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IN THE INTERNATIONAL COURT OF JUSTICE

QUESTIONS RELATING TO USE OF THE SARGASSO SEA AND THE PROTECTION OF EELS

FEDERAL STATES OF ALLIGUNA

Applicant

v.

REPUBLIC OF REVELS

Respondent

MEMORIAL FOR THE APPLICANT

2018-2019

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STATEMENT OF JURISDICTION

The Federal States of Alliguna ("Alliguna") and the Republic of Revels ("Revels") have submitted to the International Court of Justice ("ICJ") questions relating to use of the Sargasso Sea and the protection of eels. Alliguna and Revels.

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 ("Alliguna") and the Republic of Revels ("Revels") are sovereign neighboring coastal countries comprising the mainland of the Ugani continent. The coastline of both countries is approximately 250 nautical miles from the Sargasso Sea. Alliguna is developed country, its economy is dominated by industrial sector: manufacturing and energy. Revels, in opposite, is a developing country whose economy is mainly based on agriculture and fishing.

The European Eel is critically endangered migratory species, which is in the IUCN Red List of Threatened Species. From the ancient time eels were essential part of Alliguna's culture that is why noticeable decline in its population had prompted its citizens to force government to restrict domestic legislation and take actions for eel welfare.

Revel's Renewable Energy Project

Revels, being a signatory to the Hamilton Declaration, subsidized a biofuel project, which is conducted in Sargasso Sea. Sargassum, as a source of energy rich oils, was harvested by the "Columbus" vessel, which belongs to private entity SEA corporation. Revels' objective was to meet its NDC commitments under the Paris Agreement.

Alliguna's Objection

Alliguna expressed its great concern about the environmental harm on the unique ecosystem of Sargasso sea, which has an enormous impact on life cycles of endemic endangered migratory species, particularly on European Eels. In light of the scientific uncertainty of consequences of biofuel production on fragile ecosystem of Sargasso Sea, Alliguna emphasized on the need to end the project.

The Dispute

Alliguna claimed that Revel's biofuel project will result in removing part of delicate ecosystem on which the eels rely, as the consequences it will lead in harming the endangered

species. If the number of European Eels will decline then Alliguna will be adversely affected which would cause transboundary harm. Revel's disputed the existence of any causal link between its project. Negotiations and mediation between the two States failed to resolve the dispute hence Alliguna applied for instituting proceedings against Revels. Revels, for its part, submitted objection contesting the ICJ's jurisdiction over the matter.

SUMMARY OF THE ARGUMENTS

I.

Alliguna has recognized the Court's jurisdiction as compulsory ipso facto. Furthermore, the Court has jurisdiction over this dispute in accordance with Article 27 of the CBD, as well as Article 14 of the UNFCCC and Article 24 of the Paris Agreement. Revels has submitted to the jurisdiction of the ICJ under the CBD, the UNFCCC, and the Paris Agreement, and this dispute arises directly under the CBD, the UNFCCC, and the Paris Agreement

II.

Revels breached the CBD, Paris Agreement and UNFCCC by harvesting Sargassum, Revels is damaging the marine biodiversity that depends on the Sargasso Sea, especially the European eel (Anguilla anguilla), which spawns in the Sargasso Sea. Revels actions did not constitute wise use of the Sargasso Sea did not promote conservation of the ecosystem, contrary to its international obligations. Revels also breached customary international law, particularly the precautionary principle and the duty not to cause transboundary harm.

ARGUMENTS

1. The ICJ has jurisdiction to determine the matter and the Republic of Revels is responsible for the conduct at issue

1.1. The ICJ has jurisdiction to determine the matter

1.1.1. The present dispute arise out of CBD, UNFCCC and Paris Agreement. Alliguna therefore invokes compromissory clauses of article 27 of CBD, article 14 of UNFCCC and article 14 of the Paris agreement. The parties have agreed that the merits of the matter concerning the interpretation and application of these treaties would submit to the jurisdiction of ICJ.

1.1.2. Primarily, the subject matter of this dispute arises under CBD

Columbus by harvesting Sargassum in Sargasso Sea, which is described under CBD as "ecologically or biologically significant area" [1] invokes application of CBD which provides an obligation for contracting parties to conserve biodiversity as well as its sustainable use. [2] Its jurisdictional scope extends if '*activities were done under the control or jurisdiction of state party in area beyond the limits of national jurisdiction*'.[3] Vessel which sailed under the flag of Revels in high seas according to customary international law of the sea is under the jurisdiction of the flag State.[4] Thus, the concept of the flag state and Convention's jurisdictional scope[5] incurs duties on Revels to

[1] Freestone D. & Gjerde K. 'Lessons from the Sargasso Sea'.
[2] CBD. Art. 1.
[3] CBD Art. 4 (b).
[4] Lotus case.
[5] Article 22 (b).

ensure compliance of the vessel's activities with the provisions of CBD.

1.2. The Republic of Revels is responsible for the conduct at issue

1.2.1. The harvesting of Sargassum in the Sargasso Sea by the SEA Corporation is attributable to the respondent

Revels is responsible for the conduct of SEA Corporation exercising governmental authority. International wrongful act of Revels is attributable to it by the conduct of an entity which is not an organ of the State but which is empowered by the law of that State to exercise elements of the governmental authority and that the entity has acted in that capacity in the particular instance.[6] International Law Commission reports this ground of attributability to include the actions of private companies, given that the company is entitled by the law of the state to exercise public functions ordinarily exercised by the state organs.[7] Even to the limited extent or in a specific context, the exercise of the specified elements of governmental authority is considered to be enough to infer the attributability based on this ground.[8] The essential standards of this attributability is the way the powers are conferred on the company, its purposes and the extent to which the company is accountable before the state. Regarding such functions as governmental is to the great extent depends on a particular state and its history[9]. Beyond that, there is no need to show the control of the state over the actions of the companies, making it therefore to act discretionary.[10] SEA Corporation functions on the basis of the subsidy provided by Revels within the framework of its governmental program of to reduce greenhouse gas emissions and expand the use of renewable energy in Revels.[11] The overall objective of this governmental program was to ensure Revels compliance with its

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[6] Art. 5, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001).
[7] Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), p. 43.
[8] Id.
[9] Id.
[10] Id.
[11] Record, 14.

NDC commitments under the Paris Agreement.[12] On the basis of these facts, the harvesting of the Sargassum by the *Columbus* for the purposes of the SEA Corporation's implementation of Revel's governmental program is characterized as a conduct of an entity exercising governmental authority. Therefore, the conduct at issue is attributable to Revel.

Revels is responsible for the conduct of a SEA Corporation which Revel acknowledged.[13] In many cases the international wrong conducted by a private entity is attributable to the state in case the state acknowledges it and adopts.[14] By issuing a press release and a report with the discussion of the success of Revels governmental program, Revel highlighted the SEA Corporation's conduct, ultimately acknowledging and adopting its international wrong. Therefore, the conduct at issue is attributable to Revel.

As for the Trial Smelter Case, Canada was responsible for its smelter plant corporation (defendant) which caused environmental damages across the border in Washington State in the United States (plaintiff).

1.2.2. Even if the Court finds that the previous is not true the Respondent is still in breach of other obligations

The Respondent is in breach of the following obligations: due diligence, precautionAary principle, sustainable development principle. These violations are addressed below.

[12] Record, 14.
[13] Art. 11, Draft articles on Responsibility of States for Internationally Wrongful Acts (2001).
[14] Id. note 13 at 52.

2. The Republic of Revels violated international law by negatively impacting the European eel through the Sargassum harvesting project in the Sargasso Sea

2.1. The respondent is in violation of *due diligence* obligation for the protection of environment

2.1.1. General considerations

Expressing the idea that territorial sovereignty is not absolute Openhaim stated: "A State, in spite of its territorial supremacy, is not allowed to alter the natural conditions of its own territory to the disadvantage of the natural conditions of the territory of a neighbouring State.[15] It is clear that the principle of territorial sovereignty is limited where its exercise crosses the territorial sovereignty of another State.

As the ICJ noticed: "The Court points out that the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory. It is 'every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States' (Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949, p. 22). A State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State. This Court has established that this obligation 'is now part of the corpus of international law relating to the environment' (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I), p. 242, para. 29)[16].

General principle of law "*sic utere tuo ut alienum non laedas"* (one should use your property in such a way as not to cause injury to your neighbour's) is widely recognised in various

[15] Oppenheim on International Law (1912: 243–44) Chapter Eight, 220.

[16] The Case ConcernTing Pulp Mills on the River Uruguay, Argentina v. Uruguay, ICJ Rep. (2010), para 101;

decisions.[17] It has its logical development in the ICJ's *Corfu Channel* case where it is stated that every state is "under an obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States"[18]. In *Corfu Channel* case the Court did not base the statement on treaty law, but referred to "certain general and well-recognized principles"[19]. The Court generalized the *Trail Smelter* principle, and found that it can be violated by an act as well as an omission[20].

Finally, in *Legality of the Threat or Use of Nuclear Weapons* the ICJ stated: "The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment"[21]

2.1.1.1. The argument that there is no violation of obligations of result cannot be accepted

This argument was specifically rejected by the Court, which found that *due dilligence* is an obligation of *conduct* (emphasis added) to coordinate regulatory activities for the purpose of preserving the ecological balance. It states that it is: "[a]n obligation to adopt regulatory or administrative measures either individually or jointly and to enforce them is an obligation of conduct."[22]

Furthermore the Court noted that this is an obligation which entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and

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[17] The Trail Smelter arbitration, the United States v. Canada, 1938 and 1941, RIAA vol. 3, pp. 1905-1982; The Lac Lanoux arbitration, Spain v. France, French original in RIAA (1957) vol. 12 (hereinafter Lac Lanoux). An incomplete English translation is found in Yearbook of International Law Commission (1974), vol. 2 part 2 p. 194 (hereinafter Lac Lanoux, English translation); Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania) case, ICJ Rep. (1947); Legality of the Threat or Use of Nuclear Weapons, advisory opinion, ICJ Rep. (1996); The Gabčíkovo-Nagymaros Project case, Hungary v. Slovakia, ICJ Rep. (1997); The Case Concerning Pulp Mills on the River Uruguay, Argentina v. Uruguay, ICJ Rep. (2010).

[18] Corfu Channel, pp. 10, 12-13.

[19] Corfu Channel, p. 22.

[20] Corfu Channel, p. 23.

[21] Legality of the Threat or Use of Nuclear Weapons, advisory opinion, ICJ Rep. (1996), 226.

[22] The Case Concerning Pulp Mills on the River Uruguay, Argentina v. Uruguay, ICJ Rep. (2010), para 187.

the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators, to safeguard the rights of the other party.[23] (Emphasis added.)

2.1.2. The threshold of harm has been overtaken by the Respondent

2.1.2.1. The general position

It is true that there is no exhaustive standard on this. As the Seabed Dispute Chamber of the International Tribunal for the Law of the Sea (ITLOS) held in its advisory opinion in 2011: "The content of 'due diligence, obligations may not easily be described in precise terms. Among the factors that make such a description difficult is the fact that 'due diligence' is a variable concept. It may change over time as measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge. It may also change in relation to the risks involved in the activity. As regards activities in the Area, it seems reasonable to state that prospecting is, generally speaking, less risky than exploration activities which, in turn, entail less risk than exploitation … The standard of due diligence has to be more severe for the riskier activities.[24] However, the tribunal emphasized that the application of "best environmental practices" and "best technologies" were measures required under the obligation.[25]

Despite the disputes (In the ILC's work on no-navigational use of international watercourses, the threshold criterion has been changed from "serious" to "appreciable" and then to "significant"[26]) and the fact that Principle 21/2 of the Stockholm and Rio Declarations do not formulate explicit thresholds of harm, this doesn't mean that such thresholds do not exist.

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[23] The Case Concerning Pulp Mills on the River Uruguay, Argentina v. Uruguay, ICJ Rep. (2010), para 197.

[24] Seabed Activities advisory opinion, Responsibilities and obligations of states sponsoring persons and entities with respect to activities in the area, (2011) ITLOS, Seabed Disputes Chamber (hereinafter Seabed Activities), para 117.

[25] Seabed Activities advisory opinion, Responsibilities and obligations of states sponsoring persons and entities with respect to activities in the area, (2011) ITLOS, Seabed Disputes Chamber (hereinafter Seabed Activities), para 136.

[26] Xue, Hanqin Transboundary Damage in International Law, Cambridge (2003), 8.

there are other examples of international legal instruments that do not have explicit qualification of thresholds in their tex.[27] The issue entails questions of foreseeability of harm, and of its potential severity.

2.1.2.2. Foreseeability and potential severity standard is fulfilled in this case

The ICJ in Corfu Channel based its reasoning on Albania's knowledge of the activities taking place in its territory, and thus indicated that an obligation to prevent and control harm also arises when a state has knowledge of a risk of harm being inflicted on other states.[28] Indeed, the case is clear on that states cannot hide behind the fact that they did not actually foresee the precise consequences of a certain situation, but that it is decisive whether the state ought to have known the consequences, and that an objectively established risk will usually be sufficient to engage the duty to adopt appropriate measures to prevent and control harm.[29]

The Articles on Prevention also take the approach that an objectively established risk is usually enough to trigger the duty of regulation and control.[30] The Articles considers "risk of causing significant transboundary harm" to include both high probability of causing significant harm and a low probability of causing disastrous harm, which illustrate that both gravity and likelihood of harm are relevant factors, and thus, what is objectively considered foreseeable may change with time, and depends on the state of knowledge regarding the risk involved in the activity in question.[31]

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[27] e.g. UNCLOS, Art. 194 (2) and the Outer Space Treaty, Article 7 (1).

[28] Birnie, Patricia, et al., International Law and the Environment, 3rd edition. Oxford 2009, 153.

[29] Voigt, Christina Sustainable Development As a Principle of International Law: Resolving Conflicts Between Climate Measures and WTO Law, Leiden 2009, p.12.

[30] Article 2 and ILC Rep. (2001) Document A/56/10 (Report of the International Law Commission on the Work of its Fifty-third Session <http://www.un.org/documents/ga/docs/56/a5610.pdf), 387 paras. 2-3.

[31] ILC Rep. (2001) Document A/56/10 (Report of the International Law Commission on the Work of its Fifty-third Session <http://www.un.org/documents/ga/docs/56/a5610.pdf), p. 385 paras. 14-15, and p. 387 paras. 1-3. See also Birnie, Patricia, et al., International Law and the Environment, 3rd edition. Oxford 2009, 153.

2.2. The respondent is in violation of precautionary principle

The essence of the precautionary principle[32] 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.[33] This idea is confirmed in a number of environmental treaties in various ways.[34]

In the commentaries to the Articles on Prevention it is stated that appropriate measures of prevention must be taken even in situations where full scientific certainty cannot be established,[35] and in the Seabed Activities advisory opinion ITLOS explicitly noted that the precautionary principle is treated as "an integral part of the general obligation of due diligence"[36]. The principle is operationalized by the requirement of environmental impact assessment. In this case the conducted Environmental Impact Assessment determined that the impacts on the marine biodiversity were uncertain.[37]

The ICJ has not clearly defined the standard of proof in environmental cases. However it should follow its own practice established in Corfu Channel i.e. that proof based on "balance of probabilities" is sufficient. This is well supported by ITLOS which in the Southern Bluefin Tuna case: although it could not "conclusively assess the scientific evidence presented by the parties" the tribunal stated that "measures should be taken as a matter of urgency to preserve the rights of the parties and to avert further deterioration of the southern bluefin tuna stock".[38]

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[32] Rio Declaration, Principle 15.

[33] Birnie, Patricia, et al., International Law and the Environment, 3rd edition. Oxford 2009, 157.

[34] The preambles of the Ozone Layer Protection Convention and the Montreal Protocol, Article 2(5) of the UNECE Water Convention, Article 1 of the POPS Convention and the preamble and Article 3 of the UNFCCC.

[35] ILC Rep. (2001) Document A/56/10, p. 395 para. 14.

[36] Seabed Activities, para. 131.

[37] Clarifications to the Record, para Q17-A17

[38] Southern Bluefin Tuna (Provisional Measures) ITLOS No 3 and 4 (1999) para. 80.

2.3. The respondent is in violation of sustainable development principle One element of the principle is that environmental considerations shall be integrated in economic development, and that need for economic and other social development is assessed when interpreting and applying obligations of environmental law.[39]

2.3.1. Wise use must be achieved within the context of sustainable development[40] Sustainable development is the management of a natural resource in such a manner that it may yield the greatest benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations.[41]

Harvesting large amounts of Sargassum from the Sargasso Sea Revels will negatively impact this precious ecosystem and could have devastating effects on on both present and future of the European eel, whose population is already in serious decline. Clearly, harvesting of Sargassum does not constitute wise use of the Sargasso Sea, as it endangered present and future of the European eel.

2.3.2. The principle of holistic approach.

Things must be viewed as a system of interrelated elements, the elements themselves also being systems interacting with one another. Any intervention may trigger ripple effects even in remote systems. So local challenges can be adequately addressed relying on the knowledge

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[39] Sands, Philippe and Jacqueline Peel Principles of International Environmental Law, 3rd edition, Cambridge 2012 p. 215. In the Iron Rhine case (Permanent Court of Arbitration, Award of 24 May 2005) it was recognized that under international law appropriate environmental measures shall be integration in the implementation and design of activities of economic development, see paras. 59, 243.

[40] Ramsar Resolution IX.1, 6.

[41] World Commission on Environment and Development Our Common Future: Report of the World Commission on Environment and Development, UNITED NATIONS II(1) [available online http://www.undocuments.net/ocf-02.htm] (last visited Nov. 17, 2017).

of the wider environment and global trends alike. Harvesting large amounts of Sargassum from the Sargasso Sea Revels will negatively impact this precious ecosystem and could have devastating effects on the European eel, whose population is already in serious decline

2.3.3. The precautionary principle mandates states to anticipate, avoid, and mitigate threats to the environment[42]. It requires that when an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically[43]This has two elements. First, there must be a potentially risky activity; second, the proponent has the burden of proving that its proposed act poses no risk to the environment or human health[44] By harvesting Sargassum, Revels is damaging the marine biodiversity that depends on the Sargasso Sea, especially the European eel (Anguilla anguilla), which spawns in the Sargasso Sea.

2.3.4. Given the threat posed by harvesting, Revels had the burden of proving that its actions would not harm the environment.[45] Revels violated the precautionary principle because it engaged in a potentially risky activity without first proving that the action posed no harm.

2.3.5. Harvesting Sargassum will negatively impact ecosystem and could have devastating effects on the European eel and in that way violates the precautionary principle.

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[42] IUCN, Guidelines for Applying the Precautionary Principle, INTERNATIONAL UNION FOR THE CONSERVATION OF NATURE 1, (2007) http://cmsdata.iucn.org/downloads/ln250507_ppguidelines.pdf.

[43] Nicholas Ashford, et. al., Wingspread Statement on the Precautionary Principle, WORLD HEALTH ORGANIZATION 1 (1998) www.who.int/ifcs/documents/forums/forum5/wingspread.doc.

[44] Daniel Bodansky, et. al., Oxford Handbook of International Law, 598 (2007).

[45] Id.

2.3.6. 1. The closing Ministerial Declaration from the United Nations Economic Conference for Europe in 1990 asserts, "Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation."2. The 1992 Rio Declaration proclaims, "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."3. The United Nations Framework Convention on Climate Change declares, "Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing [regulatory] measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost."4. The Final Declaration of the First European "Seas At Risk" Conference states that if "the 'worst-case scenario' for a certain activity is serious enough then even a small amount of doubt as to the safety of that activity is sufficient to stop it taking place. Therefore, impacting ecosystem of Sargasso Sea violates the precautionary principle.

2.4. The respondent is in violation of duties of notification, consultation and negotiation

Obligations of cooperation in good faith, and of prior notification, consultation and negotiation are enshrined in soft law instruments, and in a great number of international

conventions concerning environmental protection.[46] ILC Articles on Prevention. Article 4 require states to "cooperate in good faith".

In the Corfu Channel judgment the Court attached the obligation to notify other states when they are exposed to risks of significant harm, to the obligation to act with due diligence.[47]

In the Lac Lanoux arbitration the arbitral tribunal concluded that France had an obligation to consult and negotiate in good faith before adopting the project and based these obligations on treaty law and on customary law.[48]

In Pulp Mills, the Court clarified the scope and content of the duty to cooperate. The Court interpreted the applicable provisions in light of customary international law.[49] It noted that it was by "cooperating that the States concerned can jointly manage the risks of damage to the environment that might be created by the plans initiated by one or other of them, so as to prevent.[50] The Court held that as part of the obligation to prevent transboundary harm, the parties had to negotiate in good faith.[51] Moreover, the obligation to negotiate did not "imply an obligation to reach an agreement", [52] but the states were under an obligation "so to conduct themselves that the negotiations are meaningful".[53] It found that "[i]n the view of the Court, there would be no point to the co-operation mechanism provided for … if the party initiating the planned activity were to authorize or implement it without waiting for that mechanism to be brought to a conclusion. Indeed, if that were the case, the negotiations between the parties would no longer have any purpose."[54]

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[46] UNCLOS Articles 123 and 194, Articles 2-5 of the Convention on Long-range Transboundary Air Pollution, and Articles 7 and 8 of the Watercourses Convention, and Articles 18, 19 and 27 of the Rio Declaration.
[47] Corfu Channel, 22.
[48] Lac Lanoux, pp. 306-310.
[49] Pulp Mills, para. 55.
[50] Id at para 77.
[51] Id para. 102.
[52] Id. para. 150.
[53] Id. para. 146.
[54] Id. para. 147.

This had also been emphasized in Gabčíkovo-Nagymaros, where the ICJ required the parties to cooperate in good faith and initiate a process of monitoring for the purpose of environmental protection.[55]

2.5. The respondent is in violation of duties of monitoring the implementation of the activity

In Pulp Mills, the majority of the Court expressly acknowledged that a prior Environmental impact assessment is a requirement of general international law, and thus an obligation not dependent on basis in treaty law.[56]

The ICJ's findings with regard to the Environmental impact assessment obligation in Pulp Mills have been drawn upon both by ITLOS and by the Permanent Court of Arbitration (PCA). In the recent Indus Waters Kishenganga[57] arbitration, the PCA stated that it is beyond doubt that contemporary customary international law requires states to "take environmental protection into consideration when planning and developing projects that may cause injury to a bordering State".

Obligations of cooperation in good faith, and of prior notification, consultation and negotiation are enshrined in soft law instruments, and in a great number of international conventions concerning environmental protection.[58]

In the Corfu Channel judgment the ICJ attached the obligation to notify other states when they are exposed to risks of significant harm, to the obligation to act with due diligence. The ICJ found that Albania was obliged to notify and inform, and had violated these obligation by

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[55] Gabčíkovo-Nagymaros, para. 141.

[56] Pulp Mills, para. 204.

[57] Indus Waters Kishenganga arbitration, Pakistan v. India, Permanent Court of Arbitration, Partial Award of 18 February 2013 (hereinafter Indus Waters Kishenganga).

[58] See e.g. UNCLOS Articles 123 and 194, Articles 2-5 of the Convention on Long-range Transboundary Air Pollution, and Articles 7 and 8 of the Watercourses Convention, and Articles 18, 19 and 27 of the Rio Declaration.

not informing the UK of the danger that the minefield constituted and the breach of these duties seems to have been crucial to the invocation of state responsibility.[59]

In Pulp Mills, the Court interpreted the applicable provisions in light of customary international law.[60]

[59] Corfu Channel, 22.

[60] Pulp Mills, para. 55.

CONCLUSION AND PRAYER

Applicant, the Federal States of Alliguna, respectfully requests the ICJ to adjudge and declare that:

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

RESPECTFULLY SUBMITTED,

AGENTS OF THE APPLICANT