

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**

THE FEDERAL STATES OF ALLIGUNA

APPLICANT

V.

THE REPUBLIC OF REVELS

RESPONDENT

MEMORIAL FOR APPLICANT

23RD STETSON MOOT COURT COMPETITION

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LIST OF ABBREVIATIONS

Alliguna, Applicant	The Federal States of Alliguna
App no	Application Number
CBD	The Convention on Biological Diversity, Jun.5, 1992, 1760 UNTS 79
CMS	The Convention on the Conservation of Migratory Species of Wild Animals, Jun.23, 1979, 1651 UNTS 333
EBSA	Ecologically or Biologically Significant Marine Areas
EIA	Environmental impact assessment
ICJ, The Court	International Court of Justice
ILC	International Law Commission
IUCN Red List of Threatened Species	The IUCN Red List
ITLOS	International Tribunal on the Law of Sea
NDC	Nationally Determined Contributions
No.	Number
Para	Paragraph
Paras	Paragraphs
Revels, Respondent	The Republic of Revels
SEA Corp.	Seaweed Energy Alternatives, Inc.

SHP	Sargassum harvesting project for reduction of greenhouse gas emissions
Statute	The Statute of the International Court of Justice, Apr.18 1946, 33 U.S.T.S. 993
Record	The 2018-2019 Stetson International Environmental Moot Court Competition
UNCLOS	The United Nations Convention on the Law of Seas, Dec.10 1982, 1833 UNTS 3
UNFCCC	The United Nations Framework Convention on Climate Change, May 9 1992, 1771 UNTS 107
UNGA	United Nations General Assembly
V	Versus
VCLT	Vienna Convention on the Law of Treaties, May 23 1969, 1155 UNTS 331

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QUESTIONS PRESENTED

I.

Whether the ICJ has jurisdiction to determine the matter;

II.

Whether the SEA Corp. activities are attributable to the Republic of Revels;

III.

Whether the Republic of Revels violated international law by negatively impacting the European Eel through the SHP in the Sargasso Sea.

STATEMENT OF JURISDICTION

Alliguna and Revels submitted written declarations stating that they would submit any dispute concerning the interpretation or application of the CBD, the UNFCCC and the Paris Agreement to the ICJ.

Therefore, both parties have accepted jurisdiction of the Court under these treaties pursuant to Article 36(1) of its Statute.

The ICJ has jurisdiction under the CMS as it provides targeted protection for the European eel. The European eel is listed in the Appendix II to the CMS, therefore, its conservation has to be achieved by the agreement between the Range States, namely, the CBD.

The ICJ can determine a matter under the UNCLOS. According to the exceptional clause of Article 282 of the UNCLOS, the CBD constitutes an agreement of the States to submit the disputes concerning the interpretation and application of the UNCLOS to the ICJ.

STATEMENT OF FACTS

Alliguna and Revels

Alliguna and Revels are neighboring coastal sovereign states located in the North Atlantic Ocean near the Sargasso Sea. Both countries' coasts are approximately 250 nautical miles from the Sargasso Sea. Alliguna is a developed country, while Revels is a developing one.

The European Eel

The European Eel (*Anguilla anguilla*) is a catadromous migratory species that is listed as the Critically Endangered ones in the IUCN Red List. The European eels are found in the variety of habitats in multiple continents and countries, including Alliguna and Revels. The European eels migrate to the Sargasso Sea to spawn. The recruitment and population of the European eels have significantly declined over the past several decades. The species features prominently in Alliguna's culture, religion, and history. In 2010, the Government of Alliguna passed strict domestic legislation regarding the protection and recovering of the European eels.

The Sargasso Sea and Sargassum

The Sargasso Sea is a no-boundaries region in the North Atlantic Ocean. This sea is the only spawning area of the European eels in the world. This is

also the territory of the natural existence of the seaweed called Sargassum, which is a key element of its marine ecosystem.

The SHP of the SEA Corp.

In July 2016, the SEA Corp. received a subsidy from the Government of Revels and launched its biofuels initiative called the SHP. It includes harvesting of Sargassum from the Sargasso Sea on the high seas. The SEA Corp. uses Columbus vessel, which sails under the flag of Revels, to harvest Sargassum.

The subsidy was funded as part of the Revels Governmental program to reduce greenhouse gas emissions and expand the use of renewable energy. Revels expected that such projects would help it to meet its NDC commitments under the Paris Agreement.

The news media has covered the SHP widely in Revels and other countries, including Alliguna. At the end of 2016, the Government of Revels issued a press release and report regarding the SHP and a few of other projects that had received subsidies.

Diplomatic communication between Alliguna and Revels

On 13 January 2017, Alliguna forwarded a first diplomatic note to Revels. It contained concerns about the harvesting Sargassum in the Sargasso Sea and the possible significant adverse impacts of the SHP on the European eels. Alliguna stated that the SHP creates a likely harm to the European eels and

therefore violates international law. Also, Alliguna stressed the importance of the Sargasso Sea as the EBSA and expressed a desire to send representatives to Revels to discuss this situation.

On 11 March 2017, Revels replied to Alliguna that it is not aware of negative impact from the SHP on the Sargasso Sea or the European eels. It said that the SHP is important because it will help Revels to achieve its NDC commitments. Revels disagreed on the violation of international law from its side and stated that it is not responsible for the conduct of the SEA Corp. on the high seas as a private company. Revels also disagreed to meet Alliguna`s representatives, arguing that it is unnecessary.

In further notes from 9 April 2017 and 7 July 2017, Alliguna emphasized on the need for protection of the European eels and the fact of violation of international law by Revels. In turn, Revels replied to Alliguna on 22 May 2017 and 14 September 2017 accordingly stating that it does not violate international law because of the freedom of high seas. Revels stated that Alliguna had not presented any evidence to demonstrate how the SHP negatively impacts the European eels. Therefore, there is no causal link between the SHP and harm to the European eels.

The results of communication

For the next several months, Alliguna and Revels engaged in negotiations, followed by mediation, but failed to resolve the dispute. In February 2018, Alliguna asked Revels to submit the matter to the ICJ, but Revels refused. On 21 April 2018, Alliguna submitted an Application to the ICJ instituting proceedings against Revels. On 5 May 2018, Revels submitted its Preliminary Objections to the ICJ.

SUMMARY OF ARGUMENTS

The ICJ has jurisdiction to determine the matter

Alliguna and Revels submitted written declarations stating that they would submit any dispute concerning the interpretation of application of the CBD, the UNFCCC and the Paris Agreement to the ICJ. Therefore, both parties have accepted jurisdiction of the Court pursuant to Article 36(1) of the Statute.

The ICJ has jurisdiction under the CMS as it provides targeted protection for the European Eel. The European Eel is listed in the Appendix II to the CMS, therefore, conservation has to be achieved by the agreement between the Range States, namely, under the CBD.

The ICJ may determine the matter under the UNCLOS. According to the exceptional clause of Article 282 of the UNCLOS, the CBD constitutes an agreement of the States to submit the disputes concerning the interpretation and application of the UNCLOS to the ICJ.

Revels is responsible for the activities of the Sea Corp.

Revels shall be liable for the SHP conducted by the SEA Corp. due to its responsibility to ensure *no-harm* infliction under the CBD. Responsibility to ensure means that States shall control the fulfillment of due diligence obligation by the entities of their nationality, including private entities.

In addition, under Article 94 of the UNCLOS, the genuine link between the State and the ship under its flag entails an obligation for this State to exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

Finally, Revels as a sponsoring State has direct obligations to ensure that private entity runs the sponsored activity in accordance with international law. Therefore, Revels shall be fully responsible for the activities of the SEA Corp.

Revels violated international law by negatively impacting the European Eel through the SHP in the Sargasso Sea.

Revels is obliged to ensure that activities within their jurisdiction do not cause damage to the environment, in particular, within the high seas. This obligation includes the duty of due diligence in order to apply precautionary measures when the possible damage could be caused to the environment of the high seas. Revels is also required to cooperate with Alliguna for the conservation of biodiversity.

Revels violated its international obligations when it failed to conduct a general EIA. This means that Revels did not apply precautionary measures to protect the European eels. Also, Revels did not inform Alliguna about the uncertainty of the impacts from the SHP on the European eels.

Revels continue operating the SHP disregarding the concerns of Alliguna.

Therefore, Revels violated international law.

ARGUMENTS

I. THE INTERNATIONAL COURT OF JUSTICE HAS JURISDICTION TO DETERMINE THAT THE REPUBLIC OF REVELS IS RESPONSIBLE FOR THE CONDUCT AT ISSUE, AND THE REPUBLIC OF REVELS IS RESPONSIBLE FOR THE ACTIVITIES OF THE SEAWEED ENERGY ALTERNATIVES, INC.

1. The ICJ has jurisdiction to determine that Revels is responsible for the conduct at issue.

Although Revels has not recognized the jurisdiction of the ICJ as compulsory ipso facto,¹ its jurisdiction still comprises all cases, which the parties refer to it, and all matters specially provided for in conventions in force.² The ICJ exercises jurisdiction over the dispute at hand, as it concerns the interpretation and application of the CBD, the UNFCCC and the Paris Agreement.³

¹ *Record*, para. 5

² The Statute of the International Court of Justice, Apr.18 1946, 33 U.S.T.S. 993 [“**Statute**”], Art. 36(1); *Fisheries Jurisdiction* (Sp. v. Can.), Judgment, 1998 ICJ 432 (Dec. 4), para. 13; *Frontier Land* (Belg. v. Neth.), Judgment, 1959 I.C.J. Reports 209 (Jun.20), p.26; Malcolm Shaw, *International law* (6th. Ed., 2008), p.1075

³ *Record*, paras. 7, 10

A. The CBD rules on jurisdiction are applicable in the present case.

As it stated in the *Southern Bluefin Tuna* case, there is no reason why an activity of a State may not violate its obligations under more than one treaty.⁴ In the present case, there is a parallelism of treaties containing the similar substantive obligations but different rules on defining jurisdiction over the dispute arising from their violation.⁵ Namely, the ICJ has jurisdiction to settle this dispute under the CBD as (1) the CMS does not contain a specific obligation violated by Revels unlike to the CBD and (2) the CBD is an agreement providing compulsory jurisdiction of the ICJ prevailing over the rules of jurisdiction provided in the UNCLOS.

a) The subject matter of the dispute falls within the scope of the CBD.

Under Article 27(3) of the CBD Alliguna and Revels recognized jurisdiction of the ICJ over disputes regarding interpretation and application of this convention.⁶ At the same time, Article 10(b) and 10(c) of the CBD obliges the Contracting Parties to adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity.⁷

⁴ *Southern Bluefin Tuna* case (N.Z. v. Japan, Aus. v. Japan), I.T.L.O.S. Case No. 3 (1999) [*“SBT”*], Award on Jurisdiction and Admissibility of Aug.4 2000, para. 52

⁵ Shabtai Rosenne, *The law and practice of of the International Court, 1920-2005* (4th. Ed., 1995), p.507-509

⁶ The Convention on Biological Diversity, Jun.5, 1992, 1760 UNTS 79 [*“CBD”*], Art. 27(3);

⁷ *Ibid*, Art. 10(b) and 10 (c)

The European Eel is included into the Appendix II of the CMS as the species with unfavorable conservation status.⁸ Article 4(3) of the CMS provides that the Range States, including Revals and Alliguna,⁹ of the migratory species listed in the Appendix II have an obligation to conclude an agreement to protect and conserve such species.¹⁰

Thus, the CMS does not provide an obligation for the Range States under Appendix II of the Convention that is concurrent to those provided in Article 10(b, c) of the CBD. Consequently, the CBD covers the subject matter of the dispute and its rules on jurisdiction should be applicable in this case.

B. The dispute constitutes an exemption from the rules of jurisdiction under the UNCLOS.

Article 5 of the CBD obliges the Contracting Parties to cooperate with each other in respect of areas beyond national jurisdiction for the conservation and sustainable use of biological diversity.¹¹ Similarly, Articles 117 and 118 of the UNCLOS oblige the Parties to cooperate with other States for conservation of the living resources of the high seas.¹²

⁸ Appendix II of the CMS, p. 14

⁹ *Record*, para. 8

¹⁰ The Convention on the Conservation of Migratory Species of Wild Animals, Jun.23, 1979, 1651 UNTS 333 [“CMS”], Art. 4(3)

¹¹ The CBD, Art. 5;

¹² The United Nations Convention on the Law of Seas, Dec.10 1982, 1833 UNTS 3 [“UNCLOS”], Art. 117,118

Article 282 of the UNCLOS provides that the States Parties may choose the procedure for the settlement of the disputes under the UNCLOS in a way which differs from the one prescribed in Article 287 of the Convention. For that, the States Parties may conclude a general agreement regarding submission of the disputes to a compulsory procedure of their choice.¹³

In the *South China Sea* case, the PCA stated that the CBD might be such an agreement if it corresponds to the following conditions. First, the CBD must constitute an agreement for the settlement of a dispute concerning the interpretation or application of the UNCLOS; second, there is an agreement to submit such disputes to a compulsory procedure; third, this agreed compulsory procedure has to “entail binding decision”.¹⁴

In the present Case, all these requirements are presented.¹⁵ Therefore, the CBD is the general agreement that submits such dispute to the ICJ in the same time excluding application of the UNCLOS provisions on jurisdiction.

¹³ The UNCLOS, Art. 282; *Military and Paramilitary Activities In and Against Nicaragua*, Judgement, Merits, 1986 ICJ 14 (Jun. 27), para. 44

¹⁴ *South China Sea Arbitration* (Philip. v. China), P.C.A. Case No. 2013-19 (2016) [*“South China Sea”*], Award on Jurisdiction and Admissibility, para. 318

¹⁵ The CBD, Art.3 and 5; The UNCLOS, Art.117, 118,192 (2), 282; The Statute of the ICJ, Art.59; *Nuclear Test Case (N.Z. v. Fr.)*, Judgment, 1974 I.C.J. 457 (Dec. 20), para. 23; *South China Sea*, paras. 319-320; *Record*, para. 7

C. The dispute concerns interpretation and application of the UNFCCC and the Paris Agreement.

Article 2 of the Paris Agreement establishes an obligation for its Parties on taking measures for mitigating gas emissions,¹⁶ namely implementing programs for mitigation of the climate change.¹⁷ In addition, Article 4(f) of the UNFCCC provides that the States shall employ the EIA with a view to minimize adverse effects from such projects on the environment.¹⁸ Representatives of Revels recognized that they sponsored the SHP in order to meet the NDC commitments, i.e. to mitigate gas emissions.¹⁹ Thus, there is an issue of interpretation of the appropriate methods of implementation of the gas emission projects.

In accordance with Article 14 of the UNFCCC and Article 24 of the Paris Agreement,²⁰ both parties submit their disputes concerning the interpretation and application of this Convention to the ICJ,²¹ which means that the ICJ has jurisdiction over this case.²²

¹⁶ The Paris Agreement, FCCC/CP/2015/10/Add.1 (Dec.13, 2015) [**“Paris Agreement”**], Art. 2

¹⁷ The United Nations Framework Convention on Climate Change, May 9 1992, 1771 UNTS 107 [**“UNFCCC”**], Art. 4(b)

¹⁸ *Ibid*, Art. 4(f);

¹⁹ *Record*, para. 14

²⁰ The UNFCCC, Art. 14; Paris Agreement, Art. 24

²¹ *Record*, para. 10.

²² *Supra*, note 2

2. Revels is responsible for the activities of the SEA Corp.

Revels shall be liable for the SHP conducted by the SEA Corp. due to (1) its responsibility to ensure infliction of no-harm, (2) the genuine link with the vessel under the flag of Revels and (3) its obligations as the sponsoring State.

A. Revels has a responsibility to ensure that the SHP does not cause damage to the environment of areas beyond the limits of national jurisdiction.

Article 3 of the CBD obliges the States to ensure that activities under their jurisdiction do not cause damage to the environment of areas beyond the limits of national jurisdiction.²³ In *Activities in the Area* case, the ITLOS stated that responsibility to ensure means that States shall control the fulfillment of due diligence obligation by the entities of their nationality.²⁴ Such control shall cover activities of non-governmental entities beyond the limits of national jurisdiction as well.²⁵

In the *Pulp Mills* case, the ICJ confirmed this position and stated that in course of due diligence obligation the States shall adopt appropriate rules and

²³ The CBD, Art. 3;

²⁴ *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, Advisory Opinion, ITLOS Case No 17, (Feb.1 2011) [*“Activities in the Area”*], para. 108;

²⁵ UNGA, Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, UN Doc. A/RES/25/2749 (Dec.12 1970), para. 14;

measures of activities and exercise administrative control over private operators, in particular, in form of monitoring activities.²⁶

Consequently, Revels is obliged to ensure that activities of the SEA Corp. and, in particular, the SHP do not cause damage to the environment.

B. Revels shall exercise control over the activities of vessels under its flag.

The exercise of the control over the private actors' activities by the State is even more self-evident if dealing with maritime sphere. By virtue of Article 94 of the UNCLOS, the genuine link between the State and the ship under its flag entails an obligation for this State to exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.²⁷ In *M/V Saiga* case, the ITLOS concluded that connection between the ship and its flag State secures more effective implementation of the State's obligations.²⁸

As the vessel of the SEA Corp. is flying the flag of Revels,²⁹ it means that the activities of the vessel are subject to control of Revels and its exclusive jurisdiction on the high seas.³⁰

²⁶ *Pulp Mills on the River Uruguay* (Arg.v.Uruguay), Judgment, 2010 I.C.J. 14 [“*Pupl Mills*”], para. 197;

²⁷ The UNCLOS, Art. 94;

²⁸ *The M/V “SAIGA”* case (St. Vinc. & Grenad. v. Guin.), Judgment, I.T.L.O.S. Case No. 2 (Jul.1 1999); para. 86

²⁹ *Record*, para. 13

³⁰ The UNCLOS, Art. 92

C. Revels has obligations to control the activities of the SEA Corp. as the sponsoring State.

The ITLOS emphasized in the *Activities in the Area* case that the sponsoring State has direct obligations to ensure that private entity runs the sponsored activity in accordance with international law..³¹ These obligations include conduct of the EIA, application of the precautionary approach and best environmental practices as well as cooperation with another States in order to minimize the adverse impacts on the environment.³²

Revels sponsored the SHP conducted by the SEA Corp.³³ Hence, even though the SHP is directly implemented by the SEA Corp., Revels holds enlisted duties as the sponsoring State and shall be liable for the violation under international law.

II. THE REPUBLIC OF REVELS VIOLATED INTERNATIONAL LAW BY NEGATIVELY IMPACTING THE EUROPEAN EEL THROUGH THE SARGASSUM HARVESTING PROJECT IN THE SARGASSO SEA.

Revels (1) violated its obligation not to cause damage to the environment via (1.1) failure to fulfill due diligence obligation and (1.2.) non-application of the precautionary measures, as well as (2) neglected to cooperate with the

³¹ *Activities in the Area*, para. 121;

³² *Ibid*, para. 122

³³ *Supra*, note 18

interested States for the conservation and sustainable use of biological diversity in respect of areas beyond national jurisdiction.

1. Revels violated the obligation not to cause damage to the environment.

Under international law the States are obliged to ensure that activities within their jurisdiction do not cause damage to the environment, in particular, within the areas beyond the limits of national jurisdiction³⁴including the high seas.³⁵ International customary obligation not to cause environmental harm,³⁶ also known as *no-harm* rule,³⁷ includes the following consequential rules: due

³⁴ The CBD, Art. 3; The UNCLOS, Art.194 (2); The CMS, Art.2 (1); *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996, I.C.J. 226 [“*Nuclear Weapons*”] para. 29; *Gabčíkovo-Nagymaros Project* (Hun. v. Slov.), Judgment, 1997 I.C.J. 7 [“*Gabčíkovo-Nagymaros*”] para. 53; *Pulp Mills*, para. 101; *Certain Activities Carried Out by Nicaragua in the Border Area* (Costa Rica v. Nicaragua), Judgment, 2015 I.C. J. 66 [“*Certain Activities*”] para. 118; *Record*, para. 13

³⁵ Lee A. Kimball, 'The International Legal Regime of the High Seas and the Seabed Beyond the Limits of National Jurisdiction' [2005] SCBD 64, p.5

³⁶ *Nuclear Weapons*, para. 29; *Gabcikovo-Nagymaros*, para. 53; *Pulp Mills*, para. 101; *Certain Activities*, para. 118; *Corfu Channel* case (U.K. v. Alb.), Merits, Judgment, 1949 I.C.J. 4, p. 22; *Trail Smelter Arbitration* (U.S. v. Can.), 3 R.I.A.A. 1905, p.1965; UNGA, Stockholm Declaration, U.N. Doc. A/CONF.48/14/Rev.1 (Jun.16 1972), Principle 21; Marte Jervan, 'The Prohibition Of Transboundary Environmental Harm. An Analysis Of The Contribution Of The International Court Of Justice To The Development Of The No-Harm Rule' [2014] PluriCourts 150, p.1

³⁷ Kerryn Brent, 'The Certain Activities Case: What Implications For The No-Harm Rule?' [2017] APJEL 28, p.1

diligence obligation and precautionary approach.³⁸ Violation of one of such rules is equal to the violation of *no-harm* rule.³⁹

A. Revels did not fulfill obligation of due diligence.

Due diligence is an obligation “of conduct”⁴⁰ that has to be fulfilled via adoption of regulatory measures by the State.⁴¹ Scope of such measures differs depending on the specific risks and activities in question.⁴² The only indispensable requirement of due diligence obligation is conduct of the EIA.⁴³

As the ICJ stressed in *Pulp Mills* case, the State may be obliged to conduct several EIAs to fulfill due diligence obligation.⁴⁴ It could be required in order to assess any significant damage in which the planned activities may result.⁴⁵

³⁸ Timo Koivurova, ‘Due diligence’ [2013] OUP, p.3; Marte Jervan, ‘The Prohibition Of Transboundary Environmental Harm. An Analysis Of The Contribution Of The International Court Of Justice To The Development Of The No-Harm Rule’ [2014] PluriCourts 150, p.65-66, 72-75.

³⁹ The CBD, Art.5, 14 (1) (d); The UNFCCC, Art.3 (3), (5); The CMS, Art.2 (1); The UNCLOS, Art.197, 198; International Law Association, *Study Group on Due Diligence in International Law Second Report* (76th Session, First Report, 2014), p.25; Marte Jervan, ‘The Prohibition Of Transboundary Environmental Harm. An Analysis Of The Contribution Of The International Court Of Justice To The Development Of The No-Harm Rule’ [2014] PluriCourts 150, p.65; *Record*, para 18 (2), (3); 19 (3); *Clarifications*, q.17

⁴⁰ *Activities in the Area*, para. 110

⁴¹ *Pulp Mills*, para 185-187; *Activities in the Area*, paras. 111, 112, 115, 197

⁴² *Activities in the Area*, para. 117; Christina Voigt, ‘State Responsibility for Climate Change Damages’ [2008] Nord J. of Int’ L 1, p.10

⁴³ *Pulp Mills*, para 204

⁴⁴ *Pulp Mills*, paras 102, 116; This Memorial, chapter II (2)

⁴⁵ *Ibid.*

In the present case, the prior EIA conducted by Revels showed that the impacts derived from the SHP on marine biodiversity, and, in particular, population of the European eels, are uncertain.⁴⁶ Therefore, Revels was obliged to keep performing due diligence obligation and to conduct the general EIA after the project has started to overcome the uncertainty factor and define whether there is a possibility of adverse effects on the European eels.

In turn, Revels did not conduct any EIA afterwards despite the fact that it received uncertain results of the prior EIA. Therefore, Revels failed to fulfill obligation of due diligence.

B. Revels failed to apply a precautionary approach.

Uncertainty of adverse effects, possibility of which is not clearly determined⁴⁷ is a defining criterion for precautionary approach.⁴⁸ This approach is an integral part of the due diligence obligation.⁴⁹ The precautionary approach implies that a lack of full scientific certainty regarding the possible serious and

⁴⁶ *Clarifications*, q.17

⁴⁷ 'What's All The Fuss About The Precautionary Principle?' *The Guardians* (London, 12 July 2013).

⁴⁸ Arie Trouwborst, 'The Relationship Between the Precautionary Principle and the Preventative Principle in International Law and Associated Questions' [2009] *Erasmus Law Review* 23, p.116.

⁴⁹ *Activities in the Area*, para. 131; *Nuclear Weapons* (Judge Palmer dissenting opinion, p.412; Judge Weeramantry dissenting opinion, p. 342); *MOX Plant Case* (Ire. V. U.K.) Order, Request for Provisional Measures, ITLOS Case No. 10 (2001) [*“MOX Plant”*], para. 34; The Vienna Convention on the Law of Treaties, May 23 1969, 1155 UNTS 331, Art. 31(3)(a); C.B.D. Decision IX/20, UNEP/CBD/COP/DEC/IX/20 (Oct. 9 2008), para. 22

irreversible damages shall not preclude States from applying measures to prevent environmental degradation.⁵⁰

In *Southern Bluefin Tuna* case, Australia and New Zealand claimed that conduct of any unilateral actions by Japan, in particular, experimental fishing project, regarding a seriously depleted stock where scientific evidence indicates that so doing may possibly threaten its recovery, is in violation of the precautionary approach.⁵¹ The ITLOS supported the claim, having emphasized on historically lowest level of population of southern bluefin tuna, existence of scientific uncertainty and urgency of threat to the species.⁵²

During the last several decades both the recruitment and the population of the European eels have seriously declined.⁵³ According to the IUCN Red List, one of the major reasons of the European eels` population decline is habitat loss.⁵⁴ Taking into account that the SHP destroys the natural spawn habitat of the European eels⁵⁵it is clear that harvesting of Sargassum significantly contributes to extinction of the European eels. It constitutes an adverse impact

⁵⁰ Rio Declaration on Environment and Development 1992 [“**Rio Declaration**”], Principle 15

⁵¹ *SBT*, Order of Aug.27 1999, paras. 28 (1) (e), 29 (1) (e)

⁵² *Ibid*, paras. 79, 80, 85

⁵³ *Record*, para 3

⁵⁴ The IUCN Red List of Threatened Species,IUCN, 2014

⁵⁵ *Record*, paras. 3, 13, 14

on the Range States that are interested in preservation of the species,⁵⁶ including *Alliguna*.⁵⁷

Alliguna stressed on the possible infliction of harm to the European eels as to the catadromous migratory species.⁵⁸ Revels responded that it is not aware of negative impact on the European eels.⁵⁹ It demonstrates Revels` carelessness about the impact from the SHP. Meanwhile, Revels was expected to apply and enforce the administrative measures to control the SHP`s impact⁶⁰ on the marine biodiversity and especially on the European Eels. Consequently, having failed to do so, Revels does not comply with the precautionary approach.

Thus, the Republic of Revels failed to fulfill due diligence obligation and precautionary principle that amounts to violation of *no-harm* rule.

2. The Republic of Revels fails to fulfill its duty to cooperate.

Obligation to cooperate in good faith⁶¹ is an obligation “of conduct”⁶² which has a customary nature.⁶³ This obligation concerns the biological diversity as well.⁶⁴ Article 5 of the CBD provides that the States shall cooperate

⁵⁶ The CMS, Art. 1 (1)(h); *Record*, para 20 (1)

⁵⁷ *Ibid*; The CBD, Art. 10 (1)(c)

⁵⁸ *Record*, para 18 (2); The CMS, Appendix II

⁵⁹ *Record*, para 19 (2)

⁶⁰ *Supra*, note 12; *Gabčikovo-Nagymaros*, para 140; *Record*, para 19 (1); This Memorial, part II (2)

⁶¹ *Lake Lanoux Arbitration* (Fr. v. Spa.) 12 R.I.A.A. 281 (1957), pp. 306-310

⁶² *Ibid*

⁶³ *Ibid*; *Ibid*; *Nuclear Weapons*, para 103;

⁶⁴ The CBD, Art.5

for the conservation and sustainable use of biological diversity in respect of areas beyond national jurisdiction. Hence, a need for protection of the survival and variability within species entails vital necessity of cooperation.⁶⁵ The importance of this obligation is emphasized in international documents related to the conservation of biological diversity, in particular, in the Sargasso Sea.⁶⁶

As the ICJ stated in *Pulp Mills* case, cooperation involves informing, notifying and negotiating⁶⁷ which should be based on the results of the EIA.⁶⁸

Firstly, an initiating State has to inform directly all other interested States⁶⁹ about the planned activities before their commencement.⁷⁰ It enables such interested States to determine whether these activities might cause significant damage to them and initiate cooperation if necessary.⁷¹

⁶⁵ Michael Allaby, *A Dictionary of Ecology*, (4th ed., 2010); *Global Biodiversity Strategy*. World Resources Institute, The World Conservation Union and United Nations Environment Programme, [1992] WRI IUCN & UNEP, p.25

⁶⁶ C.B.D. Decision IX/20, UNEP/CBD/COP/DEC/IX/20 (Oct. 9 2008), paras.11, 22; C.B.D. Decision X/29, UNEP/CBD/COP/DEC/X/29 (Oct. 29 2010), paras. 8 (a), 1, Annex I; UNGA, Resolution 67/78 (Oceans and the law of the sea), UN Doc. A/RES/67/78 (Apr.18 2013), para.199; UNGA, Resolution 68/70 (Oceans and the law of the sea), UN Doc. A/RES/68/70 (Feb.27 2014), para.215; UNGA, Resolution 68/70 (Oceans and the law of the sea), UN Doc. A/RES/69/245 (Feb.24 2015), para.231; David Freestone, Howard Roe, Dan Laffoley, Kate Morrison, Jake Rice, Loma Inniss, Tammy Trott, `Chapter: Sargasso Sea` (2016), p.1-7; Sargasso Sea Alliance, *The protection and management of the Sargasso Sea: The golden floating rainforest of the Atlantic Ocean. Summary Science and Supporting Evidence Case*, IUCN (2009), p.37

⁶⁷ *Pulp Mills*, para 115

⁶⁸ *Ibid*, para 120

⁶⁹ *Certain Questions of Mutual Assistance in Criminal Matters* (Djib. V. Fr.), Judgment, 2008 I.C.J. 177, para. 110

⁷⁰ *Pulp Mills*, paras. 94, 99

⁷¹ *Pulp Mills*, paras.. 94. 94, 102, 105

Secondly, upon request of any possibly affected State⁷² the initiating State has to describe main aspects of the planned activities in more detailed manner.⁷³ In particular, such description shall include results of the full EIA with estimation of any possible significant damage which might be caused by the activities.⁷⁴ The initiating State should keep informing interested States about any available data on the conduct and impacts of these activities.⁷⁵ If there are any concerns regarding that impact, the Parties shall enter into negotiations at any stage of the activities to fulfill the obligation to cooperate.⁷⁶

Moreover, under the UNFCCC Revels has to cooperate with Alliguna regarding development, elaboration and implementation of the SHP.⁷⁷ The implementation of such projects should be strictly monitored the initiating State. It has to employ appropriate measures, for example the EIA, to minimize adverse effects on the environment.⁷⁸

In *Southern Bluefin Tuna* case, the ITLOS supported a statement of Australia and New Zealand⁷⁹ that Japan violated its obligation to cooperate, in

⁷² *Supra*, note 42

⁷³ *Pulp Mills*, para. 112

⁷⁴ *Ibid*, para. 116

⁷⁵ *Ibid*, para. 113

⁷⁶ *Ibid*, para. 139; CBD, Art.27 (1)

⁷⁷ The UNFCCC, Art. 4(1)(c) and 4(1)(e)

⁷⁸ *Ibid*, Art. 4(1)(f)

⁷⁹ *SBT*, Order of Aug.27 1999, paras.68, 90 (1) (c), (d); Award on Jurisdiction and Admissibility of Aug.4 2000, paras. 33, 35

particular, via unilateral implementation of experimental fishing program without any efforts to cooperate with other interested States.⁸⁰

Hence, Revels did not discuss any aspects of the SHP with Alliguna. After receiving of the EIA results and before starting the SHP, Revels did not inform all the possibly affected States, including Alliguna, about its results. Having been concerned with possible effects of the SHP, Alliguna sent three diplomatic notes to the Government of Revels and tried to arrange a meeting between both States` representatives. For its part, Revels rejected this arrangement.⁸¹ After that, Alliguna initiated negotiations with Revels regarding likely harm to the European eels, but once again without any success.⁸²

Therefore, Revels failed to fulfill its obligation to cooperate for the conservation and sustainable use of biological diversity in respect of areas beyond national jurisdiction.

As a result, Revels violated *no-harm* rule via breach of due diligence obligation and failure to apply the precautionary approach, as well as totally neglected obligation to cooperate with Alliguna regarding conservation of the European eels.

⁸⁰ *SBT*, Award on Jurisdiction and Admissibility of Aug.4 2000, para. 33

⁸¹ *Record*, paras. 15, 17, 18, 19 (4), 20,22, 24

⁸² *Record*, paras. 18, 19 (4), 20,22, 24

CONCLUSION AND PRAYER FOR RELIEF

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

1. The International Court of Justice has jurisdiction to determine that the Republic of Revels is responsible for the conduct at issue, and the Republic of Revels is responsible for the activities of the SEA Corporation;

2. The Republic of Revels violated international law by negatively impacting the European Eel through Sargassum Harvesting Project in Sargasso Sea

RESPECTFULLY SUBMITTED,

AGENTS OF APPLICANT