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

**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

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TABLE OF CONTENTS

I. INDEX OF AUTHORITIES.....	5
ii. STATEMENT OF JURISDICTION	7
III. QUESTIONS PRESENTED.....	8
IV. STATEMENT OF FACTS.....	9
V. SUMMARY OF ARGUMENTS	12
VI. ARGUMENTS	13
1. THE REPUBLIC OF REVELS IS IN VIOLATION OF INTERNATIONAL LAW BY HARMING THE EUROPEAN EEL (<i>ANGUILLA ANGUILLA</i>) POPULATION AND ECOSYSTEM OF THE SARGASSO SEA	13
a. Revels is violating international law regarding the interpretation of principles 2, 4, and 21 of the Declaration of the United Nations Conference on the Human Environment.....	14
b. Revels is violating the ecosystem regarding the interpretation of article 145 of the UN Convention on the Law of the Sea (UNCLOS) by allowing activities that damage the flora and fauna of the ecosystem. 15	
2. INTERNATIONAL LAW STATES THAT THE REPUBLIC OF REVELS IS RESPONSIBLE FOR THE CONDUCT OF “THE SEA CORPORATION”.....	16
a. Revels is responsible for the conduct of the SEA Corporation regarding the interpretation of Articles 1, 2, 8, and 12 of the ILC Draft Articles on State Responsibility	16
b. Taking into consideration UNCLOS and the Advisory Opinion of the Seabed Disputes Chamber of ITLOS, Revels can be held liable for not complying with its obligations as a Sponsoring State with respect to activities carried out by the SEA Corporation.....	19
3. THE REPUBLIC OF REVELS IS REQUIRED TO REMEDIATE FOR HARMING THE ECOSYSTEM IN THE SARGASSO SEA	21

- a. Revels is violating international law regarding the interpretation of principles 2, 4, and 21 of the Declaration of the United Nations Conference on the Human Environment.....22
- b. As adequate reparation, the Republic of Revels is required to remediate the harm caused to the Sargasso Sea ecosystem and the European eel population23

VII. CONCLUSION25

INDEX OF AUTHORITIES

International Treaties & Regional Treaties

<i>Draft Articles on Responsibility of States for Internationally Wrongful Acts</i> , [2001] 2 Y.B. Int'l L. Comm'n 26, U.N. DOC. A/56/49 (Vol.I)/ Corr.4.....	4, 5, 6
Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea, March 4, 2014, BER., Monaco, GR. Brit.-US.....	1
United Nations Conference on Environment and Development, June 3-14, 1992, <i>Rio Declaration on Environment and Development</i> , U.N. DOC. A/CONF. 151/26 (1992).....	1, 10
United Nations Conference on the Human Environment, Stockholm, Swed., June 6-16, 1972, <i>Declaration of the United Nations Conference on Human Development</i> , U.N. DOC. A./CONF. 48/14/REV 1.....	1
United Nations Convention on the Law of the Sea, <i>opened for signature</i> , December 10, 1982 (1994)	7, 9, 12, 13, 15, 16, 19, 20, 21

Essays, Articles and Journals

García López, Tania, <i>El principio de la reparación del daño ambiental en el derecho internacional público. Una aproximación a su recepción por parte del derecho mexicano</i> . Universidad Nacional Autónoma de México, (2016).	24
Freestone, David et al., <i>First World Ocean Assessment Chapter: Sargasso Sea</i> 1-7 (United Nations ed., 2016)	15

The Clearing-House Mechanism of the Convention on Biological Diversity, Ecologically or Biologically Significant Areas (EBSAs): The Sargasso Sea, 15 June 2015.....13, 14.

Valverde Soto, Max. *General Principles of International Law*. University of Costa Rica. Ilsa Journal of Int'l and Comparative Law. 194. (1996).
.....18

Cases, Judicial and Arbitral Decisions

Responsibilities and obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area. Advisory Opinion, 2011, Seabed Disputes Chamber of ITLOS, (Feb. 1), 71.....16,19, 20, 21

Corfu Channel (U.K./Alb.), 1949 I.C.J. 4 (Apr. 9)17

The Factory at Chorzow (Pol. v. Ger.), 1927 P.C.I.J. (ser. A) No. 9.....24

Miscellaneous

Jervan, Marte, Master thesis, The Prohibition of Transboundary Environmental Harm: The ICJ and the No-Harm Rule, UiOUiO PluriCourts - Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order. (2016).22

Sucharitkul, Sompong. *The Principles of Good-Neighborliness in International Law*, Golden Gate University School of Law GGU Law Digital Commons, (1996)
.....22

The Clearing-House Mechanism of the Convention on Biological Diversity, Ecologically or Biologically Significant Areas (EBSAs): The Sargasso Sea, 15 June 2015.....13, 14

STATEMENT OF JURISDICTION

The Federal States of Alliguna and the Republic of Revels submit the following dispute to the International Court of Justice. Pursuant to Article 40 of the Statute of the International Court of Justice, the cases brought before the Court may be made by special agreement. On July 6th 2018 the Registrar addressed notification to the parties and informed that the case of Questions Relating to Use of the Sargasso Sea and the Protection of Eels (Federal States of Alliguna v. Republic of Revels) has been entered as 2018 General List No. 237.

On 16 July 2018 the Parties submitted the Joint Written Statement regarding the facts in case 2018 General List No. 237 without waiving any claims, counterclaims, objections, or rights. Also, they requested the Court to decide this matter based on the facts. It is important to mention that the Court will consider the questions as to its jurisdiction and state responsibility simultaneously with the questions on the merits raised in the Application, according to Article 79, paragraph 10, of the Rules of Court.

It is important to mention that UNCLOS established the Tribunal of the Sea as the way for resolution of disputes. However pursue to this Convention, when there is the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal.¹

¹ Article 288.4 United Nations Convention on the Law of the Sea, *opened for signature*, December 10, 1982 (1994)

QUESTIONS PRESENTED

1. WHETHER THE REPUBLIC OF REVELS IS HARMING THE EUROPEAN EEL (*ANGUILLA ANGUILLA*) POPULATION AND ECOSYSTEM IN THE SARGASSO SEA BY PERMITTING THE SEA CORPORATION'S SARGASSUM HARVEST.
2. WHETHER THE REPUBLIC OF REVELS IS RESPONSIBLE FOR THE CONDUCT OF THE SEA'S CORPORATION INITIATIVE IN THE SARGASSO SEA.
3. WHETHER THE REPUBLIC OF REVELS IS REQUIRED TO REMEDIATE FOR HARMING THE ECOSYSTEM IN THE SARGASSO SEA.

STATEMENT OF FACTS

The Federal States of Alliguna (Alliguna) and the Republic of Revels (Revels) are neighboring sovereign states with coasts approximately 250 nautical miles from the Sargasso Sea (R. at 1). Alliguna is a developed country whereas Revels is a developing country (R. at 2). The European eel (*Anguilla anguilla*), a Critically Endangered species, migrates to the Sargasso Sea to spawn; it has exhibited a pronounced decline over the past several decades (R. at 3). In 2010, Alliguna passed strict domestic legislation to help protect and recover the species (R. at 4).

Alliguna and Revels are Members of the United Nations and are Parties to the Statute of the International Court of Justice (ICJ). Alliguna has recognized the ICJ's jurisdiction as compulsory *ipso facto* (on condition of reciprocity); Revels has not (R. at 5). Alliguna and Revels are Parties to the Vienna Convention on the Law of Treaties (R. at 6).

Alliguna and Revels are Contracting Parties to the Convention on Biological Diversity (CBD) and both declared they would submit to the ICJ's jurisdiction to resolve disputes concerning the interpretation or application of the CBD (R. at 7). Alliguna and Revels are Parties to the Convention on the Conservation of Migratory Species of Wild Animals and are Range States for the European eel (R. at 8).

Alliguna and Revels are States Parties to the United Nations Convention on the Law of the Sea (UNCLOS). Alliguna chose the ICJ for the settlement of disputes regarding UNCLOS while Revels chose the International Tribunal for the Law of the Sea

for the settlement of disputes (R. at 9). Alliguna and Revels are Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and to the Paris Agreement; both countries submit to the ICJ for any dispute concerning the interpretation or application of the UNFCCC or the Paris Agreement (R. at 10).

Alliguna and Revels are signatories to the Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea (R. at 11) and fully participated in the United Nations Conference on the Human Environment at Stockholm; the United Nations Conference on Environment and Development at Rio de Janeiro; the World Summit on Sustainable Development at Johannesburg; and the Rio+20 Conference at Rio de Janeiro (R. at 12). In July 2016, the SEA Corporation (a privately owned company in Revels) began harvesting Sargassum in the Sargasso Sea on the high seas (R. at 13). The SEA Corporation received a subsidy from the Government of Revels (R. at 14).

On 13 January 2017, Alliguna contacted Revels urging for the end of the SEA Corporation's harvesting activities on the Sargassum Sea (R. at 18). On 11 March 2017, Revels contacted Alliguna stating it was unaware of any demonstrable negative impact on the Sargasso Sea or the European eel (R. at 19). On 9 April 2017, Alliguna contacted Revels stating that harvesting Sargassum in the Sargasso Sea is a violation of the Convention on Migratory Species (CMS) (R. at 20). On 22 May 2017, Revels contacted Alliguna denying the CMS's applicability and further insisting that harvesting Sargassum at high seas is within Revels' right (R. at 21). On 7 July 2017, Alliguna contacted Revels commenting on the limits to the rights at high seas and noting contraventions to international law (R. at 22). On 14 September 2017, Revels contacted

Alliguna refuting such breaches of international law and any link between the SEA Corporation's activity and the decline of the European eel (R. at 23).

In February 2018, Alliguna asked Revels to agree to submit the matter to the ICJ; Revels refused (R. at 24). On 21 April 2018, Alliguna submitted the Application instituting proceedings. On 5 May 2018, Revels submitted the Preliminary Objections (R. at 25).

Alliguna seeks an order from the ICJ declaring it's jurisdiction to determine the matter and that Revels is responsible for the conduct at issue; and that Revels violated international law by negatively impacting the European eel through Sargassum harvesting. Revels opposes these claims and seeks an order from the ICJ declaring it does not have jurisdiction to determine the matter and that the conduct at issue is not attributable to Revels; and even if it has jurisdiction, Revels has not violated international law with respect to the Sargassum harvesting (R. at 26).

The SEA Corporation has continued to harvest Sargassum in the Sargasso Sea (R. at 27).

SUMMARY OF ARGUMENTS

Revels is in violation of international law by harming the European Eel and the Sargasso Sea ecosystem regarding the interpretation of principles 2, 4 and 21 of the Declaration of the United Nations Conference on the Human Environment and in relation to the dispositions of the Convention of Biological Diversity and its Clearing-House Mechanism. Also by article 145 of UNCLOS, Revels defies the measures taken by the Authority related on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction when the State continued developing the project of biofuels.

Revels is responsible for the conduct of the SEA Corporation by the interpretation of Articles 1, 2, 8, and 12 of the Draft Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts. Also, by the dispositions of UNCLOS and the guidelines of the 2011 Advisory Opinion of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, Revels can be held liable for not complying with its obligations as a Sponsoring State with respect to activities carried out in the Sargasso Sea by the juridical person it sponsored (the SEA Corporation).

The Republic of Revels is required to remediate for harming the ecosystem in the Sargasso Sea. It is a basic rule of international law that reparation is to be made for violations of international law. The Republic of Revels has violated Principle 2 of the Rio Declaration, the *sic utere tuo ut alienum non laedas* principle, the international integrity

principle, and the good neighborliness principle. It is therefore required that the Republic of Revels remediate the harm caused.

ARGUMENTS

1. THE REPUBLIC OF REVELS IS IN VIOLATION OF INTERNATIONAL LAW BY HARMING THE EUROPEAN EEL (*ANGUILLA ANGUILLA*) POPULATION AND ECOSYSTEM OF THE SARGASSO SEA.

The Sargasso Sea is a fundamentally important part of the world ocean, located within the North Atlantic sub-tropical gyre with its boundaries defined by the surrounding currents. It is importance to establish that its relevance departs from the combination of physical and oceanographic structure, complex ecosystems, and its role in global ocean and earth system processes. Also, the Sargasso Sea is home to an iconic pelagic ecosystem with the floating Sargassum seaweeds, the world's only holopelagic algae, as its cornerstone.²

Therefore, Revels is in violation in international law by the interpretation of several conventions such as United Nations Conference on the Human Environment, Convention on Biological Diversity and UNCLOS.

Additionally, harming the Sargasso Sea and European eels contravenes the Hamilton Declaration, Rio Declaration, Stockholm Declaration, Rio+20 outcome

² The Clearing-House Mechanism of the Convention on Biological Diversity, Ecologically or Biologically Significant Areas (EBSAs): The Sargasso Sea, 15 June 2015.

document “The future we want,” and the United Nations General Assembly’s annual resolutions on oceans and the law of the sea.

a. Revels is violating international law regarding the interpretation of principles 2, 4, & 21 of the Declaration of the United Nations Conference on the Human Environment, Convention on Biological Diversity.

According to this Convention, the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded through careful planning or management.³ The Sargasso Sea is an area that contains a considerable amount of these resources and therefore it has to be managed properly.

It is well known that man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat.⁴ In this case, Revels is not following this principle as they are implementing measures to comply the Paris Agreement ignoring the effects created by the harvesting of sargassum. It is important to mention that sargassum plays a vital role because it provides a dynamic structural habitat and supports a large variety of species which some of them are endangered such as the American and European Eel. This determines the Sargasso Sea as an Ecologically and Biologically Significant Area.⁵

³ Principle 2, United Nations Conference on the Human Environment, Stockholm, Swed., June 6-16, 1972, Declaration of the United Nations Conference on Human Development, U.N. DOC. A./CONF. 48/14/REV 1.

⁴ Id.Principle 4

⁵ The Clearing-House Mechanism of the Convention on Biological Diversity, Ecologically or Biologically Significant Areas (EBSAs): The Sargasso Sea, 15 June 2015.

It is true that Revels has the sovereign right to exploit their own resources pursuant to their own environmental policies and has the duty to not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.⁶ However, the actions that were taken due to the policies related to the NDC commitments under the Paris Agreement for improving and preserving the environment, start to cause a bigger damage to the Sargasso Sea ecosystem.

b. Revels is violating the ecosystem regarding the interpretation of article 145 of the UN Convention on the Law of the Sea (UNCLOS) by allowing activities that damage the flora and fauna of the ecosystem.

As it was mentioned before, the Sargasso Sea is an important area in which one of the most important characteristics is the concentration of sargassum. Sargassum mats are home to at least 145 invertebrate species and around 127 species of fish; the mats act as important spawning, nursery and feeding areas for fish, turtles and seabirds.⁷

The Republic of Revels is in violation of international law by harming the European Eel population, pursuant to Article 145 from UNCLOS it is established that necessary measures shall be taken with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities.⁸ As a result, the Authority, created by this Convention, shall adopt

⁶ Principle 21 United Nations Conference on the Human Environment, Stockholm, Swed., June 6-16, 1972, Declaration of the United Nations Conference on Human Development, U.N. DOC. A./CONF. 48/14/REV 1

⁷ Freestone, David et al., First World Ocean Assessment Chapter: Sargasso Sea 1-7 (United Nations ed., 2016)

⁸ Article 145 of UNCLOS United Nations Convention on the Law of the Sea, opened for signature, December 10, 1982 (1994)

appropriate rules, regulations and procedures for the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.

Therefore, the project created by Revels defies the efforts being made to develop these instruments under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

2. INTERNATIONAL LAW STATES THAT THE REPUBLIC OF REVELS IS RESPONSIBLE FOR THE CONDUCT OF “THE SEA CORPORATION”.

Revels is responsible for the conduct of the privately-owned company SEA Corporation, which is harming the European Eel (*ANGUILLA ANGUILLA*) by harvesting Sargassum in the Sargasso Sea. Firstly, Revels’ responsibility can be interpreted by Articles 1, 2, 8, and 12 of the Draft Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts. Secondly, it is interpreted that Revels can be held liable for not complying with its obligations as a Sponsoring State with respect to activities carried out in the Sargasso Sea by the juridical person it sponsored (the SEA Corporation), regarding UNCLOS and the 2011 Advisory Opinion of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea.

a. Revels is responsible for the conduct of the SEA Corporation regarding the interpretation of Articles 1, 2, 8, and 12 of the ILC Draft Articles on State Responsibility.

The SEA Corporation breached international law and Revels is responsible for this. Regarding Article 1 of the ILC Draft Articles on State Responsibility, a State “entails

international responsibility” when breaching international law or carrying out an internationally wrongful act. An internationally wrongful act can be an action or an omission, and either one of these should be “attributable to the State under international law”⁹ and constitute a “breach of an international obligation of the State” (Article 2 of the ILC Draft Articles on State Responsibility). Revels is responsible for both an action and an omission; an action because it provided the SEA Corporation with subsidy (which is analyzed below) and an omission because Revels did nothing to prevent the harming of the European Eel. In the Corfu Channel Case¹⁰, the Court decided that Albania should be held internationally responsible for not attempting to prevent the explosions of the two British destroyers. The same can be interpreted for Revels: It should be held internationally responsible for not attempting to prevent the harming of the European Eel.

Revels stated that the wrongful act of the SEA Corporation is not attributable to its government under international law; however, through the further discernment of Article 8 of ILC Draft Articles on State Responsibility, it can be interpreted that the conduct of an entity might be attributable to the State because of the existence of a “specific factual relationship between the (...) entity engaging in the conduct and the State”¹¹. One of the circumstances in which the entity’s wrongful conduct is associated with the State is when the entity acts on the “instructions of the State in carrying out the wrongful conduct”¹². The Government of Revels provided a subsidy to the SEA

⁹ *Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries*, [2001] 2 Y.B. Int’l L. Comm’n 31, 35.

¹⁰ *Id.* at 35.

¹¹ *Corfu Channel (U.K./Alb.)*, 1949 I.C.J. (Apr. 9).

¹² *Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries*, [2001] 2 Y.B. Int’l L. Comm’n 31, 47.

Corporation for the Sargassum initiative to fulfill its recently launched program's commitments. The SEA Corporation, by receiving the subsidy, had to carry out the instructions of the Government of Revels and continue harvesting Sargassum. The entity's wrongful act is therefore attributable to Revels because of its association with the instructions held by the Government, due to the analysis of Article 8 referred above.

As to the existence of a breach of an international obligation, the way the SEA Corporation (under Revels' responsibility) breached multiple international treaties has already been established. However, for the further demonstration of Revel's responsibility, Article 12 of the ILC Draft Articles on State Responsibility states that there is a breach of an international obligation by a State "when an act of the State is not in conformity with what is required of it by that obligation, regardless of its origin of character"¹³. The phrase "regardless of its origin of character" refers to all possible sources for creating legal obligations that are perceived by international law. One of this sources is the Principle of Sovereignty and Responsibility¹⁴, which protects the sovereign rights of a State over its natural resources while affirming that the concept of sovereignty is not absolute and that no State should cause damage to the environment of other states or to areas beyond a state's national jurisdiction.

The Government of Revels affirms that its recently launched project is not in contravention of international law; however, if it were to be so, the project still opposes the Principle of Sovereignty and Responsibility since it is harming the European Eel of

¹³ Id. at 54-55.

¹⁴ Valverde Soto, Max. *General Principles of International Law*. University of Costa Rica. 194. (1996).

the Sargasso Sea, an area beyond state's national jurisdiction. Also, the fact that Revels points out Article 87 of UNCLOS to justify its use of the high seas does not mean that there is no existence of a breach of an international obligation, seeing that the Principle of Sovereignty and Responsibility states that areas beyond state's national jurisdiction should not be harmed. The Government of Revels likewise talks about the Precautionary Principle weighing in favor of its project to mitigate climate change, but it is forgetful of the Principle of Sovereignty and Responsibility stated above.

b. Taking into consideration UNCLOS and the Advisory Opinion of the Seabed Disputes Chamber of ITLOS, Revels can be held liable for not complying with its obligations as a Sponsoring State with respect to activities carried out by the SEA Corporation.

As stated above, Revels mentioned that Alliguna seems to ignore that all states have freedom of the high seas under Article 87 of UNCLOS. In such case, Revels seems to ignore that the freedom of the high seas is specifically regulated by UNCLOS and that Article 139 of this treaty establishes that all "States Parties shall have the responsibility to ensure that activities in the Area, whether carried out by States Parties, or state enterprises or natural or juridical persons which possess the nationality of State Parties or are effectively controlled by them or their nationals"¹⁵ shall be carried out in conformity with what UNCLOS establishes. So, even though the Government of Revels denies its relationship with the SEA Corporation, it is undoubtedly responsible for its conduct in the high seas. In all, if Revels is not taking responsibility of the matter, the

¹⁵ United Nations Convention on the Law of the Sea, *opened for signature*. December 10, 1982, art. 139.

State Parties members of the Authority should be suspicious of how the SEA Corporation is being regulated, since all juridical persons carrying out activities in the high seas are meant to be carefully observed and regulated by the State Party they belong to, so that they can follow the qualifications set by the Authority. Since nothing was attempted by Revels to prevent the harming of the European Eel, then

Now, it would be a completely different thing if Revels did not know about the SEA Corporation's conduct, but it did, and its government even sponsored the juridical person to harvest Sargassum. The 2011 Advisory Opinion of the Seabed Disputes Chamber of ITLOS, by taking into consideration the dispositions of UNCLOS, further analyses two kinds of Sponsoring States obligations (for both developed and developing Countries):

1) The obligation to ensure that sponsored contractors act in the terms set out by UNCLOS: this is the obligation of "due diligence", which means that Sponsoring States should take measures within its legal system (laws, regulations and administrative measures) to ensure that sponsored contractors carry out their activities accordingly to UNCLOS. If Revels is not in control of the SEA Corporation, how can State Parties members of the Authority of UNCLOS guarantee that the SEA Corporation is being well regulated? It is interpreted that Revels is not being responsible of ensuring that the juridical person is acting in the terms that UNCLOS establishes.

2) "Direct obligations with which the sponsoring States must comply independently of their obligation to ensure a certain conduct on the part of the

sponsored contractors”¹⁶: these include the obligations to assist the Authority and the application of the best environmental practices. If Revels is not in control of the SEA Corporation as stated above, how can State Parties members of the Authority guarantee that the activities of the SEA Corporation were authorized by the Authority before they were carried out? The same can be said about the application of the best environmental practices. By not taking control of the matter, it is interpreted that Revels did not ensure that the SEA Corporation were to act with the application of the best environmental practices, which led to the harming of the European Eel in the Sargasso Sea.

All of this means that Revels, as a Sponsoring State, can be held liable for “its failure to fulfill its obligations”¹⁷ under UNCLOS. Two conditions are needed to establish the liability of the sponsoring State, which are also highlighted by the 2011 Advisory Opinion. The sponsoring State (a) must have had failed to carry out its responsibilities under UNCLOS and (b) there must have been an occurrence of damage; and there must exist a causal link between (a) and (b). In the case of Revels, it has already been implied that it failed to carry out its responsibilities as a Sponsoring State and because of so, the European Eel’s ecosystem was harmed. Therefore, it is interpreted that Revels can be held liable for its failure in fulfilling its obligations as a Sponsoring State.

3. THE REPUBLIC OF REVELS IS REQUIRED TO REMEDIATE FOR HARMING THE ECOSYSTEM IN THE SARGASSO SEA.

¹⁶ Responsibilities and obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area
Advisory Opinion, 2011, Seabed Disputes Chamber of ITLOS, (Feb. 1), 71.

¹⁷ Id. at 72.

As presented in the preceding arguments, the Republic of Revels is responsible for the detriment to the Sargasso Sea ecosystem and the European eel population. The Republic of Revels has failed to observe international customary law through its funding of the SEA Corporation and by the SEA Corporation's actions. Moreover, the Republic of Revels has also failed to observe international customary law as provided by the *sic utere tuo ut alienum non laedas principle*¹⁸ and the good neighborliness principle¹⁹. It is therefore required that the Republic of Revels remediate the harm caused to the Sargasso Sea ecosystem and the European eel population.

a. The Republic of Revels has failed to observe international customary law as provided by the *sic utere tuo ut alienum non laedas principle* and the good neighborliness principle.

As has been stated, the SEA Corporation's actions have had (and continue to have) a negative impact on the Sargasso Sea ecosystem and the European eel population. Even though the area being directly impacted is found at high-seas, international customary law provides for a the prohibition of transboundary environmental harm, or as otherwise known "no harm rule". The Republic of Revels has a duty to act as to not injure the interests of other States; this would constitute the principle of international integrity. Furthermore, Principle 2 of the Rio Declaration limits the sovereign right of any State to exploit their own resources, pursuant to their own environmental and developmental policies, in that it may only be done ensuring such activities do not

¹⁸ Jervan, Marte, Master thesis, *The Prohibition of Transboundary Environmental Harm: The ICJ and the No-Harm Rule*, UiOUiO PluriCourts - Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order, (2016).

¹⁹ Sucharitkul, Sompong. *The Principles of Good-Neighborliness in International Law*, Golden Gate University School of Law GGU Law Digital Commons, (1996).

damage the environment of other States or of areas beyond the limits of national jurisdiction²⁰.

On the other hand, the good neighborliness principle obligates states to try to reconcile their interests with the interests of neighboring states. The Republic of Revels has shown a dismal lack of regard for the European eel, a species that is fully intertwined with the culture of the people of the Federal States of Alliguna. At no point did the Republic of Revels attempt to reconcile its activities and interests with those of the Federal States of Alliguna.

Thus, the sum of the above entails that the Republic of Revels is in contravention of international customary law.

b. As adequate reparation, the Republic of Revels is required to remediate the harm caused to the Sargasso Sea ecosystem and the European eel population.

The Republic of Revels has breached international customary law and has caused detriment to the Sargasso Sea ecosystem and the European eel population. This detriment is suffered by the Federal States of Alliguna (as stated previously) and, in the sense that the European eel is a critically endangered species that provides a variety of ecological services, just as well by the entire international community.

Subsequently, these damages must be compensated; it is a basic rule of international law that reparation is to be made for violations of international law²¹. Such

²⁰ United Nations Conference on Environment and Development, June 3-14, 1992, *Rio Declaration on Environment and Development*, U.N. DOC. A/CONF. 151/26 (1992)

is the case that these environmental damages must be calculated in the basis of the link between reasonable costs of restoration measures, reinstatement measures, or preventative measures.

Given the importance of the Sargasso Sea ecosystem and the European eel population, a mere monetary compensation would be insufficient. En general terms, the consequence to these actions must be enough to discourage them in the future, must foster the integral reparation to the environment, must indemnify the economic damages associated with the detriment, and must procure the necessary funds to finance the remedy²².

²¹ The Factory at Chorzow (Pol. v. Ger.), 1927 P.C.I.J. (ser. A) No. 9

²² García López, Tania, *El principio de la reparación del daño ambiental en el derecho internacional público. Una aproximación a su recepción por parte del derecho mexicano*. Universidad Nacional Autónoma de México, (2016).

CONCLUSION

Applicant, the Federal States of Alliguna, respectfully requests the International Court of Justice adjudge and declare that:

1. The Republic of Revels violated international law by harming the European Eel (*ANGUILLA ANGUILLA*) population and ecosystem of the Sargasso Sea.
2. The Republic of Revels is responsible for the conduct of the “SEA” Corporation.
3. The Republic of Revels is required to remediate the damages caused to the ecosystem of the Sargasso Sea.

Respectfully Submitted,

X _____

Representatives for the
Federal States of Alliguna

