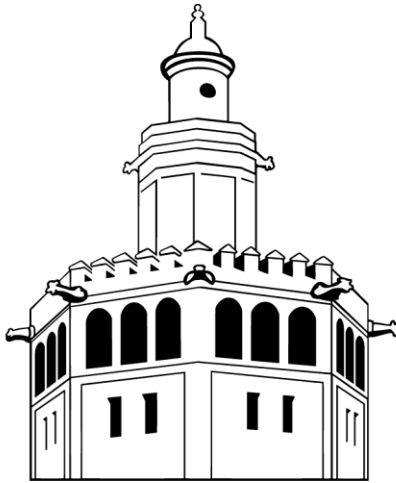


**Oil Pollution in the Marine Environment
(Federal States of Albacares/Republic of Repelmuto)**

RECORD

**Fifteenth Annual
International Environmental
Moot Court Competition
2010–2011**



**STETSON
UNIVERSITY**

College of Law

NOTIFICATION, DATED 30 JUNE 2010, ADDRESSED TO
THE MINISTER OF FOREIGN AFFAIRS OF THE FEDERAL STATES OF ALBACARES
AND
THE MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF REPELMUTO

The Hague, 30 June 2010.

On behalf of the International Court of Justice, and in accordance with Article 26 of the Rules of Court, I have the honor to acknowledge receipt of the joint notification dated 16 June 2010. I have the further honor to inform you that the case of Oil Pollution in the Marine Environment (Federal States of Albacares/Republic of Repelmuto) has been entered as 2010 General List No. 115. The written proceedings shall consist of memorials to be submitted to the Court by 19 November 2010. Oral proceedings are scheduled for 17-20 March 2011.

/s/

Registrar
International Court of Justice

JOINT NOTIFICATION, DATED 16 JUNE 2010, ADDRESSED TO
THE REGISTRAR OF THE COURT

The Hague, 16 June 2010.

On behalf of the Federal States of Albacares and the Republic of Repelmuto, and in accordance with Article 40, paragraph 1, of the Statute of the International Court of Justice, we have the honor to transmit to you an original copy of the English texts of the Special Agreement Between the Federal States of Albacares and the Republic of Repelmuto for Submission to the International Court of Justice of Differences Between Them Concerning Oil Pollution in the Marine Environment, signed at Granada, Spain, on 16 June 2010.

For the Federal States of Albacares:

/s/

Di A. Toms
Minister of Foreign Affairs

For the Republic of Repelmuto:

/s/

H.Y. Drocarbon
Minister of Foreign Affairs

SPECIAL AGREEMENT
BETWEEN
THE FEDERAL STATES OF ALBACARES
AND
THE REPUBLIC OF REPELMUTO
FOR SUBMISSION TO THE
INTERNATIONAL COURT OF JUSTICE OF DIFFERENCES
BETWEEN THEM CONCERNING
OIL POLLUTION IN THE MARINE ENVIRONMENT

The Federal States of Albacares and the Republic of Repelmuto,

Recalling that the Federal States of Albacares and the Republic of Repelmuto are Members of the United Nations and that the Charter of the United Nations calls on Members to settle international disputes by peaceful means,

Observing that the Federal States of Albacares and the Republic of Repelmuto are Member States of the International Maritime Organization and are Parties to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL),

Cognizant that the Federal States of Albacares is a State Party to the United Nations Convention on the Law of the Sea, while the Republic of Repelmuto has signed but not ratified the United Nations Convention on the Law of the Sea,

Conscious that the Federal States of Albacares and the Republic of Repelmuto are Parties to the Convention on Biological Diversity,

Considering that fishing and tourism are important economic activities in the Federal States of Albacares,

Bearing in mind the energy needs of the people and industries of the Republic of Repelmuto,

Recognizing that differences have arisen concerning the environmental impact of and response to the release of oil in the Gulf of Sedna,

Noting that the Federal States of Albacares and the Republic of Repelmuto have been unable to settle their differences through negotiation,

Desiring that the International Court of Justice, hereinafter referred to as the Court, consider these differences,

Desiring further to define the issues to be submitted to the Court,

Have agreed as follows:

Article I

The Federal States of Albacares and the Republic of Repelmuto, hereinafter referred to as the Parties, shall submit the questions contained in Annex A of this Special Agreement to the Court pursuant to Article 40, paragraph 1, of the Statute of the International Court of Justice.

Article II

1. The Parties shall request the Court to decide this matter on the basis of the rules and principles of general international law, as well as any applicable treaties.
2. The Parties also shall request the Court to decide this matter based on the Agreed Statement of Facts, attached as Annex A, which is an integral part of this Agreement.
3. The Parties also shall request the Court to determine the legal consequences including the rights and obligations of the Parties, arising from any judgment on the questions presented in this matter.
4. The Parties shall not contest the jurisdiction of the Court in their written pleadings or oral arguments.

Article III

1. The proceedings shall consist of written pleadings and oral arguments.
2. The written pleadings shall consist of memorials to be submitted simultaneously to the Court by the Parties.
3. The written pleadings shall be consistent with the Rules of the 2010–2011 Stetson International Environmental Moot Court Competition (International Finals).
4. No changes may be made to any written pleading once it has been submitted to a Regional Round. A written pleading submitted to the International Finals must be an exact copy of the written pleading submitted to the Regional Round.

Article IV

1. The Parties shall accept the Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
2. Immediately after the transmission of the Judgment, the Parties shall enter into negotiations on the modalities for its execution.
3. If the Parties are unable to reach agreement within six months, either Party may request the Court to render an additional Judgment to determine the modalities for executing its Judgment.

Article V

This Special Agreement shall enter into force upon signature.

DONE at Granada, Spain, this sixteenth day of June 2010, in two copies, each in the English language, and each being equally authentic.

For the Federal States of Albacares:

/s/

Di A. Toms
Minister of Foreign Affairs

For the Republic of Repelmuto:

/s/

H.Y. Drocarbon
Minister of Foreign Affairs

ANNEX A

1. The Federal States of Albacares and the Republic of Repelmuto are coastal states that share a common territorial boundary. Both states border the Gulf of Sedna. Annex B is a map that provides the relative location of the states.
2. The Federal States of Albacares is a developing country with a population of approximately 10 million people. A majority of its people live along the coast, and it is known for its beaches and coral reefs. Its economy depends heavily on tourism, agriculture, and fishing (commercial, sport, and subsistence fishing). Although the health of its coral reefs have declined in recent years (due in part to rising water temperatures), the beaches of Albacares are relatively pristine. To take advantage of these ecosystems for the benefit of its people, the national government subsidized the construction of hotel beach resorts in 2003-2007. Tourism is the second-largest source of hard currency after remittances from Albacares nationals living and working abroad.
3. The Republic of Repelmuto is an industrialized country with a population of approximately 220 million people. It has a highly diversified and vibrant economy that is spurred by a growing and geographically dispersed population. Repelmuto has the second highest gross domestic product in the world. To meet its energy needs, Repelmuto relies on a mix of petroleum (45%), coal (25%), natural gas (15%), nuclear (11%), and renewables (4%). Repelmuto imports approximately 65% of its petroleum. In recent years, the national government of Repelmuto has adopted a policy of developing its domestic petroleum industry to become energy independent.
4. As part of its efforts to become energy independent (which include conservation measures), the Republic of Repelmuto has authorized the increase of oil exploration and extraction activities within its Exclusive Economic Zone (EEZ) within the Gulf of Sedna. The Republic of Repelmuto asserts that it may claim an EEZ under customary international law. Recent exploratory drilling in the EEZ has found that it contains more than the equivalent of 6.6 billion barrels of oil in deepwater areas.
5. The Federal States of Albacares and the Republic of Repelmuto are Members of the United Nations and are Parties to the Statute of the International Court of Justice.
6. The Federal States of Albacares and the Republic of Repelmuto are Parties to the Vienna Convention on the Law of Treaties.
7. The Federal States of Albacares and the Republic of Repelmuto are Member States of the International Maritime Organization and are Parties to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL).
8. The Federal States of Albacares is a State Party to the United Nations Convention on the Law of the Sea (UNCLOS). The Republic of Repelmuto has signed but has not ratified UNCLOS.

9. The Federal States of Albacares and Republic of Repelmuto are Contracting Parties to the Convention on Biological Diversity (CBD).
10. High-level representatives from the Federal States of Albacares and the Republic of Repelmuto attended and fully participated in the 1972 United Nations Conference on the Human Environment at Stockholm, the 1992 United Nations Conference on Environment and Development at Rio de Janiero, and the 2002 World Summit on Sustainable Development at Johannesburg.
11. Recent advances in technology have allowed companies to conduct offshore oil drilling in waters more than 1,500 meters deep. Oil rigs are typically connected to a drill pipe that extends below the sea floor to reservoirs of oil. Oil rigs typically have an emergency shut-off valve or blowout preventer that stops the flow of oil in an emergency, such as when the connection between the oil rig and subsea unit is severed. As illustrated in Figure 1, an oil rig may employ several different methods to trigger the blowout preventer: a primary hard-wired controller can be manually operated from the oil rig; a secondary “Dead Man” switch can respond automatically, even if the oil rig is separated from the drill pipe; and an acoustical control or trigger can serve as a tertiary means to activate the blowout preventer.

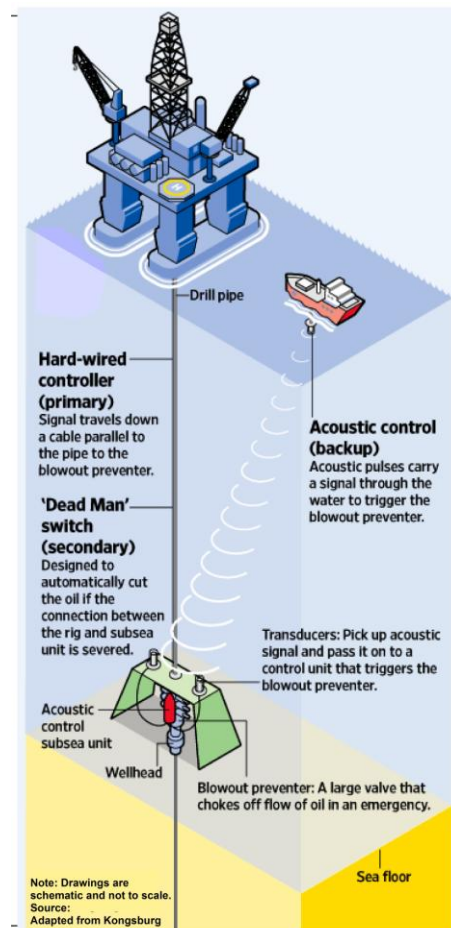


Figure 1

12. In the Repelmuto EEZ, the Minerals Extraction Agency (MEA) regulates all oil exploration, drilling, and extraction. The MEA grants licenses to private companies that conduct such activities. The MEA inspects the companies' operations to ensure that all laws, regulations, and policies are adhered to.
13. From 2001-2008, the Liberty Party governed the Republic of Repelmuto. In 2002, the MEA considered requiring acoustical triggers for offshore oil operations. In 2004, after the oil industry complained that the cost of acoustical triggers was excessive, the MEA decided not to require them. The MEA did require that oil rigs have hard-wired controllers and "Dead Man" switches.
14. During this timeframe of 2001-2008, the MEA did not conduct rigorous inspections of oil rigs in the Gulf of Sedna. Subsequent investigations commissioned by the Repelmuto Congress found numerous instances of conflicts of interest. MEA regulators frequently accepted gifts from oil industry representatives, including drinks, meals, and trips to sporting events. One particular egregious example involved three MEA regulators who attended a World Cup football match as guests of Fahy Oil, a corporation incorporated under the laws of Repelmuto.
15. In 2008, the Republic of Repelmuto held national elections, and the Conservation Party won a majority of seats in the Congress. Elle Kempii, the leader of the Conservation Party, was elected President. The Conservation Party assumed power on 25 January 2009.
16. On 2 February 2009, an offshore oil rig, called *Blue Ocean*, located in the Gulf of Sedna and owned by Fahy Oil, exploded and sank. Fifteen employees on the rig were killed. Because of the explosion, Fahy Oil employees were not able to activate the hard-wired controller to trigger the blowout preventer. The "Dead Man" switch was inoperative due to a dead battery. The *Blue Ocean* did not have an acoustical trigger or control. A later investigation by the Repelmuto Congress found that that Fahy Oil had ignored warnings indicating faulty safety systems in the days leading up to the explosion.
17. As a result of the explosion, the oil rig separated from the subsea unit and oil began to flow from a broken wellhead 1,625 meters below the surface of the water. The equivalent of 35,000 to 60,000 barrels of crude oil per day began to flow into the Gulf of Sedna from the broken wellhead. More precise estimates are not available.
18. The Government of the Republic of Repelmuto promptly notified the Federal States of Albacares of the explosion and subsequent spill, keeping it fully informed about the state of the spill, the oil's projected movement, and Repelmuto's efforts to stop it.
19. After initial attempts by Fahy Oil to halt the flow of oil failed, on 10 February 2009, the Repelmuto Environmental Protection Organization (REPO), Repelmuto's environmental agency, authorized the use of the chemical dispersant ChemEx-5000 at the source of the leak in an attempt to prevent oil from reaching the surface and shoreline. Chemical dispersants such as ChemEx-5000 help dissolve the oil slick into smaller droplets of oil.

REPO stated that this was the first time that chemical dispersants were used at these depths underwater and that their long term effects to aquatic life were unknown. Fahy Oil began immediately to release ChemEx-5000 at the site of the broken wellhead.

20. On 17 February 2009, the following diplomatic note was forwarded to the Government of the Republic of Repelmuto:

The Embassy of the Federal States of Albacares presents its compliments to the Government of the Republic of Repelmuto and wishes to convey its sympathy for the loss of life and environmental damage associated with the *Blue Ocean* incident.

* * *

The Government of the Federal States of Albacares requests that the Government of the Republic of Repelmuto take all the necessary measures to stop the continuous oil flow from Fahy Oil's broken wellhead. In addition, the Government of the Federal States of Albacares also requests that the Government halt the use of ChemEx-5000. The manufacturer's recommended application volume for ChemEx-5000 is 2 to 10 gallons per surface acre. Fahy Oil is applying amounts far in excess of this level and in deep waters near the source of the leak. The use of this dispersant, which is banned in the Federal States of Albacares, is completely different in methodology, scale, and potential impacts than anything REPO has authorized in the past. Fahy Oil has applied this toxic dispersant to the marine environment in a wholly unprecedented and unanalyzed manner.

Chemical dispersants such as ChemEx-5000 and dispersed oil have significant negative impacts on many forms of transboundary marine life, including marine mammals, plankton, turtles, birds, fish, and corals. ChemEx-5000 releases toxic break-down products from oil that, alone or in combination with oil droplets and dispersant chemicals, can make dispersed oil more harmful to marine life than untreated oil. Dispersants can affect species in the Gulf of Sedna through a variety of pathways.

Whales, for example, feed by skimming plankton, small fish, and squid from the surface. As they do so, they will be at risk of ingesting ChemEx-5000 and dispersed oil, as well as food contaminated with these chemicals. Moreover, when whales and sea turtles surface to breathe, they may be forced to breathe in fumes from or ingest dispersants and dispersed oil.

Birds are also at risk. As they dive into the Gulf to feed, they may be exposed to ChemEx-5000 and dispersed oil through direct contact and through contaminated prey. Studies have found that dispersed oil

damages the insulating properties of seabird feathers more than untreated oil, making the birds more susceptible to hypothermia and death. Studies have also demonstrated that chemical dispersants and dispersed oil have toxic effects on bird eggs that are similar or worse than from untreated oil. Birds exposed to dispersed oil may return to their nests and contaminate their eggs.

In addition, we have grave concerns about the impact of ChemEx-5000 and dispersed oil on fish, which will be exposed to these chemicals as they swim and feed in the water column. Studies have shown that dispersed oil is toxic to fish at all life stages.

We are also very concerned about the potential effect of dispersants and dispersed oil on our corals. Dispersants such as ChemEx-5000 and dispersed oil increase death rates and reduce settlement on reefs, and interfere with the development of young life stages of reef-building corals.

Please accept the assurance of my highest consideration.

/s/

T. Truncatus

Ambassador

21. On 27 February 2009, the following diplomatic note was forwarded to the Government of the Federal States of Albacares:

The Embassy of the Republic of Repelmuto presents its compliments to the Government of the Federal States of Albacares and has the honor to acknowledge receipt of the diplomatic note dated 17 February 2009.

As an initial matter, the Government of the Republic of Repelmuto appreciates the concerns expressed by the Government of the Federal States of Albacares. Please be assured that the Government of the Republic of Repelmuto is taking all available actions to halt the flow of oil. To date, however, these actions have not been successful.

* * *

To attempt to mitigate the environmental impacts of this accident, REPO has authorized the use of ChemEx-5000. While it is acknowledged that such a chemical dispersant has not been used in this scale or at this depth, we believe that such action is consistent with the precautionary approach as enshrined in Principle 15 of the Rio Declaration: "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

* * *

We will keep you informed about our actions and progress. Please accept the assurance of my highest consideration.

/s/

Nick Otto
Ambassador

22. Despite several attempts by Fahy Oil to stop the oil flow, including a so-called “junk shot,” a technique consisting of pumping shredded tires and golf balls into the well, and the so-called “top hat” approach, which involved the attempted placement of a small containment dome on top of the wellhead, oil continued to flow at a rate of 35,000 to 60,000 barrels of oil per day.
23. The Republic of Repelmuto’s coastal population was upset at Fahy Oil’s inability to stop the continuous oil flow, which threatened their livelihoods and natural resources. The Government of the Federal States of Albacares publicly expressed grave concerns about oil reaching its pristine beaches and coral reefs, and the devastating impact this would have on its economy.
24. In a 10 March 2009 televised national address, President Kempii outlined her government’s efforts to stop the oil spill and stated that “we will make sure that Fahy Oil pays” and that “those who are injured, including businesses and individuals in Albacares, are fully compensated for damages related to this terrible accident.”
25. In a 17 March 2009 press conference, the Minister of REPO re-affirmed the President’s statements that those who had been injured would be compensated. When a reporter asked her whether damage due to chemical dispersants would also be compensated, the Minister answered that “that is directly related to the oil spill.”
26. At a 25 March 2009 press conference, President Kempii was asked again about possible compensation for Albacares businesses and individuals. The President said, “Let me be very clear about this point: we will ensure that those who are injured, including businesses and individuals in Albacares, are fully compensated for damages related to this tragic accident.” She then repeated this sentence in the Albacaren language.
27. Fahy Oil continued to release ChemEx-5000 on the surface and at the subsurface with the permission of REPO. In total, Fahy Oil released approximately 7,600 kiloliters of ChemEx-5000 into the Gulf of Sedna (half on the surface and half at the subsurface). Monitoring by REPO later found that the release of ChemEx-5000 killed up to 35% of all organisms living 500 feet below the surface in areas where the dispersant was used. REPO does not have data regarding the impact of the subsurface release of ChemEx-5000.

28. On 4 July 2009, Fahy Oil finally succeeded in drilling a relief well that halted the flow of oil from the broken wellhead.
29. In the Republic of Repelmuto, the oil spill had far reaching economic and environmental effects. Coastal hotels and restaurants closed down as tar balls washed ashore, impacting the tourism industry. The fishing industry collapsed, as commercial and recreational fishing operations were banned and dead zones appeared in the Repelmuto EEZ. The oil spill spanned more than 85,000 square kilometers on the surface; the precise extent of the significant underwater plume was uncertain. Coastal marshes died, destroying marine and bird nurseries. Every type of animal and plant life in the area was adversely affected.
30. In the Federal States of Albacares, the spill had similar devastating economic and environmental effects. The tourism industry collapsed, as tar balls covered its beaches and its coral reefs died. Other countries imposed a ban on fish harvested from the Gulf, which caused severe economic losses to the fishing industry.
31. On 28 August 2009, the following diplomatic note was forwarded to the Government of the Republic of Repelmuto, which stated in part:

The Embassy of the Federal States of Albacares presents its compliments to the Government of the Republic of Repelmuto and has the honor to request that the Republic of Repelmuto enter into negotiations with the Federal States of Albacares to arrive at a just and adequate rate of compensation for the economic and environmental damages caused by the oil spill in the Gulf of Sedna. This request comes, in part, as a response to President Kempii's assurances that Albacaren businesses and individuals would be fully compensated.

* * *

The Government of the Federal States of Albacares notes that these damages are the result of the Government of the Republic of Repelmuto's failure to adequately regulate offshore oil drilling operations within its jurisdiction and its indiscriminate use of underwater chemical dispersants in response to the oil spill. The Republic of Repelmuto's actions and inactions are a clear breach of the duty to avoid transboundary harm underlying MARPOL, UNCLOS, the CBD, the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, and the Draft Articles on Responsibility of States for Internationally Wrongful Acts.

Because of the unprecedented economic and environmental impacts from the oil spill in the Gulf of Sedna, the Government of the Federal States of Albacares believes that the Government of the Republic of Repelmuto understands the position and goodwill of the Government of the Federal States of Albacares in requesting compensation.

Please accept the assurance of my highest consideration.

/s/

T. Truncatus
Ambassador

32. On 15 September 2009, the following diplomatic note was forwarded to the Government of the Federal States of Albacares, which stated in part:

As an initial matter, the Government of the Republic of Repelmuto appreciates the concerns of the Government of the Federal States of Albacares over the economic and environmental impacts of the oil spill.

The Government of the Republic of Repelmuto notes, however, that it is not liable to the Government of the Federal States of Albacares for any damages under MARPOL, UNCLOS, or CBD.

The Government of the Republic of Repelmuto observes that MARPOL is not applicable because it applies to ships, not to oil platforms. *Blue Ocean* was an oil platform, falling outside MARPOL's scope. Additionally, any reference to UNCLOS is inappropriate because the Republic of Repelmuto is not a party to UNCLOS. In any event, the Republic of Repelmuto has complied with the spirit of UNCLOS, having taken necessary and appropriate measures to prevent, reduce, and control pollution. Finally, the Republic of Repelmuto is not liable under CBD, as this convention does not expressly require compensation under these circumstances.

* * *

Furthermore, we are obliged to point out that the current Government of the Republic of Repelmuto is not responsible for the previous government's lack of oversight over offshore oil drilling operations. We can only take responsibility for any actions taken during our administration, which has sought strict enforcement of all laws and regulations. It is also worth recalling that this Government kept the Federal States of Albacares fully informed of the extent and nature of its operations to contain the oil spill, including the use of underwater chemical dispersants. Under these circumstances, the Government of the Federal States of Albacares should seek compensation for the damages it has suffered from the responsible party, which in the present case is Fahy Oil. We will work with you to ensure that Fahy Oil provides adequate compensation in accordance with the laws of Repelmuto.

33. On 10 October 2009, the Government of the Federal States of Albacares provided the Government of the Republic of Repelmuto with a diplomatic note that stated in part:

The Federal States of Albacares deplores the Government of the Republic of Repelmuto's reckless indifference toward the economic and environmental impacts associated with the oil spill in the Gulf of Sedna.

While we acknowledge that MARPOL may not expressly cover *Blue Ocean*, we note that the Republic of Repelmuto must regulate companies within its jurisdiction in accordance with customary international law. Customary international law requires the use of emergency shut-off systems for offshore rigs, like an acoustical trigger. Indeed, governments of oil-producing countries like Brazil and Norway have required acoustical triggers for decades in almost all of their offshore rigs.

34. On 2 November 2009, the Government of the Republic of Repelmuto responded with a diplomatic note that stated in part:

As regrettable as the oil spill was, we note that that we are not responsible for the damages that the Federal States of Albacares has suffered. We continue to assert that Fahy Oil is the responsible party. We also strongly dispute that we have acted inconsistently with our international legal obligations, customary or conventional. Thus, we are under no legal obligation to compensate the Federal States of Albacares.

35. In an attempt to shield itself from mounting clean up costs and legal claims, Fahy Oil filed for bankruptcy protection. The bankruptcy plan approved by the Repelmuto courts led to the liquidation of the corporation. No funds were available to provide compensation to any entity injured outside of the territory of Repelmuto.

36. Additional negotiations between the Federal States of Albacares and the Republic of Repelmuto failed to resolve the dispute, but the parties agreed to submit this matter to the International Court of Justice under a Special Agreement pursuant to Article 36, paragraph 1, of the Statute of the International Court of Justice.

37. The Federal States of Albacares opposes the claims in paragraph 38 and seeks an order declaring that the Republic of Repelmuto violated international law by (1) failing to properly regulate activities within its jurisdiction and (2) authorizing the unwise and imprudent widespread use of chemical dispersants in response to the oil spill. The Federal States of Albacares also seeks an order that the Republic of Repelmuto must compensate it for damages suffered.

38. The Republic of Repelmuto opposes the claims in previous paragraph 37 and seeks an order declaring that the Republic of Repelmuto has not violated international law and does not have any legal obligation to compensate the Federal States of Albacares.

ANNEX B

