

**TEAM NO. 1954**

**IN THE INTERNATIONAL COURT OF JUSTICE**



**AT THE PEACE PALACE**

**THE HAGUE, THE NETHERLANDS**

**THE CASE CONCERNING  
THE USE OF THE SARGASSO SEA AND THE PROTECTION OF EELS**

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**THE FEDERAL STATES OF ALLIGUNA  
*APPLICANT***

**v.**

**THE REPUBLIC OF REVELS  
*RESPONDENT***

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**MEMORIAL FOR THE RESPONDENT**

**THE 2018 STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION**

**NOVEMBER 2018**

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## **STATEMENT OF JURISDICTION**

On 16 July 2018, the Republic of Revels (“Revels”) and the Federal States of Alliguna (“Alliguna”) submitted the following dispute to the Court, in accordance with Article 26 of the Statute of the International Court of Justice. [Statute of the International Court of Justice, art. 26, T.S. No. 993(1945)]. The Registrar of the Court addressed notification to the parties on July 6, 2018. See Special Agreement Between the Federal States of Alliguna and the Republic of Revels for Submission to the International Court of Justice of Differences Between Them Concerning Questions Relating to Use of the Sargasso Sea and the Protection of Eels , 16 July 2018.



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## **QUESTION PRESENTED**

**I. WHETHER INTERNATIONAL COURT OF JUSTICE HAS THE JURISDICTION OVER THIS DISPUTE BETWEEN ALLIGUNA AND REVELS.**

**II. WHETHER THE CONDUCT AT THIS ISSUE IN THIS MATTER IS ATTRIBUTABLE TO REVELS FOR PURPOSES OF STATE RESPONSIBILITY.**

**III. WHETHER REVELS VIOLATED THE INTERNATIONAL OBLIGATIONS**

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## **STATEMENT OF FACTS**

### **A. The parties and disputes**

The Republic of Revels (“Revels”) and the Federal States of Alliguna (“Alliguna”) are neighboring coastal sovereign states.<sup>1</sup> Alliguna is a developed country with a diversified economy while Revels is a developing country of which economy is based largely on fishing and agriculture.<sup>2</sup>

The European eel is a facultatively catadromous migratory species listed as Critically Endangered on the IUCN Red List of Threatened Species.<sup>3</sup> Alliguna and Revels are both range countries for the species.<sup>4</sup> The European eel is particularly important to Alliguna and its citizens for its cultural, religious and historical values. However, the species’ recruitment, population, and escapement have exhibited pronounced declines over the past several decades.<sup>5</sup>

In July 2016, the Seaweed Energy Alternatives, Inc. (“the SEA Corporation”), a large, privately owned company in Revels, launched its latest biofuels initiative and began harvesting Sargassum from the Sargasso Sea to use for biofuel production.<sup>6</sup> In order to meet NDC commitments under Paris Agreement, the Government of Revels gave a subsidy for the Sargassum initiative to select non-governmental entities or persons to implement renewable energy projects. At the same time, the news media has covered it widely.<sup>7</sup>

At the end of 2016, the Government of Revels issued a press release and a report discussing the progress and success of the country’s new renewable energy program, which includes the SEA Corporation’s ongoing Sargassum initiative.<sup>8</sup> This aroused the attention of a non-governmental organization in Alliguna, which concerned the potential

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<sup>1</sup> R. para4,1.

<sup>2</sup> R. para4,2.

<sup>3</sup> R. para4,3.

<sup>4</sup> R. para5,8.

<sup>5</sup> R. para4,4.

<sup>6</sup> R. para5,13.

<sup>7</sup> R. para5,14.

<sup>8</sup> R. para6,16.

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negative impacts on European eels,<sup>9</sup> though at first, an environmental impact assessment conducted by the SEA Corporation showed that the impacts on the marine biodiversity, including the European eel, were uncertain.<sup>10</sup> After Friends of the Eels informing the Government of Alliguna about this project and making inquiries to confirm the information, the government decided to contact the Government of Revels and urged to end this project for its violating international laws.<sup>11</sup> However, Revels disagreed with Alliguna's assertions and refused to stop the project.<sup>12</sup>

After failing to resolve the dispute by negotiations and mediation, in February 2018, Alliguna asked Revels to agree to submit the matter to the ICJ, but Revels refused.<sup>13</sup>

On 21 April 2018, Alliguna submitted an Application instituting proceeding against Revels. On 5 May 2018, Revels submitted its Preliminary Objections.<sup>14</sup>

## **B. Application of International Laws**

Alliguna and Revels are Members of the United Nations and are Parties to the Statute of the International Court of Justice (ICJ). Pursuant to Article 36, paragraphs 2 and 3, of the Statute of the ICJ, Alliguna has recognized the ICJ's jurisdiction as compulsory ipso facto but only on condition of reciprocity on the part of other states. Revels has not recognized the ICJ's jurisdiction as compulsory ipso facto.<sup>15</sup> Alliguna and Revels are Parties to the Vienna Convention on the Law of Treaties.<sup>16</sup>

Alliguna and Revels are Parties to the Convention on the Conservation of Migratory Species of Wild Animals (CMS).<sup>17</sup> Alliguna and Revels are Contracting Parties to the Convention on Biological Diversity (CBD). In accordance with Article 27, paragraph 3, of the CBD, when Alliguna and Revels ratified the CBD, both countries declared in writing that they would submit to the jurisdiction of the ICJ to resolve disputes concerning the interpretation or application of the CBD.<sup>18</sup>

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<sup>9</sup> R. para6,17.

<sup>10</sup> Clarification. para17.

<sup>11</sup> R. para6,17.

<sup>12</sup> R. para7,19.

<sup>13</sup> R. para10,24.

<sup>14</sup> R. para10,25.

<sup>15</sup> R. para4,5.

<sup>16</sup> R. para4,6.

<sup>17</sup> R. para5,8.

<sup>18</sup> R. para4,7.

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Alliguna and Revels are States Parties to the United Nations Convention on the Law of the Sea (UNCLOS). Pursuant to Article 287 of UNCLOS, when Alliguna and Revels signed UNCLOS, Alliguna made a written declaration and chose the ICJ for the settlement of disputes concerning the interpretation or application of UNCLOS, while Revels made a written declaration and chose the International Tribunal for the Law of the Sea for the settlement of disputes concerning the interpretation or application of UNCLOS.<sup>19</sup>

Alliguna and Revels are Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and are Parties to the Paris Agreement. Pursuant to Article 24 of the Paris Agreement and Article 14 of the UNFCCC, both countries submitted written declarations stating that with respect to any dispute concerning the interpretation or application of the UNFCCC or the Paris Agreement, they would submit the dispute to the ICJ. On April 22, 2016, Alliguna and Revels submitted their first Nationally Determined Contributions (NDCs) in accordance with the Paris Agreement.<sup>20</sup> Alliguna and Revels are signatories to the Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea.<sup>21</sup>

Revels and Alliguna have attended and fully participated in all of the Conferences and Meetings of the Parties related to the conventions or agreements to which they are parties.<sup>22</sup>

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<sup>19</sup> R. para5,9.

<sup>20</sup> R. para5,10.

<sup>21</sup> R. para5,11.

<sup>22</sup> Clarifications. para5; R. para5,12.

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## **SUMMARY OF THE ARGUMENT**

The International Court of Justice has no jurisdiction over this dispute because Revels has not agreed to submit it and relevant agreements fail to submit jurisdiction to ICJ. However, as for CBD, UNFCCC and Paris Agreement, which are the conventions and treaties provided jurisdiction for ICJ, none of them is relevant to this dispute.

Even if ICJ has jurisdiction over this dispute, Revels is still not responsible for the SEA corporation's act. A State is responsible only for acts of its organs or of persons acting under its control and authorization, the conduct of the SEA corporation has not been acknowledged or controlled by Revels, and does not exercise any elements of governmental authority. Therefore the conduct of private corporation is not attributable to Revels.

Alternatively, Revels has complied its international obligations. Revels has the right to conduct on the high sea and act in accordance with the requirements of CMS and UNCLOS, as well as the Hamilton Declaration and Paris Agreement. Besides, Revels did not violate the obligations of sustainable development and biodiversity protection in CBD.

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## **ARGUMENT**

### **I. THE ICJ HAS NO JURISDICTION OVER THIS DISPUTE AND REVELS IS NOT RESPONSIBLE FOR THE SEA CORPORATION'S CONDUCT RELATED TO THE SARGASSUM HARVESTING.**

#### **A. THE ICJ HAS NO JURISDICTION OVER THIS DISPUTE.**

##### **1. ICJ has no jurisdiction under Convention on Migratory Species("CMS").**

###### **a. CMS is essential to solve this dispute because it is established exclusively for migratory species.**

CMS attaches great importance to the European eel, which is one of the migratory species.<sup>23</sup> Because of the significant concern of its status from a decline in recruitment, population, and escapement, European eel is listed on the Appendix II, which means that it needs international agreements for conservation and management.<sup>24</sup> Then in the Conference of the Parties at CMS's 12<sup>th</sup> Meeting("COP12"), a Concerted Action for European eels was approved, which united its range states, specifying the clear responsibilities for implementation and funding required for the different activities.<sup>25</sup> Therefore, the Concerted Action proved itself to be "the most efficient way to engage with Range States" as described and "determine the role of CMS in the conservation of the European Eel", showing the great attention paid by CMS, which is relevant to the need to solve this case .<sup>26</sup>

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<sup>23</sup> R. at 13.

<sup>24</sup> Article IV of Convention on the Conservation of Migratory Species of Wild Animals

<sup>25</sup> GENERAL COMMENTS ON THE CONCERTED ACTION, Add.1

<sup>26</sup> cost-effectiveness in CONCERTED ACTION ON THE EUROPEAN EEL

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In this case, European eel is the core of the dispute. In the beginning, it was Friends of the Eels in Alliguna that first pointed out concerns on European eels.<sup>27</sup> Later, the Government of Alliguna also expressed criticism on Revels' behavior for the potential harm on European eels.<sup>28</sup>

What's more, Alliguna stated that "The European eel is protected by and has been the focus of much attention under CMS", which reflected that Alliguna also recognized the significant status of CMS in solving this dispute.<sup>29</sup>

#### **b. ICJ has no jurisdiction under CMS for lack of mutual consent**

According to Article XIII: Settlement of Disputes in CMS, if the dispute cannot be resolved in accordance with negotiation, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague.<sup>30</sup>

In this case, Alliguna asked Revels to agree to submit the matter to the ICJ, but Revels refused, which went against the first condition of mutual consent.<sup>31</sup> Even if ICJ is offered with mutual consent, the Permanent Court of Arbitration at The Hague is still the priority. The Court can only hear a dispute when requested to do so by one or more states.<sup>32</sup> Therefore, ICJ has no jurisdiction under CMS though it is related to this matter.

### **2. ICJ has no jurisdiction under United Nations Convention on the Law of the Sea ("UNCLOS")**

#### **a. UNCLOS is relevant to this dispute.**

UNCLOS provides the freedom of the high seas for every state in Article 87, which includes fishing on the high seas.<sup>33</sup> However, it also refers that States have the obligation

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<sup>27</sup> R. at 6.

<sup>28</sup> R. at 6.

<sup>29</sup> R. at 8.

<sup>30</sup> Article XIII in CMS, 23 June 1979, 1651 U.N.T.S.333

<sup>31</sup> R. at 10.

<sup>32</sup> Article 36 in Statute of the ICJ, 26 June 1945, T.S.993

<sup>33</sup> Article 87 in UNCLOS, 10 Dec.1982, 1833 U.N.T.S.3

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to protect and preserve the marine environment when enforcing the right,<sup>34</sup> which leaves room for the disputes in this case.

Since Sargasso Sea is part of the high seas, Revels and all other states have the freedom to use it.<sup>35</sup> However, according to Article 192, it has defined rights while underscoring the obligations that must be performed in order to benefit from such rights.<sup>36</sup> Therefore, it goes to a dispute as to whether Revels' using high seas by subsidizing monetarily in order to help SEA with harvesting Sargassum violates the protection obligation and damages marine biodiversity.<sup>37</sup> This dispute is directly associated with the freedom and obligation's definitions in UNCLOS, which refers to the interpretation and application of UNCLOS.

What's more, Alliguna also recognized the importance of UNCLOS in this case, which can be found in the diplomatic note sent from Alliguna.<sup>38</sup> In the note, Alliguna used the limitations of freely using high seas and violations of obligations to rebuke Revels' behavior,<sup>39</sup> which further proved that UNCLOS is indeed related to this dispute.

**b. Under UNCLOS, ICJ has no jurisdiction due to lack of Revels' consent.**

According to Section 5 about Settlements of Disputes in UNCLOS, when signing, ratifying or acceding to UNCLOS or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means, which includes ICJ and the other three courts, for the settlement of disputes concerning the interpretation or application of UNCLOS.<sup>40</sup> Alliguna made a written declaration and chose the ICJ for the settlements of disputes, while Revels made a written declaration and chose the International Tribunal for the Law of the Sea.<sup>41</sup> It is a fundamental principle governing the settlement of international disputes that State has sovereign and is free to choose the

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<sup>34</sup> Article 192 General obligation in UNCLOS

<sup>35</sup> R. at 8,21.

<sup>36</sup> Article 87, 192 in UNCLOS

<sup>37</sup> R. at 9,22.

<sup>38</sup> *Id.*

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

<sup>40</sup> Choice of Procedure in Article 287 from UNCLOS

<sup>41</sup> R. at 5.



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methods of resolving their disputes.<sup>42</sup> Therefore, ICJ has no jurisdiction under UNCLOS for lack of Revel's consent.

**3. ICJ has no jurisdiction under Convention on Biological Diversity("CBD"), United Nations Framework Convention on Climate Change("UNFCCC") and Paris Agreement.**

Though Revels has submitted to the Court's jurisdiction to resolve disputes concerning the interpretation or application of the CBD, UNFCCC and Paris Agreement, such documents are not the relevant international agreements governing this matter.<sup>43</sup>

**a. CBD is irrelevant to this dispute.**

CBD focuses on conserving biological diversity through finding sustainable ways to use the Earth's wealth of living organisms.<sup>44</sup> As to specific implementation obligations raised for contracting parties, Revels has fulfilled them to conserve biodiversity.

According to the impact assessment obligation mentioned by Article 14 in CBD, Revels conducted an Environmental Impact Assessment before instituting the Sargassum harvesting project as requested. <sup>45</sup>What's more, the assessment determined that the impacts on the marine biodiversity, including European eels, were uncertain,<sup>46</sup> which proved that Revels did not harm the biodiversity in Sargasso Sea.

Furthermore, Revels conserved biodiversity by promoting renewable energy project and expanding the use of renewable energy in Revels.<sup>47</sup> And the amount of the subsidy that SEA Corporation received from Revels Government was so important without which the project would not have moved forward. <sup>48</sup>This can directly show the great attention paid by Revels on conserving biodiversity and sustainable development. What's more, it

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<sup>42</sup> Article 36 in Statute of the ICJ, Basis of jurisdiction

<sup>43</sup> R. at 13.

<sup>44</sup> Convention on Biological Diversity, 6 June 1992, 1760 U.N.T.S. 79, Executive Summary[CBD]

<sup>45</sup> Clarifications. at 2.

<sup>46</sup> Clarifications. at 2.

<sup>47</sup> R. at 5,14.

<sup>48</sup> Clarifications. at 2.

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also proves that Revels fulfilled the obligation to adopt economic and socially sound measures acting as incentives for the sustainable use of natural resources.<sup>49</sup>

According to Article 13 in CBD context, the contracting parties have the obligation to promote public understanding of the importance of biodiversity<sup>50</sup> and Revels fulfilled it by issuing a press release discussing the progress of the country's new renewable energy program, especially the Sargassum initiative. <sup>51</sup>Therefore, Revels' acts all accord with the aims of CBD and none of the disputes should be solved under CBD.

**b. UNFCCC and Paris Agreement are irrelevant to this dispute.**

The UNFCCC and Paris Agreement both focus on combating climate change.<sup>52</sup>The UNFCCC aims to stabilize atmospheric greenhouse gases.<sup>53</sup> The central aim of Paris Agreement is to strengthen the global response to the threat of climate change and strengthen the ability of countries to deal with the impacts of climate change.<sup>54</sup> Neither the UNFCCC nor Paris Agreement involves marine biodiversity, Europeans eels or Sargasso Sea. <sup>55</sup> Furthermore, among the diplomatic notes and negotiations with two parties, the dispute concerning interpretation and application of UNFCCC, Paris Agreement is nowhere to see.<sup>56</sup> UNFCCC and Paris Agreement have nothing to do with the issue in this case. Therefore, ICJ lacks jurisdiction under these two documents though Revels has submitted their jurisdiction to it.

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<sup>49</sup> Article 11 Incentive Measures in CBD

<sup>50</sup> Article 13 Public Education and Awareness in CBD

<sup>51</sup> R. at 6,16.

<sup>52</sup> See generally United Nations Framework Convention on Climate Change, 9 May 1992, 1771 U.N.T.S. 107[UNFCCC];Paris Agreement, arts. 4,5,U.N.Doc.FCCC/CP/2015/L.9/REV.1(12 Dec. 2015)

<sup>53</sup> UNFCCC, *supra note* 106, at art. 2.

<sup>54</sup> See the essential elements on <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

<sup>55</sup> Generally see UNFCCC and Paris Agreement

<sup>56</sup> R. at 6-9.

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## **B. THE CONDUCT OF THE SEA CORPORATION IS NOT ATTRIBUTABLE TO THE STATE.**

To establish an international responsibility, the wrongful act must be imputable to the State itself as subject of international law.<sup>57</sup> The general rule to specify the acts attributable to the state is that the only conduct attributed to the State for the purpose of international obligation is that of its organs of government, or of others who have acted under the direction, instigation or control of those organs, i.e. as agents of the State.<sup>58</sup> The SEA Corporation is a private company, <sup>59</sup>neither a State organ nor agent of the state. Therefore, conduct of the SEA corporation, acting in a 'purely private capacity',<sup>60</sup> cannot be considered an act of State.<sup>61</sup> A state can only become responsible for such private entities' acts if the act is acknowledged and adopted by the state as its own, if the private entities are exercising elements of governmental authority, or if the action of the private entities is directed or controlled by the state.<sup>62</sup>

### **1. No elements of governmental authority are exercised by the SEA Corporation.**

Conduct which is not attributable to a State shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.<sup>63</sup> Such acknowledgement should not be mere factual but in legal,<sup>64</sup> as a general matter, conduct will not be attributable to a State where a State merely acknowledges the factual existence of conduct or expresses its verbal approval of it.<sup>65</sup> Even if Revels is aware of the factual existence of the activities of the

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<sup>57</sup> E. JIMENEZ DE ARECHAGA, *INTERNATIONAL LAW IN THE PAST THIRD OF A CENTURY* 267 (1978); *United States Diplomatic and Consular Staff in Tehran*, Judgment, I.C.J. Reports 1980, p. 3, at p. 29, para. 56. Cf. page 41, para. 90.

<sup>58</sup> RENE LEFEBER, *TRANSBOUNDARY ENVIRONMENTAL INTERFERENCE AND THE ORIGIN OF STATE LIABILITY* 60, in *24 DEVELOPMENTS IN INTERNATIONAL LAW* (1996); Brownlie, *System of the Law of Nations: State Responsibility*, Part I (Oxford, Clarendon Press, 1983), pp. 132– 166; F. Przetacznik, "The international responsibility of States for the unauthorized acts of their organs", *Sri Lanka Journal of International Law*, vol. 1 (June 1989), p. 151.

<sup>59</sup> Record, para13.

<sup>60</sup> CRAWFORD.

<sup>61</sup> R. Ago, *Fourth Report on State Responsibility*, 2 I.L.C. Yearbook 71 (1972).

<sup>62</sup> I.L.C., *Articles on the Responsibility of States for Internationally Wrongful Acts*, GA U.N. Doc. A/56/10 (2001), art.2. ('ARSIWA'); ROSALYN HIGGINS, *PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT* 154 (1994).

<sup>63</sup> ARISWA , Art. 11.

<sup>64</sup> SHAW, *INTERNATIONAL LAW* 119 (2008).

<sup>65</sup> ARSIWA , art.11.

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SEA Corporation related to the sargassum harvesting,<sup>66</sup> it denied such activities can be relevant with the state. <sup>67</sup> Therefore, it has not regarded these activities as its own and do not involve any assumption of responsibility, and herein, the acknowledgement and endorsement are absent in the present case.

**2. No elements of governmental authority are exercised by the SEA Corporation.**

Elements of governmental authority are exercised when the entity is empowered by the law of the State to exercise functions of a public character normally exercised by State organs, and the conduct of the entity relates to the exercise of the governmental authority concerned.<sup>68</sup> The fact to show such governmental elements is in accordance with the existence of a greater or lesser State participation in its capital, or, more generally, the ownership of its assets.<sup>69</sup> In the current case, the SEA corporation is entire private company and the Revels government do not have any capital interest in it.<sup>70</sup> Further, there is no official authorization of any acts related to harvesting sargassum of the SEA corporation has given by the government of Revels, on the controversy, Revels denied the relationship between such act of the state.<sup>71</sup> Therefore, no elements of governmental authority exercised in the private act of harvesting sargassum conducted by the SEA corporation.

**3. The SEA corporation's conduct is not under the direction or control of the government of Revels.**

If there is a specific factual relationship between the private entity and the state, for instance, the entity's action is under the direction of the state, such conduct of private entity is attributable to the state.<sup>72</sup> However, Revels had not directed or controlled any activity conducted by the SEA corporation. In fact, the SEA Corporation's project of harvesting Sargassum is part of its own commercial operations,<sup>73</sup> rather than the government's project. The subsidy from the Government was only funded to implement

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<sup>66</sup> Record, para14 and para15.

<sup>67</sup> Record, diplomatic note on 11 March 2017.

<sup>68</sup> ARSIWA , art.5.

<sup>69</sup> CRAWFORD; Hyatt International Corporation v. The Government of the Islamic Republic of Iran, 9 Iran-U.S.C.T.R., 72 (1985).

<sup>70</sup> Record, diplomatic note on 11 March 2017, para13.

<sup>71</sup> Record, diplomatic note on 11 March 2017.

<sup>72</sup> ARSIWA , art. 8.

<sup>73</sup> Record, Annex C

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renewable energy projects, not to support the specific activity of harvesting sargassum,<sup>74</sup> Besides, the content of the project and the method to fulfill the project are decided by the non-governmental entities on their own not by Revels. Therefore the employees were not acting under the direction, control or instruction of Revels.

## **II. REVELS COMPLIED WITH ITS INTERNATIONAL OBLIGATIONS WITH RESPECT TO THE PROJECT TO HAVEST SARGASSUM ON THE HIGH SEA IN THE SARARGASSO SEA.**

Even if ICJ has the jurisdiction over this matter and SEA cooperation's conduct was attributed to Revels, the project to harvest Sargassum on the high seas in the Sargarso sea did not violate Revels' international obligations. Revels complied with its international obligations under the Hamilton Declaration and CMS, UNCLOS, and the CBD with respect to the harvesting project. Moreover, the customary law was fully observed by Revels, especially the precautionary principle and the duty to prevent transboundary harm.

### **A. REVELS DID NOT BREACH ITS RELAVANT TREATY OBLIGATIONS.**

#### **1. Revels did not violate UNCLOS for harvesting Sargassum on the high sea.**

##### **a.Revels has the right to exercise on the high sea**

Based on UNCLOS, a ship shall sail under the flag of one State only.<sup>75</sup> The high seas are open to all States.<sup>76</sup> Accoding to Article 116 that all States have the right for their nationals to engage in fishing on the high seas.<sup>77</sup> Thus, the *Columbas*, the ship that

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<sup>74</sup> Record, para14.

<sup>75</sup> UNCLOS art.92

<sup>76</sup> UNCLOS art. 87

<sup>77</sup> UNCLOS art. 116

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conducts the haversting project conforms to it for sailing under the flag of Revels has the freedom of fishing on the high sea.<sup>78</sup>

**b. Revels has acted in accordance of the UNCLOS to protect and preserve the marine environment and to conseve living resoureces.**

Article 119 states when determining the allowable catch, scientific information shall be contributed and shall taking species above levels at which their reproduction may become seriously threatened.<sup>79</sup> Alliguna claimed that eels would be negtively effected, whereas, there is no evidence to demonstrate that proper haversting of the Sargussum would lead to the decline of European eels.<sup>80</sup> Moreover, in this article, the main subject should be Sagarssum because the project was about harvesting Sargassum from the Sargasso Sea for biefeful production.<sup>81</sup> The SEA Corporation also conducted an Enviornmental Impact Assessment to fullfill its obligation.<sup>82</sup> Therefore, Revels thinks the initiative did not violate the purpose of conserving living marine resoureces.

**2 Revels did not violate the CMS to protect the migratory species.**

**a.The harvesting would not affect the migratory species.**

Based on the requirement of CMS that states shall endeavour to the extent feasible and appropriate, to prevent, reduce or control factors that are endangering or are likely to further endanger the species, including strictly controlling the introduction of exotic species.<sup>83</sup> The action of harvesting Sargassum would not introduce any new species and Alliguna also agreeded with it for they falling to demonstrate this issue in thier own charge.<sup>84</sup> It means that this action had been done within the consideration that it would not influnce the life of European eels at any circumstance.

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<sup>78</sup> Record para 13

<sup>79</sup> UNCLOS Article 119

<sup>80</sup> Record para 23

<sup>81</sup> Record para 13

<sup>82</sup> Clarification to the Record, A17

<sup>83</sup> CMS Article 3 4 b)

<sup>84</sup> Record ANNEX B, subject of the Dispute

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## **b. The initiative helped to ease the situation of climate changing**

CMS acknowledge that changes in human activities as a result of climate change.<sup>85</sup> Nevertheless, it also recognizes that climate change is already having an adverse impact on migratory species and the phenomenon of animal migration.<sup>86</sup> CMS later stresses on the importance to society of an adequate and stable energy supply and that renewable energy sources can significantly contribute to achieving this.<sup>87</sup> CMS also states that mitigation measures, such as renewable, low carbon and “clean” energy development are urgently required on the condition of providing impact assessments.<sup>88</sup> Revels had already practiced the scientific research by conducting an assessment.<sup>89</sup> The use of biofuel would reduce the gas emissions and expand the use of renewable energy in Revels which can mitigate the global warming.<sup>90</sup> Thus, the project is adhere to CMS and there is no wrongful act has been done by Revels.

## **3 Revels did not violate Hamilton Declaration and NDCs in Paris Agreement.**

The guiding principle of Hamilton Declaration is to conserve the Sargasso Sea ecosystem for the benefit of present and future generations.<sup>91</sup> Pursuant to the Hamilton Declaration, Revels believes the SEA Corporation’s initiative would help Revels to achieve its duty in this declaration as well as its NDC commitments under Paris Agreement as Revels was doing its part to mitigate climate change and help conserve biodiversity.<sup>92</sup> Emission reductions are undertaken on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty, which are critical development priorities for many developing countries.<sup>93</sup> The initiative aims to utilize new energy which is a solution to reduce the negative effect on climate changing and NDC included that there is

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<sup>85</sup> CMS Resolution 12.21 CLIMATE CHANGE AND MIGRATORY SPECIES

<sup>86</sup> CMS Resolution 11.27 RENEWABLE ENERGY AND MIGRATORY SPECIES

<sup>87</sup> CMS Resolution 11.27 RENEWABLE ENERGY AND MIGRATORY SPECIES

<sup>88</sup> CMS Resolution 12.21 CLIMATE CHANGE AND MIGRATORY SPECIES

<sup>89</sup> *Id.*

<sup>90</sup> Record para 14

<sup>91</sup> Hamilton Declaration ,convention of the Sargasso Sea, 11 March, 2014, We hereby: Common Vision 2

<sup>92</sup> Record para 23

<sup>93</sup>Paris COP Decision & Paris Agreement, arts. 4, 5, U.N. Doc. FCCC/CP/2015/L.9/REV.1 (12 Dec. 2015) Nationally determined contributions

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increased reliance on biofuels.<sup>94</sup> To reduce the gas pollution, the project of SEA Corporation is critical and its one of the first commercial which need to be encouraged.<sup>95</sup>

**4. Revels did not violate its obligations under CBD and CBD's decisions to maintain the biodiversity.**

CBD set a restriction that all parties shall to avoid or minimize threat of loss of biological diversity due to the lack of scientific certainty.<sup>96</sup> "Ecosystem" is explained as adynamic complexof plant, animal and micro-organism communities and the irnon-living environment interacting as a functional unit.<sup>97</sup> The fitable removment of Sargassum would not destroy the ecosystem where eels use to spwan, since this will not infulence the function of this whole system. The European eels has been deciane for years, and Alliguna failed to describe to any causal link between the SEA Corporation's initiaticw and any detriment to the species.<sup>98</sup> Revels compiled its obligation by adopting measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity. Moreover, Revels encouraged private cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources. <sup>99</sup> Therefore,it would ease the adverse impact on migratory species population and prevent the loss of biodiversity.<sup>100</sup>

**B. REVELS DID NOT VIOLATE ITS OBLIGATION NOT TO CAUSE TRANSBOUNDARY HARM UNDER CUSTOMARY INTERNATIONAL LAW.**

The principle of not causing transboundary harm is well established by customary international law which states that no state can use its territory in a manner as to cause

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<sup>94</sup> Clarification to the Record, A9

<sup>95</sup> Record para 16

<sup>96</sup> CBD Preamble

<sup>97</sup> CBD art. 2

<sup>98</sup> Record Para 23

<sup>99</sup> Record para 16

<sup>100</sup> *Id.*



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transboundary harm to the territory of another.<sup>101</sup> Therefore, if the harm is caused by a conduct of state-controlled private corporation and the State has not fulfilled its duty of due diligence,<sup>102</sup> the State shall be responsible for the transboundary harm. In the present case, Revels had not breached of such responsibility because the conduct of SEA corporation does not qualify as act causing transboundary harm, firstly, there is no transboundary harm occurred. Secondly, even if there is transboundary harm, Revels has fulfilled its duty of due diligence.

### **1. No significant transboundary harm through physical consequences is caused in Alliguna's territory.**

As aforementioned, the principle of not causing transboundary harm is established under customary law.<sup>103</sup> To constitute a breach of the principle of causing transboundary harm, there shall be clear evidence show the existence of a significant transboundary harm<sup>104</sup> and a physical relationship between the conduct and the consequences.<sup>105</sup> In the present case, neither of these elements are met. Firstly, there is no evidence presented demonstrate the negative impact on Sargasso Sea ecosystem and European eels, or actual transboundary harm has shown within Alliguna's territory,<sup>106</sup> herein no such transboundary harm exist. Secondly, even if there is a negative harm imposed on the relevant species, any causal link between the SEA Corporation's initiative and any

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<sup>101</sup> Trail Smelter Arbitration (U.S. v. Canada) 1938/1941, R.I.A.A. 1905; Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/Conf.48/14/Rev. 1 (1973), Principle 21 ('Stockholm Declaration'); Rio Declaration, Principle 2; BIRNIE AND BOYLE, *INTERNATIONAL LAW AND THE ENVIRONMENT* 168 (2004); McCallion, *International Environmental Justice: Rights and Remedies*, 26 *HASTINGS INT'L. & COMPL.REV.* 427, 431 (2003); *Island of Palmas (U.S. v. Neth.)* (1928), 2 R.I.A.A. 829; *Lac Lanoux Arbitration (Spain v. France)* 1957, R.I.A.A. 281; *Convention on Biological Diversity*, Principle 3, 31 I.L.M. 818 (1992) [CBD].

<sup>102</sup> Rio Declaration, Principle 2; *Charter of Economic Rights and Duties of States*, U.N. Doc. A/RES/3281 (1974); *Prevention of Transboundary Harm from Hazardous Activities*, Article 2, U.N. Doc. A/56/10 (2001); *International liability for injurious consequences arising out of acts not prohibited by international law*, U.N. Doc.

<sup>103</sup> Trail Smelter Arbitration (U.S. v. Canada) 1938/1941, R.I.A.A. 1905; Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/Conf.48/14/Rev. 1 (1973), Principle 21 ('Stockholm Declaration'); Rio Declaration, Principle 2; BIRNIE AND BOYLE, *INTERNATIONAL LAW AND THE ENVIRONMENT* 168 (2004); McCallion, *International Environmental Justice: Rights and Remedies*, 26 *HASTINGS INT'L. & COMPL.REV.* 427, 431 (2003); *Island of Palmas (U.S. v. Neth.)* (1928), 2 R.I.A.A. 829; *Lac Lanoux Arbitration (Spain v. France)* 1957, R.I.A.A. 281; *Convention on Biological Diversity*, Principle 3, 31 I.L.M. 818 (1992) [CBD].

<sup>104</sup> Trail, para 1964, 1965; Stockholm Declaration, Principle 21; *ILA Montreal Rules*, 1982, Art.3; 56th ILC Report, para 150; *Corfu Channel* para 4, 22.

<sup>105</sup> O. Schachter, *International Law in Theory and Practice*, at 336-368 (Brill Academic Publishers 1991); Xue Hanqin, *Transboundary Damage in International Law*, at 4 (Cambridge U. Press 2003). Trail Smelter Case phrases this requirement as "the injury shall be established by clear and convincing evidence", but this approach has been gradually abandoned by international law considering that it goes against the precautionary trend in environmental management at national and international level.

<sup>106</sup> Record, diplomatic note of Revels on 14 September 2017.

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detriment to the species has not shown in this case,<sup>107</sup> herein a physical relationship is absent and no State liability shall be posted on Revels.

**2. Even if there is a significant transboundary harm, Revels has fulfilled its duty to conduct due diligence.**

Whether has a State acted in consistent with the due diligence obligation is recognized as a test when determining an obligation of causing transboundary harm by the customary law,<sup>108</sup> which further states that a due diligence is a duty of conduct rather than result.<sup>109</sup> Therefore, a state shall be regarded as has fulfilled the duty of due diligence if it has make the best effort to minimize the risks considering its economic conditions, the successful prevention of the harm is not required.<sup>110</sup> Several elements are set when classify the duty of due diligence, i.e. the assessment of risk and the cooperation with other states.<sup>111</sup>

In the present case, Revels has fulfilled the obligation of due diligence. Firstly, Revels has processed the assessment of risk in accordance with the relevant customary international law and principles, and determined that the impacts on the marine biodiversity, including the European eel, were uncertain.<sup>112</sup> Therefore, Revels has fulfilled the due diligence duty in respect of assessment of risk and no result indicates a significant transboundary harm. Secondly, Revels has been negotiated with Alliguna through several diplomatic notes regarding the issue of Sargasso Sea and European eels,<sup>113</sup> which showed the cooperation between two states and herein the behavior of Revels fall within the scope of fulfilling the due diligence duty. As a developing country

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<sup>107</sup> Record, diplomatic note of Revels on 14 September 2017.

<sup>108</sup> Pulp Mills Case, 2010 I.C.J. at 55-56; Malcolm N. Shaw, *International Law*, at 855 (6th ed., Cambridge U. Press 2008).

<sup>109</sup> Report of the International Law Commission, UN GAOR, 49th Sess., Supp. No.10, at 195, 237, UN Doc. A/49/10 (1994) [49th ILC Report]; XUE HANQIN: *TRANSBOUNDARY DAMAGE IN INTERNATIONAL LAW*, 170 (2003) [XUE].

<sup>110</sup> Report of the International Law Commission on the Work of its Fifty-Third Session (2001), 150-51, U.N. Doc. A/56/10 [56th ILC Report]

<sup>111</sup> Prevention of Transboundary Harm from Hazardous Activities, Article 2, U.N. Doc. A/56/10 (2001); Stockholm Declaration, Principle 24; Rio Declaration, Principle 7, 18; Pulp Mills, para 48; Lake Lanoux, para 314.

<sup>112</sup> Clarifications, Q17

<sup>113</sup> Record, diplomatic notes.

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whose economy is based largely on fishing and agriculture,<sup>114</sup> Revels has made its effort to aforementioned preventions, and herein has fulfilled the duty of due diligence.

### **C. REVELS COMPLIED WITH THE PRECAUTIONARY PRINCIPLE.**

Precautionary principle aims to protect the environment that the precautionary approach shall be widely applied by States according to their capabilities, so that there will be no “threats of serious or irreversible damage”.<sup>115</sup> Revels has fulfilled the obligations thereof.

#### **1. Revels fulfilled its duty by assuring the transparency of decision-making.**

According to Article 15 in the Precautionary Principle: protecting public health, the environment and the future of our children, an effective approach to applying the precautionary principle in these areas can be based on policy actions, such as increasing the transparency of decision-making.<sup>116</sup> Revels made sure that this programme was known by other countries in order to reach the requirement of increasing transparency of decision-making.<sup>117</sup> The SEA Corporation’s initiative to harvest Sargassum was one of the first commercial projects of its kind and Revels issued a press release and a report about it, the news media has covered it widely in Revels and other countries, including Alliguna.<sup>118</sup>

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<sup>114</sup> Record, para 2.

<sup>115</sup> Rio Declaration on Environment and Development, prin. 15, U.N. Doc. A/CONF.151/5/Rev.1 (1992) CBD preamble; United Nations Framework Convention on Climate Change, Article 3.3, Mar 21,1994, 1771 U.N.T.S 107; London Protocol Article 3, UNCLOS Article 23; Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/CONF.48/14/Rev.1 (1972).

<sup>116</sup> The precautionary principle: protecting public health, the environment and the future of our children, World Health Organization 2004, Article 15

<sup>117</sup> Record para 15

<sup>118</sup> Record Para 15&16

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## **2. Revels fulfilled its duty by conducting a scientific assessment.**

Article 15 also illustrates that applying this principle also in need of scientific research.<sup>119</sup> Rio Declaration claims that precautionary approach shall be applied by States according to their capabilities.<sup>120</sup> Revels did follow the precautionary principle based on the fact that The SEA Corporation conducted an Environment Impact Assessment before it started the programme. Though the impacts were uncertain, this scientific assessment stands for Revels' effort on trying our best to protect integrity of the global environmental and developmental system.<sup>121</sup>

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<sup>119</sup> The precautionary principle: protecting public health, the environment and the future of our children, World Health Organization 2004, Article 15

<sup>120</sup> Rio Declaration Principle 15

<sup>121</sup> Clarifications to the Record A17

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## **CONCLUSION AND PRAYER**

For the foregoing reasons, Revels respectfully requests that this Court:

1. Declare itself to be without jurisdiction to hear the matter submitted by Alliguna.
2. Declare that the conduct at this issue in this matter is not attributable to Republic of Revels for purposes of state responsibility.
3. Declare that the Republic of Revels has not violated international law regarding the Sargussum harvesting project.

Respectfully Submitted.

Team 1954

Agents for the Republic of Revels