

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



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

THE FEDERAL STATES OF ALLIGUNA

APPLICANT

v.

THE REPUBLIC OF REVELS

RESPONDENT

MEMORIAL FOR THE APPLICANT

THE 2018-2019 STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT

COMPETITION

NOVEMBER 2018

TABLE OF CONTENTS

INDEX OF AUTHORITIES.....	3
STATEMENT OF JURISDICTION	6
QUESTIONS PRESENTED.....	7
STATEMENT OF FACTS	8
SUMMARY OF ARGUMENTS	10
ARGUMENTS.....	11
I. THIS COURT HAS JURISDICTION TO DETERMINE THIS DISPUTE.....	11
A. The Court has jurisdiction to determine the present dispute pursuant to Article 36(1) of the ICJ Statute.	11
B. The Court has jurisdiction to determine this dispute notwithstanding that the dispute also concerns potential violations of the CMS and UNCLOS.	11
C. The Court has jurisdiction to apply relevant customary international law norms in adjudicating this dispute.	12
D. This Court can determine the claims against Revels notwithstanding Alliguna’s hydropower facilities.....	13
a) The clean hands doctrine does not apply to inter-state disputes.....	14
b) Even if the clean hands doctrine is applicable to this dispute, it does not bar Alliguna from seeking relief because Alliguna’s hands are not unclean.	14
II. REVELS IS RESPONSIBLE FOR SEA CORPORATION’S ACT OF SARGASSUM HARVESTING	14
A. SEA Corporation’s conduct is attributable to Revels	14
B. In any case, Revels’ failure to prevent or mitigate SEA Corporation’s Sargassum harvesting violates international law	15
a) Revels has breached its positive obligations under CBD articles to protect the Sargasso Sea ecosystem.....	16
b) In any event, Revels breached its obligations because it has not discharged its burden of proving the Project will not cause harm	18
c) Even if the conclusion produced by the EIA is accepted, Revels is still in breach because scientific uncertainty is no defence	19
d) Revels did not fulfil its procedural duties under the CBD as it failed to notify and seek consent from Alliguna.....	21
C. Revels has violated its duty to prevent transboundary harm under CIL.....	22
a) Revels can be held responsible for the activities of private individuals under its duty to prevent transboundary harm	22

b) Revels did not act with due diligence to prevent transboundary harm 23

D. Revels' attempt at fulfilling another international obligation does not preclude the wrongfulness
of its actions 24

CONCLUSION AND PRAYER FOR RELIEF.....26

INDEX OF AUTHORITIES

STATUTES

Statute of the International Court of Justice, 26 June 1945, T.S. 9931, 8, 10, 11

TREATISES

Convention on Biological Diversity, 6 June 1992, 1760 U.N.T.S. 798, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26

Convention on the Conservation of Migratory Species of Wild Animals, 23 June 1979..... 8, 10, 12, 16, 17, 18

Paris Agreement, U.N. Doc. FCCC/CP/2015/L.9/REV.1 (12 Dec. 2015) 8, 24, 25

United Nations Convention on the Law of the Sea, 10 Dec. 1982, 1833 U.N.T.S. 38, 10, 12, 13, 16

United Nations Framework Convention on Climate Change, 9 May 1992.....8, 20, 24, 25

Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 3318

Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) (1972)....23

Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea, 11 March 2014 8, 18, 20

Rio Declaration on Environment and Development, (1992) 20, 21, 23

CASES

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina/Serbia and Montenegro) (2007) ICJ Rep 4315

Construction of a Road in Costa Rica along the San Juan River (Nicaragua/Costa Rica) (Order on Provisional Measures) ICGJ 474 (ICJ 2013).....19

Corfu Channel Case (United Kingdom of Great Britain and Northern Ireland/Albania), [1949] ICJ Rep 4..21, 23

Dispute regarding Navigational and Related Rights (Costa Rica/Nicaragua), [2009] ICJ Rep 21321

Diversion of Water from the Meuse, Netherlands v Belgium, Judgment, PCIJ Series A/B No 70, ICGJ 321 (PCIJ 1937)14

Guyana v. Suriname, Award of the Arbitral Tribunal of Sept. 17, 2007, 47 I.L.M. 16613

M/V Saiga (No. 2) (St. Vincent v. Guinea), ITLOS Case No. 2, Judgment of July 1, 199913

M/V Virginia G (Pan. v. Guinea-Bissau), ITLOS Case No. 19, Judgment of Apr. 14, 2014.....13

Military and Paramilitary Activities in and against Nicaragua (Nicaragua/USA) (Merits) (1986) ICJ Rep 14... 15, 23, 24

Pulp Mills on the River Uruguay (Argentina/Uruguay) (Judgment) (2010) ICJ Rep 14 19, 20, 21, 23, 24

Southern Bluefin Tuna (New Zealand-Japan, Australia-Japan), 2000 Arbitral Tribunal 1 (Aug. 4) 11, 12

ARTICLES AND JOURNALS

Cooperation with other conventions and international organisations and initiatives. Adopted by the Conference of the Parties to the Convention on Biological Diversity at Its Sixth Meeting, U.N. DOC. UNEP/CBD/COP/6/INF/15 (14 March 2002)..... 17

Douhan, A., 2013. *Liability for Environmental Damage*. Max Planck Encyclopedia of Public International Law 16

Ebbesson, J., 2009. *Access to Information on Environmental Matters*. Max Planck Encyclopedia of Public International Law..... 21

ILC, *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities: Text adopted by the Commission at its fifty-third session, in 2001 UN Doc A/56/10, 370, [2001] II UNYBILC 146* 19, 23

ILC, *Role of subsequent agreements and subsequent practice in relation to the interpretation of constituent instruments of international organizations* (2015)..... 18

International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, UN Doc A/56/10* (2001) 15, 22

Kees, A., 2011. *Responsibility of States for Private Actors*. Max Planck Encyclopedia of Public International Law, [www.mpepil.com];..... 16

Koivurova, T., 2010. *Due Diligence*. Max Planck Encyclopedia of Public International Law 22, 23

Peter Tzeng, *Jurisdiction And Applicable Law Under UNCLOS* Yale LJ 126:242, 255 (2016) 13

Sargasso Sea Alliance, *The Protection and Management of the Sargasso Sea: The golden floating rainforest of the Atlantic Ocean* (2009) 16, 17, 20

Schröder, M., 2014. *Precautionary Approach/Principle*. Max Planck Encyclopedia of Public International Law 19, 20

South Atlantic Fishery Management Council 2002, *Fishery Management Plan for Pelagic Sargassum Habitat of the South Atlantic Region*, South Carolina 17

Stephen, M, 2013. *Clean Hands Principle*, Max Planck Encyclopedia of Public International Law 14

Tanzi, A., 2013. *Liability for Lawful Acts*. Max Planck Encyclopedia of Public International Law 21

Torben Wolff, *Utilization of seagrass in the deep sea*, *Aquatic Botany* 2 (1976)..... 17

DECISIONS AND RESOLUTIONS

CBD Decision COP IX/20	16, 21
CBD Decision COP VIII/24	21
CBD Decision COP X/29	16, 21
CMS Resolution 10.29	17
CMS Resolution 11.27	17
CMS Resolution 12.21	17

STATEMENT OF JURISDICTION

The Federal States of Alliguna ("Alliguna") submits the following dispute to the International Court of Justice (hereinafter "this Court" or "ICJ"). Pursuant to Article 36, paragraph 1 of the Statute of the ICJ, jurisdiction of this Court comprises all cases and matters provided in treaties and conventions in force.

The present dispute arises out of the Convention on Biological Diversity. Alliguna, therefore, invokes the compromissory clauses of CBD (Article 27).

The Registrar acknowledged the receipt of the application instituting proceedings against the Republic of Revels ("Revels") on 21 April 2018; and the preliminary objection submitted by the Rinnuco dated 05 May 2018.

The parties have agreed that the jurisdiction question and merits of this matter be heard and determined simultaneously. This Court, in light of the agreement reached by the parties, will consider questions of jurisdiction and state responsibility simultaneously with questions on merits raised the Application.

QUESTIONS PRESENTED

- I. Whether the ICJ has jurisdiction to preside over the current dispute
- II. Whether the Republic of Revels is responsible for the conduct at issue, that is, SEA Corporation's act of Sargassum Harvesting in the Sargasso Sea
- III. Whether the Republic of Revels violated international law by negatively impacting the European Eel through the Sargassum harvesting project in the Sargasso Sea

STATEMENT OF FACTS

A. BACKGROUND OF PARTIES

Alliguna and Revels are neighbouring coastal sovereign states located on Ugani. Both countries' coasts are approximately 250 nautical miles from the Sargasso Sea.

Both States are parties to the Statute of the International Court of Justice¹ ("ICJ Statute"), Vienna Convention on the Law of Treaties ("VCLT"), Convention on Biological Diversity ("CBD"), Convention on the Conservation of Migratory Species of Wild Animals. ("CMS"), United Nations Convention on the Law of the Sea. ("UNCLOS"), United Nations Framework Convention on Climate Change ("UNFCCC"), and the Paris Agreement. They are also signatories to the Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea ("the Hamilton Declaration").

B. THE EUROPEAN EELS

The European Eels ("the Eels") is a migratory species that is listed as Critically Endangered on the IUCN Red List of Threatened Species. The Eels migrate to the Sargasso Sea to spawn and are found in water bodies across states including Alliguna and Revels. However, the species' recruitment, population and escapement have declined drastically over past decades. The Eels are particularly important to Alliguna because of its historic presence in Alliguna's waters and its role in Alliguna's culture, religion and legislation.

C. THE SARGASSUM HARVESTING PROJECT

In July 2016, Seaweed Energy Alternatives, Inc. ("SEA Corporation"), a privately-owned company in Revels, launched its biofuels initiative and started harvesting Sargassum from the Sargasso Sea for biofuel production ("the Project"). The vessel *Columbus*, which SEA Corporation used to harvest Sargassum in the Sargasso Sea on the high seas, sailed under the flag of Revels. As part of Revels' recently launched programme to reduce greenhouse gas emissions through the expanded use of renewable energy, the Government of Revels awarded SEA Corporation a subsidy for the Project.

At the end of 2016, the Government of Revels issued a press release and report discussing the success of

¹ Statute of the International Court of Justice, 26 June 1945, T.S. 993 **Error! Bookmark not defined..Error! Bookmark not defined.**

its renewable energy program. The Project was highlighted. Concerned about potential negative impacts of the Project on the Eels, the non-government organization Friends of the Eels informed the Government of Alliguna about the Project.

D. DIPLOMATIC EXCHANGES

On 13 January 2017, Alliguna sent a diplomatic note to the Government of Revels highlighting the potential negative impacts of the Project on both the Sargasso Sea ecosystem and its endangered species such as the Eels. In this note, Alliguna also mentioned its desire to send its representatives to meet with the Government of Revels to discuss the situation. This proposal was however rejected by Revels two full months later, on 11 March 2017.

For the next several months, Alliguna and Revels engaged in additional negotiations and mediations but failed to resolve the dispute. Alliguna instituted proceedings against Revels on 21 April 2018. Revels submitted its Preliminary Objections on 5 May 2018. To date, SEA Corporation continues to harvest Sargassum in the Sargasso Sea.

SUMMARY OF ARGUMENTS

- I. This Court has jurisdiction, under Article 36(1) of the ICJ Statute, to determine this dispute because the present dispute concerns a breach of the CBD, wherein parties have agreed to submit disputes to the CBD. The concurrent claims that Alliguna may have against Revels under the CMS and UNCLOS does not bar this Court from determining the CBD claims. Given that Alliguna and Revels have requested for this Court to determine this dispute in accordance with general international law, this Court has jurisdiction to apply relevant customary international law norms in adjudicating in this dispute. Finally, the clean hands doctrine does not apply to disentitle Alliguna from seeking relief.

- II. Revels is responsible for the Project because this act is attributable to Revels. As a flag state, Revels has jurisdiction and control over the *Columbus*, and thus has a positive and active duty to ensure that activities conducted by this vessel does not cause damage to the ecosystem of the Sargasso Sea.

- III. Revels violated international law by failing to prevent or mitigate SEA Corporation's Sargassum harvesting. Revels has breached its positive obligations under the CBD to protect the Sargasso Sea ecosystem. Scientific uncertainty is no defence. Under the precautionary principle, uncertainty precisely requires Revels to desist from Sargassum harvesting. Moreover, by failing to notify and seek consent from Alliguna, Revels failed to fulfil its procedural duties under the CBD. Revels violated its duty to prevent transboundary harm under customary international law as it failed to act with due diligence. Additionally, Revels' attempt at fulfilling another international obligation does not preclude the wrongfulness of its actions.

ARGUMENTS

I. THIS COURT HAS JURISDICTION TO DETERMINE THIS DISPUTE.

A. THE COURT HAS JURISDICTION TO DETERMINE THE PRESENT DISPUTE PURSUANT TO ARTICLE 36(1) OF THE ICJ STATUTE.

Article 36(1) of the ICJ Statute states that the “the jurisdiction of the Court comprises... all matters specifically provided for in treaties and conventions in force.”² In this case, pursuant to Article 27 of the CBD, Alliguna and Revels have agreed to submit disputes concerning the “interpretation and application” of the CBD to ICJ³.

This dispute concerns the “interpretation and application” of the CBD. In the *Southern Bluefin Tuna* case⁴, it was held that for a dispute to concern the “interpretation and application” of a treaty, the parties’ claims must “reasonably relate” to the “legal standards of the treaty” at issue⁵. In making this determination, the court must focus on how the parties formulate the dispute, by examining their final submissions, diplomatic exchanges, and other relevant evidence⁶.

Alliguna’s claims in this dispute reasonably relate to the legal standards of the CBD. The CBD requires its signatories to ensure that activities within their own jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction⁷. Alliguna’s claim in this dispute is the potential harm to the biodiversity of the Sargasso Sea and the harm to the European Eels caused by the Project, which is an activity within the control of Revels. Therefore, Alliguna’s claim does reasonably relate to the CBD. Accordingly, this dispute concerns the interpretation and application of the CBD, thereby conferring upon the ICJ the jurisdiction to hear this dispute pursuant to Article 36(1) of the ICJ Statute.

B. THE COURT HAS JURISDICTION TO DETERMINE THIS DISPUTE NOTWITHSTANDING THAT THE DISPUTE ALSO CONCERNS POTENTIAL VIOLATIONS OF THE CMS AND UNCLOS.

The existence of the CMS and UNCLOS claims should not bar this Court from proceeding to hear the

² ICJ Statute, ¶ Article 36(1).

³ Record, ¶ 4.

⁴ *Southern Bluefin Tuna (New Zealand-Japan, Australia-Japan)*, 2000 Arbitral Tribunal 1 (Aug. 4) (“*Southern Bluefin Tuna*”).

⁵ *Id.* ¶ 38.

⁶ *Id.* ¶ 39.

⁷ CBD, Art 3.

CBD claims arising out of this dispute. In the diplomatic exchanges, Alliguna alleges that Revels' actions have also breached the CMS and the UNCLOS. Therefore, this dispute also concerns potential violations of these two instruments. In these two instruments, the parties have agreed to submit disputes to tribunals other than the ICJ. In the existence of the CMS and UNCLOS claims should not bar this Court from proceeding to hear the CBD claims arising out of this dispute. It is common in international law, it is common that a single act of a state violates multiple treaties. The existence of claims under one treaty, even if that treaty is *lex specialis*, should not automatically extinguish the existence of claims under other treaties⁸. The *Southern Bluefin Tuna* case is relevant here.

In the *Southern Bluefin Tuna* case, Australia and New Zealand alleged before an arbitral tribunal constituted under the UNCLOS that the experimental fishing program of Japan violated provisions of the UNCLOS. Japan argued that the tribunal's jurisdiction was excluded because the crux of the dispute concerned violations of another treaty, the Commission for the Conservation of Southern Bluefin Tuna ("CCSBT"), wherein parties had agreed to a different method of dispute resolution⁹. The arbitral tribunal noted, even if the CCSBT was the *lex specialis*, the dispute nevertheless gave rise to concurrent claims under both the CCSBT and the UNCLOS¹⁰. It held that the mere existence of claims under the CCSBT did not bar the tribunal from hearing the UNCLOS claims¹¹. Applying the logic of the arbitral tribunal here, the mere existence of claims under the CMS and UNCLOS does not bar this Court from hearing the CBD claims.

C. THE COURT HAS JURISDICTION TO APPLY RELEVANT CUSTOMARY INTERNATIONAL LAW NORMS IN ADJUDICATING THIS DISPUTE.

As established by the above arguments, this Court has jurisdiction to hear disputes concerning the "interpretation and application" of the CBD. Besides CBD norms, Alliguna submits that in adjudicating this dispute, this Court also has jurisdiction to apply relevant customary international law ("CIL") norms, namely, the duty not to cause transboundary harm and the precautionary principle.

Pursuant to the joint written statement submitted to this Court, both parties have specifically requested

⁸ *Southern Bluefin Tuna*, ¶40.

⁹ *Id.* ¶ 22-5.

¹⁰ *Id.*

¹¹ *Id.*

for this Court to decide this dispute “on the basis of the rules and principles of general international law”¹². This clause in the joint written statement provides the legal basis for this Court to apply CIL norms in this dispute.

The above interpretation of the clause in the joint written statement is supported by the cases of *M/V Saiga (No 2)*¹³, *Guyana v Suriname*¹⁴ and *M/ V Virginia G*¹⁵. Like in the present case, the parties in all three of the above cases had agreed, under a treaty, to submit disputes concerning the “interpretation and application” of the treaty to a dispute resolution tribunal. The issue was whether the dispute resolution tribunal could go beyond the treaty and apply CIL. In course of resolving the dispute that arose under the treaty, the dispute resolution tribunal applied CIL norms that were not explicitly mentioned by the treaty and found that the parties had breached the CIL norms.

The relevant treaty in all three of the above cases was UNCLOS. UNCLOS contained a specific provision which stated that in resolving disputes arising under the UNCLOS, the dispute resolution tribunal shall “apply this Convention and other rules of international law not incompatible with this Convention¹⁶.” The dispute resolution tribunals in all three cases interpreted the above provision in the UNCLOS as allowing them to consider not just treaty norms, but also CIL norms¹⁷. These cases have never been outrightly rejected¹⁸. In the present dispute, the clause in the joint written statement submitted by Alliguna and Revels provides for the application of international law just like the provision in the above three cases. Accordingly, the clause in the joint written statement should also be interpreted as allowing this Court to apply CIL norms.

D. THIS COURT CAN DETERMINE THE CLAIMS AGAINST REVELS NOTWITHSTANDING ALLIGUNA’S HYDROPOWER FACILITIES.

Revels has raised concerns about Alliguna’s hydropower facilities and their impact on the eels¹⁹. As such, an issue that arises before this Court is whether it should refuse to grant Alliguna relief on the ground that

¹² Record, ¶ 3.

¹³ *M/V Saiga (No. 2) (St. Vincent v. Guinea)*, ITLOS Case No. 2, Judgment of July 1, 1999 (“*M/V Saiga (No 2)*”)

¹⁴ *Guyana v. Suriname*, Award of the Arbitral Tribunal of Sept. 17, 2007, 47 I.L.M. 166 (“*Guyana v Suriname*”).

¹⁵ *M/V Virginia G (Pan. v. Guinea-Bissau)*, ITLOS Case No. 19, Judgment of Apr. 14, 2014 (“*M/ V Virginia G*”).

¹⁶ UNCLOS, Art. 293.

¹⁷ *M/ V Saiga (No. 2)*, ¶ 155. *Guyana v Surinam*, ¶ 405-6. *M/ V Virginia G*, ¶ 362.

¹⁸ Peter Tzeng, *Jurisdiction And Applicable Law Under UNCLOS* Yale LJ 126:242, 255 (2016).

¹⁹ Record, ¶ 7.

Alliguna's hands are "unclean" because of its operation of the hydropower facilities. The Applicant submits that the clean hands doctrine does not apply to inter-state disputes. Even if the clean hands doctrine is applicable, the Applicant submits that there is insufficient evidence to conclude that Alliguna's hands are unclean.

a) The clean hands doctrine does not apply to inter-state disputes

The applicability of the clean hands doctrine has not been explicitly recognized to be applicable in any inter-state dispute by any majority opinion of any dispute resolution tribunal²⁰. In several inter-state disputes, states have raised arguments premised on the clean hands doctrine, but courts have not upheld them²¹. A relatively comprehensive survey by a Special Rapporteur of the International Law Commission (ILC) found that "the evidence in favour of the clean hands doctrine is inconclusive" and emphasised "the uncertainty relating to the very existence of the doctrine²²."

b) Even if the clean hands doctrine is applicable to this dispute, it does not bar Alliguna from seeking relief because Alliguna's hands are not unclean.

There is insufficient evidence to conclude that Alliguna has unclean hands. Revels' allegation that Alliguna's conduct harms the eels is an unsubstantiated one. Aside from the allegation, no other evidence shows or even suggests that Alliguna's hydropower facilities harms the eels or any other species. There is also no evidence that Alliguna has failed to take mitigatory measures to minimize the alleged adverse environmental impact of its hydropower facilities. The *Meuse*²³ case is relevant here. In an individual opinion, Judge Hudson invoked the clean hands doctrine against the Netherlands and disallowed the Netherlands from seeking relief against Belgium for Belgium's breach of the bilateral treaty because there was substantial evidence that Netherlands own conduct was a breach of the treaty²⁴. Here, there is no evidence available for the court to conclude that the operation of the hydropower facilities by Alliguna has breached the CBD or any other principle of international law.

II. REVELS IS RESPONSIBLE FOR SEA CORPORATION'S ACT OF SARGASSUM HARVESTING

A. SEA CORPORATION'S CONDUCT IS ATTRIBUTABLE TO REVELS

²⁰ Stephen, M, 2013. *Clean Hands Principle*, Max Planck Encyclopedia of Public International Law, [www.mpepil.com].

²¹ John Dugard, Special Rapporteur of the International Law Commission, "Sixth Report on Diplomatic Protection" (2004).

²² *Id.* ¶ 6.

²³ *Diversion of Water from the Meuse, Netherlands v Belgium*, Judgment, PCIJ Series A/B No 70, ICGJ 321 (PCIJ 1937) ("*Meuse*").

²⁴ *Id.* ¶ 78-9.

The act of Sargassum harvesting is attributable to Revels because Revels subsidised, endorsed and permitted its continuity. Attribution to the State arises if it is in control of the operations in the course of which the alleged violations were committed²⁵. While it is insufficient to prove ‘complete dependence’ of the private entity, it has to be proved that the corporation acted under the State’s ‘effective control’²⁶. This test is used where there is evidence of ‘partial dependence’ of the private entity on the State, which can be inferred from the provision of financial assistance and operational support, from the beginning²⁷.

To this end, Revels provided subsidies as part of its government policy to expand the use of renewable energy²⁸. Without the subsidy, SEA Corporation would not have moved forward with the Project²⁹. This demonstrates their dependence on the State.

The present case can be distinguished from the facts of the *Case Concerning Military and Paramilitary Activities in and against Nicaragua* (“*Nicaragua case*”). In that case, attribution was not established because the State did not direct or enforce the perpetration of the acts contrary to human rights in course of the private corporation’s paramilitary operations³⁰. It was insufficient that the State only gave instructions pertaining to the overall actions taken by the private entity having committed the violations³¹. In contrast, the Project has received State subsidies ‘through the program’³² and is still ongoing,

The nature of the relationship between SEA Corporation and Revels, through the course of the Project, reveals the ‘complete dependence’ of the private entity on the State. Altogether, the Project is attributable to Revels and Revels bears the responsibility of ensuring that activities carried out by SEA Corporation via this vessel do not cause damage to the Sargasso Sea under the CBD..

B. IN ANY CASE, REVELS’ FAILURE TO PREVENT OR MITIGATE SEA CORPORATION’S SARGASSUM HARVESTING VIOLATES INTERNATIONAL LAW

²⁵ *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua/USA) (Merits) (1986) ICJ Rep 14 [*Nicaragua*], ¶ 115; International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts (“*ARSIWA*”) with commentaries, UN Doc A/56/10 (2001) [*2001 Draft Articles*], Chapter II, ¶ 2.

²⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina/Serbia and Montenegro) (2007) ICJ Rep 43 [*Bosnia and Herzegovina*], ¶ 400.

²⁷ *Nicaragua*, ¶ 112.

²⁸ Record, ¶ 16.

²⁹ Clarifications, A18.

³⁰ *Nicaragua*, ¶ 115.

³¹ *Bosnia and Herzegovina*, ¶ 400.

³² Record, ¶ 16.

Revels has violated its treaty obligations to control activities conducted by SEA Corporation. The State could be liable for the admission, registration or licensing of private conduct if it is expressly provided for under a relevant environmental law treaty³³. States are responsible for ensuring that activities within its jurisdiction and control do not damage areas beyond its national jurisdiction³⁴. Since Revels is a flag state, it has jurisdiction and control over ships flying its flag³⁵. On the facts, the *Columbus*, a vessel used by SEA Corporation to harvest Sargassum in the Sargasso Sea, sailed under the flag of Revels³⁶. Furthermore, Articles 7 and 8 of the CBD provide for extensive regulation, control and monitoring responsibilities within their jurisdiction³⁷.

a) Revels has breached its positive obligations under CBD articles to protect the Sargasso Sea ecosystem

By subsidizing the Project, Revels has breached Articles 1, 5, 8 and 10 of the CBD, which mandate participant States to cooperate³⁸ and ensure the conservation and sustainable use of biological resources³⁹. States are obliged to promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings⁴⁰. This obligation especially applies to degraded ecosystems and threatened species⁴¹. To this end, the cumulative adverse impacts and risks of human activities to marine biodiversity must at least be minimised⁴². Such human activities include the extraction of living biological resources, such as Sargassum harvesting⁴³.

States are thus obliged to take appropriate actions such as enacting specific guidelines⁴⁴ or establish means⁴⁵ to protect the ecosystem. These appropriate actions may be gleaned from the best practice

³³ Kees, A., 2011. *Responsibility of States for Private Actors*. Max Planck Encyclopedia of Public International Law **Error! Bookmark not defined.**, [www.mpepil.com]; Douhan, A., 2013. *Liability for Environmental Damage*. Max Planck Encyclopedia of Public International Law, [www.mpepil.com].

³⁴ CBD, Art. 3.

³⁵ UNCLOS, Art. 94.

³⁶ Record, ¶ 13.

³⁷ CBD, Art. 7; Art. 8.

³⁸ CBD, Art. 5; Art. 10(e).

³⁹ CBD, Art. 1; Art. 8(c); Art. 10(c).

⁴⁰ CBD, Art. 8(d).

⁴¹ CBD, Art. 8(f); Art. 10(d).

⁴² CBD, Art. 8(g), Art. 10(b); CBD Decision COP X/29, Art. 70, Art. 13(h); CBD Decision COP IX/20.

⁴³ Sargasso Sea Alliance, *The Protection and Management of the Sargasso Sea: The golden floating rainforest of the Atlantic Ocean* (2009) [Sargasso Sea Alliance Report], pg. 3.

⁴⁴ CBD, Art. 8(b).

⁴⁵ CBD, Art. 8(g).

recommendations provided by expert scientist groups and international organisations such as the CMS Secretariat. These best practices are relevant in the fulfilment of CBD obligations because the CMS plays a role in the implementation of the CBD with regard to sustainable use, conducting of assessments and monitoring at protected areas⁴⁶. The CMS complements the CBD's focus on habitat conservation, to address other threats targeting endangered migratory species within individual Range States or across a migratory range⁴⁷. Crucially, migratory species concerns cannot, and should not be seen separately from the broader issue of conservation and sustainable use of biodiversity⁴⁸. CMS resolutions are hence relevant in interpreting a State's CBD obligations.

According to the CMS Secretariat, best practices of mitigation include targeting biomass production for bioenergy to areas of low conservation value⁴⁹. Areas of high conservation value can be avoided by developing environmental sensitivity and zoning maps that include critical sites for migratory species⁵⁰. By undertaking appropriate survey and monitoring before and after the deployment of the renewable energy technologies, the impacts on migratory species and their habitats can also be studied in the short- and long-term⁵¹. To this end, all potential environmental impacts on migratory species must be considered when developing and implementing relevant climate change actions, such as renewable energy technology developments⁵².

On the facts, contrary to Revels' claim⁵³, scientific evidence⁵⁴ links the health of the Sargasso Sea ecosystem with viability of the Eel population. The Sargasso Sea ecosystem is based upon floating Sargassum, which provides the only spawning habitat for the Eels⁵⁵. Such findings on the threats to the ecosystem have been

⁴⁶ CBD, Decision COP V/21, ¶ 7; Cooperation with other conventions and international organisations and initiatives. Adopted by the Conference of the Parties to the Convention on Biological Diversity at Its Sixth Meeting, U.N. DOC. UNEP/CBD/COP/6/INF/15 (14 March 2002) [*Cooperation with other conventions*]. **Error! Bookmark not defined.**

⁴⁷ *Cooperation with other conventions*, ¶ 7.0.

⁴⁸ CMS Secretariat, *Migratory Species & National Biodiversity Strategies and Action Plans* (2011).

⁴⁹ *Renewable energy technologies and migratory species: Guidelines for sustainable development*. Adopted by the Conference of the Parties to the Convention on Migratory Species at Its Eleventh Meeting, UNEP/CMS/COP11/Doc.23.4.3.2.9 (2 October 2014).

⁵⁰ CMS, Resolution 10.29.

⁵¹ CMS, Resolution 11.27.

⁵² CMS, Resolution 12.21, Art. 3.

⁵³ Record, ¶ 23.

⁵⁴ Sargasso Sea Alliance Report, pg. 3.

⁵⁵ Torben Wolff, Utilization of seagrass in the deep sea, *Aquatic Botany* 2 (1976): 161-174; Sargasso Sea Alliance Report, pgs. 14 & 22; South Atlantic Fishery Management Council 2002, Fishery Management Plan for Pelagic Sargassum Habitat of the South Atlantic Region, South Carolina, pg. 183.

recalled by the Hamilton Declaration⁵⁶, which both parties have signed⁵⁷. While not binding, signing reflects Revels' acceptance of the scientific findings in the Hamilton Declaration and of undertaking conservation efforts with respect to the Sargasso Sea. The Hamilton Declaration would thus constitute an authoritative interpretation of relevant binding international agreements⁵⁸, such as the CBD. To this end, Revels cannot now dispute the scientific evidence that the Hamilton Declaration has recognised.

By recognising such scientific evidence, Revels may infer the cumulative adverse impacts of extracting Sargassum on the Eel population. Revels thus recognises that the Sargasso Sea ecosystem is degraded and the Eels species is threatened. To this end, Revels' obligations under Articles 1, 5, 8 and 10 of the CBD are especially relevant. Yet, Revels has not only failed to fulfill its positive duty provided for under Article 8, Revels has permitted or even encouraged the breach of these provisions by subsidizing the project.

Where Revels has jurisdiction over a part of the Eels' migratory range⁵⁹, Revels is defined as a Range State, according to the CMS Secretariat⁶⁰. The Eels bear an unfavourable conservation status under Appendix II⁶¹ of the CMS and hence require the conclusion of international agreements for their conservation and management, particularly by Range States such as Revels⁶². This is consistent with the language of its positive obligations under the CBD. The recommended guidelines for such conservation measures under the CMS should hence be adopted where Revels is fulfilling its CBD obligations. However, where Revels could have made an effort towards adopting such inexpensive practices, it failed to do so. Therefore, Revels can be found liable, specifically under Art. 8 of the CBD.

- b) In any event, Revels breached its obligations because it has not discharged its burden of proving the Project will not cause harm

The facts suggest that Revels has failed to discharge the burden of proving that the Project will not negatively

⁵⁶ Hamilton Declaration on the Collaboration for the Conservation of the Sargasso Sea (11 March 2014) [Hamilton Declaration].

⁵⁷ Record, ¶ 11.

⁵⁸ ILC, *Role of subsequent agreements and subsequent practice in relation to the interpretation of constituent instruments of international organizations* (2015) Chapter VIII, pg. 96.

⁵⁹ Record, ¶ 3.

⁶⁰ CMS Secretariat, *Range States Classification*. UNEP/CMS/ScCAP/Doc.7 (13 June 2009).

⁶¹ CITES, Appendices I, II, and III (valid from Apr. 4, 2017).

⁶² CMS, Art. 4.

impact the Sargasso Sea ecosystem or European Eels. At an institutional level, the person intending to execute the activity has to prove that it will not cause harm to the environment⁶³. Environmental regimes, including the CBD, reflect a precautionary approach which conceives of a more proactive role for scientific studies and decision-making procedures⁶⁴.

This burden extends to the duty of conducting Environmental Impact Assessments (“EIAs”)⁶⁵, which has been codified under Article 14 of the CBD⁶⁶. Article 14 imposes on parties a continuing and thus necessarily evolving obligation⁶⁷ to conduct impact assessments and minimise adverse impacts throughout the course of the activity. Owing to new scientific insights and technological advances, the potential development of new norms and standards, that is, the potentially fast-changing ecological status of the Eels species, needs to be considered when the State decides whether to continue with activities begun in the past⁶⁸.

The facts suggest that Revels has yet to provide any proof that the Project poses no threat to the ecosystem⁶⁹. While Revels has conducted a single EIA, the assessment outcome has yielded uncertain results⁷⁰. Such ‘uncertain’ results are not sufficient to discharge Revels’ burden of proof. In line with the precautionary approach, the lack of full scientific certainty should not exempt Revels’ liability under the CBD.

- c) Even if the conclusion produced by the EIA is accepted, Revels is still in breach because scientific uncertainty is no defence

Under the precautionary principle, Revels must implement measures to prevent environmental degradation even though there is no full scientific certainty that harvesting more than a *de minimis* amount of

⁶³ Schröder, M., 2014. *Precautionary Approach/Principle*. Max Planck Encyclopedia of Public International Law, [www.mpepil.com], ¶ 12.

⁶⁴ *Id.*

⁶⁵ ILC, *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities: Text adopted by the Commission at its fifty-third session, in 2001 UN Doc A/56/10, 370, [2001] II UNYBILC 146, Art. 7(5); Construction of a Road in Costa Rica along the San Juan River (Nicaragua/Costa Rica) (Order on Provisional Measures) ICGJ 474 (ICJ 2013), ¶ 19; Pulp Mills, ¶ 204-205; Rio, Principle 17.*

⁶⁶ CBD, Art. 14

⁶⁷ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, ICJ Reports 1997 [*Gabčíkovo*], ¶140.

⁶⁸ *Gabčíkovo*, ¶140.

⁶⁹ Record, ¶ 23.

⁷⁰ Clarifications, A17.

Sargassum⁷¹ will cause damage to the population of Eels⁷². The facts, however, suggest that such measures were not taken.

Under this principle, activities must be prevented from adversely affecting the environment even if there is no conclusive proof that the activity will have serious environmental consequences⁷³. This activity need only *pose* ‘threats of serious or irreversible damage’ to the environment⁷⁴. This principle stems from the recognition that in some cases, science is unable to make accurate long-term predictions about the consequences of human activities on the environment⁷⁵. Such cases usually involve the environmental impacts of new technology on difficult issues, including the extinction of species⁷⁶.

The precautionary principle has been explicitly incorporated or referenced in international policy documents, including the CBD⁷⁷, Rio Declaration⁷⁸ and UNFCCC⁷⁹, which Revels and Alliguna are party to. The ICJ recognises its relevance in interpreting and applying the provisions of treaties⁸⁰. This recognition suggests that the precautionary principle is tied to international obligations for States to take positive measures, in spite of scientific uncertainty.

On the facts, Sargassum harvesting has been identified as an activity that threatens serious damage to the biodiversity of the Sargasso Sea⁸¹. Furthermore, the Eels are listed as Critically Endangered on the IUCN Red List of Threatened Species⁸², which indicates that the species is facing a real threat of extinction. Moreover, the Sargasso Sea ecosystem has been designated as an EBSA⁸³ under the CBD. This label is given to areas that exhibit

⁷¹ Clarifications, ¶ 17.

⁷² Record, ¶ 23.

⁷³ Schröder, M., 2014. Precautionary Approach/Principle. Max Planck Encyclopedia of Public International Law, [www.mpepil.com], ¶ 8.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Preamble, CBD.

⁷⁸ Rio Declaration on Environment and Development, (1992) (“Rio”), Principle 15

⁷⁹ UNFCCC, Art. 3.3;

⁸⁰ *Pulp Mills on the River Uruguay* (Argentina/Uruguay) (Judgment) (2010) ICJ Rep 14 [*Pulp Mills*], ¶ 164.

⁸¹ Sargasso Sea Alliance Report, pg. 3; The Sargasso Sea Alliance, *Submission of Scientific Information to Describe Ecologically or Biologically Significant Marine Area*, pg. 15.

⁸² Record, ¶ 3.

⁸³ *Hamilton Declaration*.

vulnerability⁸⁴. This underscores the risk faced by the Eels which live in this ecosystem and confers priority upon its conservation⁸⁵. Given the already precarious situation of the Eels and its habitat, the threshold for the ‘threats of damage’ is fulfilled. By persisting with the Project, Revels has violated the precautionary principle and thereby breached the CBD.

d) Revels did not fulfil its procedural duties under the CBD as it failed to notify and seek consent from Alliguna

Revels breached Article 14 of the CBD by failing to notify and seek consent from Alliguna prior to the execution of the Project. The authorisation of any hazardous activity with a transboundary impact should be based on an assessment of the risk involved⁸⁶. The State must perform its procedural duties to notify and seek prior consent from Parties concerned, with regards to activities that pose a potential adverse transboundary impact⁸⁷. To this end, States have a duty to make information available to other States, reporting on matters such as the state of the environment and new means of treaty implementation⁸⁸. This duty is not limited to situations where significant risks have been identified⁸⁹. This access-oriented approach has been enshrined in CIL⁹⁰. In particular, this court characterised this duty to warn as based on ‘elementary considerations of humanity’⁹¹. Even in the absence of notification, States must enter into consultations with the objective of achieving acceptable solutions regarding preventive measures to minimise the risk of significant transboundary harm⁹².

The present facts suggest that Revels did not notify and seek consent of neighbouring states, such as Alliguna, prior to the execution of the Project, which has potential transboundary effects. By removing an integral part of the Sargasso Sea ecosystem, the Project can potentially affect the coastal ecosystems of neighbouring states

⁸⁴ CBD Secretariat, *Ecologically or Biologically Significant Marine Areas (EBSAs), Volume 2: Wider Caribbean and Western Mid-Atlantic Region* (2014) [EBSA] pg. 9.

⁸⁵ CBD Decision COP IX/20; CBD Decision COP VIII/24; CBD Decision COP X/29, ¶ 26.

⁸⁶ Tanzi, A., 2013. *Liability for Lawful Acts*. Max Planck Encyclopedia of Public International Law, [www.mpepil.com], ¶ 6.

⁸⁷ Philippe Sands, et. al., *Principles of International Environmental Law*, (2012), pg. 55; *Dispute regarding Navigational and Related Rights* (Costa Rica/Nicaragua), [2009] ICJ Rep 213, ¶ 94; *Pulp Mills*, ¶ 94; Rio, Principle 19; CBD, Art. 14(c).

⁸⁸ Ebbesson, J., 2009. *Access to Information on Environmental Matters*. Max Planck Encyclopedia of Public International Law, [www.mpepil.com], ¶ 2.

⁸⁹ Clarifications, A17.

⁹⁰ UN World Charter for Nature, Principle 23; Rio, Principle 10.

⁹¹ *Corfu Channel*, p. 22.

⁹² ILC, *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities*, Art. 9; Art. 12.

negatively. While the news media has covered the initiative widely, the project had already been launched in July 2016⁹³. An official press release and report was only produced at the end of 2016⁹⁴. Alliguna only came to learn about the activity's potential negative impacts on European Eels, after being notified by Friends of the Eels⁹⁵.

Moreover, while Alliguna initiated a meeting to discuss preventive measures⁹⁶, Revels refused to meet Alliguna's representatives for discussion⁹⁷. Altogether, Revels has evidently not fulfilled its procedural duties of notification or seeking consent.

C. REVELS HAS VIOLATED ITS DUTY TO PREVENT TRANSBOUNDARY HARM UNDER CIL

a) Revels can be held responsible for the activities of private individuals under its duty to prevent transboundary harm

Revels has violated its duty to prevent transboundary harm, that is, the 'no harm' principle, because Revels failed to prevent SEA Corporation's act of Sargassum harvesting. Under this principle, the State can be held responsible for failing to take necessary measures to prevent the effects of the conduct of private parties⁹⁸. In this regard, two conditions need to be satisfied conjunctively. First, the state was aware of its international obligations but failed to use the means at their disposal to perform its obligations⁹⁹. Second, there was approval given by the State for the private conduct and the State decided to perpetuate this conduct¹⁰⁰.

On the facts, both conditions are satisfied. First, having ratified the CBD¹⁰¹, Revels should be fully aware of its positive duties to conserve biodiversity but there is no suggestion that Revels undertook any actions to this end. Second, approval can be inferred from the substantial subsidies awarded by Revels as well as Revels' advertisement of SEA Corporation's still ongoing operation¹⁰². To date, Revels has allowed the continuation of

⁹³ *Id.*

⁹⁴ Record, ¶ 16.

⁹⁵ Record, ¶ 17.

⁹⁶ Record, ¶ 18.

⁹⁷ Record, ¶ 19.

⁹⁸ 2001 Draft Articles, Chapter II, ¶ 4; *Case Concerning United States Diplomatic and Consular Staff in Tehran* (United States/Iran), ICJ Reports 1980 [*Tehran*] ¶ 61; Koivurova, T., 2010. *Due Diligence*. Max Planck Encyclopedia of Public International Law, [www.mpepil.com] [*Koivurova*] ¶ 46.

⁹⁹ *Tehran*, ¶ 68.

¹⁰⁰ *Tehran*, ¶ 74.

¹⁰¹ Record, ¶ 7.

¹⁰² Record, ¶ 16.

Sargassum harvesting¹⁰³. Revels must thus be held responsible for failing to ensure that the activities of SEA Corporation abided by international obligations.

b) Revels did not act with due diligence to prevent transboundary harm

States have an obligation to ensure that activities under their jurisdiction and control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction¹⁰⁴. ‘Damage’ is in turn defined as the ‘risk of causing significant transboundary harm through physical consequences’¹⁰⁵. This notion of risk requires an objective appreciation, which a properly informed observer ought to have, of the possible harm resulting from the activity¹⁰⁶. The risk need not reach the level of ‘serious’ or ‘substantial’¹⁰⁷ but involves ‘a high probability of causing disastrous transboundary harm’, particularly on matters including industry and environment in other States¹⁰⁸.

Due diligence, under the ‘no harm’ principle, is well-established under CIL¹⁰⁹. To act with due diligence, the State’s degree of care must be proportionate to the degree of risk of transboundary harm in the instance¹¹⁰.

Developing States are required to adhere to a lower standard of due diligence because of the limited human and material resources that it may be able to expend¹¹¹. However, these countries must use all the means at their disposal especially where there are international agreements in force for such countries¹¹². To this extent, these countries must still take efforts to avoid activities, under its jurisdiction, which cause significant damage to the environment of another state¹¹³.

Although Revels is a developing economy, it is bound by international agreements, such as the CBD. In

¹⁰³ Record, ¶ 28.

¹⁰⁴ Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) (1972), Principle 21; Rio, Principle 2; *Corfu Channel Case (United Kingdom of Great Britain and Northern Ireland/Albania)*, [1949] ICJ Rep 4 [*Corfu Channel*]

¹⁰⁵ ILC, *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities: Text adopted by the Commission at its fifty-third session, in 2001 UN Doc A/56/10, 370, [2001] II UNYBILC 146, Art. 1.*

¹⁰⁶ *Report of the ILC on its 53rd Session*, pg. 151.

¹⁰⁷ *Id.*, pg. 152.

¹⁰⁸ *Id.*

¹⁰⁹ *Gabcikovo*, ¶ 140; Legality of the Threat or Use of Nuclear Weapons, ¶ 140; *Pulp Mills*, ¶ 193; *Koivurova*, ¶ 41.

¹¹⁰ *Report of the ILC on its 53rd Session*, p. 155.

¹¹¹ *Koivurova*, ¶ 19; *Nicaragua*, ¶ 157.

¹¹² *Koivurova*, ¶ 19; *Report of the ILC on its 53rd Session*.

¹¹³ *Pulp Mills*, ¶ 101.

the *Nicaragua* case, Nicaragua was not held to be responsible because of its less developed economy, which limited the human and material resources that could be expended¹¹⁴. Distinct from the *Nicaragua* case, Revels need not expend any further resources to put an end to Sargassum harvesting. In fact, the subsidies to be granted may now be saved for other projects or purposes.

Moreover, the ecological statuses of the Sargasso Sea ecosystem and the Eels are particularly vulnerable. In particular, it has been observed that the Eels' recruitment, population and escapement are declining drastically over the past decades¹¹⁵. As a migratory species, they are found in the water bodies across multiple continents and countries, including Alliguna¹¹⁶. Alliguna shares water bodies with the Sargasso Sea¹¹⁷. By removing Sargassum from the Sargasso Sea and thereby removing an integral part of the ecosystem, it would also affect Alliguna's environment. This is because the inter-dependence between the ecosystems of the biosphere does not respect artificial boundaries between states¹¹⁸. Given the high probability of causing disastrous transboundary harm to both industry and environment, Revels has a duty of care to correspondingly refrain from further exacerbating the current environmental situation. Revels has thus failed to act with due diligence and fulfil its duty to prevent transboundary harm potentially arising from the Project.

D. REVELS' ATTEMPT AT FULFILLING ANOTHER INTERNATIONAL OBLIGATION DOES NOT PRECLUDE THE WRONGFULNESS OF ITS ACTIONS

Revels' attempt at meeting its NDC commitments under the Paris Agreement does not preclude the wrongfulness of its actions. A State must order its affairs to comply with all its treaty obligations even when they conflict. The only exceptions are specific circumstances involving, amongst others, consent or state necessity¹¹⁹.

In fact, Revels' actions would defy the underlying intentions of the Paris Agreement¹²⁰ and the UNFCCC¹²¹ if States damage biodiversity in the pursuit of meeting their NDC commitments. Both climate agreements recognize the importance of protecting biodiversity and promote sustainable management of

¹¹⁴ *Nicaragua*, ¶ 157.

¹¹⁵ Record, ¶ 3.

¹¹⁶ *Id.*

¹¹⁷ Record, ¶ 3.

¹¹⁸ Millennium Ecosystem Assessment (2005). *Ecosystems and Human Well-being: Synthesis*. Island Press, Washington, DC.

¹¹⁹ Responsibilities of States for Internationally Wrongful Acts, Arts. 20-25.

¹²⁰ Article 7(2), 7(5), 7(9)(c), and 8(4)(h) clearly demonstrate the importance of conserving ecosystems to the Paris Agreement.

¹²¹ UNFCCC, Art. 2.

ecosystems. To this end, such ‘climate change’ commitments should be carried out in line with fundamental environmental law principles, including the need to preserve the integrity of the ecosystem¹²².

On the facts, Revel is unable to rely on any of the circumstances precluding wrongfulness set out in Chapter V of ARSIWA. Revels cannot rely upon the necessity to meet its NDC commitments, to preclude its violation of the CBD because the Project is not the only way to conserve the environment. This can be inferred from the other renewable energy projects that Revels has provided subsidies to¹²³.

Revels therefore cannot argue that it is achieving its NDC commitments under the Paris Agreement. Ultimately, given the underlying intentions of both the Paris Agreement and UNFCCC, Revels remains liable under its statutory and customary law obligations to preserve and promote the sustainable use of an already degraded ecosystem, particularly the endangered Eels, even where there is a lack of full scientific certainty.

¹²² Paris Agreement, Preamble.

¹²³ Record. ¶14 and ¶16.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the Federal States of Alliguna, respectfully requests this Honourable Court to **declare** that:

1. This Court has jurisdiction to preside over the current dispute
2. Revels is responsible for SEA Corporation's conduct of Sargassum harvesting in the Sargasso Sea
3. Revels has breached Article 8 of the CBD Treaty that Revels has violated its duty to prevent transboundary environmental harm under CIL

Respectfully submitted,

Agents of the Applicant