

Team No. 1995

IN THE INTERNATIONAL COURT OF JUSTICE



AT THE PEACE PALACE

THE CASE CONCERNING

USE OF THE SARGASSO SEA AND THE PROTECTION OF EELS

THE FEDERAL STATES OF ALLIGUNA

APPLICANT

v.

THE REPUBLIC OF REVELS

RESPONDENT

MEMORIAL FOR THE RESPONDENT

**TWENTY-THIRD ANNUAL STETSON INTERNATIONAL ENVIRONMENTAL MOOT
COURT COMPETITION**

NOVEMBER 2018

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STATEMENT OF JURISDICTION

The Federal States of Alliguna (“Alliguna”) and the Republic of Revels (“Revels”) have submitted to the International Court of Justice (ICJ) questions relating to responses to responsibilities at freedom on the high seas and the concern is the negative impacts on the European eel and other biodiversity in the Sargasso Sea.

Alliguna has recognized the Court’s jurisdiction as compulsory ipso facto. Furthermore, the Court has jurisdiction over this dispute in accordance with Article 27 of the CBD, as well as article 14 of the UNFCCC and Article 24 of the Paris Agreement.

Revels has submitted to the jurisdiction of the ICJ under the CBD, the UNFCCC, and the Paris Agreement, and this dispute rises directly under the CBD, the UNFCCC, and the Paris Agreement.

QUESTIONS PRESENTED

- I. Whether Revels violated international law with respect to their conduct at issue, and also by negative impacting the European eel through the Sargassum harvesting project in the Sargasso Sea, or not.

- II. Whether Revels has violated any international law, even under the argument that the SEA Corporation is a privately owned corporation (not an organ of the Republic of Revels, and is not exercise any governmental authority), that has been harvesting Sargassum in the Sargasso Sea as part of its commercial operations, or not.

- III. Whether this Court can resolve a matter contemplated by the Convention on the Conservation of Migratory Species of Wild Animals, or not.

STATEMENT OF FACTS

The Federal States of Alliguna (“Alliguna”) and the Republic of Revels (“Revels”) are neighboring coastal sovereign states located on Ugani, a small continent located in the North Atlantic Ocean near the Sargasso Sea. Both countries’ coasts are approximately 250 nautical miles from the Sargasso Sea. Alliguna is a developed country with a diversified economy. Alliguna has many rivers and dams, some of which are used to generate hydroelectric power. Revels is a developing country, and its economy is based largely on fishing and agriculture.

The European eel (*Anguilla anguilla*) is a facultatively catadromous migratory species that is listed as Critically Endangered on the IUCN Red List of Threatened Species. European eels migrate to the Sargasso Sea to spawn, unfortunately, the species’ recruitment, population, and escapement have exhibited pronounced declines over the past several decades.

Alliguna and Revels are Members of the United Nations and are Parties to the Statute of the International Court of Justice (ICJ). Pursuant to Article 36, paragraphs 2 and 3, of the Statute of the ICJ, Alliguna has recognized the ICJ’s jurisdiction as compulsory ipso facto but only on condition of reciprocity on the part of other states. Revels has not recognized the ICJ’s jurisdiction as compulsory ipso facto. Alliguna and Revels are Parties to the Vienna Convention on the Law of Treaties. Alliguna and Revels are Contracting Parties to the Convention on Biological Diversity (CBD).

In accordance with Article 27, paragraph 3, of the CBD, when Alliguna and Revels ratified the CBD, both countries declared in writing that they would submit to the jurisdiction of the ICJ to resolve disputes concerning the interpretation or application of the CBD.

Alliguna and Revels are States Parties to the United Nations Convention on the Law of the Sea (UNCLOS).

Revels provided subsidies to Seaweed Energy Alternatives, Inc. (known as the SEA Corporation) that produces and sells renewable energy, particularly biofuels. In July 2016, the SEA Corporation launched its latest biofuels initiative and began harvesting Sargassum from the Sargasso Sea to use for biofuel production. The SEA Corporation used its vessel, the Columbus, to harvest Sargassum in the Sargasso Sea on the high seas beyond national jurisdiction. The Columbus sailed under the flag of Revels. The SEA Corporation received a subsidy for the Sargassum initiative from the Government of Revels.

The subsidy was funded as part the Government's recently launched program to reduce greenhouse gas emissions and expand the use of renewable energy in Revels. The Government of Revels provided subsidies to select non-governmental entities or persons to implement renewable energy projects. Also, the Government expected that the renewable energy projects would help Revels meet its NDC commitments under the Paris Agreement.

Revels requests the Court to dismiss these proceedings because the conduct of a private company (the SEA Corporation) is not attributable to Revels such that Revels would be responsible for any alleged violations of international law. Under the Articles on Responsibility of States for internationally wrongful acts (and as further explained by the International Law Commission's commentaries on the Articles), in order for there to be an internationally wrongful act, the action or omission must be attributable to the State, which is not the case here.

The SEA Corporation is a privately owned corporation that has been harvesting Sargassum in the Sargasso Sea as part of its commercial operations. The SEA Corporation is not an organ of the Republic of Revels and is not exercising any governmental authority.

As such, the conduct of this private entity is not attributable to Revels, and Revels has no international responsibility for the alleged violations.

SUMMARY OF ARGUMENTS

The purpose of the present memorial is to demonstrate that the Republic of Revels is not responsible for the conduct of a private company, therefore, it is not in violation of International Law. In this case, it is clear that the Federal States of Alliguna does not have any jurisdiction to enact legislation beyond their territory and has yet to provide sufficient evidence of harm to the ecosystem by the Republic of Revels. In addition, the International Court of Justice has no jurisdiction to hear the present case because the The Convention on the Conservation of Migratory Species of Wild Animals (CMS) raises as *lex specialis*. Overall, the Republic of Revels is not responsible for damaging the ecosystem as alleged by the Federal States of Alliguna.

ARGUMENT

1.The Republic of Revels is not responsible for the conduct of a private company, therefore, it is not in violation of International Law.

The legal issue at stake is whether the Republic of Revels is internationally responsible for the conduct of a privately owned company. Under Article 2 (a) of the ILC there is an internationally wrongful act when conduct consisting of an action or omission is attributable to a state under international law. More so, under Article 2 (b) of the ILC you must be able to show that the act or omission constitutes a breach of the international obligations of the State.

The Lotus case (1927) provides the legal basis for addressing this question. The case cited provides a principle which states that within a territory a State has full autonomy to exercise its jurisdiction with the sole limit of prohibitive rules of international law. Furthermore, according to the Stockholm Conference held in 1972 in which Principle 21 was adopted, states have the sovereign right to exploit their own resources. In addition, abiding to the strict meaning of the cited article 2, the attribution of responsibility does not include activities of private parties, meaning, that states are in principle not responsible for the activities of private parties.

Since the attribution of international responsibility relies solely on the legal hypothesis provided by articles 4, 5, 6,8, 9,10 and 11 of the ILC, none of which declare that a State is responsible for a privately owned company, and even more so, that the State in question has not acknowledged the acts committed by the SEA Company as its own, there is no legal basis to determine that the Republic of Revels is in fact responsible for the conduct of the above cited Company.

It is also relevant to acknowledge that under the Bering's Sea arbitration of 1893, it was determined that a country could not unilaterally legislate outside its territorial water for the purpose of protecting the environment. Similar is the case upon us, it is clear that the Federal States of Alliguna does not have any jurisdiction to enact legislation beyond their territory and therefore cannot limit the acts made or to be made by the Sea Company.

The United Nations Convention on the Law of the Seas is an inviolable source of international law. Such Convention strictly stipulates that the high seas are free for all ships of all nations. The Republic of Revels is in compliance with article 87 of the UNCLOS because it deems the conduct of the Company as in exercising the freedom of scientific research stipulated in the article. In addition, it until now, complies fully with the obligation to cooperate in the conservation and management of living resources, because it has not been proven otherwise.

Therefore, the cited act is not deemed as wrongful because it is not a breach of an international obligation.

2. The Republic of Revels is not responsible for damaging the ecosystem as alleged by the Federal States of Alliguna.

The Federal States of Alliguna has the burden of proof of any allegation that implies positive facts attributable to the Republic of Revels. Otherwise The Republic of Revels would be obligated to prove negative facts, which is impossible.

Although, The Federal States of Alliguna argue that the Sargasso Sea is being affected by activities attributable to the Republic of Revels, it has not presented any evidence to prove it.

There is absence of evidence that there is a negative impact to the Sargasso Sea, and there is absence of evidence that any negative impact to the Sargasso Sea is attributable to the Republic of Revels. The lack of evidence makes it impossible to consider that the Republic of Revels is in any way responsible of the activities alleged by The Federal States of Allinguna.

The Republic of Revels is fulfilling the Convention on Biological Diversity and the Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea, because it has taken measures to control, minimize and, where possible eliminate the adverse effects of international shipping activities, and has taken measures to conserve the components of biological diversity. In this way, articles 8, 8.1 and 8.3 of the Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea, and article 8 (i) of the Convention on Biological Diversity are fulfilled. All of these measures are taken according to the possibilities that our developing country can support. The mentioned articles are transcribed below:

“Decide that the Commission will also develop, for consideration by the Signatories, proposals that the Signatories, individually or jointly, may submit to, or support at, regional or international organisations with relevant competences. In developing such proposals, the Commission will use the best available science, and apply an ecosystem approach and the precautionary approach, as appropriate. Such proposals may include:

8.1 Measures to control, minimize, and where possible, eliminate the adverse effects of international shipping activities which may be adopted through the International Maritime Organization (IMO);

8.2 Measures to minimize, to the maximum extent possible, the adverse effects of fishing activities, including for the protection of vulnerable marine ecosystems, which may be adopted through the Food and Agriculture Organization of the United Nations (FAO) and/or regional fisheries management organisations or arrangements; and

8.3 Any other measures to maintain the health, productivity and resilience of the Sargasso Sea and to protect its components, including the habitats of threatened and endangered species, from the adverse effects of anthropogenic activities.”

“Article 8. In-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate:

...

(i) Endeavour to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components:”

Also, The Republic of Revals is in fact complying with articles 11 and 19 of the Convention on Biological Diversity, by offering subsidies to the companies that reduce greenhouse gas emissions and use renewable energy, as it happens in this particular case. The mentioned articles are transcribed below:

“Article 11. Incentive Measures

Each Contracting Party shall, as far as possible and as appropriate, adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity.”

“Article 19. Handling of Biotechnology' and Distribution of its Benefits

1. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate. to provide for the Affective participation in biotechnological research activities By those Contracting Parties, especially developing countries, which provide the genetic resources for such research, and where feasible in such Contracting Parties.

2. Each Contracting Party shall take all practicable measures to promote and advance priority access on a fair and equitable basis by Contracting Parties, especially developing countries, to the results and benefits arising from biotechnologies based upon genetic resources provided by those Contracting Parties. Such access shall be on mutually agreed terms.

...”

On the other hand, it is important to note that The Federal States of Alliguna also have obligations arising from the Convention on Biological Diversity, like facilitating information relevant to the conservation and sustainable use of biological diversity, and providing new and additional financial resources to enable developing countries Parties to meet the agreed full incremental costs to them of the implementing measures which fulfil the obligations of the Convention. This According to the articles 17 and 20 of the Convention on Biological Diversity. These articles

also denote that execution of the Convention will always be done according to the special needs of developing countries. The mentioned articles are transcribed below:

“Article 17. Exchange of Information

*1. The Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, **taking into account the special needs of developing countries.***

...”

“Article 20. Financial Resources

1. Each Contracting Party undertakes to provide, in accordance with its capabilities, financial support and incentives in respect of those national activities which are intended to achieve the objectives of this Convention, in accordance with its national plans, priorities and programmes.

2. The developed country Parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfil the obligations of this Convention and to benefit from its provisions and which costs are agreed between a developing country Party and the institutional structure referred to in Article 21, in accordance with policy, strategy, programme priorities and eligibility criteria and an indicative list of incremental costs established by the Conference of the Parties. Other Parties, including countries undergoing the process of transition to a market economy, may voluntarily assume the obligations of the developed country Parties. For the purpose of this Article, the Conference of the Parties, shall at its first meeting establish a list of developed country Parties and other Parties which voluntarily assume the obligations of the developed country Parties. The Conference of the Parties shall periodically review and if necessary amend the list. Contributions from other countries and sources on a voluntary basis would also be encouraged. The implementation of these commitments shall take into account the need for adequacy, predictability and timely flow of funds and the importance of burden-sharing among the contributing Parties included in the list.”

Also, it must be noticed that the article 20 of the Convention on Biological Diversity 20 mentions that developed countries will assume the obligations of developing countries.

Considering that The Republic of Revels is using the economic, technological and knowledge resources in her power to implement ecological activities, if The Federal States of Alliguna still believes that The Republic of Revels is impacting the ecosystem in any way, it must provide our country with any financial, technological or knowledgeable resources in order to make those activities sustainable, in accordance to the special needs of The Republic of Revels.

As a result of the above-mentioned argument, it is clear that the burden of proof for the allegation of international responsibility for damaging the ecosystem lies with the Federal States of Alliguna, which has not been able to provide sufficient proof of environmental problems and the casual link with the SEA Corporation and the Republic of Revels itself.

3. The Convention on the Conservation of Migratory Species of Wild Animals (CMS) raises as *lex specialis*, this Court does not have jurisdiction under CMS, other mechanisms exists for this dispute to be settled.

The Republic of Revels declares the following:

1. Given that Alliguna's concerns provide that a supposed harm has come to the European eel, the Convention on the Conservation of Migratory Species of Wild Animals (CMS) raises as *lex specialis*.
2. This Court does not have jurisdiction under CMS, and there are other mechanisms used in international law for the dispute at hand to be settled such as arbitration, or the newly adopted Resolution 12.9 and Decisions 12.6-12.9 on the establishment of a Review Mechanism to ensure long-term compliance with Articles III.4, III.5, III.7 and VI.2 of the Convention.

We should first consider the fact that Alliguna and the Republic of Revels are both Parties to the CMS and the European Eel as listed on Appendix II of CMS, and both countries are Range States for the species.

Appendix II, it must be said, is defined by the CMS as:

“Appendix II covers migratory species that have an unfavorable conservation status and that require international agreements for their conservation and management, as well as those that have a conservation status which would significantly benefit from the international cooperation that could be achieved by an international agreement. The Convention encourages the Range States to species listed on Appendix II to conclude global or regional Agreements for the conservation and management of individual species or groups of related species.”

In addition to what has been cited, it must be said that the European eel was included in the Appendix II during the Eleventh Meeting of the Conference of the Parties to the CMS, in 2014.

With regards on the citation above, it is clear to conclude that the matter of Alliguna’s concerns are well contemplated by the CMS, which happens to be a special and technical Treaty in the matter of conservation of migratory species. Both, Alliguna and the Republic of Revels, are Range States in conformity with the article VI.

In that sense, it is proper to apply the widely accepted general principle of law of *lex specialis derogati legi generali* which establishes the priority of application of special rules over general ones.

It is also unavoidable the fact that this Court has no jurisdiction over the CMS and this Convention establishes mandatorily its own mechanism regarding the settlement of disputes.

“Article XIII Settlement of Disputes

1. Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of this Convention shall be subject to negotiation between the Parties involved in the dispute.

2. If the dispute cannot be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague, and the Parties submitting the dispute shall be bound by the arbitral decision.”

Because of these legal reasons, the Republic of Revels solicits this Court to disregard the present case and invite the parties to come to a resolution in strict compliance of their international obligations via other dispute resolution mechanisms, declaring that the suitable method of resolving this conflict is utilizing the suitable method of resolving this conflict.

CONCLUSION AND PRAYER FOR RELIEF

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

1. Declare that the Republic of Revels has not violated international law and is not responsible for any of the allegations presented by the Federal States of Alliguna.
2. Declare that the Republic of Revels conducted itself consistent with international law with regard to preserving the environment.
3. To dismiss the case and invite the parties to come to a resolution in strict compliance of their international obligations via other methods for settlement of disputes.
4. To declare that it is the CMS and its mechanisms are the suitable method of resolving this conflict.

Respectfully Submitted.

Team 1995

Agents for the Republic of Revels