IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

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

FEDERAL STATES OF ALLIGUNA

APPLICANT

V.

REPUBLIC OF REVELS

RESPONDENT

MEMORIAL FOR THE APPLICANT

THE 23RD STETSON MOOT COURT COMPETITION 2018-2019

TABLE OF CONTENTS

QUESTIONS PRESENTED

I. WHETHER THE INTERNATIONAL COURT OF JUSTICE POSSESSES JURISDICTION OVER THE RESPONDENT;

II. WHETHER THE ACTIONS OF THE SEA CORPORATION IN THE SARGASSO SEA ARE IN VIOLATION OF INTERNATIONAL LAW AND CUSTOMARY INTERNATIONAL LAW; AND

III. WHETHER THE ACTIONS OF THE SEA CORPORATION IN THE SARGASSO SEA ARE ATTRIBUTABLE TO THE REPUBLIC OF REVELS UNDER INTERNATIONAL LAW.

STATEMENT OF JURISDICTION

The Governments of the Federal States of Alliguna and the Republic of Revels submits this present controversy regarding the harvesting of the Sargassum Sea Seaweed, the habitat for the a Critically Endangered Species. The parties seek final resolution by the International Court of Justice (ICJ) by Special Agreement pursuant to Article 36, paragraph 1, in relation to Article 40, paragraph 1, of the Statute of this Court. Alliguna accepted the jurisdiction of this Court pursuant to Article 36(1) and various treaties, but Revels disputes the jurisdiction of the Court under this article and those treaties.

INDEX OF AUTHORITIES

TREATIES AND CONVENTIONS

DECLARATIONS

CONFERENCES OF THE PARTIES

JUDICIAL AND ADVISORY OPINIONS

ILA REPORTS AND ILC DRAFT ARTICLES

ARTICLES AND JOURNALS

STATEMENT OF FACTS

The Federal States of Alliguna (Alliguna) and the Republic of Revels (Revels) are neighboring coastal sovereign states on a small continent located in the North Atlantic Ocean near the Sargasso Sea.[1] Both countries' coasts are approximately 250 nautical miles from the Sargasso Sea.[2]

The European Eel (Eels) is an endangered, facultatively catadromous migratory species that is listed as Critically Endangered on the IUCN Red List of Threatened Species.[3] They are a declining species in around the world because of human activities such as recruitment, population, and escapement.[4] The Eel species is extremely important to Alliguna as the eels feature prominently in Alliguna's culture, religion, and history.[5] The Eels importance is further evident by the organization created after them, Friends of the Eels.[6] Their efforts in raising awareness on conserving the species led to strict domestic legislation in preserving the Eels.[7]

In July 2016, Seaweed Energy Alternatives, Inc. (SEA Corporation), an organization incorporated in the Republic of Revels and flying on the high seas under the Revels flag, began destroying the habitat of the Eels to use only that habitat's resources.[8] SEA Corporation is claimed to be a private corporation but received subsidy from the Republic of Revels in an amount that essentially funded the project.[9]

---

[1] Record at ¶ 1.
[2] *Id*.
[3] Record at ¶ 3.
[4] *Id*.
[5] Record at ¶ 4.
[6] *Id*.
[7] *Id*.
[8] Record at ¶ 13.
[9] Clarifications at A18.

On January 13, 2017, Alliguna reached out the Revels in regard to their corporation, SEA Corporation to discuss the matter, but the Revels refused as they deemed the meeting to be "unnecessary."[10] Essentially, the Revels weighed the significance of renewable energy over the significance of the Eels.[11] SEA Corporation's actions were in an effort to further renewable resources as attributed to the various treaties, but openly admitted that the decline of the Eels was not an issue that needed to be addressed because the Eels were already declining.[12] Instead, of preserving the Eels, the Revels claimed they rather attribute to renewable energy in efforts to, what they believed, further the purpose of numerous conventions.[13]

Finally, the Revels declined to be attributed to the conduct of the SEA Corporation.[14] The SEA Corporation were on the high seas and their actions did not constitute a violation neither customary international law nor the CBD. Allegedly, their actions were conforming to applicable law.[15]

Alliguna and the Revels are Members of the United Nations and parties to the Statute of the International Court of Justice (ICJ). Alliguna recognizes the ICJ's jurisdiction as compulsory, but on the condition of reciprocity of other states.[16] The Revels has not recognized the ICJ's jurisdiction as compulsory ipso facto.[17] Alliguna and the Revels are also parties to the Vienna Convention on the Law of Treaties (VLCT).[18]

---

[10] Record at ¶ 18-19.
[11] Record at ¶ 19.
[12] *Id*.
[13] Record at ¶ 23.
[14] Record at ¶ 19.
[15] *Id*.
[16] Record at ¶ 5.
[17] *Id*.
[18] Record at ¶ 6.

Alliguna and the Revels are contracting parties to the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.[19] In both of these conventions, both Alliguna and the Revels have declared in writing that if disputes arise out of these treaties, they will submit to the ICJ Jurisdiction.[20] Also, in accordance with the Paris Agreement, both parties submitted their first Nationally Determined Contributions (NDCs).[21]

Further, both Alliguna and the Revels are parties to the Convention on the Conservation of Migratory Species of Wild Animals (CMS), parties to the United Nations Convention on the Law of the Sea (UNCLOS), and signatories to the Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea (Hamilton).[22] While the Hamilton does not have a dispute resolution mechanism, both Alliguna and the Revels can freely choose different mechanisms apart from one another in the other treaties.[23]

Finally, both Alliguna and the Revels had high levels of participation in 1972 United Nations Conference on the Human Environment at Stockholm; the 1992 United Nations Conference on Environment and Development at Rio de Janeiro; the 2002 World Summit on Sustainable Development at Johannesburg; and the 2012 Rio+20 Conference at Rio de Janeiro.[24]

[19] Record at ¶ 7, 10.
[20] *Id*.
[21] *Id*.
[22] Record at ¶ 8, 9, 11.
[23] *Id*.
[24] Record at ¶ 12.

SUMMARY OF THE ARGUMENT

I. The ICJ has not have jurisdiction of this matter under Article 36(2) of the ICJ Statute, because Revels has accepted the Court's compulsory jurisdiction through treaty, reciprocity, and customary international law. This Court has jurisdiction because the violations of CBD, UNFCCC, and Paris Agreement are at issue in this matter and the further conventions that the Parties participate in are not exclusive to the matter at hand.

II. The actions of the SEA Corporation in the Sargasso Sea are in violation of various treaties, conventions and declarations: the Convention on Biological Diversity, Convention on the Conservation of Migratory Species of Wild Animals, the United Nations Convention on the Law of the Sea, the Rio Declaration, and the Hamilton Declaration on Collaboration for Conservation of the Sargasso Sea. The actions of the Sea Corporation in the Sargasso Sea are also in violation of customary international law.

III. The actions of the Sea Corporation in the Sargasso Sea are attributable to the Revels under international law, namely under the United Nations Convention on the Law of the Sea concerning flag states and the Draft Articles on State Responsibility for Internationally Wrongful Conduct. The Sea Corporation's ship flies the flag of the Respondent, thus inviting the jurisdiction of the Respondent onboard the ship. Furthermore, their actions were controlled, acknowledged and adopted by the Respondent as their own.

ARGUMENT

This honorable tribunal applies international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; international custom, as evidence of a general practice accepted as law; the general principles of law recognized by civilized nations; and subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.[25]

I. THE ICJ HAS JURISDICTION OVER THE RESPONDENT REGARDING THIS DISPUTE

A. Consent Through Treaty

Revels has submitted to the jurisdiction of the ICJ through the CBD, the UNFCCC, and the Paris Agreement.[26] Moreover, Article 36(1) of the VCLT States have already consented to this Court's jurisdiction by signing and ratifying a treaty that uses the ICJ as the exclusive dispute-resolution mechanism.[27]

In turn, Alliguna and the Republic of Revels have both consented to ICJ jurisdiction because they both are parties to the CBD, the UNFCCC, and the Paris Agreement which are essential to this dispute.[28] Alliguna's primary issue is the detrimental atrocities on the European eel. Further, the main concern of the CBD is to conserve biological diversity, which includes the European eel, as well as the various species of the marine biodiversity in the Sargasso Sea, as the EBSA protects the region. The UNFCCC and the Paris Agreement are also relevant because

[25] Statute of the International Court of Justice art. 38(1)(a)-(d) (San Francisco, 26 June 1945), 3 Bevans 1179, 59 Stat. 1055, T.S. No. 993.
[26] Record at ¶ 7, 10.
[27] Vienna Convention on the Law of Treaties, art. 36 sec. 1 (Jan. 27, 1980) 1155 U.N.T.S. 331.
[28] Record at ¶ 7, 10.

Revels has been provided subsidies for the harvesting of Sargassum to help achieve its NDC commitments under the Paris Agreement. Further, various treaties, declarations, and conventions explain the significance of protecting marine ecosystems, such as the Sargasso Sea. This argument will be fleshed out in the latter portion of the brief, specifically section II and III.

1. The Republic of Revels has accepted ICJ's jurisdiction as compulsory, as evident by their ascension to the CBD.

Article 36(2) of the ICJ Statute provides that "parties to the present Statute at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same."[29] Essentially, when States have a dispute via treaty, they must submit to the ICJ jurisdiction if the treaty they consent to calls for it.[30] The treaty disputes will be discussed in sections II and III of this brief.

This Court in *Nicaragua v. United States* found compulsory jurisdiction between the United States and Nicaragua because of their consent. In it, the United States contested Nicaragua did not consent to the ICJ jurisdiction; instead, they consented to the PCIJ.[31] The Court held that their ascension to the PCIJ pursuant to Article 36(5) was sufficient.[32] Also, they stated that even if Article 36(5) did not apply, their conduct as parties as well as further ICJ ascension through treaties implied consent through Article 36(2).[33]

Pursuant to Article 27, paragraph 3, parties to CBD must subject to the ICJ for all disputes. By being a party, both Alliguna and the Revels must handle this matter in the ICJ

---

[29] I.C.J. Statute art. 36(2).
[30] I.C.J. Statute art. 36(2).
[31] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Jurisdiction and Admissibility, Judgment, I.C.J. Rep. 1984, n. 1 at 8.
[32] *Id*. at 56.
[33] *Id*. at 22.

because this Court is the deciding matter when the treaty is violated. Pursuant to Article 24 of the Paris Agreement and Article 14 of the UNFCCC, parties to these treaties submit to the ICJ as compulsory jurisdiction. By subjecting to the ICJ, the parties both show intention to handle disputes in the ICJ. Similar to the clear indication of submitting to ICJ jurisdiction by the parties in *Nicaragua v. United States*, Alliguna and Revels has submitted to ICJ jurisdiction by signing and ratifying to the treaty with even further consent through other treaties.

Therefore, using the Court's reasoning in *Nicaragua v. United States*, the Revels must recognize this Court as compulsory because Alliguna and the Republic of Revels recognize the ICJ to have compulsory jurisdiction through ascension and conduct.

B. The Respondent expressed Consent Through Reciprocity

As members of the United Nations, Alliguna and Revels has consented to the ICJ's jurisdiction based on reciprocity because Declarations agreed by both nations are in dispute about an obligation to protect safeguard the environment. Pursuant to Article 36(2) of the ICJ Statutes, States may claim compulsory *ipso facto* for the interpretation of a treaty, among other Declarations.[34] The ICJ determined that when there are declarations made on the condition of reciprocity, "jurisdiction is conferred on the Court only to the extent to which the two Declarations coincide in conferring it."[35] Reciprocity issues are the "scope and substance of the commitments entered into, including reservations."[36] Essentially, reciprocity requires that to Court decide whether, when States, at the time of instituting proceedings after application "accepted 'the same obligation' in relation to the subject-matter of the proceedings"[37].

[34] I.C.J. Statute art. 36(2).
[35] I.C.J. Rep. 1952, p. 103.
[36] I.C.J. Rep. 1984, p. 419, para. 62.
[37] *ibid*., pp. 420-21, para. 64.

In the *Case of Certain Norwegian Loans* (France v. Norway), the Court decided on its jurisdiction regarding the nations' two unilateral declarations, to find reciprocity on France's behalf since Norway conditioned ICJ jurisdiction on reciprocity.[38] In doing so, this Court found Treaties to show that France conformed to ICJ jurisdiction that Norway was also a party to and thus, invoked reciprocity.[39] The Court found reciprocity, even though France argued a different treaty was relevant, in which the Court found the argument lacking relevant subject matter.[40]

Here, Alliguna and Revels are unlike the *Case of Certain Norwegian Loans* because the treaties in question are directly related to this dispute. The CBD, the UNFCCC, and the Paris Agreement all conform to enhancing biodiversity and safeguarding the environment, which are under attack by the actions of Revels. Thus, the ICJ is needed to adjudicate on the merits with the Treaties giving jurisdiction to the Parties in this dispute.

C. The Respondent expressed Consent Through Customary International Law

Even if this Court finds that the treaties do not give the ICJ compulsory jurisdiction, customary international law should allow this Court jurisdiction. Under international law, "resort must be had to the customs and usages of civilized nations."[41] This principle is reaffirmed by Article 38 (1) of the ICJ Statute, which stipulates that courts "shall apply international custom, as evidence of a general practice accepted as law."[42] Customary international law is substantiated "primarily in the actual practice of states and *opinio juris* of states."[43]

---

[38] *Certain Norwegian Loans*, France v. Norway, Judgment, 1957 I.C.J. 9 (July 6).
[39] *Id*. at pg. 30.
[40] *Id*.
[41] *The Paquete Habana*, 175 U.S. 677, 700 (U.S. 1900).
[42] I.C.J Statute art. 38(1)(b).
[43] *The Case of the S.S. Lotus (France v. Turkey)*, 1927, P.C.I.J. Ser. A, No. 10, p. 4 at p. 28; *see also North Sea Continental Shelf Case*, I.C.J. Rep. 1969, p. 3 at p. 44, (para. 77); *see also* p. 42 ¶71.*; see also The Case of the Continental Shelf (Libya v. Malta)*,1985, p. 13 at 29-30 ¶27.

State practice is evinced through treaties, diplomatic correspondence, national legislation, and policies.[44] Although such state practice must be constant and uniform, it is enough that the practice be sufficiently similar to constitute widespread state practice.[45] However, state practice must be extensive and representative, but not universal.[46] *Opinio juris* requires that a State adhere to a practice because it feels legally obliged to do so.[47]

3. There is State Practice to help show Consent to ICJ Jurisdiction is warranted.

A vast amount of States has brought disputes to the ICJ as members of the United Nations.[48] Essentially, "all the members of United Nations are ipso facto members of the statute of ICJ."[49] While the CMS, UNCLOS, the Hamilton Declaration, and the high-level representation in committees that surveyed environmental concerns does not conform to a single court, they should be recognized in analyzing the ICJ's jurisdiction.[50]

For example, in the Nuclear Test case involving Australia and France, the Court used treaties that Australia and France were both parties to in helping decide France's conformity to State practice.[51] Although the General Act for the Pacific Settlement of International Dispute was

---

[44] *North Sea Continental Shelf* (Ger. v. Den.; Ger. v. Neth.), 1969 I.C.J. 3, (¶77).
[45] *Asylum case* (Colombia v. Peru), Judgment, 20 November 1950, I.C.J. 1950, p. 277. See also, *Fisheries case (United Kingdom v. Norway)*, Judgment, 18 December 1951, ICJ Reports 1951, p. 131. 38 *Continental Shelf case* (Tunisia v. Libyan Arab Jamahiriya), Judgment, 24 February 1982, ICJ Reports 1982, p. 74, § 100 *and Continental Shelf case (Libyan Arab Jamahiriya v. Malta)*, Judgment, 3 June 1985, ICJ Reports 1985, p. 33, § 34
[46] ILA, Final Report of the Committee on the Formation of Customary (General) International Law, Statement of Principles Applicable to the Formation of General Customary International Law, Report of the Sixty-Ninth Conference, London, 2000, Principle 14, p. 734.
[47] *Case of the S.S. Lotus* (Fr. v. Turk.), 1927 P.C.I.J. Ser. A, No. 10, at 28-29; *See also, N. Sea Cases*, 1969 I.C.J. 43.
[48] *See Fisheries Jurisdiction Case (Spain v. Canada)*, Judgment, 1998 I.C.J. Rep. 1998, p. 453 ¶ 46 (Dec. 4) (pg. 5)
Fisheries Jurisdiction Case (United Kingdom v. Iceland), Judgment, 1973 I.C.J. Rep. (Feb. 2) (pg. 8, 10, 15)
[49] Dr. Monica Narang, University of Jammu, *ICJ & Peaceful Settlement of Disputes*, Journal of Asia Pacific Studies (2012) Volume 2 No 3, pg. 390.
[50] *Nuclear Tests Case (Australia v. France)*, International Court of Justice (ICJ), 20 December 1974,
[51] *Id.*

the Act that recognized the ICJ with compulsory jurisdiction, the Court used other treaties the parties submitted to, to help develop the Court's ruling and rationale.[52] The Court included treaties such as the Treaty for the Prohibition of Nuclear Weapons in Latin America, and General Assembly resolutions to formulate State practice.[53]

As stated above, Alliguna and the Revels are both parties to multiples treaties and declarations that discuss the merits.[54] In helping to determine consent to the practice of conserving environmental ecosystems and recognizing climate change, the ICJ should acknowledge these other treaties to be discussed by the Court. These include the CMS, UNCLOS, the Hamilton Declaration, and the high-level representation in committees that surveyed environmental concerns. It is only with these other treaties, along with the CBD, Paris Agreement, and UNFCCC, can the Court look at the totality of the circumstances and make informative considerations. Jurisdiction in this matter without examining the other treaties, diplomatic correspondence, national legislation, and policies that show the Revels to conform to the practices in dispute. State Practice is evident with these other treaties to provide assistance.

4. Opinio Juris is evident.

In having a legal obligation, the various treaties Alliguna and the Revels are a party to safeguard the environment by preserving it. As stated above, *opinio juris* requires that a State adhere to a practice because it feels legally obliged to do so.[55]

Both Alliguna and the Revels are known members of the United Nations evident by their representation in various conventions and treaties. While they do not agree on settlement

---

[52] *Id*.
[53] *Id*.
[54] Record at ¶ 8, 9, 11, 12.
[55] *Case of the S.S. Lotus* (Fr. v. Turk.), 1927 P.C.I.J. Ser. A, No. 10, at 28-29*; see also N. Sea Cases*, 1969 I.C.J. 43.

disputes in certain treaties and conventions, they conform in legal obligation to preserving the environment, through various acts. Thus, both Alliguna and the Revels display a legal obligation.

II. THE ACTIONS OF THE SEA CORPORATION IN THE SARGASSO SEA ARE IN VIOLATION OF VARIOUS TREATY LAW, CONVENTIONS, AND DECLARATIONS SIGNED BY THE RESPONDENT

As a general principle, States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies; and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.[56] The extent of this responsibility is outlined in various treaties, conventions, and declarations signed by the Respondent; and every treaty in force is binding upon the parties to it and must be performed by them in good faith: a concept called "*pacta sunt servanda*."[57]

A. The actions of the Sea Corporation in the Sargasso Sea are in violation of the CBD.

The object of the CBD includes the conservation of biological diversity and the sustainable use of its components.[58] This requires contracting parties of the convention to cooperate, as possible, in their efforts in respect of areas beyond national jurisdiction for the conservation and sustainable use of biological diversity.[59]

1. The Actions of the Sea Corporation Violate Article 8 of the CBD

[56] Convention on Biological Diversity art. 3 (Rio de Janeiro, 5 June 1992) 1760 U.N.T.S. 79.
[57] Vienna Convention on the Law of Treaties art. 26 (Jan. 27, 1980) 1155 U.N.T.S. 331.
[58] *See* CBD at art. 1.
[59] *Id*. at art. 5.

The CBD mandates one such conservation effort, *in-situ* conservation, to which contracting parties must, among other things, establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity; promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas; and rehabilitate and restore degraded ecosystems and promote the recovery of threatened species.[60]

Here, the Sargasso Sea has already been established as an ecologically or biologically significant area, thus warranting special measures to deter potentially harmful effects on this area of the ocean. The actions of the SEA Corporation not rise to the level of environmentally sound development because it is likely that the SEA Corporation is completely unaware of how its actions are affecting the ecosystem, including information on the remaining population of Sargassum Seaweed and the remaining population of Eels. This is the only conclusion from an inconclusive environmental impact assessment. Moreover, the SEA Corporation has done absolutely nothing to restore or at least secure the propagation of the Sargassum Seaweed in the Sargasso Sea and the Eels that live there. Thus, they have no information on the remaining population of both species and Sea Corporation's actions violate of article 8 of the CBD.

2. The Revel's actions Violate Article 10 of the CBD

The CBD mandates contracting parties to encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.[61]

---

[60] *Id*. at art. 8(a), (e) – (f). "'In-situ conservation' means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties." *Id*. at art. 2. "'Protected area' means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives." *Id*.

[61] *Id*. at art. 10(b), (e).

By refusing to come to an agreement with the Applicant and allowing the Sea Corporation to continue harvesting, the Revels is failing to reconcile their environmental convention obligations with private entities acting on their behalf. In addition, the Revel's rejection of the Alliguna's invitation for a meeting to discuss the impacts of the Sea Corporation's actions in the Sargasso Sea is a violation of the object of the CBD to cooperate with other contracting parties. Thus, the Revel's actions violate article 10 of the CBD.

B. The actions of the Sea Corporation and the Respondent are in violation of the CMS.

The fundamental principle of the CMS includes the promotion, cooperation, and support of research relating to migratory species.[62]

1. The actions of the Sea Corporation run contrary to CMS Resolution 11.27

From CMS Resolution 11.27, the conference of the parties urged parties and encouraged non-Parties to apply appropriate Strategic Environment Assessment (SEA) and Environmental Impact Assessment (EIA) procedures when planning the use of renewable energy technologies; avoid existing protected areas in the broadest sense and other sites of importance to migratory species; undertake appropriate survey and monitoring both before and after deployment of renewable energy technologies to identify impacts on migratory species and their habitats in the short-and long-term, as well as to evaluate mitigation measures; and apply appropriate

[62] Convention on the Conservation of Migratory Species of Wild Animals art. 2(3)(a) (June. 23, 1979), 1651 U.N.T.S. 333

cumulative impact studies to describe and understand impacts at larger scale, such as at population level or along entire migration routes.[63]

Here, Resolution 11.27 calls for the avoidance of existing protected areas of importance to migratory animals. The Sea Corporation is in violation of this because they know, or should know, that the Sargasso Sea is an EBSA zone, and yet they continue harvesting the Sargassum Seaweed from there anyways. Second, the conference of the parties in Resolution 11.27 stated that surveying and monitoring of migratory species and their habitat is an ongoing process. The SEA Corporation performed one environmental impact statement and ceased monitoring the impact of their actions. Third, the conference of the parties encourages cumulative impact studies to describe and understand impact on larger scale. The SEA Corporation has failed to do any data collecting since their initial environmental impact statement, and thus, run contrary to the Resolution.

2. SEA Corporation actions run contrary to CMS Resolution 12.21.

Resolution 12.21 states the conference of the parties encouraged the consideration of social impacts of migratory species in the implementation of climate change policies.[64] As stated above, similar measure should be undertaken regarding the social impacts of migratory species as well.[65]

The Sea Corporation failed to perform any assessments into the social impact of the European Eel in the implementation of the Respondent's renewable energy program. The Eel is of great significance to the Applicant's cultural history: the eels feature prominently in the Applicant's religion and history. The Sea Corporation failed to account for the existing social

[63] UNEP/CMS/Resolution 11.27 para. 2(2.1)-(2.3).
[64] UNEP/CMS/Resolution 12.21 para. 3.
[65] *Id*. at

importance of the European Eel in their actions and thus acted contrary to this resolution, and thus, run contrary to the guidelines.

3. The Revel's actions violate of Article 4 of the CMS

For parties that are range States of migratory species listed in Appendix II, the parties should facilitate the conclusion of agreements where these should benefit the species and should give priority to those species in an unfavorable conservation status.[66] The spirit of both the principal and Article 4 of the CMS is cooperation.

Article 4 is applicable here because the Revel is a range state of the Eel, and the Eel is listed in Appendix II of the CMS. As a result, the CMS requires the conclusion of agreements between parties that benefits the Appendix II species. The Revel's actions are contrary to this guideline because the Revels continuously refuse to cooperate with the Applicant about conserving the Eel, let alone acknowledge its role in the Eel's decline. The Revels is a developing nation and, as a result, may not possess the economic resources to undertake solitary conservation efforts. However, this reasoning would not suffice because the Respondent has asked no one in the international community for assistance, and thus, the Revels violates Article 4 of the CMS.

C. The Revels are in violation of the United Nations Convention on the Law of the Sea

Although all states enjoy the freedoms to fish and conduct scientific research on the high seas, these freedoms are constrained by two factors: due regard for the interests of other states

[66] *See* CMS Art. 2(3)(a), 4(3).

and due regard for rights under this convention. [67] But as a general matter, States have the obligation to protect and preserve the marine environment.[68]

1. The Revels is in violation of Articles 117 and 118

All states have a duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.[69] States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas.[70] In addition, States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned.[71]

The Revel is acts in violation of Article 117 because they are failing to cooperate with Alliguna on how to best conserve the ecosystem of the Sargasso Sea. Instead, the Respondent continues to vehemently deny that their renewable energy program is impacting the Sargasso Sea in any fashion.

Furthermore, the Respondent has nationals exploiting living resources in a protected area: the Sargasso Sea. As a result, the Respondent is obligated to enter into negotiations with a view on taking necessary conservation measures. However, Revels actions in violates Article 118 because they initially declined to meet with Alliguna. Although they eventually entered negotiations with the Applicant, they possessed the mindset that the decline is not their fault, that

[67] United Nations Convention on the Law of the Sea art. 87 (Montego Bay, 10 Dec. 1982) 1833 U.N.T.S. 3, 21 I.L.M. 1261 (1982)
[68] *Id*. at art. 192.
[69] *Id*. at art. 117
[70] *Id*. at art. 118
[71] *Id*.

the decline is "regrettable," and that the Applicant's concerns are "unwarranted." Thus, Revel's actions violate on Article 117 and 118.

2. Revel's actions violates Article 300.

Furthermore, Parties shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.[72] The Respondent is obligated to assume the obligations under this convention because the Respondent signed it and became a state party to the convention. Furthermore, to disregard the health of the ecosystem constitutes an abuse of right as the Seaweed possessed immense significance to the Sargasso Sea, and the Eel that migrates through there is of enormous significance to the Applicant. Thus, Revels violates of Article 300.

D. The actions of the Sea Corporation in the Sargasso Sea are in violation of the Rio Declaration

1. The SEA Corporation is in violation of Principle 15 of the Rio Declaration

To protect the environment, the precautionary approach is widely applied by States according to their capabilities.[73] Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.[74]

Sea Corporation's action violates the Rio Declaration Principle 15. The Sargasso Sea, an EBSA zone, is an important ecosystem in the life cycle of the Eel. Per Principle 15, lack of full

[72] *Id*. at art. 300.
[73] United Nations Rio Declaration on Environment and Development prin. (13 June 1992), 31 I.L.M. 874 (1992).
[74] *Id*.

scientific certainty is no excuse for postponing cost-effective measures to prevent environmental degradation necessary to help facilitate the survival of the Eel. The Sea Corporation performed an environmental impact assessment, and the results from that assessment allegedly concluded that the effects of the harvesting are unknown. Due to the occurrence of continued harvesting activities, the SEA Corporation must have wrongly interpreted this assessment to mean that no negative effects will stem from their activities. Revels has also wrongly interpreted this assessment to signify that there is no evidence to suggest that the biofuels initiative has negatively impacted the Sargasso Sea ecosystem or eels. Thus, Sea Corporation violates Rio Declaration.

E. Sea Corporation's actions violate the Hamilton Declaration.

The guiding principle of the Hamilton Declaration is to conserve the Sargasso Sea ecosystem for the benefit of present and future generations.[75] Although not binding in nature, the signatories decided to collaborate, to the extent possible, in pursuing conservation measures for the Sargasso Sea ecosystem through existing regional and international organizations with relevant competences.[76]

Sea Corporation's actions in the Sargasso Sea violate this declaration because the harvesting of the Sargassum Seaweed threatens the continued existence of the European Eel for future generations, especially the Applicant's future generations. That issue merits consideration because the Eel is of great significance to the Applicant's religious and cultural history. Furthermore, the declaration encourages collaboration. Thus, if the Sea Corporation's actions violate of other environmental agreements, Sea Corporation violates declaration as well.

---

[75] Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea, para. 2.
[76] *Id*. at para. 3.

III. THE ACTIONS OF THE SEA CORPORATION IN THE SARGASSO SEA ARE IN VIOLATION OF CUSTOMARY INTERNATIONAL LAW

A. Sea Corporation's actions violate the Precautionary Principle

Once again, we review the precautionary principle mentioned above.[77] An overwhelming percentage of the world accepts the precautionary principle as customary international law. The contemporary basis for the rationale behind the Precautionary Principle arose from the Stockholm Declaration, where Principle 21 mandated that all states are responsible for certifying, *inter alia*, "that the activities within their jurisdiction and control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction."[78] 182 states have ratified the declaration.[79] The Rio Declaration on Environment and Development was approved at the United Nations Conference on Environment and Development. 178 U.N. member states adopted the Rio Declaration. From the Rio Conference was the creation of the CBD[80], which 196 states have ratified.[81] As such, the precautionary principle is recognized as CIL.

Here, the precautionary principle does not require clear proof that their actions may harm the Eels. Although the SEA Corporation's environmental impact assessment yielded inconclusive results, they know or should know, that the Sargasso Sea is an EBSA zone, and the Eels that migrate there are critically endangered. Thus, that area warrants sensitive treatment despite an inconclusive impact assessment.

---

[77] *Id*.
[78] Stockholm Declaration on the Environment, Principle 21 (1972).
[79] Stockholm Convention, "Status of ratification," <http://chm.pops.int/Countries/StatusofRatifications/PartiesandSignatoires/tabid/4500/Default.aspx> (last visited Nov. 11, 2018).
[80] The Precautionary Principle appears again in the CBD in the Preamble. *See* CBD, preamble at pg. 1.
[81] CMS, "List of Parties," <https://www.cbd.int/information/parties.shtml> (last visited Nov. 11, 2018).

Furthermore, the Respondent's full participation and presence in the aforementioned conferences and conventions establishes a general practice of Revels regarding environmental concerns as it relates to the Precautionary Principle. The Revel is a contracting[82] party to the CBD, CMS, UNCLOS; and signatory to the Hamilton Declaration, a participant in the 2002 World Summit on Sustainable Development; and the 2012 Rio+20 Conference at Rio de Janeiro, as well as a participant in the conferences in the aforementioned paragraphs. The Respondent, through signing and/or becoming parties to multiple environmental conventions and agreements, acknowledges the need for proactive strategies in preserving biodiversity and the environment: presenting a legal obligation.

This clearly indicates the Respondent's embraced obligation of proactive steps on responsible caretaking and use of the environment past its national jurisdiction and the aquatic wildlife who inhabits it, despite claims that there is insufficient evidence to assert that Seaweed harvesting is detrimental to the Eel. Extensive harvesting of Sargassum Seaweed runs opposite to the survival of the critically endangered European Eel, and to deny the detrimental effects on the basis of insufficient scientific evidence would run counter to this legal obligation. Thus, Revels violate precautionary principle.

B. Sea Corporation's actions violate the Duty to Prevent Transboundary Harm

"Transboundary harm" means harm caused in the territory of or in other places under the jurisdiction or control of a State other than the State of origin, whether or not the States concerned share a common border.[83] The State of origin, in the exercise of their sovereign right

[82] "'[C]ontracting State' means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force." V.C.L.T. Art. 2(1)(f).
[83] Articles on Prevention of Transboundary Harm from Hazardous Activities, Art. 2(c). *See also* Stockholm Declaration on the Environment, Principle 21 (1972).

to exploit their own natural resources, shall take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof.[84]

The Duty to Prevent Transboundary harm is a recognized principle of customary international law. Article 2(c) of the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, in its contemporary form, derives from Principle 21 of the Stockholm Declaration: an agreement that 182 states to date have ratified. The essence of the principle also appears in the Rio Declaration: an agreement that 178 U.N. member states have ratified thus far.

For example, The court in the *Corfu Channel Case* stated that Albania's duty to alert British warships of mines in its territorial waters was a general and well-recognized principle that every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.[85] The court in the *Trail Smelter Case* held that "no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence."[86] Finally, the Court in the *Iron Rhine Case* wrote that "[e]nvironmental law and the law on development . . . require that where development may cause significant harm to the environment there is a duty to prevent…such harm . . . . This duty… has now become a principle of general international law."

Here, this duty mandates that all appropriate measures must be taken to prevent significant transboundary harm or at any event to minimize the risk thereof, and the Sea Corporation is failing to do this. Like in the *Iron Rhine Case*, the activities of the Sea Corporation threatens to cause harm to the ecosystem of the Sargassum Sea; and it is from this

[84] *Id*. at Art. 3.
[85] *Corfu Channel*, Merits, Judgment 1949 I.C.J. p. 4, at p. 23. at 22.
[86] *Trail Smelter Arbitration (United States v. Canada)*, 3U.N. Rep Int'l Arb Awards 1905 (1941)

conduct that a duty to prevent or mitigate the harm arises. Choosing to continue with harvesting the seaweed despite an inconclusive environmental impact statement does not equate to taking all appropriate measures to prevent harm. Continuing to harvest the seaweed despite its importance to a critically endangered species, Eel, is not taking all appropriate measures to prevent harm. The transboundary harm includes the damage done to the collective cultural consciousness of Alliguna with regards to the significance of the eel towards their cultural identity. Thus, Sea Corporation's actions violate the Duty to Prevent Transboundary Harm.

IV. THE ACTIONS OF THE SEA CORPORATION IN THE SARGASSO SEA ARE ATTRIBUTABLE TO THE RESPONDENT UNDER INTERNATIONAL LAW

There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.[87]

A. The actions of the Sea Corporation in the Sargasso Sea are attributable to the Respondent under Article 8 of the Draft Articles on State Responsibility for Internationally Wrongful Conduct

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct.[88]

[87] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, *with commentaries*, art. II, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1.
[88] *Id*. at art. 8

In the text of article 8, the three terms "instructions," "direction," and "control" are disjunctive; it is sufficient to establish any one of them.[89] Such conduct will be attributable to the State only if it directed or controlled the specific operation and the conduct complained of was an integral part of that operation.[90] Furthermore, it does not matter that the person or persons involved are private individuals nor whether their conduct involves "governmental activity."[91] Most commonly, cases of this kind will arise where State organs supplement their own action by recruiting or instigating private persons or groups who act as "auxiliaries" while remaining outside the official structure of the State.[92]

However, the International Criminal Tribunal for the Former Yugoslavia outlines the "overall control" test in the *Prosecutor v. Tadic* appeals case.[93] There, the Defendant was charged with committing crimes against humanity for his actions in the Prijedor region of Bosnia & Herzegovina, including the Omarska, Trnopolje and Keraterm detention camps.[94] The tribunal here declares the "effective control" test unconvincing in finding Serbia and Montenegro responsible because the test does not parallel the accepted principles of state responsibility, and the effective control test unnecessarily stiffens an area of law with no hard and fast rules. Although the tribunal was concerned with criminal responsibility, the tribunal noted "that the requisite degree of control by the Yugoslavian 'authorities over these armed forces required by international law for considering the armed conflict to be international was overall control going

[89] *Id*. at art. 8, para 7.
[90] *Id*. at art. 8, para 3.
[91] *Id*. at art. 8, para 2.
[92] *Id*.
[93] Int'l Crim. Tribunal for the Former Yugoslavia, Decision on Interlocutory Appeal on Jurisdiction, 1995. Appeals Chamber, Case No. IT-94-1-A, 35 I.L.M. 32 (1996).
[94] *Id*.

beyond the mere financing and equipping of such forces and involving also participation in the planning and supervision of military operations."[95]

Here, like *Tadic*, an overall control test should govern. The Revels has stated that government subsidies are awarded to non-governmental entities or persons to implement renewable energy projects and jumpstart the government's program to reduce greenhouse gas emissions. It is reasonable to assume that these subsidies come with requirements, restrictions, and other conditions for receiving subsidies and its continual disbursement, thus strongly suggesting control over their operations. In fact, but for the subsidies awarded by the Respondent, the SEA Corporation could not have participated in the Respondent renewable energy program. Furthermore, the Respondent's support goes beyond mere financing because the Respondent is relying on private entities like the SEA Corporation to help meet its international obligations. It is very likely that since their money and their international responsibilities are involved, the Respondent would be overseeing certain aspects of the project: the type of organic matter to collect, the location to harvest, and the amounts to harvest.

Thus, the actions of the SEA Corporation are attributable to the Respondent under Article 8 of the draft articles.

B. The actions of the Sea Corporation in the Sargasso Sea are attributable to the Respondent under Article 11 of the Draft Articles on State Responsibility for Internationally Wrongful Conduct

Conduct which is not attributable at the time of commission to a State under the articles shall nevertheless be considered an act of that State under international law if and to the extent

[95] *Id* at 58 ILM, vol. 38, No. 6 (November 1999), p. 1546, para. 145.

that the State acknowledges and adopts the conduct in question as its own.[96] "[T]he term 'acknowledges and adopts' in article 11 makes it clear that what is required is something more than a general acknowledgement of a factual situation, but rather that the State identifies the conduct in question and makes it its own."[97]

The court in the *United States Diplomatic and Consular Staff in Tehran* (United States of America v. Iran) case suggested a relatively high threshold for the "acknowledges and adopts" standard found in Article 11. There, a militant group composed of hundreds of individuals overran the U.S. Embassy in Tehran, Iran, and held embassy officials and staff hostage for 444 days.[98] The International Court of Justice determined that there was insufficient evidence to link the actions of the militants to the government of Iran.[99]

Unlike the *Tehran case*, the Sea Corporation's harvesting of the seaweed is not of an "independent and unofficial character" on their behalf because, but for the subsidy provided by the Respondent, the Sea Corporation would not have had the funds to engage in their energy activities. Second, the Respondent acknowledges the actions of the Sea Corporation by holding press releases elaborating on the efforts of the Sea Corporation, its activities in the Sargasso Sea and its importance to the state's energy initiatives. Third, and in another diversion from the facts in the *Tehran* case, the Respondent adopted the conduct of the Sea Corporation here because the Respondent issued a press release highlighting the success of *its* recently launched renewable energy program. The Revels has also stated that they expect the activities of the Seaweed

[96] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, art. XI, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1.
[97] Commentary on Art. XI, para. 6.
[98] *United States Diplomatic and Consular Staff in Tehran, Judgment*, I.C.J. Rep. 1980
[99] *Id*. at pg. 30-31, para. 59

Corporation and other non-governmental entities to help meet *its* NDC commitments under the Paris Agreement: further evidence of the adoption of the activities of the corporation as its own.

C. The Sea Corporation's actions are attributable to the Revels under UNCLOS concerning Flag State responsibility

Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.[100]

The Advisory Opinion on Responsibilities and obligations of States with respect to activities in the Area, issued by the Seabed Disputes Chamber of the ITLOS, adequately delineates the responsibilities of states for private entities engaged in exploitation activities.[101] There, the Republic of Nauru sought the tribunal for an advisory opinion regarding the potential liability of state responsibility for the actions of its private entities extracting resources from the seabed. Nauru admitted to not having the financial or technological resources to harvest polymetallic nodules from the seabed and, unless it subcontracts the work to private entities, it would be unable to participate in activities in the area.[102] The tribunal, although declining the proposal, outlined conditions where the state would incur responsibility for the exploitation actions of its private entities in the area: they must be either nationals of a State Party or effectively controlled by it or its nationals; and they must be "sponsored by such States".[103]

Here, the Respondent clearly has jurisdiction over the SEA Corporation because the corporation flies the Respondent's flag during harvest expeditions. The SEA Corporation is also

[100] UNCLOS at art. 94.
[101] The Advisory Opinion on Responsibilities and obligations of States with respect to activities in the Area, dated 1 February 2011, issued by the Seabed Disputes Chamber of the ITLOS.
[102] *Id*. at para 4
[103] *Id*. at para 74

a national of the Respondent because the SEA Corporation was incorporated there. In addition, the Respondent sponsors the SEA Corporation because, but for the financial subsidy granted by the Respondent's renewable energy program, the SEA Corporation would not have participated in harvesting the Sargassum Seaweed from the Sargasso Sea, and thus the Revels are responsible.

CONCLUSION AND PRAYER FOR RELIEF

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

1. The harvesting of the Sargassum Seaweed by the Sea Corporation in the Sargasso Sea is in violation of various treaty law, conventions, and declarations drafted for the conservation of the resources in this ecologically or biologically significant area.
2. The actions of the Sea Corporation in the Sargasso Sea are attributable to the Respondent; and
3. Order an injunction on all harvesting activities in the Sargasso Sea until more research is performed on the short-term and long-term impacts of Sargassum harvesting on the ecosystem of the Sargasso Sea and the European Eel.

RESPECTFULLY SUBMITTED,

/s/ 1960

AGENTS OF THE APPLICANT