
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 23RD STETSON MOOT COURT COMPETITION 2018-2019

TABLE OF CONTENTS

TABLE OF CONTENTS

QUESTIONS PRESENTED	v
STATEMENT OF JURISDICTION	vi
INDEX OF AUTHORITIES	vii
STATEMENT OF FACTS	x
SUMMARY OF ARGUMENTS	xii
ARGUMENTS	1

I. THE ICJ HAS JURISDICTION OVER THE DISPUTE, AND THE CONDUCT OF SEA IS ATTRIBUTABLE TO REVELS.....	1
A. THE ICJ HAS JURISDICTION OVER THE DISPUTE.....	1
1. THE ICJ HAS JURISDICTION UNDER THE RELEVANT CONVENTIONS.....	2
a. The ICJ has jurisdiction under CBD because CBD relates to this dispute.....	3
b. The ICJ has jurisdiction under UNFCCC and PA because both relate to the dispute.....	4
i. Revels has consistently invoked its obligations under UNFCCC and PA as justification for its renewable energy project.	4
ii. Revels is estopped from denying the ICJ’s jurisdiction under the above conventions.....	5
2. REVELS MAY NOT INVOKE CMS AND UNCLOS TO PRECLUDE THE ICJ FROM ACQUIRING JURISDICTION OVER THE DISPUTE.	6
B. THE CONDUCT OF SEA IS ATTRIBUTABLE TO REVELS.....	8
1. SEA IS IN FACT ACTING UNDER THE CONTROL OF REVELS.....	8
2. CIRCUMSTANTIAL EVIDENCE LEAD TO THE INEVITABLE CONCLUSION THAT REVELS KNEW OF AND THEREFORE SHOULD BE HELD RESPONSIBLE FOR THE EXTRACTION OF SARGASSUM.....	9

3.	REVELS ACKNOWLEDGED AND ADOPTED THE ACT OF EXTRACTION OF <i>SARGASSUM</i> AS ITS OWN.....	10
II.	REVELS VIOLATED INTERNATIONAL LAW BY NEGATIVELY IMPACTING THE EEL THROUGH THE EXTRACTION OF <i>SARGASSUM</i> FROM SARGASSO.....	12
A.	REVELS VIOLATED ITS OBLIGATIONS UNDER THE CBD.....	12
1.	THE EXTRACTION OF <i>SARGASSUM</i> FROM SARGASSO IS CONTRARY TO CONSERVATION AND SUSTAINABLE USE.....	12
a.	Revels' acts harmed Sargasso and the eel, in violation of its obligation of in-situ conservation under Art. 8 of the CBD.....	13
b.	Revels violated its duty to avoid or minimize adverse impacts on the eels by extracting <i>Sargassum</i> from Sargasso.....	15
c.	Revels did not protect and encourage customary use of biological resources in accordance with traditional cultural practices.....	16
2.	REVELS VIOLATED THE PRECAUTIONARY PRINCIPLE UNDER THE CBD.	16
B.	REVELS VIOLATED ITS OBLIGATIONS UNDER UNCLOS.....	17
1.	CONTRARY TO REVELS' ASSERTION, THE FREEDOM OF THE HIGH SEAS IS NOT ABSOLUTE.....	17
2.	REVELS HAS FAILED TO IMPLEMENT SUCH MEASURES AS TO PROMOTE CONSERVATION OF THE LIVING RESOURCES IN THE HIGH SEAS AND TO COOPERATE WITH OTHER STATES.....	18
3.	REVELS FAILED TO FULFILL IN GOOD FAITH THE OBLIGATIONS IT ASSUMED UNDER THE UNCLOS.....	19
4.	REVELS EXCEEDED THE LIMITATION IMPOSED BY ART. 3 OF THE CBD UPON THE FREEDOM OF THE HIGH SEAS.....	19
C.	REVELS VIOLATED ITS OBLIGATIONS UNDER THE CMS.....	20
1.	REVELS VIOLATED ITS DUTIES UNDER ARTS. II AND IV OF THE CMS..	21
2.	REVELS' VIOLATED ITS DUTIES UNDER CMS RESOLUTIONS 11.27 AND 12.21.....	22
D.	REVELS BREACHED ITS DUTY NOT TO CAUSE TRANSBOUNDARY HARM.....	23
a.	The harm was the result of human activity.....	24

b. There is a physical relationship between the harvesting of <i>Sargassum</i> and the biodiversity of Sargasso Sea.....	24
c. Extraction resulted in transboundary movement of harmful effects..	25
d. Revels’ biofuels initiative project involves a risk of causing significant harm.....	25
CONCLUSION AND PRAYER FOR RELIEF.....	27

QUESTIONS PRESENTED

- I. WHETHER THE INTERNATIONAL COURT OF JUSTICE HAS JURISDICTION TO DETERMINE THE MATTER AND WHETHER THE REPUBLIC OF REVELS IS RESPONSIBLE FOR THE CONDUCT AT ISSUE
- II. WHETHER THE REPUBLIC OF REVELS VIOLATED INTERNATIONAL LAW BY NEGATIVELY IMPACTING THE EUROPEAN EEL THROUGH THE *SARGASSUM* EXTRACTION IN THE SARGASSO SEA

STATEMENT OF JURISDICTION

Under Article 36(1) of the Statute of the International Court of Justice, the Federal States of Alliguna (“Alliguna”) and the Republic of Revels (“Revels”) refer to the International Court of Justice (“ICJ”) the questions of international law stated in Annex A of the Special Agreement Between the Federal States of Alliguna and the Republic of Revels for Submission to the International Court of Justice of Differences Between Them Concerning Questions Relating to the Use of the Sargasso Sea and the Protection of Eels (“Special Agreement”).

INDEX OF AUTHORITIES

TREATIES AND CONVENTIONS

Convention on Biological Diversity, 5 June 1992, 1760 U.N.T.S. 79	2,12,13,15,16,20,24
Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331.	21
Statute of the International Court of Justice, 18 April 1946, 33 U.S.T.S. 993	1
United Nations Framework Convention on Climate Change, 9 May 1992, 1771 U.N.T.S. 107	2
United Nations Convention on the Law of the Sea, 10 December 1982, 1833 U.N.T.S. 3.	6,18,19,20
Paris Agreement, FCCC/CP/2015/10/Add.1 (13 December 2015).	2,4
Convention on the Conservation of Migratory Species of Wild Animals, 3 June 1979, 1651 U.N.T.S. 333.	6,20,21,25

U.N. DOCUMENTS AND OTHER INTERNATIONAL DOCUMENTS

CBD/EBSA/EM/2017/1/INF/1 (27 November 2017).	13
Commentary on the Articles on State Responsibility, Rep. of the Int'l Law Comm'n, 53rd Sess., Apr. 23–June 1, July 2–Aug. 10, 2001, 202-03, UN Doc. A/56/10; GAOR, 56th Sess., Supp. 10 (2001)	8,9,10
Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea (11 March 2014).	22,26
Int'l Law Comm'n, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10 (2001).	8,9
U.N. Conference on Environment and Development, <i>Rio Declaration on Environment and Development</i> , U.N. Doc. A/CONF.151/26/Rev.1 (Aug., 12, 1002).	17,23
U.N. Conference on the Human Environment, <i>Declaration of the United Nations Conference on the Human Environment</i> , U.N. Doc. A/CONF.48/14/Rev. 1, (June 16, 1972).	20
U.N. World Summit on Sustainable Development, <i>Johannesburg Declaration on Sustainable Development</i> , U.N. Doc. A/CONF.199/20, (4 September 2002).	15

U.N. Conference on Sustainable Development, <i>Rio+20: The Future We Want</i> , ¶ 158 (2012).	17
UNEP/CBD/COP/DEC/IX/20 (5 December 2012).	4
UNEP/CBD/COP/DEC/X/29 (29 October 2010).	4
UNEP/CBD/COP/DEC/VIII/24 (15 June 2006)	13
UNEP/CMS/Resolution 11.27 (4-9 November 2014).	22,23
UNEP/CMS/Resolution 12.21(October 2017).	22,23
Report of the International Law Commission, Articles on Prevention of Transboundary Harm from Hazardous Activities, U.N. GAOR, U.N .Doc A/56/10., (2001).	24,25,26
 <i>JUDICIAL DECISIONS</i>	
Corfu Channel Case (U.K. v. Alb.), 1949 I.C.J. 4, 22.	10
Fisheries Jurisdiction (Spain v. Can.), 1998 I.C.J. Rep. 432.	2
Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. Rep. 226.	23
Mavrommatis Palestine Concessions (Greece.v. U.K.), 1924.P.C.I.J. (ser. B) No 3 (Aug.30)	2
<i>Prosecutor v. Duško Tadic</i> , International Tribunal for the Former Yugoslavia, Case IT-94-1-A (1999), (November 1999), p. 1518, at p. 1541, ¶.117.	9
Southern Bluefin Tuna Case (N.Z. v. Japan, Aus. v. Japan), I.T.L.O.S. Case No. 3 (1999)	7
 <i>BOOKS</i>	
Brownlie, <i>Principles of Public International Law</i> (6th ed., 2003).	5,24
Glowka, <i>A Guide to the Convention on Biological Diversity</i> , International Union for Conservation of Nature [IUCN], (1994).	15,16,20
Hanqin, <i>Transboundary Damage in International Law</i> (2003).	24,
Kolb, <i>The International Court of Justice</i> (2013).	1,7
Sands, et. al., <i>Principles of International Environmental Law</i> (2012)	1,18,22

ESSAYS, ARTICLES, AND JOURNALS

- MacGibbon, *Estoppel in International Law*, 7 Int'l and Comparative Law Quarterly 458 (1958). 5
- Milledge & Harvey, *Golden Tides: Problem or Golden Opportunity? The Valorisation of Sargassum from Beach Inundations*, J. Mar. Sci. Eng. (2016). 14
- Ovchar, *Estoppel in the Jurisprudence of the ICJ: A principle promoting stability threatens to undermine it*, Bond L. Rev. (2009). 5,6
- Wagner, *Jurisdiction by Estoppel in the International Court of Justice*, 74 Cal. L. Rev. 1777 (1986). 5

MISCELLANEOUS

- Bonhommeau, et al., *Impact of climate on eel populations of the Northern Hemisphere*, Mar Ecol Prog Ser 373 (2008) <https://www.int-res.com/articles/meps2008/373/m373p071.pdf>. 14,21
- Freestone, et al., *Chapter 50. Sargasso Sea*, UNITED NATIONS (2016) 16
http://www.un.org/depts/los/global_reporting/WOA_RPROC/Chapter_50.pdf.
- Submission of Scientific Information to Describe Ecologically or Biologically Significant Marine Areas, THE SARGASSO SEA ALLIANCE (2011)
<https://www.cbd.int/doc/meetings/mar/rwebsa-wcar-01/other/rwebsa-wcar-01-sargasso-sea-alliance-02-en.pdf>. 14,15,25
- Sumalia, et al., *Values from the Resources of the Sargasso Sea*, SEA ALLIANCE SCIENCE REPORT SERIES 12 (2013)
https://www.oceanfdn.org/sites/default/files/No.12_ValuesfromResources._HI.compressed.pdf. 14,24,25
- Trott, et al. *Efforts to Enhance Protection of the Sargasso Sea* (2011) 13,15
<http://nsgl.gso.uri.edu/flsgp/flsgpw10002/data.suspect/papers/052.pdf>.

STATEMENT OF FACTS

The Federal States of Alliguna (“Alliguna”) and the Republic of Revels (“Revels”) are states in the North Atlantic Ocean near the Sargasso Sea (“Sargasso”).¹ Alliguna is a developed country relying on manufacturing and energy, while Revels is a developing country focusing on fishing and agriculture.²

The European eel (“eel”) is a critically endangered migratory species which lives in Alliguna’s waters and migrates to spawn in the Sargasso. It features prominently in Alliguna’s culture, religion, and history.³ Considering pronounced declines in its recruitment, population, and escapement over the past decades,⁴ Alliguna passed strict domestic legislation to protect and recover the species.⁵

In July 2016, Seaweed Energy Alternatives, Inc. (“SEA”), a large, privately owned company in Revels, launched a biofuels initiative. Using *Columbus*, a vessel sailing under the flag of Revels, SEA began extracting *Sargassum* from Sargasso to use for biofuel production.⁶ To make the activity possible,⁷ Revels subsidized it as part of its renewable energy program to help it meet

¹ R. ¶ 1.

² R. ¶ 2.

³ R. ¶ 3.

⁴ R. ¶ 3.

⁵ R. ¶ 4.

⁶ R. ¶ 14.

⁷ Clarifications, A18.

its Nationally Determined Contributions (“NDC”) under the Paris Agreement (“PA”).⁸ Revels later released a press release and report highlighting SEA’s initiative as a key factor to the progress and success of its renewable energy program.⁹

Alliguna communicated its objections to Revels’ project and demanded its immediate termination due to its negative impact on Sargasso and the eels.¹⁰ However, Revels refused to acknowledge the destructive effects of the extraction of *Sargassum*, and denied any responsibility for SEA’s actions.¹¹ Furthermore, Revels declined¹² Alliguna’s invitation to discuss the matter.¹³

As negotiations and mediations failed to resolve the dispute, Alliguna submitted an Application instituting proceedings against Revels in the ICJ. Alliguna seeks an order declaring that (1) the ICJ has jurisdiction to determine the matter and that Revels is responsible for the conduct at issue; and (2) Revels violated international law through the project.¹⁴

Defiantly, SEA has continued to extract *Sargassum* from Sargasso.¹⁵

⁸ *Id.*

⁹ R. ¶ 16.

¹⁰ R. ¶ 18.

¹¹ R. ¶ 19.

¹² R. ¶ 19.

¹³ R. ¶ 18.

¹⁴ R. ¶ 26.

¹⁵ R. ¶ 28.

SUMMARY OF ARGUMENTS

I.

The ICJ has jurisdiction under the CBD, UNFCCC, and Paris Agreement because they relate to the dispute. The CMS and UNCLOS do not preclude the ICJ from acquiring jurisdiction. Revels cannot invoke the rule of *lex specialis* to divest the ICJ of jurisdiction.

The conduct of SEA is attributable to Revels because the former is acting under the control of the latter. Circumstantial evidence also leads to the inevitable conclusion that Revels knew of and therefore should be held responsible for the extraction of *Sargassum*. Revels acknowledged and adopted the act of extraction of *Sargassum* as its own.

II.

Revels violated international law. It failed to comply with its obligations under the CBD, as the extraction of *Sargassum* is contrary to conservation and sustainable use. Revels' acts were in violation of its obligation of in-situ conservation, its duty to avoid or minimize adverse impacts of its activities to biodiversity, and the mandate to protect and encourage customary use of biological resources in accordance with traditional cultural practices. It also violated the precautionary principle under the CBD.

Revels likewise violated its obligations under the UNCLOS and CMS.

Revels breached its duty not to cause transboundary harm.

ARGUMENTS

I. THE ICJ HAS JURISDICTION OVER THE DISPUTE, AND THE CONDUCT OF SEA IS ATTRIBUTABLE TO REVELS.

A. The ICJ has jurisdiction over the dispute.

The ICJ acquires jurisdiction in two ways. First, under Art. 36(1) of its Statute, the ICJ has jurisdiction by agreement between the Parties to the dispute, either by a special agreement or by a compromissory clause in a multilateral or bilateral treaty.¹⁶ A compromissory clause gives the ICJ jurisdiction over disputes arising from the interpretation or application of a treaty in question.¹⁷ They constitute a mechanism for guaranteeing the application of the treaty.¹⁸

Second, under Art. 36(2), Parties may declare that they recognize the ICJ's compulsory jurisdiction *ipso facto* and without special agreement in all legal disputes concerning the interpretation of a treaty, questions of international law, and the existence of any fact which would constitute a breach of an international obligation.¹⁹

¹⁶ Statute of the International Court of Justice, art. 36(1), 18 April 1946, 33 U.S.T.S. 993 [hereinafter ICJ Statute];

Philippe Sands, et al.; *Principles of International Environmental Law*, at 172 (2012).

¹⁷ Robert Kolb, *The International Court of Justice*, at 409 (2013).

¹⁸ *Id.*

¹⁹ ICJ Statute, art. 36(2).

1. The ICJ has jurisdiction under the relevant conventions.

Upon ratification of the Convention on Biological Diversity (“CBD”),²⁰ the United Nations Framework Convention on Climate Change (“UNFCCC”)²¹ and the PA,²² Alliguna and Revels have submitted written declarations stating that with respect to any dispute concerning the interpretation or application of the aforementioned conventions, they will submit the dispute to the ICJ.²³

To acquire jurisdiction under a treaty, the ICJ whose jurisdiction is at issue must determine whether the parties’ claims “reasonably relate to or are capable of being evaluated in relation” to the “legal standards of the treaty,” the breach of which is alleged.²⁴ In its determination, the ICJ must focus on how the parties formulate the dispute by examining the application and final submissions, diplomatic exchanges, public statements, and other relevant evidence.²⁵

A dispute is a disagreement on a point of law or fact, a conflict of legal views or interests between two persons.²⁶ There is a dispute over the interpretation or application of a treaty if the actions complained of can reasonably be measured against standards or obligations prescribed by

²⁰ Convention on Biological Diversity, 5 June 1992, 1760 U.N.T.S. 79 [hereinafter CBD].

²¹ United Nations Framework Convention on Climate Change, 9 May 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC].

²² Paris Agreement, FCCC/CP/2015/10/Add.1 (13 December 2015) [hereinafter Paris Agreement].

²³ R. ¶¶ 7, 10.

²⁴ Southern Bluefin Tuna (N.Z. v. Japan, Aus. v. Japan), I.T.L.O.S. Case No. 3 (1999).

²⁵ Fisheries Jurisdiction (Spain v. Can.), 1998 I.C.J. Rep. 432 (Dec. 4).

²⁶ Mavrommatis Palestine Concessions (Greece.v. U.K.), 1924 P.C.I.J. (ser. B) No. 3 (Aug. 30).

that treaty.²⁷ The legality of the act of harvesting the *Sargassum*, the dispute in this case, can be measured against standards and obligations prescribed by CBD²⁸ and PA in relation to UNFCCC.²⁹

a. The ICJ has jurisdiction under CBD because CBD relates to this dispute.

The objectives of CBD are the conservation of biodiversity and the sustainable use of its components.³⁰ Alliguna's primary concern is the negative impacts of the extraction of *Sargassum* on the Sargasso ecosystem and the protection of the eels.³¹ Biodiversity encompasses the eel, as well as the rest of the marine biodiversity in Sargasso, including *Sargassum*. Revels harmed Sargasso when it extracted *Sargassum* therefrom, and thus harmed the eel and prevented any chance of its recovery.³² As the dispute relates to the conservation of biodiversity³³ and sustainable use of its components,³⁴ CBD applies.

²⁷ Id

²⁸ Supra, I.A.1.a

²⁹ Supra, I.A.1.b

³⁰ R. ¶ 6; CBD, *supra* note 20, art. 3.

³¹ R., Annex B.

³² *See infra* II.A.1.a.

³³ *See infra* II.A.1.

³⁴ *See infra* II.A.2.

Furthermore, Revels' duties and their application are interpreted under CBD Decisions X/29³⁵ and IX/20.³⁶ The ecologically or biologically significant area ("EBSA") process, which designates Sargasso as such, also relates to the object and purpose of CBD.³⁷ Hence, the dispute must be settled under CBD.

b. The ICJ has jurisdiction under UNFCCC and PA because both relate to the dispute.

UNFCCC and PA are relevant because Revels subsidized the extraction of *Sargassum* as part of its renewable energy program in fulfilment of its NDC commitments.³⁸

i. Revels has consistently invoked its obligations under UNFCCC and PA as justification for its renewable energy project.

PA was agreed upon by Parties to UNFCCC to combat climate change³⁹ and strengthen the implementation of UNFCCC.⁴⁰ It obliges them to prepare, communicate, and maintain successive

³⁵ UNEP/CBD/COP/DEC/X/29 (29 October 2010).

³⁶ UNEP/CBD/COP/DEC/IX/20 (5 December 2012).

³⁷ Vienna Convention on the Law of Treaties, art. 31(1), [1969].1155 U.N.T.S 331 [hereinafter VCLT]; *see infra*

II.A.3

³⁸ R. ¶ 14.

³⁹ Paris Agreement, *supra* note 22, Preamble.

⁴⁰ *Id.*, art. 2.

NDCs that they intend to achieve by pursuing domestic mitigation measures, with the aim of achieving the objectives of such contributions.⁴¹ Revels claims that the extraction of *Sargassum* will enable it to comply with its NDC commitments,⁴² since using *Sargassum* as a biofuel will allegedly mitigate climate change by providing a more sustainable energy source. The dispute thus involves the interpretation and application of Revels' obligations under these conventions.

ii. Revels is estopped from denying the ICJ's jurisdiction under the above conventions.

Estoppel is a general principle of international law,⁴³ recognized by the ICJ and other tribunals.⁴⁴ Estoppel obliges a State "to be consistent in its attitude to a given factual or legal situation."⁴⁵ It has three elements: first, a Party must make a representation to another; second, the representation must be unconditional and made with proper authority; and lastly, the Party invoking estoppel must rely on the representation.⁴⁶

Firstly, Revels' having declared clearly and unequivocally that its actions are justified under UNFCCC and PA through the diplomatic note dated March 11, 2011,⁴⁷ the first requirement

⁴¹ *Id.*, art. 4(2).

⁴² R. ¶ 14.

⁴³ Ian Brownlie, *Principles of Public International Law* (6th ed. 2003), at 616.

⁴⁴ Alexander Ovchar, *Estoppel in the Jurisprudence of the ICJ: A principle promoting stability threatens to undermine it*, *Bond L. Rev.* (2009).

⁴⁵ Iain MacGibbon, *Estoppel in International Law*, 7 *Int'l and Comparative Law Quarterly* 458, at 468 (1958).

⁴⁶ Megan Wagner, *Jurisdiction by Estoppel in the International Court of Justice*, 74 *Cal. L. Rev.* 1777 (1986).

⁴⁷ R. ¶ 19.

of estoppel is met. Secondly, since the note was sent to Alliguna by Carl A. Omage, Ambassador of Revels,⁴⁸ the second requirement of authority is present. Lastly, “a party must show ‘that it has taken distinct acts in reliance on the other party’s statement either to its detriment or to the other’s advantage.’”⁴⁹ Alliguna filed an Application instituting proceedings against Revels in the ICJ, under the assumption that the ICJ acquires jurisdiction through UNFCCC and PA.⁵⁰ Alliguna relied on Revels’ claim that these two conventions are their bases for their actions.⁵¹ However, Revels revoked this statement in their Preliminary Objections⁵² to conveniently deprive the ICJ of jurisdiction. This declaration by Revels operates to Alliguna’s detriment. Hence, Revels is estopped from denying the ICJ’s jurisdiction under these conventions.

1. Revels may not invoke CMS⁵³ and UNCLOS⁵⁴ to preclude the ICJ from acquiring jurisdiction over the dispute.

Revels argues that the dispute is covered by CMS and UNCLOS, to the exclusion of CBD and UNFCCC in relation to PA by virtue of *lex specialis*.⁵⁵ However, there is no reason for a State’s

⁴⁸ R. ¶ 14.

⁴⁹ Ovchar, *supra* note 44, at 63.

⁵⁰ R., Annex B.

⁵¹ *Id.*

⁵² R., Annex C.

⁵³ Convention on the Conservation of Migratory Species of Wild Animals, 3 June 1979, 1651 U.N.T.S. 333 [hereinafter CMS].

⁵⁴ United Nations Convention on the Law of the Sea, 10 December 1982, 1833 U.N.T.S. 3 [hereinafter UNCLOS].

⁵⁵ *Id.*

act to not violate obligations under more than one treaty.⁵⁶ It is commonplace in international law and State practice for more than one treaty to bear upon a particular dispute.⁵⁷ Therefore, assuming *arguendo* that CMS and UNCLOS are relevant to the dispute, this does not prevent the ICJ from acquiring jurisdiction.

The ICJ has interpreted compromissory clauses in treaties as also covering provisions of other treaties related to the treaty containing said clauses,⁵⁸ contrary to Revels' restrictive reasoning. In this case, the ICJ may likewise obtain jurisdiction pursuant to CBD, UNFCCC, and PA, and not be precluded from acquiring jurisdiction pursuant to UNCLOS and CMS.

The ICJ stated in the *Southern Bluefin Tuna* case that “there is frequently a parallelism of treaties, both in their substantive content and in their provisions for settlement of disputes arising thereunder,”⁵⁹ as in this case where the dispute resolution provisions are at issue, and the dispute arises under multiple treaties. Hence, the applicability of CMS and UNCLOS, and particularly their respective dispute settlement clauses, do not operate to supersede CBD and the climate change conventions in their application to this dispute.

⁵⁶ *Southern Bluefin Tuna* (N.Z. v. Japan, Aus. v. Japan), I.T.L.O.S. Case No. 3 (1999).

⁵⁷ *Id.*

⁵⁸ Robert Kolb, *supra* note 17, at 414.

⁵⁹ *Southern Bluefin Tuna*, *supra* note 54.

B. The conduct of SEA is attributable to Revels.

Internationally wrongful acts of states arise when there is an act or omission attributable to a Party which constitutes a breach of international obligation.⁶⁰ While acts by private entities are generally not attributable to the state, certain factual circumstances may justify such an attribution.⁶¹ In this case, the extraction of *Sargassum* by SEA is attributable to Revels.

1. SEA is in fact acting under the control of Revels.

Art. 8 of the Articles on Responsibility of States for Internationally Wrongful Acts (“ARSIWA”) states that the “acts of persons shall be considered an act of a State under international law if the former is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.”⁶² Circumstances may arise where such conduct of a private corporation is attributable to the State because there exists a specific factual relationship between the person or entity engaging in the conduct and the State.⁶³ Art. 8 deals with two such circumstances. The second outlines a situation where private persons act under the State’s

⁶⁰ Int’l Law Comm’n, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, art. 35 (2001) [hereinafter ARSIWA].

⁶¹ Commentary on the Articles on State Responsibility, Rep. of the Int’l Law Comm’n, 53rd Sess., Apr. 23–June 1, July 2–Aug. 10, 2001, 2002-03, UN Doc. A/56/10; GAOR, 56th Sess., Supp. 10 (2001) [hereinafter ARSIWA Commentary].

⁶² ARSIWA, *supra* note 60, art. 8.

⁶³ ARSIWA Commentary, *supra* note 61.

direction or control.⁶⁴ The degree of control necessary to hold a Party responsible may, however, vary according to the factual circumstances of each case.⁶⁵ Based on the ICJ’s rulings, it is a matter of appreciation in each case “whether particular conduct was or was not carried out under the control of a State, to such an extent that the conduct controlled should be attributed to it.”⁶⁶

In the present case, there exists a specific factual relationship of control between SEA’s *Sargassum* extraction and Revels. SEA continues to receive subsidy from Revels to be able to extract *Sargassum*. Without the subsidies, the project would not have been possible.⁶⁷ The subsidy was funded as part of Revels’ renewable energy program to reduce greenhouse gas emissions. Revels expected that these would help it meet its NDC commitments under PA.⁶⁸ Thus, factual circumstances justify attribution of SEA’s actions to Revels.

2. Circumstantial evidence lead to the inevitable conclusion that Revels knew of and therefore should be held responsible for the extraction of *Sargassum*.

Assuming *arguendo* that Revels’ control is not established by direct evidence, circumstantial evidence show that it had knowledge of the illegal activities of SEA and should

⁶⁴ *Id.*

⁶⁵ *Prosecutor v. Duško Tadic*, International Tribunal for the Former Yugoslavia, Case IT-94-1-A (1999), (November 1999), p. 1518, at p. 1541, ¶ 117.

⁶⁶ ARSIWA Commentary, *supra* note 61.

⁶⁷ Clarifications, A18.

⁶⁸ R. ¶ 14.

therefore be responsible for them. Proof may be “drawn from inferences of fact, provided that they leave no room for reasonable doubt.”⁶⁹

Alliguna’s claims benefit from this point. Revels was aware of the extraction of *Sargassum* being conducted by SEA. Not only did the former issue press releases featuring the extraction, but it also funded the operations, without which the . Hence, similarly, Revels can be held responsible for the extraction of *Sargassum*.

3. Revels acknowledged and adopted the act of extraction of *Sargassum* as its own.

Art. 11 of the ARSIWA states that conduct not attributable to a Party upon its commission shall nevertheless be considered an act of the latter, provided that it subsequently acknowledges and adopts the conduct as its own.⁷⁰ Acknowledgement and adoption of conduct by a Party may be express or implied by the conduct of the Party in question.⁷¹

In the current dispute, Revels has both acknowledged and adopted the actions of SEA as its own. Revels had knowledge of SEA’s actions as the extraction had been heavily covered by news media both in and outside Revels.⁷² Furthermore, Revels has consented to the extraction of

⁶⁹ Corfu Channel Case (U.K. v. Alb.), 1949 I.C.J. 4, 22.

⁷⁰ ARSIWA Commentary, *supra* note 61.

⁷¹ *Id.*

⁷² R. ¶ 15

Sargassum since the end of 2016, as manifested by its provision of subsidies.⁷³ It even went so far as issuing a press release and a progress report regarding the extraction of *Sargassum* as part of its renewable energy program⁷⁴ in fulfillment of its obligations under PA in relation to UNFCCC.⁷⁵ Taken all together, these facts clearly manifest not only the acknowledgment of SEA's acts, but more importantly, Revels' adoption of SEA's conduct.

⁷³ R. ¶¶ 13, 14.

⁷⁴ R. ¶ 16.

⁷⁵ R. ¶ 19.

II. REVELS VIOLATED INTERNATIONAL LAW BY NEGATIVELY IMPACTING THE EEL THROUGH THE EXTRACTION OF *SARGASSUM* FROM SARGASSO.

A. Revels violated its obligations under CBD.

CBD mandates the conservation of biodiversity⁷⁶ and the sustainable use of its components,⁷⁷ with emphasis on *in-situ* conservation,⁷⁸ or the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings.⁷⁹ It also imposes upon Parties the responsibility to ensure that activities within its jurisdiction or control do not cause damage to the environment of other States or areas beyond national jurisdiction,⁸⁰ and to cooperate with States for these purposes.⁸¹ In extracting *Sargassum* from Sargasso, Revels violated CBD and defeated its overarching goal of conservation and sustainable use of biodiversity.

1. The extraction of *Sargassum* from Sargasso is contrary to conservation and sustainable use.

⁷⁶ CBD, *supra* note 20, art. 1.

⁷⁷ *Id.*, art. 10.

⁷⁸ *Id.*, art. 8.

⁷⁹ *Id.*, art. 2.

⁸⁰ *Id.*, art. 3.

⁸¹ *Id.*, art. 5.

Parties must use components of biodiversity such that it does not lead to its long-term decline and maintains its potential to meet the needs of present and future generations.⁸² This mandates the institution and enforcement of a legal framework that aims to conserve and sustainably use components of biodiversity, and avoid or minimize adverse impacts thereto. The implementation of sustainable use may be facilitated by the designation of EBSAs⁸³ in need of protection in open ocean waters and deep sea habitats.⁸⁴ Sargasso meets the EBSA criteria⁸⁵ and must be protected as such through area-based management tools.⁸⁶

a. Revels' acts harmed Sargasso and the eel, in violation of its obligation of in-situ conservation under Art. 8 of CBD.

Parties are obliged to protect ecosystems and natural habitats, and maintain viable populations of species in natural surroundings.⁸⁷ This obligation applies to areas within and outside of their national jurisdiction with respect to activities carried out under their jurisdiction or

⁸² *Id.*, art. 2.

⁸³ CBD/EBSA/EM/2017/1/INF/1 (27 November 2017).

⁸⁴ UNEP/CBD/COP/DEC/VIII/24 (15 June 2006); Trott, et al. *Efforts to Enhance Protection of the Sargasso Sea* (2011) <http://nsgl.gso.uri.edu/flsgp/flsgpw10002/data.suspect/papers/052.pdf>.

⁸⁵ R. ¶ 18; *supra* note 36.

⁸⁶ *Supra* note 35.

⁸⁷ CBD, *supra* note 24, art. 8(d).

control.⁸⁸ In Sargasso, *Sargassum* mats act as spawning areas for the eel and other species,⁸⁹ and affect their migration patterns.⁹⁰ Spawning, larval development, feeding, and migration take place in the open ocean, thus oceanic environmental conditions are of primary importance for the survival of eel larvae and, therefore, eel recruitment.⁹¹ *Sargassum* deposits also stabilize beaches, and provide nutrients for beach and dune plants.⁹² Its organic matter is positively correlated to fish abundance.⁹³ There had been no commercial-scale extraction of *Sargassum* from Sargasso for use as biofuel in the past⁹⁴ as it posed a direct threat to the Sargasso ecosystem due to drastic ocean changes caused by extraction, thus disrupting the capacity of the species therein to adapt their daily activities to the Sargasso environment.⁹⁵

⁸⁸ *Id.*, art. 4(b).

⁸⁹ Submission of Scientific Information to Describe Ecologically or Biologically Significant Marine Areas, THE SARGASSO SEA ALLIANCE (2011) <https://www.cbd.int/doc/meetings/mar/rwebsa-wcar-01/other/rwebsa-wcar-01-sargasso-sea-alliance-02-en.pdf>.

⁹⁰ Sumalia, et al., Values from the Resources of the Sargasso Sea, SEA ALLIANCE SCIENCE REPORT SERIES 12 (2013) https://www.oceanfdn.org/sites/default/files/No.12_VvaluesfromResources._HI.compressed.pdf.

⁹¹ Bonhommeau, et al., *Impact of climate on eel populations of the Northern Hemisphere*, Mar Ecol Prog Ser 373 (2008) <https://www.int-res.com/articles/meps2008/373/m373p071.pdf>.

⁹² Milledge & Harvey, *Golden Tides: Problem or Golden Opportunity? The Valorisation of Sargassum from Beach Inundations*, J. Mar. Sci. Eng. (2016).

⁹³ Sumalia, et al., *supra* note 90.

⁹⁴ Milledge & Harvey, *supra* note 92.

⁹⁵ Trott, et al., *supra* note 84; Submission of Scientific Information to Describe Ecologically or Biologically Significant Marine Areas, *supra* note 89; Bonhommeau, et al., *supra* note 91.

Revels could have harvested *Sargassum* from inundated beaches instead to prevent the economic disruption it causes to tourism, aquaculture, and fisheries,⁹⁶ considering that Sargasso is the only area of significant *Sargassum* distribution where it grows in truly open ocean and provides a rare form of valuable habitat.⁹⁷ Therefore, Revels' extraction from Sargasso aggravated the decline of the eel population by threatening its habitat, contrary to its duty to protect the same.

b. Revels violated its duty to avoid or minimize adverse impacts on the eels by extracting *Sargassum* from Sargasso.

Parties are obliged to incorporate considerations of conservation and sustainable use in their national decision-making process through anticipatory, rather than reactive, environmental policies.⁹⁸ In particular, threatened species must be protected through legislation,⁹⁹ with the goal of avoiding or minimizing adverse impacts on biodiversity.¹⁰⁰ Other means by which this may be attained is subjecting biological users to harvesting controls, implementing management plans and incentive measures, and assessing measures of national income to take into account the depletion

⁹⁶ Milledge & Harvey, *supra* note 92.

⁹⁷ Submission of Scientific Information to Describe Ecologically or Biologically Significant Marine Areas, *supra* note 89.

⁹⁸ CBD, *supra* note 20, art. 10(a); U.N. World Summit on Sustainable Development, *Johannesburg Declaration on Sustainable Development*, U.N. Doc. A/CONF.199/20, ¶ 26 (4 September 2002) [hereinafter *Johannesburg Declaration*]; Lyle Glowka, *A Guide to the Convention on Biological Diversity*, International Union for Conservation of Nature [IUCN], at 58 (1994).

⁹⁹ CBD, *supra* note 20, art. 8(k).

¹⁰⁰ *Id.*, art. 10(b).

of biological resources,¹⁰¹ such as the eel. The eel is listed as Critically Endangered on the IUCN Red List of Threatened Species,¹⁰² demonstrating their importance and the continued threats to their existence.¹⁰³ Revels violated its obligation to protect it and the Sargasso when it utilized its funds for the extraction of *Sargassum*,¹⁰⁴ and failed to implement policies to avoid or minimize its adverse effects on the eel.

c. Revels did not protect and encourage customary use of biological resources in accordance with traditional cultural practices.¹⁰⁵

Parties must recognize customary uses of biological resources, and indigenous and local community norms by encouraging governmental policies consistent with traditional cultural practices.¹⁰⁶ Revels violated this duty by further endangering the eel¹⁰⁷ through the degradation of its spawning habitat, in disregard of the species' cultural, religious, and historical importance to Alliguna.¹⁰⁸

¹⁰¹ Glowka, *supra* note 98, at 41.

¹⁰² R. ¶ 3; Trott, et al., *supra* note 84.

¹⁰³ Freestone, et al., *Chapter 50. Sargasso Sea*, UNITED NATIONS (2016)
http://www.un.org/depts/los/global_reporting/WOA_RPROC/Chapter_50.pdf.

¹⁰⁴ R. ¶ 13.

¹⁰⁵ CBD, *supra* note 20, art. 10(c).

¹⁰⁶ Glowka, *supra* note 98, at 41. Johannesburg Declaration, *supra* note 98, ¶ 25.

¹⁰⁷ *See supra* II.A.1.a.

¹⁰⁸ R. ¶ 4.

2. Revels violated the precautionary principle under CBD.

Parties are obliged to avoid or minimize threats of significant reduction or loss of biodiversity, notwithstanding the lack of exhaustive scientific certainty.¹⁰⁹ Revels was informed of the harm caused to the eels by the extraction of *Sargassum* from Sargasso,¹¹⁰ but it refused to terminate the project¹¹¹ to avoid or minimize the threat to both the eel and the Sargasso ecosystem.

B. Revels violated its obligations under UNCLOS.

Revels claims that it has acted in accordance with the mandates of UNCLOS to conserve living resources on the high seas and cooperate with other States,¹¹² and that it has every right to extract *Sargassum* from the high seas by virtue of the freedom of the high seas provided by UNCLOS.¹¹³ However, the freedom of the high seas is not absolute, and Revels violated its obligations under Arts. 117, 118, 192 and 300 of UNCLOS.¹¹⁴

¹⁰⁹ CBD, *supra* note 20, Preamble; U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1, Principle 15 (Aug., 12, 1992) [hereinafter Rio Declaration]; U.N. Conference on Sustainable Development, *Rio+20: The Future We Want*, ¶ 158 (2012).

¹¹⁰ R. ¶ 18.

¹¹¹ R. ¶ 19.

¹¹² R. ¶ 21.

¹¹³ *Id.*

¹¹⁴ UNCLOS, *supra* note 54, arts. 117-118, 192, & 300.

1. Contrary to Revels' assertion, the freedom of the high seas is not absolute.

Revels contends that they enjoy freedom of the high seas and, therefore, should be allowed to extract Sargassum in the high seas pursuant to its rights. While Art. 87 of UNCLOS maintains that the high seas are open to all states, this is subject to limitations established by the Convention and by other rules of international law,¹¹⁵ and “with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.”¹¹⁶ Revels cannot invoke their right to enjoy the freedom of the high seas to justify the damage to marine resources and biodiversity of the Sargasso, as this goes beyond what is permitted on the high seas and violates numerous rules of international law.

2. Revels failed to implement such measures as to promote conservation of the living resources in the high seas and to cooperate with other states.

UNCLOS mandates all Parties 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.¹¹⁷ The SEA Corporation is a national of Revels and Revels has failed to implement such measures as to promote conservation of the living resources in the high seas. It

¹¹⁵ Sands, et. al., *supra* note 16, at 406.

¹¹⁶ UNCLOS, *supra* note 54, art. 87.

¹¹⁷ *Id.*, art. 117.

was not alleged in the record that it has set any standard for which the SEA Corporation should measure its conduct.

Furthermore, States must cooperate with each other in the conservation and management of living resources in the areas of the high seas.¹¹⁸ Revels' actions do not show that it is willing to cooperate with Alliguna for it has refused to first and foremost take account for its actions much less to seek dispute resolution with Alliguna in its efforts to conserve the biodiversity that will affect several states.¹¹⁹

3. Revels failed to fulfill in good faith the obligations it assumed under UNCLOS.

UNCLOS provides that Parties shall “fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.” Revels fails to show good faith when even after obtaining knowledge of its highly risky extraction initiative, it still continues to extract *Sargassum* to this day.¹²⁰ Furthermore, Revels is abusing its right to the freedom of the high seas by not taking into account the limitations in Articles 117 and 118 as previously mentioned and furthermore, using this right to justify it's violations of international law.¹²¹

4. Revels exceeded the limitation imposed by Art. 3 of CBD upon the freedom of the high seas.

¹¹⁸ UNCLOS, *supra* note 54, art. 118.

¹¹⁹ R. ¶ 24.

¹²⁰ R. ¶ 28.

¹²¹ R. ¶ 21.

While freedom of the high seas is provided for under UNCLOS,¹²² States have the responsibility under CBD to ensure that activities within their jurisdiction do not cause damage to the environment, even beyond such jurisdiction,¹²³ an embodiment of the same principle in the Stockholm Declaration.¹²⁴ In extracting *Sargassum*, an activity within its jurisdiction of Revels because of the key role of the vessel, *Columbus*, which sailed under its flag,¹²⁵ Revels exceeded this limitation and caused damage to Sargasso and, consequently, the eel.¹²⁶

C. Revels violated its obligations under CMS.

Revels claims that the extraction did not constitute any violation of CMS.¹²⁷ However, it violated its duties under Arts. II and IV of CMS, and CMS Resolutions 11.27 and 12.21. CMS is concerned with species of wild animals that migrate across or outside national jurisdiction boundaries.¹²⁸ As the eel is a migratory species listed in Appendix II of CMS,¹²⁹ Revels cannot ignore their obligations under CMS by saying that they do not apply to the case or contain limiting

¹²² UNCLOS, *supra* note 54, art. 87

¹²³ CBD, *supra* note 20, art. 3.

¹²⁴ U.N. Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment*, U.N. Doc. A/CONF.48/14/Rev. 1, Principle 21 (June 16, 1972).

¹²⁵ R. ¶ 13.

¹²⁶ Glowka, *supra* note 98, at 26.

¹²⁷ R. ¶ 21.

¹²⁸ CMS, *supra* note 53, ¶ 4.

¹²⁹ *Id.*, Appendix II.

language.¹³⁰ Treaties shall be interpreted in good faith in light of its object and purpose.¹³¹ Undoubtedly, the purpose of CMS is to conserve and effectively manage migratory species.¹³²

1. Revels violated its duties under Arts. II and IV of CMS.

CMS provides a specific duty of the Range States to not only acknowledge the importance of migratory species but to take individually or in cooperation appropriate and necessary steps to conserve such species and their habitat.¹³³ It also includes guidelines for agreements that Parties which are Range States should endeavor to conclude,¹³⁴ including conservation of the habitats of importance in maintaining a favorable conservation status and protection of such habitats from disturbances.¹³⁵ Instead of endeavoring to conserve the species and its habitat, Revels, a Range State for the eel,¹³⁶ disregarded its duty by extracting *Sargassum* from Sargasso despite the fact that Sargasso is the habitat where eels develop.¹³⁷ As Revels is a Party to the Hamilton Declaration,¹³⁸ its actions are inconsistent with its own recognition that the Sargasso is an important open ocean ecosystem, the majority of which lies beyond national jurisdiction, which deserves

¹³⁰ R. ¶ 21.

¹³¹ VCLT, *supra* note 37, art. 31(1).

¹³² CMS, *supra* note 53, Preamble, ¶ 6.

¹³³ *Id.*, art. II(1).

¹³⁴ *Id.*, art. IV.

¹³⁵ *Id.*, art. V(e).

¹³⁶ R. ¶ 8.

¹³⁷ Bonhommeau, et al., *supra* note 91.

¹³⁸ R. ¶ 11.

recognition by the international community for its high ecological and biological significance, its cultural importance and its outstanding universal value.¹³⁹ It has also refused cooperation by declining to even meet with Alliguna to discuss the situation and the impact of the extraction of *Sargassum*.¹⁴⁰

2. Revels' violated its duties under CMS Resolutions 11.27 and 12.21.

Revels cannot simply disregard the Resolutions as non-binding.¹⁴¹ It is bound by CMS Resolutions, because these serve as an authoritative interpretation of international agreements.¹⁴² It was thus incumbent upon Revels to comply with them to comply with CMS. It cannot now claim that that the Resolutions are non-binding, if it had never rejected or impugned them.

The Resolutions recognize the potentially detrimental effects of renewable energy technologies¹⁴³ and climate change to migratory species.¹⁴⁴ Acknowledging that the exploitation of renewable energy may adversely affect the movement, staging areas, habitat, and mortality of CMS-listed migratory species,¹⁴⁵ Resolution 11.27 requires Parties to undertake appropriate survey and monitoring both before and after the deployment of renewable energy technologies to identify

¹³⁹ Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea, 11 March 2014, ¶1.

[hereinafter Hamilton Declaration].

¹⁴⁰ R. ¶ 19.

¹⁴¹ R. ¶ 21.

¹⁴² Sands, et. al., *supra* note 16, at 109.

¹⁴³ UNEP/CMS/Resolution 11.27 (4-9 November 2014).

¹⁴⁴ UNEP/CMS/Resolution 12.21(October 2017).

¹⁴⁵ *Supra* note 141.

short- and long-term impacts on migratory species and their habitats, and to evaluate mitigation measures.¹⁴⁶ Revels did not perform any assessment after the extraction, being merely satisfied with the Environmental Impact Assessment conducted prior to the extraction, which did not even provide conclusive results.¹⁴⁷

Furthermore, Resolution 12.21 acknowledges that changes in human activities as a result of climate change, including adaptation and mitigation measures, may have the most immediate negative impact on migratory species,¹⁴⁸ and recognizes that mitigation measures, such as renewable energy development, may significantly affect migratory species and their habitats depending on how the installations are operated, and that further research impact assessments, especially for new technologies are required.¹⁴⁹ Revels was remiss in its duties when it failed to seriously consider the impact of the extraction of the *Sargassum*, and instead pursued with the such extraction to comply with its NDC commitments.¹⁵⁰

D. Revels breached its duty not to cause transboundary harm.

¹⁴⁶ *Id.*

¹⁴⁷ Clarifications, A15.

¹⁴⁸ *Supra* note 144.

¹⁴⁹ *Id.*

¹⁵⁰ R. ¶ 19.

The duty to prevent transboundary harm¹⁵¹ is a rule of conventional¹⁵² and customary international law.¹⁵³ Although Parties have the sovereign right to exploit their own resources pursuant to their own environmental policies, there is also a corresponding duty 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.¹⁵⁴ This rule has four elements,¹⁵⁵ all of which are present in this case. First, the harm must result from human activity. Second, there must be a physical relationship between the activity concerned and the harm. Third, there must be transboundary transfer of the harmful effect. Lastly, the activity must involve “a risk of causing significant harm.”¹⁵⁶

a. The harm was the result of human activity.

The extraction of *Sargassum* can only be performed through conscious human action. The acts of extraction were conducted by SEA, and this matter is not in dispute.¹⁵⁷

¹⁵¹ Rio Declaration, *supra* note 109, Principle 2.

¹⁵² CBD, *supra* note 20, art. 3.

¹⁵³ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. Rep. 226, 19, ¶ 29 (July 8).

¹⁵⁴ CBD, *supra* note 20, art. 3.

¹⁵⁵ Xue Hanqin, *Transboundary Damage in International Law*, at 4 (2003).

¹⁵⁶ Report of the International Law Commission [“ILC”], Articles on Prevention of Transboundary Harm from Hazardous Activities, U.N. GAOR, U.N. Doc A/56/10., (2001).

¹⁵⁷ R. ¶ 13.

b. There is a physical relationship between the harvesting of *Sargassum* and the biodiversity of Sargasso Sea.

Acts giving rise to transboundary harm are those that directly or indirectly involve natural resources.¹⁵⁸ The decrease in *Sargassum* by virtue of the extraction adversely affects biodiversity, as fish abundance is positively correlated to abundance of *Sargassum*.¹⁵⁹

c. Extraction resulted in transboundary movement of harmful effects.

The extraction directly relates to the spawning of the eels,¹⁶⁰ and affects their movement.¹⁶¹ Migratory species, such as the eel, cyclically and predictably cross one or more national jurisdictional boundaries,¹⁶² and their decline will impact the Range States of the eel, including Alliguna.¹⁶³

d. Revels' biofuels initiative project involves a risk of causing significant harm.

¹⁵⁸ Hanqin, *supra* note 154.

¹⁵⁹ Sumalia, et al., *supra* note 90.

¹⁶⁰ Submission of Scientific Information to Describe Ecologically or Biologically Significant Marine Areas, *supra* note 89.

¹⁶¹ Sumalia, et al., *supra* note 90.

¹⁶² CMS, *supra* note 20, Preamble, ¶4.

¹⁶³ R. ¶ 8.

The “risk of causing significant harm” refers to the combined effect of the probability of occurrence of an accident and the magnitude of its injurious impact.¹⁶⁴ The term “significant” is something more than “detectable” but need not be at the level of “serious” or “substantial”.¹⁶⁵ The decline of the eels is a significant loss to the marine biodiversity of Alliguna and even its culture, history and religion.¹⁶⁶

The risk need not be of high probability¹⁶⁷ and is to be taken objectively, as denoting an appreciation of possible harm resulting from an activity which a properly informed observer had or ought to have had.¹⁶⁸ Revels could have easily appreciated the risks of extraction, especially of an amount that is more than minimal¹⁶⁹ in the Sargasso because it had already recognized the need to conserve the Sargasso Sea ecosystem¹⁷⁰ as a home of a diversity of species identified for protection,¹⁷¹ such as the eel, as a signatory to the Hamilton Declaration.¹⁷²

¹⁶⁴ Report of the ILC, *supra* note 155.

¹⁶⁵ *Id.*

¹⁶⁶ R. ¶ 4.

¹⁶⁷ Report of the ILC, *supra* note 155.

¹⁶⁸ *Id.*

¹⁶⁹ Clarifications, A15.

¹⁷⁰ Hamilton Declaration, *supra* note 138, ¶ 1.

¹⁷¹ *Id.*, Preamble, ¶ 6.

¹⁷² R. ¶ 11.

CONCLUSION AND PRAYER FOR RELIEF

Applicant, the Federal States of Alliguna, respectfully requests the Court to adjudge and declare that:

1. The International Court of Justice has jurisdiction over the dispute, and the Republic of Revels is responsible for the conduct at issue; and
2. The Republic of Revels violated international law by negatively impacting the European eel through the *Sargassum* extraction in the Sargasso Sea.

Respectfully submitted,

AGENTS FOR THE APPLICANT