

**TEAM NO: 1964A**

**IN THE INTERNATIONAL COURT OF JUSTICE**

**AT THE PEACE PALACE**

**THE HAGUE, THE NETHERLANDS**



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

**FEDERAL STATES OF ALLIGUNA**

*APPLICANT*

**v.**

**REPUBLIC OF REVELS**

*RESPONDENT*

\*\*\*\*\*

**MEMORIAL FOR THE APPLICANT**

\*\*\*\*\*

**THE 23<sup>RD</sup> STETSON INTERNATIONAL ENVIRONMENTAL**

**MOOT COURT COMPETITION 2018 – 2019**

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Paris Agreement, Dec. 12, 2015, FCCC/CP/2015/10/Add.1 - 14 -, -15-, - 18 -, - 22 -, - 23 -, - 24 -, - 25 -, - 26 -, - 27 -, - 31 -, - 38 -, -39-, - 40 -

Statute of the International Court of Justice, Jun. 26, 1945, T.S. 993 ----- 14 -, - 16 -, - 25 -, - 28 -

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United Nations Framework Convention on Climate Change, May 9, 1992, 1771 UNTS 107 - 14 -, - 15 -, - 18 -, - 22 -, - 23 -, - 24 -, - 25 -, - 26 -, - 27 -, - 38 -, - 39 -, - 40 -

Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331- - 14 -, - 15 -, - 36 -, - 37 -, - 40 -

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Temple of Preah Vihear Case (Camb. v. Thai.) 1962 I.C.J. 6 -----	- 26 -
Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, 1994 I.C.J. 6 -----	- 36 -
Trail Smelter Arbitration (U.S. v. Canada), (1949) 3 U.N.R.I.A.A. 1938 -----	- 33 -
United States Diplomatic and Consular Staff in Tehran (U.S.A v. Iran), 1980 I.C.J. 3 -----	- 30 -

#### INTERNATIONAL DOCUMENTS

Decision IX/20, adopted by the Conference of the Parties to the Convention on Biological Diversity at its Ninth Meeting, UNEP/CBD/COP/DEC/IX/20 (9 Oct. 2008)-----	- 35 -
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The United Nations Conference on Environment and Development, ‘The Rio Declaration on Environment and Development’ UN Doc. A/CONF.151/26 (vol. I), (1992) 31 ILM 874- 32 -, - 34 -

United Nations General Assembly Resolution, A/RES/71/257, Oceans and the Law of the Sea --- 37 -

United Nations, Declaration of the United Nations Conference on the Human Environment, (1972) 11 ILM 1416----- - 33 -

BOOKS, ARTICLES AND JOURNALS

A. Sirinskiene, The Status of Precautionary Principle: Moving Towards a Rule of Customary Law ----- - 32 -

C. De Klemm & C. Shine, Biological Diversity Conservation and the Law: Legal Mechanisms for Conserving Species and Ecosystems, IUCN Environmental Law Centre (1993) ----- - 29 -

D. Jacoby & M. Gollock, Anguilla anguilla. The IUCN Red List of Threatened Species 2014, (2015).----- - 32 -

D. S. Ullman et al., On the characteristics of subtropical fronts in the North Atlantic (2007) - 39 -

D.d’A. Laffoley et al., The protection and management of the Sargasso Sea: The golden floating rainforest of the Atlantic Ocean. Summary Science and Supporting Evidence Case- 17 -, - 34 -, - 36 -, - 37 -, - 38 -

IUCN, Wildlife in a Changing World – An Analysis of the 2008 IUCN Red List of Threatened Species ----- - 29 -



IUCN, IUCN Red List Categories and Criteria: Version 3.1, 14 (2nd ed. 2012)-----	- 32 -
J. Hallett, The Importance of the Sargasso Sea and the Offshore Waters of the Bermudian Exclusive Economic Zone to Bermuda and its People. Sargasso Sea Alliance Science Report Series, No 4-----	- 32 -
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P. Birnie & A. Boyle, International Law and the Environment, Oxford University Press, (2nd ed. 2002) -----	- 35 -

## STATEMENT OF JURISDICTION

The Federal States of Alliguna (“Alliguna”) and the Republic of Revels (“Revels”) submit this dispute to the International Court of Justice (“ICJ”), pursuant to Article 36(1) of the Statute of the International Court of Justice, subject to the reservation of Revels to the jurisdiction of the Court. The Registrar acknowledged receipt of the proceedings filed by Alliguna against Revels on 21 April 2018. Revels on 5 May 2018 filed its Preliminary Objections.

The present dispute arises out of the Convention on Biological Diversity (“CBD”), United Nations Framework Convention on Climate Change (“UNFCCC”) and Paris Agreement. Alliguna relies on Revels’ declarations that it would submit disputes with respect to the aforementioned treaties’ interpretation or application, to the ICJ.

The Parties in their Joint Written Statement dated 16 July 2018 have requested that the Court decide the jurisdictional and state responsibility questions and the merits of this matter on the basis of the rules and principles of general international law, as well as any applicable treaties. The Parties also accept the Judgement of the Court as final and binding upon them and shall execute it in its entirety and in good faith.

## **QUESTIONS PRESENTED**

- I. Whether the International Court of Justice has jurisdiction over the dispute between Alliguna and Revels and whether Revels is responsible for the conduct of the SEA Corporation in the Sargasso Sea.
  
- II. Whether the Republic of Revels violated its international obligations through the Sargassum harvesting project in the Sargasso Sea.

## STATEMENT OF FACTS

### **The Parties**

Alliguna and Revels are neighbouring coastal sovereign states. Their coasts are approximately 250 nautical miles from the Sargasso Sea. Alliguna is a developed country with a diversified economy. It relies heavily on manufacturing and energy. Alliguna uses some of its rivers and dams to generate hydroelectric power. Revels is a developing country depending largely on fishing and agriculture.

### **The European Eel**

The European eel (*Anguilla anguilla*) is a catadromous migratory species. It is listed as Critically Endangered on the IUCN Red List of Threatened Species due to pronounced declines in its population. The Eel is of cultural, religious and historical significance to Alliguna and its citizens. In 1990, a non-governmental organization, Friends of the Eels, was formed in Alliguna to raise awareness about the Eel's conservation. Due in part to its efforts, Alliguna passed strict domestic legislation to help protect and recover the species.

### **Revels' Sargassum Harvesting Project**

In July 2016, the SEA Corporation, a private company in Revels, launched a biofuels initiative which involved the use of the Columbus, which sailed under the flag of Revels, to harvest Sargassum from the Sargasso Sea, on the high seas. An Environmental Impact Assessment

determined that the project's impacts on the marine biodiversity, including the European eel, were uncertain.

The Sargassum Project was heavily subsidized by a fund from the Government of Revels. Without the subsidy, the Sargassum project would not have been able to move forward. Revels hoped that this project would help it meet its nationally determined contributions ("NDC") under the Paris Agreement. In a report and press release at the end of 2016, Revels highlighted the progress and success of the on-going Sargassum project.

### **The Dispute**

Concerned about the disruption to the ecosystem of the European eels, the Friends of the Eels, informed Alliguna whom after making inquiries to confirm the information, contacted Revels about the situation. A total of three diplomatic notes were forwarded to Revels identifying Alliguna's concerns about the significant harm posed to the ecosystem of the European Eels from the Sargassum harvesting project and potential violations of international law. Revels, in its responses by diplomatic notes, denied any breaches of international law justifying their actions on the basis that they incur no liability for the actions of the Sea Corporation. After failed attempts at resolving the dispute by negotiations and mediation Alliguna asked Revels to submit the matter to the International Court of Justice ("ICJ"). However, Revels refused.

## **Applicable International Law**

Alliguna and Revels are Members of the United Nations and are Parties to the Statute of the ICJ. Alliguna recognises the ICJ's jurisdiction as compulsory on the condition of reciprocity, however, Revels does not.

Both Alliguna and Revels are Parties to the Vienna Convention on the Law of Treaties ("VCLT"), the Convention on Biological Diversity ("CBD"), the Convention on the Conservation of Migratory Species of Wild Animals ("CMS"), the United Nations Convention on the Law of the Sea ("UNCLOS"), the United Nations Framework Convention on Climate Change ("UNFCCC"), the Paris Agreement and are signatories to the Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea.

With respect to the CBD, UNFCCC and the Paris Agreement, both Parties made written declarations that they would submit unresolved disputes to the jurisdiction of the ICJ concerning the treaties' interpretation or application. However, with respect to UNCLOS Alliguna chose the ICJ whereas Revels chose the International Tribunal for the Law of the Sea ("ITLOS") for the settlement of disputes.

## SUMMARY OF ARGUMENTS

- I. Alliguna submits that Revels' Sargassum project has the potential to cause irreversible harm to the marine environment of the Sargasso Sea and further affect the Critically Endangered European eel. These claims arise under **Articles 3, 4, 5, 8 and 10** of the **CBD**, **Article 4** of the **UNFCCC** and **Article 4** of the **Paris Agreement**, which are relevant and rationally connected to the dispute. This Court has jurisdiction pursuant to **CBD, Article 27; UNFCCC, Article 14** and **Paris Agreement, Article 24** read in conjunction with **Article 36(1)** of **ICJ Statute**. Alliguna's application is admissible as it has a legal interest in having the dispute settled, as the conservation of biodiversity is an obligation *erga omnes partes* derived the principles found in the **Legality of the Threat or Use of Nuclear Weapons** case. Furthermore, the conduct of the SEA Corporation in harvesting Sargassum in the Sargasso Sea is attributable to Revels as they acknowledged and adopted its conduct.
  
- II. The harvesting of Sargassum on the Sargasso Sea violates Revels' customary international obligation to take preventative measures to ensure protection of the environment. By virtue of the biofuel initiative Revels breached its obligation to ensure that activities within its jurisdiction and control do not cause harm to the environment of other States. Revels has a duty to fulfil its treaty obligations in good faith and by the omission to take the necessary measures to prevent harm to ecosystem of the European Eels, it has breached **Articles 3, 6 and 8** of the **CBD** and **Article 26** of the **VCLT**. Although Revels did not yet ratify the **Hamilton Declaration**, Revels is under an obligation to refrain from acts which defeat the

object and purpose of the **Hamilton Declaration** in accordance with **Article 18** of the **VCLT**.

Revels has no lawful justifications under the **UNFCCC** and **Paris Agreement**.



## ARGUMENTS

### I. THIS COURT HAS JURISDICTION OVER THE DISPUTE PURSUANT TO ARTICLE 36(1) OF THE STATUTE OF THE ICJ

The jurisdiction of the Court comprises, *inter alia*, all matters specially provided for in treaties and conventions in force.<sup>1</sup> The Court, in determining whether it has jurisdiction, must (a) establish that there is a dispute between the parties,<sup>2</sup> and (b) the subject-matter of the dispute is one over which the Court has jurisdiction.<sup>3</sup> The issue of jurisdiction is a question of law to be determined in light of the relevant facts of the dispute.<sup>4</sup> Jurisdiction over this dispute is conferred on the ICJ by the compromissory clauses of the conventions, wherein Alliguna and Revels recognises the ICJ's jurisdiction over their interpretation and application.

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<sup>1</sup> Statute of the International Court of Justice, Jun. 26, 1945, T.S. 993, Art. 36(1).

<sup>2</sup> Fisheries Jurisdiction (Spain v. Canada), 1998 I.C.J. 432, ¶33 (Dec. 4) [hereinafter “Fisheries Jurisdiction”].

<sup>3</sup> Southern Bluefin Tuna Case (Aus. and N.Z. v Japan), 2000 Arbitral Tribunal 1, ¶48 (Aug. 4) [hereinafter “SBT”].

<sup>4</sup> Border and Transborder Armed Actions (Nic. v. Hon.), 1988 I.C.J. 69, ¶16 (Dec. 20).

**A. THERE IS A DISPUTE WITH RESPECT TO THE USE OF THE SARGASSO SEA  
AND THE PROTECTION OF THE EUROPEAN EELS**

A dispute over which the Court has jurisdiction relates to a “disagreement on a point of law or fact, a conflict of legal views or of interests.”<sup>5</sup> It must also be shown that “the claim of the party is positively opposed by the other.”<sup>6</sup>

The dispute between Alliguna and Revels concerns the harvesting of Sargassum in the Sargasso Sea by the *Columbus*, a vessel flying under the flag of Revels. The harvesting of Sargassum has the potential to pose a direct threat to the Sargasso Sea ecosystem.<sup>7</sup> Revels’ activities in the Sargasso Sea threatens irreversible harm to the critically endangered European eel as the Sargasso Sea is the only known spawning location for the species.<sup>8</sup> Alliguna submits that Revels is in breach of the precautionary principle and its duty to prevent transboundary harm.

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<sup>5</sup> *Mavrommatis Palestine Concessions*, (Greece v. Britain), 1924 P.C.I.J. Ser.A No.2, at 11 (Aug. 30).

<sup>6</sup> *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament*, (Marshall Islands v. India), 2016 I.C.J. 255, ¶41 (5 Oct).

<sup>7</sup> D.d’A. Laffoley et al., *The protection and management of the Sargasso Sea: The golden floating rainforest of the Atlantic Ocean. Summary Science and Supporting Evidence Case*, 37 (2011) [hereinafter “Laffoley”].

<sup>8</sup> Laffoley, at iii.

Revels is also in breach of **Articles 3, 4, 5, 8 and 10** of the **CBD**, **Article 4** of the **UNFCCC**, and **Article 4** of the **Paris Agreement**.

On 13 January 2017, Alliguna sent its first diplomatic note to Revels on the issue of harvesting Sargassum in the Sargasso Sea. The note outlined the adverse effects of the project on the Sargasso Sea's ecosystem; threats to the European eel; breaches of the **CBD**; the precautionary principle and the duty to prevent transboundary harm. Revels, by diplomatic note dated 11 March 2017, dismissed Alliguna's claims as "unwarranted" and "vehemently disagrees" that Revels violated international law.<sup>9</sup> Revels' opposition of Alliguna's claims, which concern both fact and law are evidence that there is a dispute between the Parties.

**B. THE SUBJECT-MATTER OF THIS DISPUTE CONCERNS THE APPLICATION  
AND INTERPRETATION OF THE CBD, UNFCCC AND THE PARIS  
AGREEMENT**

In a situation where parties contend that the dispute involves the interpretation or application of different treaties, the Court must ascertain "whether the violations of the treaty pleaded [...] fall within the provisions of the treaty and whether as a consequence the dispute is one which the Court has jurisdiction *ratione materiae* [...]"<sup>10</sup> Therefore, when invoking the compromissory clause of

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<sup>9</sup> Record, ¶19.

<sup>10</sup> Case Concerning Oil Platforms (Iran v. U.S.A), Preliminary Objections, 1996 I.C.J. 803, ¶16 (Dec. 12).

a treaty, the claims made to sustain jurisdiction, must reasonably relate to, or be capable of being evaluated in relation to the legal standards of the treaty in point as determined by the Court whose jurisdiction is at issue.<sup>11</sup> To determine the real dispute, the Court must look not only to the application and submissions but also to the diplomatic exchanges, public statements and other pertinent evidence.<sup>12</sup>

### **1. The dispute concerns the CBD**

Alliguna submits that the current dispute involves the application and interpretation of the provisions of the **CBD**.

#### *a. The dispute falls within the jurisdictional scope of the **CBD**.*

The **CBD** provides for the conservation of biological diversity through finding sustainable mechanisms for the use of its components and through the equitable sharing of the benefits from the use of genetic resources.<sup>13</sup> The **CBD**'s definitional scope of "biological diversity" includes "marine and other aquatic ecosystems and the ecological complexes of which they are part [...]".<sup>14</sup>

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<sup>11</sup> SBT, ¶48.

<sup>12</sup> Fisheries Jurisdiction, ¶¶ 30, 31.

<sup>13</sup> M. Fitzmaurice et al., *Multilateral Environmental Treaties*, Edward Elgar Publishing, 11 (2017).

<sup>14</sup> Convention on Biological Diversity, Jun. 6, 1992, 1760 U.N.T.S. 79, Art. 2 [hereinafter "CBD"].

Therefore, the duties of conservation under the **CBD** extends to the marine biodiversity in the Sargasso Sea and by extension the European eel. Further, the **CBD** applies in relation to each Contracting Party in the case of processes and activities carried out under its jurisdiction or control, regardless of where their effects occur, within or beyond the limits of national jurisdiction.<sup>15</sup> While the Sargassum harvesting project occurs beyond Revels' national jurisdiction, on the high seas, these activities still fall within the jurisdictional scope of **Article 4** of the **CBD**.

*b. Revels is duty-bound by the **CBD** to sustainably use components of biological diversity and not to cause damage to the environment.*

Revels, as a Contracting Party to the **CBD**, is duty-bound not to cause harm to the environment of areas beyond the limits of its national jurisdiction.<sup>16</sup> Revels is also obliged to adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity.<sup>17</sup> The harvesting activities in the Sargasso Sea, which are attributable to Revels,<sup>18</sup> occurs beyond its national jurisdiction<sup>19</sup> and threatens the precious ecosystem on which the European eel relies. Revels' activities in the Sargasso Sea threatens harm to the environment beyond Revels' national jurisdiction and its obligations under **Articles 3** and **10** of the **CBD** are invoked.

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<sup>15</sup> CBD, Art. 4(b).

<sup>16</sup> CBD, Art. 3.

<sup>17</sup> CBD, Art. 10(b).

<sup>18</sup> See *infra* at 25.

<sup>19</sup> Record, ¶13.

*c. Revels has a duty under the **CBD** to co-operate with Alliguna for the conservation of biological diversity.*

**CBD** Contracting Parties have a duty to cooperate in respect of areas beyond national jurisdiction for the conservation and sustainable use of biological diversity.<sup>20</sup> Revels did not consult or cooperate with Alliguna, a Contracting Party to the **CBD**, before it undertook its unilateral actions in the Sargasso Sea. Therefore, Revels' obligation to cooperate under **Article 5** of the **CBD** is relevant and reasonably related to this dispute.

*d. Revels has a duty under the **CBD** to undertake measures for in-situ conservation of biological diversity.*

Essential to the **CBD** is the provision on *in-situ* conservation of biological diversity.<sup>21</sup> The Preamble of the **CBD** provides that the fundamental requirement for the conservation of biological diversity, is the *in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings. Revels is under an obligation to ensure that its activities promote *in-situ* conservation. Revels' activities in the Sargasso Sea threatens such conservation efforts and **Article 8** of the **CBD** is reasonably related to the dispute.

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<sup>20</sup> **CBD**, Art. 5.

<sup>21</sup> **CBD**, Art. 8.

*e. Revels has a duty under the **CBD** to conduct impact assessments and minimize impact.*

Revels is obligated to initiate action to prevent danger or damage to biodiversity.<sup>22</sup> Revels' activities in the Sargasso Sea pose a danger to the ecosystem that supports the European eel and it ought to act to prevent such danger. **Article 14** of the **CBD** is relevant and reasonably related to the dispute.

## **2. The dispute concerns the UNFCCC and the Paris Agreement**

The **UNFCCC** and **Paris Agreement** impose obligations on State Parties to adopt measures that reduce global carbon levels.<sup>23</sup> However, State Parties to the **UNFCCC** and **Paris Agreement** must also ensure that methods adopted to reduce carbon levels do not impact upon the quality of the environment.

Revels asserts that its Sargassum project is justified under its **UNFCCC** and **Paris Agreement** obligations as biofuels generated using Sargassum is expected to emit less greenhouse gases and its increased use would reduce the reliance on fossil fuels in Revels.<sup>24</sup> However, not only does the

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<sup>22</sup> CBD, Art. 14.

<sup>23</sup> United Nations Framework Convention on Climate Change, May 9, 1992, 1771 UNTS 107, Art. 4 [hereinafter "UNFCCC"]; Paris Agreement, Dec. 12, 2015, FCCC/CP/2015/10/Add.1, Art. 4 [hereinafter "Paris Agreement"].

<sup>24</sup> Record, ¶¶14,19.

harvesting of Sargassum inhibit natural carbon sequestration in the Sargasso Sea<sup>25</sup> but it also endangers the marine biodiversity that depend on the seaweed in the Sargasso Sea. Therefore, the interpretation and application of Revels' obligations under the **UNFCCC** and **Paris Agreement** are reasonably related to this dispute as the court is required to determine whether Revels complied with these treaties.

### **C. ALLIGUNA DULY COMPLIED WITH THE DISPUTE RESOLUTION PROCEDURE UNDER THE CBD, UNFCCC AND PARIS AGREEMENT**

The dispute resolution procedure under the **CBD**, **UNFCCC** and **Paris Agreement** are similar in nature. The compromissory clauses of the three treaties require that State Parties, in the event of a dispute, first seek to the settle the dispute through negotiation or any other peaceful means of their own choice.<sup>26</sup> The **CBD** specifically makes mention that if the parties fail to reach agreement by negotiation they may seek the good offices of, or request mediation by a third party.<sup>27</sup> Adjudication

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<sup>25</sup> M.W. Lomas et al., Notes on Microbial Productivity of the Sargasso Sea and How it Compares to Elsewhere, and The Role of the Sargasso Sea in Carbon Sequestration – Better than Carbon Neutral?, Sargasso Sea Alliance, 5 (2011) [hereinafter “M.W. Lomas”].

<sup>26</sup> CBD, Art. 27(1); UNFCCC, Art. 14(1); Paris Agreement, Art. 24.

<sup>27</sup> CBD, Art. 27(2).



before the ICJ is a last resort. Therefore, before recourse is had to the ICJ, States must first attempt other peaceful means of dispute resolution.<sup>28</sup>

Alliguna's application to the Court for adjudication of the dispute is consistent with the compromissory clauses of the **CBD**, **UNFCCC** and **Paris Agreement**. Alliguna, by diplomatic note on 13 January 2017, notified Revels of its concerns and requested a meeting with representatives of Revels to discuss the situation.<sup>29</sup> Revels rejected this request.<sup>30</sup> Alliguna also undertook to negotiate and mediate the dispute with Revels for several months.<sup>31</sup> However, the negotiations and mediation failed to resolve the dispute regarding the Sargassum harvesting project.<sup>32</sup> Therefore, having failed to resolve the dispute by negotiations and mediation Alliguna is entitled to apply to have the dispute resolved by adjudication before the ICJ, consistent with **Article 27** of the **CBD**; **Article 14** of the **UNFCCC** and **Article 24** of the **Paris Agreement**.

#### **D. THE COURT HAS JURISDICTION BY VIRTUE OF THE CBD, UNFCCC AND THE PARIS AGREEMENT COMPROMISSORY CLAUSES**

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<sup>28</sup> CBD, Art. 27(3); UNFCCC, Art. 14(2); Paris Agreement, Art. 24.

<sup>29</sup> Record, ¶18.

<sup>30</sup> Record, ¶19.

<sup>31</sup> Record, ¶24.

<sup>32</sup> Record, ¶24.

**1. Revels gave advance consent to the jurisdiction of ICJ over the CBD, UNFCCC and the Paris Agreement**

States can, by unilateral declarations under the **CBD, UNFCCC and Paris Agreement**, declare that they would submit to the jurisdiction of the ICJ to resolve disputes concerning the interpretation or application of the aforementioned treaties.<sup>33</sup> Both Alliguna and Revels, in accordance with **Article 27(3)** of the **CBD**; **Article 14** of the **UNFCCC** and **Article 24** of the **Paris Agreement**, made written declarations giving advance consent that they would submit unresolved disputes regarding the treaties' interpretation or application to the ICJ.<sup>34</sup> Therefore, the **CBD, UNFCCC and Paris Agreements** are treaties by which this Court has jurisdiction by virtue of the **Statute of the ICJ, Article 36(1)**, regarding any dispute which concerns those treaties. *Ad hoc* consent is therefore not required for the resolution of **CBD, UNFCCC and Paris Agreement** disputes between Alliguna and Revels.

**2. Revels is estopped from denying the jurisdiction of the ICJ over the dispute**

The principle of estoppel is accepted as one of the “general principles of law recognized by civilized nations.” Estoppel is a principle which prevents states from acting inconsistently to the detriment of others.<sup>35</sup> It is based on good faith and consistency. International estoppel prevents

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<sup>33</sup> CBD, Art. 27.

<sup>34</sup> Record, ¶¶7,10.

<sup>35</sup> M. Wagner, Jurisdiction by Estoppel in the International Court of Justice, (1986) 74 Calif.L.Rev. 1777, 1779

States from changing their position after having consented to a particular statement upon which another party has detrimentally relied. This Court has applied estoppel as a principle of international law in various proceedings.<sup>36</sup>

Revels consistently asserted by press release<sup>37</sup>, reports<sup>38</sup> and diplomatic notes<sup>39</sup> that its actions in the Sargasso Sea are in accordance with its obligations under the **UNFCCC** and the **Paris Agreement**. Revels refusal to submit this dispute to the Court's jurisdiction<sup>40</sup> is inconsistent with its declarations of advance consent to the ICJ's jurisdiction over disputes involving the **CBD**, **UNFCCC** and **Paris Agreement**.<sup>41</sup> Revels' refusal is detrimental to Alliguna's expectations that Revels would submit this dispute to the ICJ as the parties failed in their attempts to negotiate and mediate the dispute. Therefore, Revels is estopped from refusing this Court's jurisdiction over the dispute.

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<sup>36</sup> Temple of Preah Vihear Case (Camb. v. Thai.) 1962 I.C.J. 6 (Jun. 15); North Sea Continental Shelf (F.R.G. v. Den. & Neth.) 1969 I.C.J. 3 (Feb. 20); Barcelona Traction, Light and Power Co Ltd (Belgium v Spain), 1970 I.C.J. 3 (Feb. 5) [hereinafter "Barcelona Traction"].

<sup>37</sup> Record, ¶16.

<sup>38</sup> Record, ¶16.

<sup>39</sup> Record, ¶¶19, 23.

<sup>40</sup> Record, ¶24.

<sup>41</sup> Record, ¶¶7, 10.

**3. The Fisheries Jurisdiction and the Southern Bluefin Tuna (“SBT”) supports this Court’s jurisdiction over the dispute**

*a. SBT does not supports Revels’ contentions that the CMS and UNCLOS should govern the dispute*

The contentions by Revels that the **CMS** is a *lex specialis* with respect to the European eel and that the **UNCLOS** is *lex specialis* with respect to the high seas are unsustainable. In the *SBT Case*, the **UNCLOS** Arbitral Tribunal accepted that in international and State practice it was commonplace for more than one treaty to bear upon a particular dispute by what is known as the “parallelism of treaties.”<sup>42</sup> The obligations contained in one treaty are not necessarily in competition with another treaty. **Article XII** of the **CMS** expressly provides that the **CMS** “shall in no way affect the rights or obligations of any Party deriving from any existing treaty.”

Revels’ activities in the Sargasso Sea is not saved from scrutiny under the **CBD**, **UNFCCC** and **Paris Agreement**. The provisions of the **CMS** and **UNCLOS** are not *lex specialis* and operate parallel to the obligations contained in the **CBD**, **UNFCCC** and **Paris Agreement**. Therefore, the Court is not without jurisdiction over this dispute between Alliguna and Revels.

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<sup>42</sup> SBT, ¶52.

*b. The Fisheries Jurisdiction Case is not applicable to the instant dispute.*

Revels contends that the *Fisheries Jurisdiction Case*<sup>43</sup> supports the view that the ICJ is without jurisdiction over the dispute. The *Fisheries Jurisdiction Case* concerned the interpretation of Canada's reservation made to its acceptance of the compulsory jurisdiction of the ICJ under **Article 36(2)** of the **Statute of the ICJ**. The Case is distinguishable on the facts. This dispute involves the Court's jurisdiction by virtue of **Article 36(1)** as opposed to **Article 36(2)** of the **Statute of the ICJ**. Further, the present dispute does not involve an interpretation of a reservation made by either Alliguna or Revels pursuant to **Article 36(2)** of the **Statute of the ICJ**. Therefore, Revels' contention is without merit and application.

#### **E. ALLIGUNA'S APPLICATION TO THE ICJ IS ADMISSIBLE**

##### **1. The conservation of biodiversity is an obligation *erga omnes partes* which gives Alliguna a legal interest in the dispute**

Obligations *erga omnes* are of such importance that all States can be held to have a legal interest in their protection.<sup>44</sup> This Court has previously stated that there is a "general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the

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<sup>43</sup> Fisheries Jurisdiction (Spain v. Canada), 1998 I.C.J. 432.

<sup>44</sup> Barcelona Traction, ¶33 (Feb. 5)

environment.”<sup>45</sup> The protection of the world’s environment is an obligation *erga omnes*. Biodiversity conservation is an issue of worldwide concern and scale.<sup>46</sup> The loss of a species represents a loss to all of humanity.<sup>47</sup> Species shall be considered a world-belonging natural resource, whose extinction would inflict permanent damages in natural patrimony and environmental diversity.<sup>48</sup>

Therefore, Alliguna has a legal interest in ensuring that Revels’ activities in the Sargasso Sea are terminated to ensure the conservation of biodiversity which is an obligation *erga omnes*.

#### **F. THE ACTS OF THE SEA CORPORATION IN THE SARGASSO SEA IS ATTRIBUTABLE TO REVELS**

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<sup>45</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 266, ¶29 (Jul. 8)

<sup>46</sup> C. De Klemm & C. Shine, *Biological Diversity Conservation and the Law: Legal Mechanisms for Conserving Species and Ecosystems*, IUCN Environmental Law Centre (1993)

<sup>47</sup> IUCN, *Wildlife in a Changing World – An Analysis of the 2008 IUCN Red List of Threatened Species*, 2 (2009).

<sup>48</sup> *Id.*

Every internationally wrongful act of a State entails the international responsibility of that State.<sup>49</sup> 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.<sup>50</sup> The first part of this test is satisfied as the acts of the SEA Corporation harvesting Sargassum and endangering the biodiversity in the Sargasso Sea are attributable to Revels.

### **1. Revels acknowledged and adopted the conduct of the SEA Corporation's Sargassum project**

Conduct which is not attributable to a State shall nevertheless be considered an act of that State under international law if the State acknowledges and adopts the conduct in question as its own.<sup>51</sup> In the *Consular Staff* case<sup>52</sup> there was an armed attack by Iranian students on the United States Embassy. This Court found that Iran breached its international obligations having known of the militants' actions and knowingly decided not to intervene.<sup>53</sup> Subsequent to its formation in July

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<sup>49</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, [2001] 2 Y.B. Int'l L. Comm'n 26, Art. 1, U.N. DOC. A/56/49(Vol. I)/Corr.4,[hereinafter "ARSIWA"].

<sup>50</sup> ARSIWA, Art. 2.

<sup>51</sup> ARSIWA, Art.11.

<sup>52</sup> United States Diplomatic and Consular Staff in Tehran (U.S.A v. Iran), 1980 I.C.J. 3. (24 May) [hereinafter "Consular Staff Case"].

<sup>53</sup> Consular Staff Case, ¶¶ 63, 67.

2016,<sup>54</sup> the SEA Corporation though a private company<sup>55</sup> was financed by Revels.<sup>56</sup> The government of Revels acknowledged and adopted their actions as their own by the provision of a subsidy for the Sargassum initiative,<sup>57</sup> without which the biofuels project would not have been able to advance.<sup>58</sup>

Under **Article 4(2)** of the **Paris Agreement**, State Parties are mandated to prepare, communicate and maintain successive Nationally Determined Contributions (“NDCs”) that it intends to achieve. State Parties are obliged to pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.<sup>59</sup> Revels hopes that the SEA Corporation’s biofuels initiative would help in meeting its **Paris Agreement**, NDC commitments.<sup>60</sup> This is evidenced by the press releases and reports done by Revels which highlighted the success of the ongoing Sargassum project in meeting these commitments.<sup>61</sup> Therefore, Revels acknowledged and adopted the conduct of the SEA Corporation in the Sargasso Sea as its own.

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<sup>54</sup> Record, ¶13.

<sup>55</sup> Record, ¶13.

<sup>56</sup> Record, ¶14.

<sup>57</sup> Record, ¶14.

<sup>58</sup> Clarifications, A18.

<sup>59</sup> Paris Agreement, Art. 4(2).

<sup>60</sup> Record, ¶14.

<sup>61</sup> Record, ¶16.



## II. REVELS VIOLATED ITS INTERNATIONAL OBLIGATIONS THROUGH THE SARGASSUM HARVESTING PROJECT IN THE SARGASSO SEA

### A. REVELS VIOLATED THE PRECAUTIONARY PRINCIPLE UNDER CUSTOMARY INTERNATIONAL LAW

#### 1. Revels is bound by the precautionary principle under customary international law

The precautionary principle provides that states should take the necessary precaution to prevent threat of damage to the environment where there is lack of scientific certainty.<sup>62</sup> This principle has achieved the status of customary international law.<sup>63</sup> In the *Gabcikovo-Nagymaros Case* this Court underscored that the need for vigilance and prevention of the environment by States as environmental damage is often irreversible.<sup>64</sup>

Sargassum mats are home to over 145 invertebrate species and over 127 species of fish. The Sargasso Sea is the only known spawning area for the European eel.<sup>65</sup> Further, the eel, is listed

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<sup>62</sup> The United Nations Conference on Environment and Development, 'The Rio Declaration on Environment and Development' UN Doc. A/CONF.151/26 (vol. I), (1992) 31 ILM 874; UNFCCC Art. 3(3); CBD, Preamble Recital 9.

<sup>63</sup> A. Sirinskiene, *The Status of Precautionary Principle: Moving Towards a Rule of Customary Law*, 358 (2009).

<sup>64</sup> *Gabcikovo-Nagymaros Project (Hungary v Slovakia)*, Judgment, 1997 I.C.J. 7, ¶ 68 (Sept. 25).

<sup>65</sup> L. Inniss et al., *The First Global Integrated Marine Assessment World Ocean Assessment 1*, Chapter 50: Sargasso Sea, United Nations, 1 (2016)

as Critically Endangered on the IUCN Red List of Threatened Species.<sup>66</sup> This indicates the serious harm posed to the population of the eel<sup>67</sup> and the necessity for conservation measures.<sup>68</sup> While Revels undertook the precautionary step of conducting an environmental impact assessment (“EIA”) of the Sargassum project, the findings of that EIA determined that the impacts on the marine biodiversity, including the European eel, were uncertain.<sup>69</sup> In light of the inconclusive findings, Revels ought to implement measures to protect the eel. However, without implementing these measures, Revels allowed the SEA Corporation to proceed with the harvesting of Sargassum, further endangering the eels and disrupting the Sargasso Sea’ ecosystem. Revels’ failure to halt the project and implement measures to protect the eel as requested by Alliguna,<sup>70</sup> is a violation of the precautionary principle.

## **B. REVELS VIOLATED ITS OBLIGATIONS UNDER THE CBD.**

### **1. Revels failed to ensure their activities do not cause transboundary harm.**

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<sup>66</sup> Record, ¶3.

<sup>67</sup> IUCN, IUCN Red List Categories and Criteria: Version 3.1, 14 (2nd ed. 2012).

<sup>68</sup> D. Jacoby & M.Gollock, *Anguilla anguilla*. The IUCN Red List of Threatened Species 2014, (2015).

<sup>69</sup> Clarifications, A17

<sup>70</sup> Record, ¶18

States are under an obligation not to cause environmental harm. The “no harm” principle has achieved the status of customary international law.<sup>71</sup> The principle places an obligation upon States not to conduct or permit activities within their territories in such a manner as to cause injury to the environment of another.<sup>72</sup> CBD State Parties have the right to exploit their own resources pursuant to a responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction.<sup>73</sup>

The harvesting of Sargassum for biofuel production can be considered as damaging to areas beyond Revels’ national jurisdiction, in the Sargasso Sea. Despite the lack of direct scientific evidence,<sup>74</sup> studies indicate that the commercial extraction of Sargassum pose a direct threat to the Sargasso Sea’s ecosystem.<sup>75</sup> Extraction depletes the Sargassum and other minerals resources which are inherently characteristic of the Sargasso Sea.

Furthermore, the European eel is of cultural, religious and historical significance to Alliguna.<sup>76</sup> The eels migrate to spawn in the Sargasso Sea<sup>77</sup> which borders both Alliguna and

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<sup>71</sup> Trail Smelter Arbitration (U.S. v. Canada), (1949) 3 U.N.R.I.A.A. 1938; *Supra* note 44

<sup>72</sup> United Nations, Declaration of the United Nations Conference on the Human Environment, (1972) 11 ILM 1416, Principle 21; Rio Declaration, Principle 2; CBD, Art. 3.

<sup>73</sup> CBD, Art. 3.

<sup>74</sup> Record, ¶20.

<sup>75</sup> Laffoley, at 37.

<sup>76</sup> Record, ¶4.

<sup>77</sup> Record, ¶3.

Revels.<sup>78</sup> The eels' population has been on the decline<sup>79</sup> and the Sargassum harvesting project can cause irreversible drops in the eels' population. While the exact cause for the decline in the species is unknown, it can be attributed to the interference with the eels' ecosystem<sup>80</sup> in the Sargasso Sea. By harvesting Sargassum, Revels breached its obligations under the **CBD** and in customary international law not to cause harm to areas beyond their national jurisdiction.

## **2. Revels violated its CBD obligation of *in-situ* conservation.**

*In-situ* conservation requires positive acts by CBD State Parties to conserve and maintain natural habits and the species which thrive in them. These acts include, *inter alia*, the establishment of protected areas to conserve biological diversity and promotion of the protection of ecosystems and natural habitats.<sup>81</sup> **CBD Decision IX/20** specifically invites State Parties to study issues relating to the conservation and sustainable use of biological diversity in areas beyond national jurisdiction<sup>82</sup> and co-operate in developing and applying effective options for preventing and mitigating the adverse impacts of human activities to selected seabed habitats.<sup>83</sup>

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<sup>78</sup> Record, ¶1.

<sup>79</sup> Record, ¶3.

<sup>80</sup> *Supra* note 67.

<sup>81</sup> CBD, Art. 8.

<sup>82</sup> Decision IX/20, adopted by the Conference of the Parties to the Convention on Biological Diversity at its Ninth Meeting, UNEP/CBD/COP/DEC/IX/20 (9 Oct. 2008), Art. 8.

<sup>83</sup> *Id.*, Art 11.

Revels has failed to engage in any acts of *in-situ* conservation under the **CBD**, instead they have engaged in acts which have the effect of removing the very ecosystem that is home to thousands of diverse marine species, particularly, the Critically Endangered European eel. The eel can only spawn in Sargasso Sea.<sup>84</sup> Therefore, Revels' extraction activities eliminates an important phase in the life cycle of the eel. The acts by Revels therefore violate its *in-situ* conservation obligations under the **CBD**.

### **C. REVELS VIOLATED ITS INTERNATIONAL OBLIGATIONS UNDER THE HAMILTON DECLARATION**

#### **1. As a signatory, Revels is bound by the object and purpose of the Hamilton Declaration**

Although Revels is merely a signatory of the **Hamilton Declaration**,<sup>85</sup> Revels is still bound by its provisions. **Article 18** of the **VCLT** imposes an obligation on Revels to refrain from acts which defeat the object and purpose of a treaty. Furthermore, **Article 31(1)** of the **VCLT** states that a treaty shall be interpreted in its context and in light of its object and purpose. **Article 31(2)** of the **VCLT** states the context in which treaty shall be interpreted includes text<sup>86</sup>, preamble<sup>87</sup> and

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<sup>84</sup> Laffoley, at iii

<sup>85</sup> Record, ¶11.

<sup>86</sup> Case of Certain Norwegian Loans, Judgment, 1957I.C.J. 9. (Jul. 6)

<sup>87</sup> Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, 1994 I.C.J. 6.

annexes. The object and purpose of the **Hamilton Declaration** can be gleaned from its common vision provisions which recognize that the Sargasso Sea is an important open ocean ecosystem.<sup>88</sup>

Through the Sargassum harvesting project, Revels has failed to take steps to conserve the Sargasso Sea but rather, engage in acts which potentially threaten the Sargassum Sea ecosystem and the European eel.<sup>89</sup> Revels also failed to conserve the Sargasso Seas ecosystem for the benefit of present and future generations.<sup>90</sup> When Sargassum is extracted from the Sargasso Sea for commercial purposes, it affects the top-layer Sargassum algae which define the Sargasso Sea.<sup>91</sup> This is critical to supporting the diverse marine life which depends on this ecosystem to thrive which is particularly important for species that are endangered or on the brink of extinction, such as the European eel.<sup>92</sup> Revels' continued extraction of Sargassum from the Sargasso Sea can have significant impacts to the Sea's ecosystem. Revels' actions therefore undermine its obligation to conserve the Sargasso Sea ecosystem.

## **2. Revels breached its obligation to collaborate in pursuing conservation measures for the Sargasso Sea ecosystem.**

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<sup>88</sup> Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea, Mar. 11, 2014, Art. 1.

<sup>89</sup> Laffoley, at 37.

<sup>90</sup> Hamilton Declaration, Art. 2.

<sup>91</sup> Laffoley, at 37.

<sup>92</sup> Record, ¶3.

Both Alliguna and Revels have agreed to collaborate, to the extent possible, in pursuing conservation measures for the Sargasso Sea ecosystem.<sup>93</sup> The Sargasso Sea was given special mention under a UN General Assembly Resolution<sup>94</sup> which notes the efforts of the Sargasso Sea Alliance to raise awareness of the ecological significance of the Sargasso Sea.<sup>95</sup> The establishment of institutions such as the Sargasso Sea Alliance exists to protect the unique and vulnerable ocean ecosystem of the Sargasso Sea.

The extraction of Sargassum by Revels for biofuel production undermines these collaboration initiatives to protect this valuable ecosystem and violates their undertakings under the Hamilton Declaration.

#### **D. REVELS' BREACHES OF ITS OBLIGATIONS ARE NOT JUSTIFIABLE UNDER THE UNFCCC OR THE PARIS AGREEMENT**

Revels argues that the Sargassum harvesting project helps achieve its NDC commitments under the **Paris Agreement**,<sup>96</sup> and therefore its obligations under climate change conventions justify the Sargassum project. However, scientific research shows the serious disadvantages which harvesting Sargassum may have and its negative impact upon climate change.<sup>97</sup> Moreover, Revels is obliged

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<sup>93</sup> Hamilton Declaration, Art. 3.

<sup>94</sup> United Nations General Assembly Resolution A/RES/71/257, Oceans and the Law of the Sea.

<sup>95</sup> *Id.*, Art. 329.

<sup>96</sup> Record, ¶19.

<sup>97</sup> Laffoley, at 37.

to undertake methods at climate change reduction that do not negatively impact upon the environment.

### **1. Harvesting Sargassum has a negative effect on carbon sequestration**

Sargassum has a high primary productivity and as a result it plays a key role in the global ocean sequestration of carbon.<sup>98</sup> The Sargasso Sea represents 7% of the global net biological carbon pump<sup>99</sup> and 18 – 58% of the annual North Atlantic carbon sink estimated over the period 1992-2006.<sup>100</sup> The Sargassum Project removes more than a *de minimis* amount of Sargassum from the Sargasso Sea.<sup>101</sup> The removal of Sargassum from the Sargasso Sea gravely reduces natural carbon sequestration in the North Atlantic Ocean. Revels' project to reduce greenhouse gases by the use of Sargassum biofuels causes more harm than good to efforts of carbon reduction.

### **2. Revels has a duty to ensure its climate change strategies do not negatively impact the environment**

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<sup>98</sup> Laffoley, at 27.

<sup>99</sup> M.W. Lomas et al, at 5

<sup>100</sup> D. S. Ullman et al., On the characteristics of subtropical fronts in the North Atlantic (2007).

<sup>101</sup> Clarifications, A16.



Parties to the **UNFCCC** are obliged to employ methods formulated and determined nationally, with a view to minimizing adverse effects on, the quality of the environment, by projects or measures undertaken by them to mitigate or adapt to climate change.<sup>102</sup>

While Revels has an obligation under the **UNFCCC** to take measures to reduce and/or reverse the harmful effects of climate change,<sup>103</sup> the **Paris Agreement** requires countries to do so by its NDCs. There must therefore be a balancing exercise. Revels is duty bound to ensure that methods adopted have minimal adverse effects on the quality of the environment. The Sargassum harvesting project destroys the ecosystem of the Sargasso Sea and destroys the only breeding ground for the European eel. Therefore, the method employed by Revels to minimise the effects of climate change negatively impacts upon the quality of the marine environment of the Sargasso Sea.

### **3. Revels has a duty to perform its treaty obligations in good faith**

Regardless of any alleged benefits of the Sargassum project, Revels cannot use its obligations under the **UNFCCC** and **Paris Agreement** to justify breaches of its obligations under the **CBD**, **Hamilton Declaration** and customary international law. All treaties are binding and must be performed in good faith by parties to a treaty.<sup>104</sup> Revels is bound by the **VCLT**<sup>105</sup> and must perform

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<sup>102</sup> UNFCCC, Article 4(1)(f).

<sup>103</sup> UNFCCC, Article 4(1)(f).

<sup>104</sup> VCLT, Art. 26

<sup>105</sup> Record, ¶6.

its obligations in good faith. States ought to perform their treaty obligations reasonably and in such a manner that its purpose can be realized.<sup>106</sup>

Revels freedom on the high seas is subject to the conditions laid down under the **UNCLOS** and other rules of international law.<sup>107</sup> Revels must enjoy that freedom in such a way as to prevent damage to marine resources and biodiversity of the Sargasso Sea. The **UNCLOS** specifically provides that States Parties have a general obligation to protect and preserve the marine environment.<sup>108</sup> State Parties also have a duty to cooperate and to adopt, with respect to their nationals, measures for the conservation of the living resources of the high seas.<sup>109</sup> These obligations are materially the same as Revels' obligations under the **CBD** to conserve biological diversity and sustainably use its components.<sup>110</sup> Therefore, the **UNCLOS** and the maxim of *pacta sunt servanda* require that Revels fulfill its obligations under the climate change treaties through means that do not violate its obligations to protect and conserve biodiversity.

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<sup>106</sup> *Supra* note 68 at ¶142.

<sup>107</sup> United Nations Convention on the Law of the Sea, Dec. 10, 1982 U.N.T.S. 3, Art. 87 [hereinafter "UNCLOS"].

<sup>108</sup> UNCLOS, Art. 192

<sup>109</sup> UNCLOS, Arts. 117, 118

<sup>110</sup> CBD, Art. 1.

## **CONCLUSION**

For the foregoing reasons, Alliguna respectfully requests that this Court adjudge and declare that:

1. The Court has jurisdiction over this dispute;
2. The acts of the SEA Corporation in the Sargasso Sea is attributable to Revels;
3. Revels violated its international obligations through the Sargassum Project;
4. Revels terminate the Sargassum Project.

**RESPECTFULLY SUBMITTED,**

**AGENTS OF THE APPLICANT**