

**IN THE INTERNATIONAL COURT OF JUSTICE  
AT THE PEACE PALACE  
THE HAGUE, THE NETHERLANDS**



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

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**FEDERAL STATES OF ALLIGUNA**

*APPLICANT*

**V.**

**REPUBLIC OF REVELS**

*RESPONDENT*

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**MEMORIAL FOR THE APPLICANT**

**THE 23RD STETSON MOOT COURT COMPETITION 2018-2019**

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## **QUESTIONS PRESENTED**

- I. Whether the International Court of Justice has jurisdiction over this matter arising directly under international environmental agreements when both the Nation of Revels and Alliguna are signatories of those Agreements?
- II. Does the Nation of Revels retain a duty under the United Nations Convention Law of the Sea and various environmental agreements when those instruments require jurisdiction and control over flagships harming the environment or fellow sovereigns?
- III. Whether the Republic of Revels violated any of the customary international law and several multilateral environmental agreements by harvesting Sargassum in the Sargasso Sea and placing the European eel at risk of endangerment?

## **STATEMENT OF JURISDICTION**

Pursuant to Articles 36 and 40 of the Statute of the International Court of Justice and Article 38 of the Rules of Court, the Federal States of Alliguna (“Alliguna”) and the Republic of Revels (“Revels”) refer to the International Court of Justice (“Court”) the questions of international law stated in Alliguna’s Written Application Instituting Proceedings against Revels.

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## **STATEMENT OF FACTS**

The Federal States of Alliguna and the Republic of Revels are coastal states within the continent of Ugani and are both located approximately 250 nautical miles from the Sargasso Sea.<sup>1</sup> Alliguna is a developed nation dependent on energy and manufacturing that utilizes its rivers and dams for hydroelectric energy.<sup>2</sup> Revels is a developing nation with an economy dependent on fishing and agriculture.<sup>3</sup>

The European eel is located in both countries and, at one time, was extremely prevalent in Alliguna's waters.<sup>4</sup> The species migrates to the Sargasso Sea to spawn and larvae eventually migrate inland.<sup>5</sup> Currently, the eel is listed as critically endangered by the IUCN Red List of Threatened Species due to significant declines in recruitment and population.<sup>6</sup> Despite such declines, the eels continue to be a significant feature in Alliguna's culture, religion, and history.<sup>7</sup> As such, in 2010 Alliguna promulgated stringent legislation in an effort to restore and protect the species.<sup>8</sup>

Despite the precarious position of the European eel, Seaweed Energy Alternatives, Inc. ("SEA Corp."), a privately owned company incorporated under the laws of Revels, launched a

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<sup>1</sup> R. at 4, ¶ 1.

<sup>2</sup> R. at 4, ¶ 1, 2.

<sup>3</sup> *Id.*

<sup>4</sup> R. at 4, ¶ 3.

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

<sup>6</sup> *Id.*

<sup>7</sup> R. at 4, ¶ 4.

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

biofuels initiative to harvest Sargassum from the Sargasso Sea.<sup>9</sup> Sargassum is critical to the lifecycle of the European eel and such harvesting activities therefore risk interfering with the eels' spawning cycles.<sup>10</sup> The initiative is being funded in part by the Republic of Revels who issued a subsidy under their program to reduce greenhouse gas emission and expand use of renewable energy.<sup>11</sup> The Government of Revels expects that this project will help the country meet its NDC commitments under the Paris Agreement.<sup>12</sup>

Concerned with the potential negative impact on European Eels, Friends of the Eels, a Alliguna-based conservation organization informed the Government of Alliguna about the proposed project.<sup>13</sup> Similarly concerned with the potentially devastating impacts to the European eels species, Alliguna contacted the Republic of Revels by a diplomatic note on January 13, 2017 expressing that the project was a likely violation of customary international law, the precautionary principle, the duty to prevent transboundary harm, and various provision of the Convention on Biological Diversity ("CBD").<sup>14</sup> As such, Alliguna, proposed a meeting between representatives of the two nations to come to a resolution to mitigate the potential harmful effects.<sup>15</sup>

The Republic of Revels responded on March 11, 2017 acknowledging such concerns but denying any demonstrable impact.<sup>16</sup> The Republic of Revels further asserted that the project would serve as a key feature of the nation's ability to reach NDC commitments and foster its use of renewable energies.<sup>17</sup> Revels likewise expressed quotations of vehement disagreement with any

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<sup>9</sup> R. at 5, ¶ 13.

<sup>10</sup> R. at 8, ¶ 20.

<sup>11</sup> R. at 5, ¶ 14.

<sup>12</sup> *Id.*

<sup>13</sup> R. at 6, ¶ 17.

<sup>14</sup> R. at 6, ¶ 18.

<sup>15</sup> *Id.*

<sup>16</sup> R. at 7, ¶ 19.

<sup>17</sup> *Id.*

assertion that the project violates international law or the CBD.<sup>18</sup> They also denied any responsibility for the actions of private companies, including SEA Crop., on the high seas.<sup>19</sup> The country concluded by proposing that the question of whether the project violated international law or the CBD had no bearing on the Republic of Revels.<sup>20</sup> In light of those assertions, Revels rejected a meeting between the two countries.<sup>21</sup>

Alliguna responded on April 9, 2017 emphasizing that harvesting Sargassum interferes with a delicate ecosystem and harms a species protected under the Convention on Migratory Species (“CMS”).<sup>22</sup> Alliguna alleged that Revels’ project will violate multiple international agreements because Revels has funded and approved the project, and the actions of SEA Crop. are attributable to the nation under the Rio Declaration and the Articles on Responsibility of States for Internationally Wrongful Acts (“Articles on Responsibility”).<sup>23</sup> Alliguna likewise noted various advisory opinions of the ICJ supporting this opinion.<sup>24</sup>

Revels responded on May 22, 2017 denying that CMS governed the issue and furthermore, that is non-binding that the Articles on Responsibility actually support Revels’ position that they are not responsible for SEA Crop.<sup>25</sup> Further, all advisory opinions are distinguishable from the

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

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> R. at 8, ¶ 20.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> R. at 8–9, ¶ 21.

current situation.<sup>26</sup> It concluded its correspondence by citing the UN Convention on the Law of the Sea (“UNCLOS”) gives its the right to exploit resources, like Sargassum, on the high seas.<sup>27</sup>

This response was again met by Alliguna on July 7, 2017 asserting that UNCLOS in actuality prohibits Revels’ actions under Articles 117, 118, 192, and various others and that any harm to the eels would violate the Hamilton Declaration, Rio Declaration, Stockholm Declaration, and various other international instruments.<sup>28</sup>

The final correspondence came from Revels on September 14, 2017 again summarily denying such assertions and claims, asserting compliance with all instruments and agreements cited by Alliguna.<sup>29</sup>

Subsequent attempts at negotiation or mediation failed to resolve the dispute between the two nations.<sup>30</sup> A request by Alliguna to Revels to submit the matter to ICJ was met with refusal by Revels.<sup>31</sup> Consequently, Alliguna submitted an Application Instituting Proceedings against Revels on April 21, 2018.<sup>32</sup> Revels responded to this filing with objections on May 5, 2018 denying ICJ’s jurisdiction and refuting responsibility for the conduct of SEA Corp.<sup>33</sup> The Federal States of Alliguna now seek an order from the ICJ declaring that the ICJ has jurisdiction to determine the

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<sup>26</sup> *Id.* at 9.

<sup>27</sup> *Id.*

<sup>28</sup> R. at 9, ¶ 22.

<sup>29</sup> R. at 9, ¶ 23.

<sup>30</sup> R. at 10, ¶ 24.

<sup>31</sup> *Id.*

<sup>32</sup> R. at 10, ¶ 25.

<sup>33</sup> *Id.*

matter, the Republic of Revels is responsible for the conduct at issue, and the Republic of Revels violated international law.<sup>34</sup>

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<sup>34</sup> R. at 11.

## SUMMARY OF ARGUMENT

- I. The International Court of Justice has jurisdiction over the current dispute because the Parties' provided written declarations giving the ICJ jurisdiction over disputes arising under the CBD, UNFCCC, and Paris Agreement, all of which are currently at issue.
- II. Under the plain terms of the UNCLOS, Rio Convention, CBD, and ASR, Revels is obliged to exercise jurisdiction and control over SEA Corp. to ensure its harvesting activities do not violate the terms of those agreement or international law relating to conservation and preservation of marine resources on the high seas.
- III. The International Court of Justice should find that the Republic of Revels violated the precautionary principle, duty to prevent transboundary harm, Convention on Biological Diversity, and United Nations Convention on the Law of the Seas by harvesting Sargassum from the Sargasso Sea and placing the European eel at risk of further endangerment.

## ARGUMENT

### **I. THE INTERNATIONAL COURT OF JUSTICE HAS JURISDICTION OVER THE MATTERS BEFORE THE COURT.**

#### **A. The International Court of Justice has jurisdiction over this dispute through recognition of multilateral environmental agreements under which the issue before the Court arises.**

The Statute of the International Court of Justice provides that the Court’s jurisdiction comprises “all cases which the parties refer to it” as well as specific matters “provided for in the Charter of the United Nations or in treaties and conventions in force.”<sup>35</sup> Under Article 36, paragraph 2, Parties have the right, at any time, to recognize the Court’s jurisdiction as “compulsory *ipso facto*” either unconditionally, “on condition of reciprocity on the part of several or certain states,” or for a certain period of time, and in relation to “any other state accepting the same obligation.”<sup>36</sup> Such a declaration gives the ICJ jurisdiction over a variety of legal disputes, including those concerning whether a breach of an international obligation has occurred and the nature or extent of the reparations necessary.<sup>37</sup> Article 27, paragraph 3 of the CBD and Article 14 of the United Nations Framework Convention on Climate Change (UNFCCC) similarly state that disputes pertaining to interpretation or application of either Convention not resolved through negotiation or “any other peaceful means” are to be submitted to either arbitration or the International Court of Justice.<sup>38,39</sup> Further, the Paris Agreement provides that the dispute resolution mechanism provided under Article 14 of the UNFCCC shall apply *mutatis mutandis*.

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<sup>35</sup> Statute of the International Court of Justice, art. 36(1), 26 June 1945, T.S. 993.

<sup>36</sup> *Id.* at art. 36(2)-(3).

<sup>37</sup> *Id.* at art. 36(2).

<sup>38</sup> Convention on Biological Diversity, art. 27(1)-(3), 6 June 1992, 1760 U.N.T.S. 79.

<sup>39</sup> United Nations Framework Convention on Climate Change, art. 2(1)-(2), 9 May 1992, 1771 U.N.T.S.

In the case before the Court, it is uncontested that the countries of Alliguna and Revels are parties to the Statute of the International Court of Justice and Alliguna has recognized the ICJ as having jurisdiction compulsory *ipso facto* contingent of reciprocity on the part of the state.<sup>40</sup> Thus, Alliguna is bound to submit disputes to the ICJ. However, when jurisdiction under a treaty is at issue, the court in dispute must determine whether the parties' claims "reasonably relate" to the "legal standards of the treaty" at issue.<sup>41</sup> In its determination, a court will focus on the formulation of the dispute as set forth in court submissions, diplomatic exchanges, and other relevant evidence.<sup>42</sup>

Here, when Alliguna and Revels ratified the CBD, UNFCCC, and Paris Agreement, both countries declared in writing that they would submit to the jurisdiction of the ICJ to resolve any disputes concerning the interpretation or application of the respective Conventions. The disputes currently at issue consider questions of interpretations leading to potential violations under the listed international treaties. Specifically, the ICJ has been asked to consider whether the likely harm of the European eel allegedly created by Revels' economic investitures violates various Articles of the CBD in order to achieve the country's NDC commitments under the Paris Agreement. Thus, regardless of Revels' decision not to declare compulsory jurisdiction under the Statute of the International Court of Justice, it is indisputable that the ICJ has jurisdiction over the

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<sup>40</sup> R. at 4, ¶ 5.

<sup>41</sup> *Southern Bluefin Tuna (New Zealand-Japan, Australia-Japan)*, 2000 Arbitral Tribunal 1, 38–39 (Aug.

4).

<sup>42</sup> *Id.* at 39.



current matters before the Court due to the countries' declarations of recognition of the ICJ's jurisdiction over matters relating to the CBD, UNFCCC, and Paris Agreement.

## **II. THE REPUBLIC OF REVELS POSSESSES INTERNATIONAL RESPONSIBILITY FOR SEAWEED ENERGY ALTERNATIVES, INC.'S ACTIONS**

### **A. SEA Corp. is subject to the jurisdiction and control of the Republic of Revels under various provisions appearing the United Nations Convention on the Law of the Sea.**

#### **1. Articles 92 and 94 of the United Nations Convention on the Law of the Sea (UNCLOS) establish that any ship flying under the flag of a signatory nation is subject to its jurisdiction and such nation has a general duty to exercise general control over that ship to ensure its compliance with international regulations, procedures, and practices.**

Under Article 92 of the UNCLOS, Revels has exclusive jurisdiction over SEA Corp. and its vessels.<sup>43</sup> The Article states in unambiguous terms that “Ships shall sail under the flag of one State only and, save in exceptional cases...shall be subject to its exclusive jurisdiction on the high seas.”<sup>44</sup> Revels, as one of the 168 ratifying signatories to the agreement, consents to this broadly accepted principle and therefore cannot disclaim jurisdiction over any ship lawfully flying under its flag. Furthermore, even casting aside Revel's consent as a signatory to the various provisions of UNCLOS, Article 2 is widely considered customary international law that countries may not derogate from.<sup>45</sup> Because Revels acknowledges that SEA Corp. is an entity incorporated under the laws of Revels and operating vessels flying under its flag, pursuant to Article 92 Revels shall have exclusive jurisdiction over SEA Corp. and its vessels.

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<sup>43</sup> United.Nations.Convention.on.the.Law.of.the.Sea.,10.December.1982.,1833.U.N.T.S..3, Art. 92 [hereinafter UNCLOS].

<sup>44</sup> *Id.*

<sup>45</sup> North Sea Continental Shelf Cases (Federal Republic of Germany/The Netherlands; Federal Republic of Germany/Denmark), [1969] I.C.J. Rep. 28–29, para. 65 (noting its agreement with the idea that Article 2 on the high seas reflects customary international law).

Because SEA Corp. is lawfully sailing its vessels under the flag of Revels, Article 94 imposes the concomitant duty on Revels to exercise jurisdiction and control over such ships to ensure conformity with accepted international regulations, practices, and treaties. Article 94 clearly provides that “[e]very State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.”<sup>46</sup> The article further elaborates that this duty requires every state ensure safe “manning,” “labour conditions” and “training of crews,” for such ships “taking into account the applicable international instruments” and “ensuring accepted international regulations, procedures, and practices.”<sup>47</sup> Therefore, Revels must ensure that SEA Corp.’s vessels are operated in a manner that complies with both widely accepted international law principles and Revels’ national obligations under instruments such as treaties.

The obligation of Revels to exercise jurisdiction and control over SEA Corp. in this circumstance is further supported by the International Tribunal on the Law of the Sea’s view of Article 92 and 94. In a 2015 advisory opinion involving illegal fishing operations, the Tribunal stated that these provisions, read together, require that “the flag State, in fulfilment of its responsibility to exercise effective jurisdiction and control in administrative matters, must adopt the necessary administrative measures to ensure that fishing vessels flying its flag are not involved in activities which will undermine the flag State’s responsibilities under the Convention in respect of the conservation and management of marine living resources.”<sup>48</sup> Although the particular facts

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<sup>46</sup> *Supra* note 43 at Art. 94.

<sup>47</sup> *Id.*

<sup>48</sup> Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 36-37.

of that case involved harm to marine resources in the exclusive economic zone of another sovereign, the Tribunal made clear that certain obligations under UNCLOS such as those under articles 91, 92, 94, 192, and 193 are “general obligations which are to be met by the flag State in all maritime areas regulated by the Convention.”<sup>49</sup> Because Part VII regulates maritime activities on the high seas, it follows that Revels must heed its obligation under 92 and 94 to exercise jurisdiction and control over SEA Corp. to prevent harm to the European Eel.

**2. Articles 116 to 120 and 192 and 193 of the UNCLOS provide that all signatory nations have a general duty to ensure their nationals act to conserve and avoid harm to marine resources and life on the high seas, both directly and through cooperative agreement with fellow sovereigns.**

Article 117 of the UNCLOS, by its terms, specifically imposes an affirmative duty on Revels to assume jurisdiction and control over SEA Corp, as the planned harvesting activities risk harm to marine life and resources. Article 117 provides that “[a]ll States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals...necessary...for conservation of the living resources of the high seas.”<sup>50</sup> Because harvesting of Sargassum threatens to damage the critical habitat of the endangered European Eel,<sup>51</sup> Revels is compelled to exercise jurisdiction and control over SEA Corp. either directly or indirectly through terms of a cooperative agreement with Alliguna.

Articles 192 and 193 of the UNCLOS bind Revels to exercise jurisdiction and control over SEA Corp. as a matter of the terms of the agreement and under customary international law. Those articles impose the general obligation, without regard to sovereign borders,<sup>52</sup> to “protect and

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<sup>49</sup> *Id.* at p. 34.

<sup>50</sup> *Supra* note 43 at Art. 117.

<sup>51</sup> R. at 8, ¶ 20.

<sup>52</sup> *Supra* note 48 at p. 37 (explaining that “article 192 applies to all maritime areas...”).

preserve the marine environment” and conditions any exploitation of marine resources on this obligation.<sup>53</sup> Because Article 92 requires effective exercise of jurisdiction and control over flag ships and Article 94 obliges the flag state to adopt the necessary administrative measures for those flagships to comply with international law, those duties trigger where a flag ship does not comply with Articles 192 and 193. In other words, flag ships undermining preservation and conservation goals enumerated in 192 and 193 compel the flag state to intervene and employ measures for control of those ships.<sup>54</sup>

**B. The United Nations Conference on Environment and Development at Rio de Janeiro and the Convention on Biological Diversity require that Revels Exercise Jurisdiction over SEA Corp.**

**1. Principle 2 of the Rio Convention and Article 3 of the Convention on Biological Diversity (CBD) require that Revels exercise control over SEA Corp. as sovereigns retain an obligation to ensure activities within their jurisdiction and control do not damage other states or the environment.**

Because SEA Corp. is an incorporated entity of Revels and therefore subject to its jurisdiction and control, Revels has an affirmative duty under Principle 2 of the Rio Declaration and Article 3 of the CBD to exercise such control to prevent harm to the European Eel and Alliguna. Both provisions provide that while states retain the “sovereign right to exploit their own resources,” this right is accompanied by a concomitant “responsibility to ensure that activities

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<sup>53</sup> *Supra* note 43 at Arts. 192-93.

<sup>54</sup> This interpretation represents the unanimous opinion of the ITLOS. *See supra* note 48 at p. 63 (asserting that “under article 94 of the Convention, has the obligation to adopt the necessary administrative measures to ensure that fishing vessels flying its flag are not involved in activities... which undermine the flag State’s responsibility under article 192 of the Convention for protecting and preserving the marine environment and conserving the marine living resources...”).

within their jurisdiction or control” do not harm the environment or other sovereigns.<sup>55</sup> The proposed harvesting project occurs on the high seas meaning that Revels does not have a “sovereign right” to exploit these resources. Furthermore, although the project will physically occur within Revels’ jurisdiction, the actions of SEA Corp. are within the jurisdiction and control of Revels. Therefore, provided that SEA Corp. is an entity of Revels subject to its jurisdiction and control and the proposed harvesting project may harm the endangered European Eel and Allgiuna, Principle 2 demands that Revels invoke its jurisdiction and control to enjoin SEA Corp. from engaging in those harmful activities.

Although the Rio Principles largely represent nonbinding commitments, Rio Principle 2 represents a codification of international law. Following the seminal Trail Smelter Arbitration,<sup>56</sup> the “no harm” principle embodied in Principle 2 and CBD Article 3 has achieved customary status according to explicit statements of the ICJ.<sup>57</sup> Because there is a likelihood that the actions of SEA Corp., a national of Revels under its jurisdiction and control, will harm the European Eel, the Eel’s critical habitat, and the neighboring nation of Alliguna who fundamentally relies on the Eel,<sup>58</sup> customary international law requires Revels exercise jurisdiction over SEA Corp. to prevent such harm.

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<sup>55</sup> Rio Declaration on Environment and Development, UN Doc.A/CONF.151/26 (1992) [hereinafter Rio] Principle 2; Convention on Biological Diversity, 1760 UNTS 79 Art. 3 (1993).

<sup>56</sup> Trail Smelter Arbitration (US/Canada), 3 U.N. Rep Int’l Arb Awards 1905 (1941).

<sup>57</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J..226 (1996).

<sup>58</sup> R. at 8, ¶ 20.

**2. Article 4 of the CBD clearly directs that Revels must control activities carried on by its national outside Revels physical jurisdiction.**

The CBD clearly contemplates a scenario such as this under Article 4 and obliges Revels to control SEA Corp. Article 4 expressly states that Contracting Parties acknowledge the conservation and preservation mandates in the Convention apply to “activities, regardless of where their effects occur, carried out under its jurisdiction or control,...[and] beyond the limits of national jurisdiction.”<sup>59</sup> As discussed in the paragraphs on UNCLOS Article 92, it is without question that Revels has jurisdiction and control over SEA Corp.<sup>60</sup> Therefore, the fact that SEA Corp. is a private entity operating on the high seas does not permit Revels to ignore any harm coming of those actions. Under CBD Article 4, Revels shall have responsibility to ensure the activities of SEA Corp. comply with all provisions of the CBD.

**C. By subsidizing and failing to regulate SEA Corp.’s harvesting activities, Revels has assumed liability for any harm caused by SEA Corp under the Articles on Responsibility of States for Internationally Wrongful Acts**

**1. Articles 1 and 2 of under the Articles on Responsibility of States for Internationally Wrongful Acts (ASR) attribute liability to Revels for any actions taken by SEA Corp. that violate the nation’s obligations under UNCLOS, Rio, and the CBD.**

Since SEA Corp.’s harvesting activities risk harm to the European Eel in derogation of marine conservation and preservation provisions in UNCLOS, Rio, and the CBD, ASR Articles 1 and 2 place liability for such activities on Revels.<sup>61</sup> ASR Article 1 states that “[e]very internationally wrongful act of a State entails the international responsibility of that State.”<sup>62</sup>

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<sup>59</sup> *Supra* note 55 at Art. 4.

<sup>60</sup> *Supra* note 48 and 49.

<sup>61</sup> Articles on the Responsibility of States for Internationally Wrongful Acts, Art.48, GA U.N.Doc. A/56/10 (2001) [hereinafter ASR].

<sup>62</sup> *Id.* at Art. 1.

Article 2 defines “internationally wrongful act” to include “actions” and “omissions” of the state that are “attributable to the State under international law” and that constitute “breach of an international obligation of the State.”<sup>63</sup> As discussed in the immediately preceding paragraphs, SEA Corp.’s harvesting project like violates various marine resource protection provisions under UNCLOS, Rio, and the CBD.<sup>64</sup> Since those instruments reflect obligations of Revels and Revels has the flag state is obliged to effectively control the actions of SEA Corp., under ASR Article 1 and 2 the harvesting project is an international wrong attributable to Revels. In omitting its responsibility to exercise effective jurisdiction and control over SEA Corp. and further acting to endorse the project through subsidies, Revels has assumed liability for the wrongs of SEA Corp. under the ASR.

### **III. THE REPUBLIC OF REVELS VIOLATED SEVERAL CUSTOMARY INTERNATIONAL LAWS AND MULTILATERAL ENVIRONMENTAL AGREEMENTS BY HARVESTING SARGASSUM FROM THE SARGASSO SEA, WHICH PLACESE THE EUROPEAN EEL AT RISK OF FURTHER ENDANGERMENT.**

Removing the spawning habitat of a species can impact a species’ ability to repopulate and exposes the species to the risk of extinction.<sup>65</sup> By harvesting Sargassum from the Sargasso Sea, the Republic of Revels places the European eel at risk of further endangerment.<sup>66</sup> The likely harm to the European eel caused by the harvesting of the Sargassum places the Republic of Revels in

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<sup>63</sup> *Id.* at Art. 2.

<sup>64</sup> *See supra* sections A and B.

<sup>65</sup> *See* Rollie Wilson, *Removing Dam Development To Recover Columbia Basin Treaty Protected Salmon Economies*, 24 AM. INDIAN L. REV. 357, 359 (2000) (discussing the impacts to the salmon population following the construction of dams in the Columbia Basin).

<sup>66</sup> R. at 7; *see also* Mary Wood, *The Tribal Property To Wildlife Caital (Part I): Applying Principles Of Sovereignty To Protect Imperiled Wildlife Populations*, 37 IDAHO L. REV. 1, 45 (2000).

violation of customary international law, such as the precautionary principle and the duty to prevent transboundary harm. Additionally, the actions taken by the Republic of Revels violated its obligations under United Nations Convention on the Law of the Sea (“UNCLOS”)<sup>67</sup>, Convention on Biological Diversity (“CBD”)<sup>68</sup>, Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea (“Hamilton Declaration”)<sup>69</sup>, and Convention on the Conservation of Migratory Species of Wild Animals (“CMS”)<sup>70</sup>. The ICJ should rule in favor of the Federal States of Alliguna and find that the Republic of Revels violated international law by harvesting Sargassum in the Sargasso Sea and order the Republic of Revels to terminate the Sargassum biofuel initiative.

**A. The Republic of Revels violated the precautionary principle through its Sargassum biofuel initiative.**

The precautionary principle sets forth that “[w]here 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.”<sup>71</sup> The principle stands for two fundamental regulatory policies: (1) harm to human health and the environment should be avoided or minimized through anticipatory, preventive regulatory controls, and (2) to accomplish this,

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<sup>67</sup> United Nations Convention on the Law of the Sea, 10 Dec. 1982, 1833 U.N.T.S. 3 [hereinafter UNCLOS].

<sup>68</sup> Convention on Biological Diversity, 6 June 1992, 1760 U.N.T.S. 79 [hereinafter CBD].

<sup>69</sup> Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea, SARGASSO SEA COMMISSION (Mar. 11, 2014),

[http://www.sargassoseacommission.org/storage/documents/Hamilton\\_Declaration\\_on\\_Collaboration\\_for\\_the\\_Conservation\\_of\\_the\\_Sargasso\\_Sea.with\\_signatures.pdf](http://www.sargassoseacommission.org/storage/documents/Hamilton_Declaration_on_Collaboration_for_the_Conservation_of_the_Sargasso_Sea.with_signatures.pdf) [hereinafter Hamilton Declaration].

<sup>70</sup> Convention on the Conservation of Migratory Species of Wild Animals, 23 June 1979, 1651 U.N.T.S. 333 [hereinafter CMS].

<sup>71</sup> United Nations Conference on Environment and Development, June 3–14, 1992, *Rio Declaration on Environment and Development*, Principle 15, U.N. Doc.A/CONF.151/5/Rev.1 [hereinafter Rio Declaration].



activities and technologies whose environmental consequences are uncertain, but potentially serious, should be restricted until the uncertainty is largely resolved.<sup>72</sup> The Hamilton Declaration incorporates this precautionary approach into its language by including “measures to maintain the health, productivity and resilience of the Sargasso Sea . . . .”<sup>73</sup>

Application of the precautionary requires looking at: (1) the threats of serious or irreversible damage on the environment, (2) the lack of full scientific certainty, which shall not be used as a reason for postponing preventative measures, and (3) the cost-effective measures to prevent environment degradation to achieve full scientific certainty.<sup>74</sup> Revels fails to consider each of these elements prior to starting the Sargassum biofuels initiative.

### **1. Harvesting Sargassum poses a threat to the European Eel.**

One of the leading factors in the extinction of a species involves modifications or destruction of a species’ habitat.<sup>75</sup> By harvesting Sargassum in the Sargasso Sea, Revels’ actions pose a threat of serious or irreversible damage to the European eel’s ability to stave off extinction.<sup>76</sup> Removal of the Sargassum will destroy the spawning habitat of the European eel drastically altering how this species can repopulate.<sup>77</sup>

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<sup>72</sup> See John Applegate, *The Taming of the Precautionary Principle*, 27 Wm. & Mary Envtl. L. & Pol’y Rev. 13, 13 (2002).

<sup>73</sup> Hamilton Declaration, *supra* note 69 at ¶ 8.1.

<sup>74</sup> John Applegate, *supra* note 72 at 20.

<sup>75</sup> John Kunich, *Preserving The Womb Of The Unknown Species With Hotspots Legislation*, 52 Hastings L.J. 1149, 1152 (2001).

<sup>76</sup> R. at 8, ¶ 20.

<sup>77</sup> R. at 6, ¶ 18; *see also* Rollie Wilson, *supra* note 65.

**2. Lack of full scientific certainty on the impacts of the European eel should not be used as a reason for postponing prevention measures.**

The activities and technologies whose environmental consequences are uncertain, but potentially serious, should be restricted until a level of certainty that little to no damage will be caused to the environment has been reached.<sup>78</sup> The Republic of Revels has failed to provide any assessments on the impacts of harvesting Sargassum on biodiversity of the Sargasso Sea.<sup>79</sup> In light of these activities, Revels has failed to cooperate with Alliguna in seeking measures that could mitigate the environmental damage caused by the harvesting of Sargassum.<sup>80</sup> without full scientific certainty, Revels' actions could lead to environmental harms that go unchecked and contravenes established international law.<sup>81</sup>

**3. Revels has failed to implement cost-effective measures that could curtail the impacts to the European eel.**

Although the burden of proof rests with the party bringing forth this claim, the Republic of Revels is not excused from participating in discussions and providing any evidence that may be in its possession that could help this Court in resolving this dispute.<sup>82</sup> The impacts on the spawning location of the European eel, and the failure to provide any impact assessments from Revels' biofuel initiatives all go against the purpose behind the precautionary principle.<sup>83</sup> Revels violated the precautionary principle by not implementing any cost-effective measures that could curtail the

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<sup>78</sup> John Applegate, *supra* note 72 at 13.

<sup>79</sup> R. at 8, ¶ 20.

<sup>80</sup> R. at 10, ¶ 24.

<sup>81</sup> *See* Rio Declaration, *supra* note 71.

<sup>82</sup> *See Pulp Mills on the River Uruguay, (Arg. V. Uru.)*, 2010 I.C.J. 1, 121–22 (Apr. 01) (noting that both parties must play a role in helping the Court reach a decision).

<sup>83</sup> *See* Rio Declaration, *supra* note 71.

impacts to the European eel.<sup>84</sup> Additionally, Revels' actions contravene CBD's preamble when it failed to implement any cost-effective measures that could curtail the impacts on the European eel's population.<sup>85</sup>

This Court should find that Revels' actions violated customary international law by failing to abide by the precautionary principle and failing to adopt any cost-effective measure to prevent further environmental degradation in the Sargasso Sea, which raises the risk of serious threat or irreversible harm on the European eel.

**B. Revels' Sargassum biofuel initiative caused transboundary harm to the Federal States of Alliguna.**

Generally, States have the right to exploit their own resources pursuant to their own environmental and developmental policies so long as those activities do not cause damage to the environment of other states or of areas beyond the limits of their national jurisdiction.<sup>86</sup> Additionally, under general international law, a party must undertake an environmental impact assessment "where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context."<sup>87</sup> International law requires that such transboundary environmental impact assessments ("EIA") ensure: (1) proposed activities abide the customary international law prohibition on transboundary pollution; (2) that states take affirmative mitigation action where activities in their jurisdiction pose harm to the environment beyond their territory; (3) reasonable effort is made to explore and consider all potential transboundary effects; and (4)

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<sup>84</sup> R. at 8, ¶ 20.

<sup>85</sup> CBD, *supra* note 68 at 1.

<sup>86</sup> See Rio Declaration, *supra* note 71 at Principle 2; UNCLOS, *supra* note 67 at Art. 194(2); CBD, *supra* note 68 at Art.3.

<sup>87</sup> *Pulp Mills on the River Uruguay*, (*Arg. V. Uru.*), 2010 I.C.J. at 149, ¶ 204.

states heed any other obligations concerning transboundary EIAs enumerated in international agreements to which they are a signatory.<sup>88</sup>

Here, both states are parties to CBD and UNCLOS, which both prohibit transboundary pollution.<sup>89</sup> Additionally, both agreements require that the states carry out a transboundary EIA on activities that pose a potential risk to the environment.<sup>90</sup> Damages to the European eels spawning habitat will severely harm the eel and lead to irreparable harms to the people of Alliguna who carry strong cultural ties to the species.<sup>91</sup> Revels has failed to provide a transboundary EIA that addresses these potential impacts to the European eel and have failed to ensure that their activities would not cause damage to the eels population.<sup>92</sup>

### **C. The Republic of Revels has violated its obligations under UNCLOS.**

Pursuant to UNCLOS, the states have the obligation to protect and preserve the marine environment.<sup>93</sup> The states shall also take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other states.<sup>94</sup> Additionally, articles 117 and 118 in UNCLOS sets forth that states will cooperate in taking measures as may be necessary to conserve the living resources of the high seas.<sup>95</sup>

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<sup>88</sup> See John Knox, *The Myth and Reality of Transboundary Environmental Impact Assessment*, 96 A.J.I.L. 291, 291 (2002).

<sup>89</sup> R. at 4–5, ¶¶ 7, 9; see CBD *supra* note 68 at Art. 3; UNCLOS, *supra* note 67 at Art. 194(2).

<sup>90</sup> see CBD *supra* note 68 at Art. 14; UNCLOS, *supra* note 67 at Art. 204(2).

<sup>91</sup> R. at 4, ¶ 4.

<sup>92</sup> *Id.*

<sup>93</sup> UNCLOS, *supra* note 67 at Art. 192.

<sup>94</sup> *Id.* at Art. 194(2).

<sup>95</sup> *Id.* at Art. 117, 118.

Revels violated each of these provisions by failing to cooperate with Alliguna and failing to take all measures necessary to ensure that their activities do not cause damage by pollution to other states.<sup>96</sup> Both Revels and Alliguna are parties to UNCLOS and Alliguna has chosen the ICJ for the settlement of disputes concerning the interpretation or application of UNCLOS.<sup>97</sup> Revels has chosen the International Tribunal for the Law of the Sea for the settlement of disputes concerning the interpretation or application of UNCLOS.<sup>98</sup> Both courts are capable of handling disputes concerning the interpretation of UNCLOS and the ICJ has jurisdiction over this dispute as discussed above.

### **1. Revels violated articles 192 and 194 of UNCLOS.**

Under UNCLOS articles 192 and 194, the states have the responsibility to take all necessary measures to protect and preserve the marine environment.<sup>99</sup> Revels has failed to provide any measures to mitigate the impacts caused by harvesting the Sargassum in the Sargasso Sea.<sup>100</sup> In a diplomatic note sent to Alliguna on May 22, 2017, Revels claims that it has not violated UNCLOS because under Article 87 Revels and all states have freedom to harvest Sargassum over the high seas.<sup>101</sup> Revels fails to acknowledge its responsibilities set forth within UNCLOS and by pursuing its biofuel initiative, Revels' actions harm Alliguna's cultural connection to the European eel.<sup>102</sup>

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<sup>96</sup> R. at 9, ¶ 22.

<sup>97</sup> R. at 5, ¶ 9.

<sup>98</sup> *Id.*

<sup>99</sup> UNCLOS, *supra* note 67 at Art. 192, 194.

<sup>100</sup> R. at 6, ¶ 18.

<sup>101</sup> R. at 9, ¶ 21.

<sup>102</sup> R. at 9, ¶ 22.

## **2. Revels violated articles 117 and 118 of UNCLOS**

Additionally, Revels fails to cooperate with Alliguna and states that Alliguna failed to provide any evidence to Revels that demonstrates how the biofuels initiative has negatively impacted the Sargasso Sea ecosystem or European eels.<sup>103</sup> As stated above, destroying or modifying the spawning habitat of a species can drastically impact the population size of a species over time.<sup>104</sup> Pursuant to articles 117 and 118 of UNCLOS, all states have the duty to take, or to cooperate with other states in taking measures that may be necessary for the conservation of the living resources.<sup>105</sup> Revels has failed to cooperate with Alliguna in setting forth mitigating factors that ensure that no harm will occur to the European eel or to the Sargasso Sea ecosystem.<sup>106</sup>

### **D. Revels has violated its obligations under CBD.**

Pursuant to CBD Article 1, the objectives of this Convention are the conservation of biological diversity, the sustainable use of its components and fair and equitable sharing of the benefits arising out of the utilization of genetic resources.<sup>107</sup> Embedded within this language is the concept that each state will cooperate with each other to ensure that the resources from biological diversity are sustainably used.<sup>108</sup> Article 3 sets forth the precautionary principle that each party will ensure that activities within their jurisdiction or control does not cause damage to the environment of other states.<sup>109</sup> Additionally, each party to this agreement must work towards regulating or

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<sup>103</sup> R. at 9, ¶ 23.

<sup>104</sup> See Rollie Wilson, *supra* note 65.

<sup>105</sup> UNCLOS, *supra* note 67, Art. 117.

<sup>106</sup> R. at 10, ¶ 24.

<sup>107</sup> CBD, *supra* note 68, Art. 1.

<sup>108</sup> *Id.* at Art. 5.

<sup>109</sup> *Id.* at Art. 3.

managing biological resources important for the conservation of biological diversity with a view to ensuring their conservation and sustainable use.<sup>110</sup>

Here, both parties are contracting parties to the Convention on Biological Diversity, and both Alliguna and Revels declared in writing that they would submit to the jurisdiction of the ICJ to resolve disputes concerning the interpretation or application of the CBD.<sup>111</sup> Both parties in this matter are in disagreement of the application of the CBD provisions and have failed to resolve their dispute.<sup>112</sup> The ICJ should rule in favor of Alliguna and find that Revels' Sargassum biofuel initiative runs counter to CBD.

**1. Revels' Sargassum biofuel initiative runs counter to the conservation and sustainable use of biological diversity.**

Parties to the Convention are required to adopt measures that minimize adverse impacts to biological diversity and ensure the sustainable use of the area's resources.<sup>113</sup> Revels' uncontrolled measures of harvesting Sargassum poses a serious threat to the biological integrity in the Sargasso Sea. Specifically, Revels has failed to provide adopt any measures that demonstrate a sustainable use of the resources in the Sargasso Sea. Instead Revels argues that its biofuel initiative help satisfy its NDC commitments under the Paris Agreement at the expense of destroying the biological diversity in the Sargasso Sea.<sup>114</sup> Additionally, Revels has failed to perform an EIA on its actions in the Sargasso Sea, and instead, Revels attempts to place the burden on Alliguna to provide

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<sup>110</sup> *Id.* at Art. 8(c); *see also id.* at Art. 10(b) (establishing that each party to this agreement must adopt measures that minimize adverse impacts to biological diversity).

<sup>111</sup> R. at 4, ¶ 7.

<sup>112</sup> R. at 10, ¶ 24.

<sup>113</sup> CBD, *supra* note 68 at Art. 10(b).

<sup>114</sup> R. at 9, ¶ 23.

evidence that the biofuels initiative negatively impacts the Sargasso Sea ecosystem or European eel.<sup>115</sup> This ignores both the precautionary principle set forth in the CBD<sup>116</sup> and the procedures requiring EIA's for proposed projects that are likely to have significant adverse effects on biological diversity.<sup>117</sup> Initiatives that modify or destroy the spawning habitat of a species can have drastic effects on the Sargasso Sea ecosystem, and pursuant to CBD, Revels must cooperate with Alliguna in setting up measures that ensure a sustainable use of the resources in the Sargasso Sea and protect the biological diversity of the Sea.<sup>118</sup>

## **2. Impacts from Revels' Sargassum biofuel initiative move beyond its jurisdiction and cause harm to the Federal States of Alliguna.**

The people of Alliguna have strong historical and cultural ties to the European eel and any action that may impact the population of the European eel will cause harm to Alliguna.<sup>119</sup> Impacting the spawning habitat of the European eel can have spillover effects that are not limited to a certain area.<sup>120</sup> By messing with the spawning habitat of the European eel, Revels' actions may potentially affect the species' migratory patterns or lead to a decrease in the species' population.<sup>121</sup> Given the large scale impacts that might occur from Revels' Sargassum biofuel initiative, unexpected impacts to the biological diversity of the Sargasso Sea must be expected.<sup>122</sup>

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<sup>115</sup> *Id.*

<sup>116</sup> CBD, *supra* note 68 at Art. 3.

<sup>117</sup> *Id.* at Art. 14(a).

<sup>118</sup> R. at 6, ¶ 18; *see also* CBD, *supra* note 68 at Art. 5.

<sup>119</sup> R. at 4, ¶ 4.

<sup>120</sup> *See* John Kunich, *supra* note 75.

<sup>121</sup> *See id.*

<sup>122</sup> *See id.*



## **CONCLUSION AND PRAYER FOR RELIEF**

Applicant, the Federal States of Alliguna, respectfully requests the Court to hold:

- I. The International Court of Justice has jurisdiction over the matter arising before the court under the CBD, UNFCCC, and Paris Agreement.
- II. The Republic of Revels violated international agreements, treaties, and international law principles by failing to exercise its jurisdiction and control over SEA Corp. to prevent harm to the European eels.
- III. The Republic of Revels violated the precautionary principle, duty to prevent transboundary harm, and various other international environmental agreements by placing the European eel at further risk of endangerment and destroying its habitable ecosystem.

RESPECTFULLY SUBMITTED,

AGENTS OF APPLICANT