA) and recognized under the criteria “Uniqueness or rarity.”⁷⁷ That status means that the Sargasso Sea serves important purposes to support the healthy functioning of oceans and many services that it provides. EBSA concept emphasizes the need of effective policy action by countries; therefore, Sargasso Sea should be recognized by Revels as a unique threatened ecosystem and be protected in the appropriate way.

Notwithstanding the positive contribution of biofuel technologies for climate change mitigation, the adoption of climate-friendly practices should not develop owing to the loss of biodiversity, because there is no hierarchy under the environmental protection system.⁷⁸ Revel’s developing country status is not an excuse for destruction of fragile ecosystem of the Sargasso Sea by extraction of the Sargassum seaweed. The abovementioned is a clear evidence of the violation of CBD provisions and decisions by Revels.

⁷² The protection and management of the Sargasso Sea: The golden floating rainforest of the Atlantic Ocean. Summary Science and Supporting Evidence Case. Sargasso Sea Alliance, p.13 <<http://www.sargassoseacommission.org/>>

⁷³ CBD Art. 8 (i) and (k)

⁷⁴ Id. Art. 5

⁷⁵ Id., Art. 10 (e)

⁷⁶ Id., Art. 7 (c)

⁷⁷ Annex 1, CBD Decision IX/20

⁷⁸ CBD Decision X/37 Preamble

2. Method chosen by Revels for the climate change mitigation is inconsistent with the sustainable development principle under the Paris Agreement, UNFCCC.

The Sargasso Sea area plays a key role in the sequestration of carbon in the global ocean.⁷⁹ Under UNFCCC all Parties shall promote sustainable management and cooperate in the conservation of sinks and reservoirs of all greenhouse gases, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems.⁸⁰

Recognizing the importance of achieving the aims of the Paris Agreement, Alliguna stresses the fact, that the biodiversity, sustainable goals and NDCs under the Paris Agreement are designed to be implemented in synergy, even in the developing countries.⁸¹ There is a growing appreciation of the immense benefits of synchronizing efforts to achieve the SDG and the Aichi Biodiversity Targets, with the NDCs.⁸²

Alliguna recognizes that climate change mitigation, economic development and energy security are important for Revels, meanwhile they have to be balanced with the environmental considerations through the principle of the sustainable development.⁸³

Even using the whole annual energy potential of the Sargassum in the Sargasso Sea⁸⁴: the maximum possible amount of dry matter is $100000 \text{ tons} * 600 = 60000000 \text{ m}^3$ of gas, $60000000 * 0,6 = 36000000 \text{ m}^3$ of biomethan, $36000000 * 4 = 144000000 \text{ kW/year}$. Revels will have the electricity that even less than the annual Haiti consumption.⁸⁵

Biomass production is the predicted activity which relies heavily on continuous deliveries, which is impossible in the way designed by SEA Corporation. Gathering Sargassum in the high seas by

⁷⁹ The protection and management of the Sargasso Sea: The golden floating rainforest of the Atlantic Ocean. Summary Science and Supporting Evidence Case. Sargasso Sea Alliance, p.27

⁸⁰ UNFCCC Art. 4, ¶ 4 (d)

⁸¹ Paris Agreement Preamble, Art. 2, 4, 6.4 (a); WWF 2017 “NDCs – a force for nature?” (Katherine Watts) p. 17

⁸² WWF 2015 “NDC Analysis: an overview of the forest sector” (Petersen and Braña Varela)

⁸³ SEPARATE OPINION OF VICE-PRESIDENT WEERAMANTRY on Gabchicovo-Nagymarosh, p.1

⁸⁴ The protection and management of the Sargasso Sea: The golden floating rainforest of the Atlantic Ocean. Summary Science and Supporting Evidence Case. Sargasso Sea Alliance, 44 pp., 2011, p. 12

⁸⁵ Energy Consumption in Haiti < <https://bit.ly/2qLYchM> >

vessels proofs to be inefficient.⁸⁶ Mostly all known seaweed biofuel productions are based on harvesting algae on farms created at the territorial seas or exclusive economic zones⁸⁷ to mitigate transport costs and additional CO₂ pollution. Seaweed should be produced in floating cultivation systems spanning hundreds of hectares to make an impact as bioenergy feedstock.⁸⁸ Moreover, most algae-based biofuel concepts still require significant investments to become commercially viable.⁸⁹ To this end, increased reliance on Sargassum biofuels made by Revels at the expense of Sargasso Sea natural treasures contradicts the principle of sustainable development and appears not to solve climate change issues sufficiently.

In order to meet the NDC Revels as the country situated in the area of one of the highest insulation potential in the world⁹⁰ can heavily rely on distributed solar generation, which will be way less expensive energy alternative with long-term exploitation period.⁹¹

Noting the importance of ensuring the integrity of ecosystem of Sargasso Sea and the existence of aforementioned reasonably available alternatives, Alliguna claims that harvesting activity of Revels undermines the sustainable development principle within Paris Agreement.

3. Revels might cause irreversible damage to the Sargasso Sea ecosystem which negatively impacts the population of the European Eel in violation of CMS.

Revels did not fulfill its obligations as a Range State under Appendix II of CMS, which includes Anguilla Anguilla. Range states have to take actions, paying special attention to migratory species the conservation status of which is unfavourable, and taking individually or in cooperation appropriate and

⁸⁶ FAO Aquatic Biofuels Working Group, Review paper: Algae-based biofuels: applications and co-products, July 2010, p.4

⁸⁷ Seaweed Bioethanol Production in Japan – The Ocean Sunrise Project <<https://bit.ly/2DFv9oM>> , Macroalgae as a Biomass Feedstock: A Preliminary Analysis, US Department of Energy 2010, p.8, Belona Europa Factsheet pros and cons seaweed for biofuel <<https://bit.ly/2ruyBsU>>

⁸⁸ FAO Aquatic Biofuels Working Group, Review paper: Algae-based biofuels: applications and co-products, July 2010, p.6

⁸⁹ Id. p. iv

⁹⁰ Global Solar Atlas <<https://bit.ly/2OLBFvf>>

⁹¹IRENA Solar energy cost para. 4 <<http://www.irena.org/solar>>

necessary steps to conserve such species and their habitat.⁹² Moreover, due to Article 4, paragraph 3, the Parties should endeavor to conclude Agreements covering the conservation and management of this migratory species.

The *Anguilla anguilla* is listed as Critically Endangered on the IUCN Red List of Threatened Species.⁹³ The last two decades eel populations declined dramatically by 90–99%, due to the human activities and oceanic fluctuations.⁹⁴ Commercial extraction of Sargassum has the potential to pose a direct threat to the Sargasso Sea ecosystem.⁹⁵ Therefore, the activities carried out by the SEA Corporation under the control of Revels contribute to the decline of the European Eel.

As representatives of Revels attended all meetings and conferences of the CMS,⁹⁶ they were aware of the procedures for sustainable planning of the renewable energy projects. The Resolution 11.27 urges to apply appropriate SEA and EIA procedures, when planning the use of renewable energy technologies, avoiding existing protected areas and other sites of importance to migratory species⁹⁷ and minimize the adverse effects of activities through careful site selection and planning, thorough EIAs, and good post-construction monitoring.⁹⁸

CMS Resolution 12.21 affirms the necessity to assess potential social and environmental impacts on migratory species when developing and implementing relevant climate change mitigation (as biofuels technology) and also refers to SEA and EIA, which should take into account the needs of CMS-listed species.

Being the Parties to the CMS, Revels should aim to undertake all energy sector developments in such a way that negative impacts on migratory species are avoided, which is not the case herein.

⁹² CMS Art. 2

⁹³ Jacoby, D. & Gollock, M. 2014. *Anguilla anguilla*. *The IUCN Red List of Threatened Species* 2014

⁹⁴ The European eel (*Anguilla anguilla*, Linnaeus), its Lifecycle, Evolution and Reproduction: A Literature Review. Vincent J. T. van Ginneken & Gregory E. Maes 2005, p. 392

⁹⁵ The protection and management of the Sargasso Sea: The golden floating rainforest of the Atlantic Ocean. Summary Science and Supporting Evidence Case. Sargasso Sea Alliance, 44 pp., 2011, p. 37

⁹⁶ Clarifications, Q.5

⁹⁷ CMS Art. 2.1

⁹⁸ Id. Preamble, para 3

4. Revels violated the provisions of UNCLOS.

Although UNCLOS Article 87 provides for freedom of the high seas, there are limits and damaging the marine resources and biodiversity of the Sargasso Sea, which Revels is subsidizing monetarily, goes beyond what is permitted on the high seas and violates UNCLOS Articles 117, 118, 192, and 300, among others.

Article 117 of UNCLOS requires states to adopt with respect to their nationals measures for the conservation of the living resources of the high seas. Actions accomplished by vessel of the SEA Corporation under the flag of Revels are an abuse of the rights and freedoms recognized in this Convention, what is contrary to the Article 300. Moreover, Revels rejected to negotiate and thereby violated the obligation to cooperate under Article 118 of UNCLOS.⁹⁹

Article 192 creates the determined obligations for Revels to take the appropriate measures to preserve the marine environment, e.g. Sargasso Sea ecosystem complexity. This article provides for the general obligation which is being elaborated by states under auspices of the UN GA through the concept of protection of marine biodiversity of ABNJ. In September 2018, 71 countries gathered to develop an international legally binding instrument under UNCLOS on the conservation and sustainable use of the marine biological diversity of ABNJ.¹⁰⁰

The Hamilton Declaration is the unique non-binding instrument to establish a framework for its signatory governments to work together to conserve an ecosystem that lies primarily in ABNJ.¹⁰¹

Supported by Revels SEA Corporation`s project flouts the efforts of international community to create international binding instrument for the protection of marine environment and biodiversity of ABNJ.

⁹⁹ Record, ¶ 19

¹⁰⁰ Press release on Intergovernmental Conference to Draft Marine Biological Diversity Treaty Continues, UN 11 SEPTEMBER 2018 <<https://www.un.org/press/en/2018/sea2082.doc.htm>>

¹⁰¹ Freestone, David & Bulger, Faith. (2016). The Sargasso Sea Commission: An Innovative Approach to the Conservation of Areas beyond National Jurisdiction. *Ocean Yearbook*. 30.10.1163

Alliguna expresses the overgrowing concern of the international community over the climate change threats and biodiversity loss. In such a critical situation that our Mother Earth is facing, Alliguna urges Revels not to destroy pristine ecosystems of the planet, like Sargasso Sea, by misinterpreting the basic environmental treaties and principles.

CONCLUSION AND PRAYER

For the foregoing reasons, the Federal States of Alliguna respectfully requests that this Court:

1. Declare the ICJ has jurisdiction to determine the matter and that the Republic of Revels is responsible for the conduct of the SEA Corporation in the Sargasso Sea.
2. Declare that the Republic of Revels violated customary international law and provisions of conventions by negatively impacting the European eel through the Sargassum harvesting project in the Sargasso Sea.

Respectfully Submitted.

Team 1935A

Agents for the Federal States of Alliguna