

IN THE INTERNATIONAL COURT OF JUSTICE



AT THE PEACE PALACE
THE HAGUE, THE NETHERLANDS

**THE CASE CONCERNING THE PROTECTION OF SEA TURTLES IN THE
CHELONIA SEA REGION**

THE FEDERAL STATES OF ATTERAC
APPLICANT

v.

THE REPUBLIC OF REDONDA
RESPONDENT

MEMORIAL FOR THE RESPONDENT

THE 2013 STETSON MOOT COURT COMPETITION

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STATEMENT OF JURISDICTION

In accordance with Article 40 of the Statute of the International Court of Justice, the Republic of Redonda and the Federal States of Atterac submitted the following dispute to the Court on 14 June 2013. The parties signed a special agreement to submit their dispute to the Registrar of the Court. *See* Special Agreement Between the Federal States of Atterac and the Republic of Redonda for Submission to the ICJ of Differences Between Them Concerning Questions Relating to the Protection of Sea Turtles, signed at Georgetown, Cayman Islands on 14 June 2013. The Registrar of the Court addressed notification to the parties on 21 June 2013.

QUESTIONS PRESENTED

- I. WHETHER RESPONDENT VIOLATED INTERNATIONAL ENVIRONMENTAL LAW IN ALLOWING THE MAROONS TO USE THE KILPKONN SEA TURTLES.
- II. WHETHER RESPONDENT VIOLATED THE UNCLOS IN ALLOWING THE MAROONS TO USE THE KIPLKONN SEA TURTLES AND ENACTING THE RPSA.
- III. WHETHER RESPONDENT ACTED IN ACCORDANCE WITH THE ICESCR IN ALLOWING THE MAROONS TO EXERCISE THEIR CULTURAL PRACTICE.
- IV. WHETHER APPLICANT VIOLATED RESPONDENT'S *JUS COGENS* RIGHT OF SELF-DETERMINATION.

STATEMENT OF FACTS

The Federal States of Atterac (“Atterac”) and the Republic of Redonda (“Redonda”) are located in the Chelonia Sea Region (“CSR”)(R.1). They share an early history of being home to the Maroons, who are descendants of slaves who escaped from plantations in the CSR (R.3). While the Maroons were primarily from Atterac, they are now Redondan nationals with a population of about 2,000 individuals (R.2). One tradition maintained across centuries by the Maroons is the unique rite of adulthood involving the hunting of the Kilpkonn Sea Turtles (“KST”) for males and the collecting of KST eggs for females (R.2). This rite is the only time when they hunt the KST (Cl.19,20,26).

In 1995, all twelve States within the CSR negotiated the Chelonia Sea Agreement (“CSA”) which entered into force in 1997. The CSA seeks to protect the KST (R.13), an endangered species nesting in Respondent’s territory but spends parts of its life cycle throughout the CSR (R.1). Eleven States signed and ratified the CSA (Cl.9), but Respondent merely signed it (R.11), in consideration of its potential impact on the Maroons (R.14). Nonetheless, all the States implemented domestic laws consistent with its provisions (R.13).

In 2002, Respondent enacted the Redonda Presential Sea Act (“RPSA”), showing its interest in the presential sea covering 50 nautical miles from its Exclusive Economic Zone (“EEZ”). The Ministry of Foreign Affairs was instructed, under the RPSA, to negotiate with other States to ensure that any activity undertaken within the presential sea is consistent with Respondent’s laws and regulations. No State, however, recognized or accepted Respondent’s presential sea (R.16).

Consistent with tradition, the hunting of the KST and the collection of its eggs continue today (R.20). In a diplomatic note sent by Applicant in 2013, it asserted that Respondent violated

its international obligations in allowing the Maroons to continue with its cultural practices (R.23) of hunting the KST and collecting its eggs (R.29). Respondent asserts that as a signatory to the CSA, it has implemented laws protecting the KST (Cl.10). It also claims that the exemption to the Maroons' ritual (Cl.11,26) is a mere observance of its obligation under the International Covenant on Economic, Social, and Cultural Rights ("ICESCR")(R.24).

Failing to resolve the matter, the Parties agreed to submit the matter to the International Court of Justice for adjudication.

SUMMARY OF ARGUMENTS

Respondent, in allowing the Maroons to use the KST, did not violate its treaty obligations because it is not bound by the CSA. It also did not violate regional customary law since the CSA cannot be considered as such. There was no violation of the Convention on Biological Diversity (“CBD”) as Respondent acted well-within its sovereign right to exploit its natural resources and did not cause transboundary harm. Similarly, it did not violate the Convention on International Trade in Endangered Species (“CITES”) given that the Maroons’ hunting of the KST and the collection of its eggs are considered within the exemption thereto. Lastly, the general principles of international environmental law were not violated since Respondent acted in accordance thereto.

Respondent furthered the objective of the United Nations Convention on the Law of the Sea (“UNCLOS”) by enacting the RPSA. Moreover, in allowing the Maroons to use the KST for its traditional rituals, Respondent acted in accordance with the ICESCR in upholding the Maroons’ absolute right of self-determination. Respondent submits that, in fact, it is Applicant who violated this right.

ARGUMENTS

RESPONDENT DID NOT VIOLATE ITS INTERNATIONAL ENVIRONMENTAL OBLIGATIONS.

RESPONDENT DID NOT VIOLATE THE CSA.

Respondent is not a party to the CSA because Respondent's signature does not amount to an expression of consent.

A State must consent to be bound by a treaty in order to become a party thereto.¹ Conversely, a State who has not consented to a treaty cannot be bound by it.² In this case, Respondent never consented to be bound by the CSA (R.14,25) and thus, is not obligated to comply with its provisions.

There are two modes of consenting to a treaty:³ through mere signature⁴ or through acceptance, approval, or ratification.⁵ Then CSA clearly requires ratification and not just mere signature, as the mode for States to consent to it as a treaty.

Respondent's signature cannot amount to an expression of consent to the CSA. *First*, the CSA did not provide that mere signature shall bind the parties.⁶ *Second*, the contracting States

¹ Vienna Convention on the Law of Treaties, art.2(g), May 23,1969, 1155 U.N.T.S.331 [VCLT].

² SHAW, INTERNATIONAL LAW, 909-10 (6TH ed. 2008).

³ SHAW, *supra* note 2, at 910-13; BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW, 610(2008).

⁴ UN Treaty Section of the Office of Legal Affairs, Treaty Handbook, No.E.02.V2 (2002), *available at* <http://treaties.un.org/doc/source/publications/THB/English.pdf>; VCLT, art.2(g).

⁵ Case Concerning Certain German Interests in Polish Upper Silesia (Ger. v. Pol.), 1926 P.I.C.J. Ser.A.No.7, at 30; MCNAIR, THE LAW OF TREATIES 199-205 (1961); VCLT, arts.2(g), 18(b).

agreed that ratification of the CSA is necessary considering that eleven State parties ratified the treaty (R.11,Cl.9).⁷ *Third*, Respondent's non-ratification shows its intent to not give the effect of consent to the signature of its representative (R.14).⁸ Further, Applicant specifically admitted that Respondent is not a party to the treaty (R.24).

Clearly, the States intended for the CSA to be ratified. Thus, Respondent, being a mere signatory, is not bound by the CSA.

Respondent has no legal obligation to implement the CSA.

There is no affirmative duty imposed on signatories to a treaty to perform certain acts or to carry out its specific provisions.⁹ In this case, the CSA explicitly imposes the affirmative duty to enforce measures to protect the KST (Annex B). Being a mere signatory to the CSA, Respondent is not bound by this affirmative duty. This is supported by Art. X of the CSA.

Respondent did not defeat the object and purpose of the CSA.

A signatory to the CSA is merely prohibited from defeating its object and purpose,¹⁰ which is to promote the protection, conservation, and recovery of sea turtle populations and of the habitats on which they depend on (Annex B). Furthermore, Art. II of the CSA recognizes the cultural characteristics of the Maroons as an exception.

⁶ VCLT, art.12(a).

⁷ VCLT, art.12(b).

⁸ VCLT, art.12(c).

⁹ VCLT, art.18.

¹⁰ VCLT, art.18; Rogoff, *The International Legal Obligations of Signatories to an Unratified Treaty*, 32 ME.L. RE.263(1980).

It bears emphasis that Respondent refrained from acts which defeat the object and purpose of the CSA. In fact, Respondent upheld the object and purpose of the CSA by enacting and implementing a law prohibiting its nationals from killing or capturing KST and collecting their eggs (Cl.10,11). While Respondent exempts the Maroons from this prohibition, it nonetheless limits the exemption to use in adulthood rites and subsistence purposes in order to protect, conserve, and recover KST population (Cl.18).

RESPONDENT DID NOT VIOLATE REGIONAL CUSTOMARY LAW.

The CSA is not regional customary law.

To qualify as international custom, there must be State practice and *opinio juris*.¹¹ For a regional or local custom, there must be proof of constant and uniform usage practiced by the States.¹²

In this case, while most of the States are party to the CSA, this does not automatically qualify it as a custom. The substance and provisions of the CSA must be shown to exist in the actual practice and *opinio juris* of States.

There is no State practice of the CSA.

Regional customary law requires a higher standard of proof than general customary law.¹³ While a general custom may be created by a majority or a substantial minority of

¹¹ *Opinion on the Legality of the Threat or Use of Nuclear Weapons*, 1996 I.C.J. Reports, 226,253; 110 ILR 163; Statute of the International Court of Justice, June 26,1945, art.38(1)(b), 33 U.N.T.S.993 [I.C.J. Statute].

¹² *Asylum (Colom. v. Peru)*, 1950 I.C.J.266 (Nov. 20).

¹³ SHAW, *supra* note 2, at 92-93.

interested States, a regional custom requires positive acceptance of all parties.¹⁴ There was no positive acceptance of the CSA by all States in the CSR, Respondent not being a party thereto. Consequently, the CSA did not crystallize into regional custom.

There is no opinio juris.

Opinio juris requires that acts “must be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule requiring it.”¹⁵ The recognition of the CSA as a customary law cannot be established in the framework of the treaty process itself.¹⁶ The practice of the parties to a treaty is of little use as a means of expressing *opinio juris* because it is preconditioned by mutual treaty obligations.¹⁷

In the CSR, there was no existing norm prohibiting the intentional capture, retention, or killing of KSTs prior to the CSA. It was only after the CSA had entered into force in 1997 that the parties rigorously enforced laws pursuant to it (R.13). If the CSA had not been executed, the parties would not have enacted such prohibitions, thus evidencing lack of *opinio juris*.

¹⁴ Asylum, *supra* note 12, Alvarez-Dissenting.

¹⁵ *Id.*

¹⁶ UN Conference on the Law of Treaties. UN Doc.A/Conf.39; UNCLLOT II, 67-72, 197-201 [UNCLLOT].

¹⁷ UNCLLOT *supra* note 16.

Even assuming that it is regional customary law, Respondent, as a persistent objector, is not bound by it.

A persistent objector is a State which has expressed its objection to the practice throughout the process of formation and development of the custom and thus, cannot be bound by such custom.¹⁸

Performing acts inconsistent with State practice is considered as persistent objection.¹⁹ Like State practice, it is evidenced by treaty-making, legislation, and official State publications²⁰ such as diplomatic interchanges and the opinions of national legal advisors.²¹

Respondent's non-ratification of the CSA, exemption of the Maroons from the coverage of its law prohibiting the killing of the KSTs, and various diplomatic exchanges with Applicant, are proof of its persistent objection to the CSA (R.22, 25). Thus, the CSA, even if customary, is not binding upon Respondent.

RESPONDENT DID NOT VIOLATE THE CBD, BUT IN FACT ACTED IN ACCORDANCE THERETO.

The CBD²² emphasizes the government's role in implementing its provisions²³ "as far as possible and as appropriate."²⁴ In allowing the Maroons to continue practicing the adulthood rite,

¹⁸ Fisheries (U.K. v. Nor.), 1951 I.C.J.116.

¹⁹ Fisheries, *supra* note 18; SHAW, *supra* note 2 at 90.

²⁰ Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), 2002 I.C.J.3.

²¹ SHAW, *supra* note 2, at 83-84.

²² Convention on Biological Diversity, Jun.6,1992, 1760 U.N.T.S.79 [CBD].

²³ GLOWKA, ET AL., A GUIDE TO THE CONVENTION ON BIOLOGICAL DIVERSITY 35 (1994).

²⁴ CBD, arts.5-6.

Respondent considered the needs of its citizens while implementing measures consistent with the CBD.

Respondent exercised its right to exploit its natural resources in accordance with the CBD.

Article 3 applies the customary law²⁵ of a State's sovereign right to use its natural resources²⁶ pursuant to its national environmental policies.²⁷ Respondent legitimately exercised its right to exploit in allowing the Maroons to hunt the KST and harvest its eggs (R.18) through national legislation.

Respondent has a sovereign right to exploit the KST within its territory.

The power to exploit natural resources within a State's territory²⁸ embraces the power to control its use.²⁹ The KST nests on the beaches (R.1) and the KST hunted in territorial waters and EEZ of Respondent are its own natural resources³⁰ which can be exploited with government authorization.³¹ The authorized use (R.20) of the KST in the Maroons' adulthood rites (R.3) is a

²⁵ Rio Declaration on Environment and Development, prin.2, U.N.Doc.A/CONF.151/5/Rev.1(1992) [Rio].

²⁶ UN General Assembly, Res.1803(XVII), 14 Dec.1962.

²⁷ CBD, art.3.

²⁸ Declaration of the United Nations Conference on the Human Environment, prin.21, U.N.Doc.A/CONF.48/ 14/Rev.1 (1972) [Stockholm].

²⁹ Simmons, *On the Territorial Rights of States, Philosophical Issues: Social, Political and Legal Philosophy*, vol.11 (2001) 321; CASSESSE, *INTERNATIONAL LAW*, 88-89 (2001).

³⁰ UN, *supra* note 26.

³¹ Kovalev. *Contemporary Issues of the Law of the Sea: Modern Russian Approaches* (Butler, ed.) 56-57 (2004).

legitimate exercise of Respondent's sovereign right to exploit. The permit extended to the Maroons is a means of managing the State's resources.³²

Respondent exercised its right to fish in the presential sea in accordance with the UNCLOS.

The presential sea, being 200 to 250 nautical miles from Respondent's territorial sea baseline (R.15), is part of the high seas.³³ The RPSA simply extended the application of laws to Redondan citizens in the high seas (R.16). The freedom to fish in the high seas³⁴ as customary law³⁵ and as enshrined in the UNCLOS,³⁶ is applicable in the presential sea. The hunting of KSTs, which are *res nullius*,³⁷ by the Maroons in the presential sea (R.19) is thus a legitimate exercise of the freedom to fish.

Respondent did not cause transboundary harm by permitting the Maroons to continue hunting the KST.

The right to exploit must be done without causing transboundary harm,³⁸ which is defined as damage upon a State caused by the acts of another in the territory of the State of

³² BLANCO & RAZZAQUE, GLOBALISATION AND NATURAL RESOURCES LAW: CHALLENGES, KEY ISSUES AND PERSPECTIVES, 9-10 (2012); BARNES, PROPERTY RIGHTS AND NATURAL RESOURCES, 228-30 (2009).

³³ UN Convention on the Law of the Sea, 10 Dec.1982, 21 I.L.M.1261 [UNCLOS].

³⁴ SHAW, *supra* note 2, at 623.

³⁵ Wold, *The Status of Sea Turtles under International Environmental Law and International Environmental Agreements*, J.INT'L WILDLIFE L.& POL'Y., 15-16 (2002).

³⁶ UNCLOS, art.87.

³⁷ Wold, *supra* note 35, at 12.

³⁸ Trail Smelter (U.S. v. Can.), Arbitral Tribunal, 1941; Corfu Channel (U.K. v. Alb.) 1949 I.C.J.

origin.³⁹ It has four conditions.⁴⁰ *First*, there must be a physical relationship between the activity and damage.⁴¹ *Second*, there must be human causation.⁴² *Third*, it must be severe⁴³ necessitating legal action⁴⁴. *Lastly*, there must be transboundary transfer of the harmful effect.⁴⁵ These conditions apply to harm against persons, property, or the environment.⁴⁶ Here, none of the elements are present.

i. Respondent did not cause damage to Applicant's property.

Under the first condition, the harm must result in damage of a physical character.⁴⁷ The possible damage to Applicant's economy, with 5% of its GDP coming from tourism (R.2), is an intangible financial damage not within the scope of this condition.⁴⁸

Assuming that financial damage may be considered, the condition of severity is not present. Atterac, a developed nation, cannot rely solely on the KST for its 5% GDP since the

³⁹ ILC Commentary on the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, 2001 Report on its 53rd Session, A/56/10, Preamble.

⁴⁰ SCHACHTER, *INTERNATIONAL LAW THEORY AND PRACTICE*, 366-68 (1991).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Wold, *supra* note 35, at 15

⁴⁴ *Id.*

⁴⁵ SCHACHTER, *supra* note 40, at 366-368; HANQIN, *TRANSBOUNDARY DAMAGE IN INTERNATIONAL LAW*, 8-10 (2003).

⁴⁶ ILC, *supra* note 39, at 153

⁴⁷ HANQIN, *supra* note 45, at 5; Akehurst, *International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law*, 16 *Netherlands Yearbook of International Law*, 3-16 (1985).

⁴⁸ *Id.*

KST is migratory, spending parts of its life cycle throughout the CSR (R.1,2). Additionally, the KST subsists and Applicant's GDP will not be significantly affected (Cl.17) as required.⁴⁹

The condition of human causation, which requires the damage to be proximately caused by the alleged acts, is not present.⁵⁰ There is no proof that the Maroons are the proximate cause of the KST's significant decrease. Many factors affect the KST's population⁵¹ and liability cannot be placed on Respondent alone.

ii. Respondent did not cause environmental harm.

The hunting of the KST and the collection of their eggs are not in themselves environmental harms.⁵² The CBD recognizes sustainable use of such natural resources⁵³ and the Record is bereft of facts indicating unsustainable use. Even with the tracking of the KST since the beginning of 2003 (R.19), no information linking the practice to the decrease has been found.

b. The Maroons' adulthood rites do not have an adverse impact on the KST's population.

Article 10(b) requires measures to prevent or minimize adverse impact on biological diversity.⁵⁴ The CBD does not expect absolute prohibition and allows continued use of natural

⁴⁹ Barboza, *Sixth Report on International Liability for Injurious Consequence Arising out of Acts not Prohibited by International Law*, 1990, UN Doc.A/CN.4/428; Wold, *supra* note 35, at 18.

⁵⁰ SCHACHTER, *supra* note 40, at 366.

⁵¹ UNEP, *Challenges to International Waters: Regional Assessments in a Global Perspective* (2006).

⁵² LIN, *THE UNIFYING ROLE OF HARM IN ENVIRONMENTAL LAW*, 981 (2006)

⁵³ *See generally* CBD.

⁵⁴ CBD, art.10(b).

resources with consideration of sustaining biological diversity.⁵⁵ Not all use of endangered species is intrinsically dangerous.⁵⁶

i. The Maroons' traditional hunting of the KST is not a destructive consumption of it.

For use of biodiversity to be unsustainable, it must reduce the population faster than the species' capacity to reproduce.⁵⁷ Out of the 50,000 Maroons, only 2,000 participate in this tradition (R.3), showing that it is practiced sparingly. In the community of 2,000, only the members at adulthood hunt (R.3). This distributes the hunting number throughout the years, minimizing the hunted KST.

ii. Centuries of practice of the rite of adulthood have not adversely affected the KST.

Since 1700-1800 (R.3), the Maroons have been practicing this tradition without harming the KST population. Sea turtles transfer nesting beaches when exposed to disruptive egg harvesting, continuous hunting,⁵⁸ and with overpopulated or polluted beaches.⁵⁹ The fact that the KST nests solely on Respondent's beaches (R.1) indicates that no disturbance was caused.

⁵⁵ See generally CBD.

⁵⁶ UNEP-CBD Guidelines, Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity, Secretariat of the Convention on Biological Diversity 7 (2004).

⁵⁷ Kriepps, *Sustainable Use of Endangered Species under CITES: Is it a Sustainable Alternative*, 17 U.P.A.J.INT'L L.463 (1996).

⁵⁸ Pacific Leatherback Turtle Recovery Team, *Recovery Strategy for Leatherback Turtles (Dermochelyscoriacea) in Pacific Canadian Waters* Species at Risk Act Recovery Strategy Series, Fisheries and Oceans Canada (2006); Standora, et.al, *Body Temperature, Diving Cycles, and Movement of a Subadult Leatherback Turtle, Dermochelyscoriacea*. 40 *Herpetologica* 169-76.

iii. The KST's breeding cycle can accommodate the Maroons' minimal consumption.

Of the 3,000-5,000 KSTs in existence (Cl.34), those living in the CSR find nesting grounds solely on Respondent's beaches (Cl.1). KSTs lay an average of 5-7, the highest at 13, nests per year.⁶⁰ Each nest has 100-120 eggs with a 70% fertilized egg ratio.⁶¹ 15 females produce approximately 80 nests per season.⁶² The minimal use of the KST relative to its breeding habits makes adverse damage highly improbable.

iv. Other factors affect the KST's population.

One of the leading causes of death of sea turtles is incidental catching.⁶³ Pollution and debris in the waters also cause the depletion of the sea turtle population.⁶⁴ Climate change⁶⁵ skews the sex ratio for optimal breeding⁶⁶ because nest temperature determines the hatchling's

⁵⁹ SWOT, *Burning Issues in Conservation: Leatherback Sea Turtles of the World*. 1 State of the World's Sea Turtles Report, 4.

⁶⁰ Eckert, *Environmental Unpredictability and Leatherback Sea Turtle (Dermochelys coriacea) Nest Loss*, Inter American Convention for the Protection and Conservation of Sea Turtles, 43 *Herpetologica* 315-23, (1987).

⁶¹ *Id.*

⁶² *Id.*

⁶³ WITHERINGTON, *SEA TURTLES: AN EXTRAORDINARY NATURAL HISTORY OF SOME UNCOMMON TURTLE* (2006).

⁶⁴ Reid & Miller, *Keeping Options Alive, The Scientific Basis for Conserving Biodiversity*, World Resources Institute 52 (1989).

⁶⁵ *Id.*

⁶⁶ SWOT, *supra* note 59, at 5.

sex.⁶⁷ The hunting and collection of turtle eggs only affect the sea turtles when in large quantities,⁶⁸ as in the case of Mexico.⁶⁹ Thus the impact of traditional hunting is insignificant to the KST.

v. The Maroons' subsistence living does not adversely impact the KST.

The Maroons' subsistence living is not dependent on the KST and they limit their consumption of this resource to the adulthood rite (Cl.26). Additionally, the Maroons' subsistence living has no impact on the KST's survival (Cl.19).

c. The Maroons have an interest to conserve and protect the KST.

The Maroons have a clear interest in conserving and protecting the KST for the continuous practice of their culture and retention of their identity. The Maroons exhibited such interest through the tagging project which studies the migration patterns of the KST (R.19) for sustainable use.

2. Respondent fulfilled its obligations under Articles 6, 7, and 8 by employing measures to protect and monitor the KST.

The measures provided in the CBD are to be applied alternatively⁷⁰ with consideration of the principle of common but differentiated responsibilities.⁷¹ While Respondent did not apply all the measures in the CBD, it has fulfilled its commitments by adopting conservation policies.

⁶⁷ *SEA TURTLES A SeaWorld Education Department Publication*, 2005 Sea World, Inc. Hawkes, et.al, *Climate Change and Marine Turtles*, Endangered Species Research, 141-42 (2009).

⁶⁸ Mancini & Koch, *Sea Turtle Consumption and Black Market Trade in Baja California Sur, Mexico*, Endangered Species Research, Vol.7 2009.

⁶⁹ *Id.*

RESPONDENT DID NOT VIOLATE THE CITES IN ALLOWING THE MAROONS TO HUNT THE KST AS A CULTURAL PRACTICE.

3. CITES is inapplicable because the Maroons' use of the KST is not for a commercial purpose.

CITES seeks to regulate the international trade of endangered species.⁷² It regulates the commercial use of States by requiring permits or certification. The Maroons use the KST for a non-commercial purpose outside the purview of CITES.

4. The KSTs hunted in Respondent's territorial sea are not introductions from the sea.

An introduction from the sea is the transportation into a State of a specimen from a marine environment outside of its jurisdiction.⁷³ The KSTs hunted in Respondent's territorial waters and EEZ does not fall under this definition.

⁷⁰ Secretariat of the Convention on Biological Diversity, *Handbook of the Convention on Biological Diversity: Including its Cartagena Protocol on Biosafety 3rd ed.*2005 [CBD Handbook].

⁷¹ CBD, art.20(4); HONKONEN, THE COMMON BUT DIFFERENTIATED RESPONSIBILITY PRINCIPLE IN MULTILATERAL ENVIRONMENTAL AGREEMENTS: REGULATORY AND POLICY ASPECTS (2009). CBD Handbook.

⁷² YOUNG, TRADING FISH, SAVING FISH: THE INTERACTION BETWEEN REGIMES IN INTERNATIONAL LAW (2011)

⁷³ CBD, art.1

5. The Maroons' hunting of the KST in the presential sea falls under the exception as a personal effect.

CITES requires a certificate for the non-commercial import by an introduction from the sea.⁷⁴ However, Article VII(c) provides an exception from the certification requirement in cases of personal or household effects,⁷⁵ which is the nature of the Maroons' use of the KST.

For the exception to apply Article VII(c)⁷⁶ requires that (a) the specimen is acquired while the person resides in his country of usual residence, (b) it is personally owned and not to be used for a primarily commercial purpose, (c) it is legally acquired, and (d) it is carried or included in personal baggage at the time of import.⁷⁷ The Maroons fulfill all these requirements.

a. The Maroons acquired the KST residing in Redonda by the process of tagging.

To be exempt as personal effect, the items must be acquired within the person's country of usual residence.⁷⁸ Resolution 13.7 recognizes that there are many different ways by which a specimen may be acquired and that Annex 1 is not an exclusive list.⁷⁹ The acquisition by the Maroons was done in accordance with national laws.

⁷⁴*Id.* Convention on International Trade in Endangered Species of Wild Flora and Fauna, art.III(3), Mar.3,1973, 993 U.N.T.S.243, [CITES].

⁷⁵ CITES, art.VII(3).

⁷⁶ *Id.*

⁷⁷ Resolutions of the Conference of the Parties Conf.13.7 (Rev.CoP16) Control of Trade in Personal and Household Effects [Conf.13.7].

⁷⁸ *Id.*

⁷⁹ *Id.*

One method of acquisition is by direct removal of the endangered species from the wild⁸⁰ which is necessary to attach the tag on the KST.⁸¹ The KST's tagging serves a dual purpose of gathering information and to locate it for the adulthood rite (Cl.33). The removal from the wild and the tagging of the KST in Respondent's territory serves as acquisition for possible future use. The KST's subsequent release does not negate its acquisition. The KST's subsequent hunting and transportation from the high seas to Redonda is then covered by the exception of personal effects. It is considered a hunting trophy transported as personal effects exempt from certification of introduction.

b. The Maroons' traditional hunting is not for a primarily commercial purpose.

The non-commercial use⁸² of an introduction from the sea is the most important requirement⁸³ and is key in acquiring a certificate of introduction. The certificate is not meant to prohibit the personal use of endangered species, such as in the case of the Maroons' adulthood rite. At no point was there a commercial transfer from the Maroons to another.

⁸⁰ *Id.*

⁸¹ Mansfield, et.al, *Satellite Tag Attachment Methods for Tracking Neonate Sea Turtles*, MARINE ECOLOGY PROGRESS SERIES, 181-92 (2012).

⁸² Resolutions of the Conference of the Parties Conf.5.10 Definition of 'primarily commercial purposes' Conf.5.10.

⁸³ Klemm, *Guideline for Legislation to Implement CITES*, IUCN Env'l Pol'y & L.No.26 (1993).

c. *Hunting in the presential sea is a legal means of acquiring the KST.*

As discussed earlier, the presential sea is high seas covered by the freedom to fish for as long as no transboundary harm is caused. Similarly, hunting is recognized as a means of acquisition as long as it is legal within the territory where it was done⁸⁴ as in the case of the Maroons.

d. *The Maroons carry the KST when entering Respondent's territory.*

The item must also be worn, carried, or included in personal baggage.⁸⁵ Hunting trophies, defined as the whole animal or a derivative of it, are covered by the exception when carried⁸⁶ and is meant for the personal use of the importer hunter.⁸⁷ The Maroons enter Respondent's territory carrying the raw whole of the KST within their vessel.

6. *Assuming *arguendo* that the Maroons are not exempt, a certificate of introduction would be superfluous.*

The main purpose of the certificate of introduction is to verify the non-commercial use of the KST and if it is detrimental to the survival of the species.⁸⁸ Verification is no longer necessary given that the adulthood rite has been recognized by Respondent to be non-

⁸⁴ Conf.13.7 Annex 1(9).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Resolutions of the Conference of the Parties Conf.12.3 (Rev.CoP16) Permits and Certificates.

⁸⁸ CITES, art.III(5).

commercial through national legislation allowing the Maroons' use of the KST, thereby, making the certificate of introduction unnecessary and redundant.

RESPONDENT DID NOT VIOLATE GENERAL PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW.

Respondent acted in accordance with the precautionary principle, the principle of sustainable development, the cooperation principle, and intergenerational equity principle.

The precautionary principle cannot be applied to the Maroons' use of the KST.

The precautionary principle obligates States to undertake measures to protect the environment in cases of "serious threats and irreversible damage" despite the lack of scientific certainty.⁸⁹ This principle was applied in the Stockholm Declaration, the CBD, and UNCLOS, all of which Respondent took participated in (R.6,8,&10).

In applying this principle to biodiversity conservation and natural resource management,⁹⁰ these elements must be present: (a) there is a situation of uncertainty where precaution is necessary, (b) there is a threat, and (c) the threatened harm is serious.⁹¹ The use of a species is not in itself a threat unless such use is unsustainable. These elements are lacking given that the Maroons' use has no effect on the KST's population.

⁸⁹ Rio, prin.15.

⁹⁰ IUCN Council, Guidelines for Applying the Precautionary Principle to Biodiversity Conservation and Natural Resource Management (2007).

⁹¹ *Id.*

a. Assuming that the precautionary principle applies, Respondent complied with the same.

The precautionary principle is operationalized by applying “concrete policy and management measures” to tackle the “conservation problem”.⁹² Respondent imposed a general prohibition against the hunting of the KST which protects it from extinction (Cl.20).

Respondent cooperated with the Chelonian States by recognizing the KST as a shared resource.⁹³

States must co-operate in good faith to protect the environment,⁹⁴ including shared resources.⁹⁵ Migratory species like the KST are shared resources⁹⁶ not controlled by a State yet not a common property of all.⁹⁷ In accordance with the principle of co-operation,⁹⁸ Respondent shared information with other nations which it gathered through the tagging system it implemented (Cl.33).

⁹² *Id.*

⁹³ Klemm, *Migratory Species in International Law*, Natural Resource Journal, 949, (1989).

⁹⁴ Rio, prin.27.

⁹⁵ Stockholm, prin.21.

⁹⁶ PARADELL-TRIU, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW: AN OVERVIEW. RECIEL 9(2) (2000) at 46.

⁹⁷ Klemm, *supra* 18 at 952-54; Wold, *supra* 35 at 12.

⁹⁸ UNEP Environmental Law Guidelines and Principles, prin.7.

RESPONDENT DID NOT VIOLATE THE UNCLOS, BUT RATHER, FURTHERED THE TREATY'S OBJECTIVE.

RESPONDENT DID NOT VIOLATE THE UNCLOS IN ITS EXERCISE OF SOVEREIGNTY OVER ITS WATERS.

Respondent validly exercised its sovereignty over its territorial sea.

The coastal State shall “exercise its jurisdiction particularly with respect to the preservation of the marine environment...having regard to the provisions of international conventions, co-operation with other States and the recommendations of international technical bodies...[and] the other rights inherent in the sovereignty of the coastal State.”⁹⁹

Clearly, Respondent has the jurisdiction and prerogative to impose measures for the conservation, regulation and management of the KST within its territory. In light thereof, Respondent took measures to preserve its marine environment by prohibiting 97.5% of its citizens from hunting the KST and collecting its eggs, exempting only the Maroon communities (Cl.10). Thus, by enacting this measure, Respondent rightfully exercised its jurisdiction, while respecting the cultural rights of the Maroons under the ICESCR.

Respondent validly exercised its sovereignty over its EEZ.

The EEZ is the “part of the sea which is adjacent to the territorial sea and beyond it up to a maximum distance of 200 nautical miles.”¹⁰⁰ The coastal State has sovereign rights over the

⁹⁹ NORDQUIST ED., UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, 1982: A COMMENTARY;

¹⁰⁰ *Id.* at 491.

natural resources, and jurisdiction over the exploration and exploitation of that area, as well as, marine preservation and marine scientific research.¹⁰¹

Article 61 of the UNCLOS mandates the conservation of the living resources in the EEZ, through “the best scientific evidence.” Respondent complied with this by studying the KST’s migratory patterns through its tracking devices. Respondent has further complied with this provision by disseminating scientific information to the other States regarding the KST’s migratory habits (Cl.33), complying with the UNCLOS definition of scientific information leading to “the best scientific evidence.”¹⁰²

THE RPSA DOES NOT IMPAIR THE FREEDOM OF THE HIGH SEAS.

Respondent merely asserts its interest over its presential sea and does not exclude other States from the enjoyment of the said area.

The presential sea is a “contiguous zone to the EEZ in which the State may prevent infringements of its fishing, research and resource exploitation interests in the EEZ.”¹⁰³ It recognizes that the coastal State has *special interests* in the areas adjacent to its EEZ, without creating any jurisdictional claims over the said area, as seen in the case of Chile.¹⁰⁴

¹⁰¹ NORDQUIST, *supra* 99;

¹⁰² *Id.* at 312.

¹⁰³ Dalton, *The Chilean Mar Presencial: A Harmless Concept of a Dangerous Precedent?* 8(3) INT’L J. MARINE & COASTAL L., 415 (1993).

¹⁰⁴ Vicuña, *The Presential Sea: Defining under International Law Coastal State’s Special Interests in High Seas Fisheries and Other Activities Therein*, 35 German Yearbook of International Law, 291-92 (1992).

The RPSA does not expand the exercise of Respondent's sovereignty over its presential sea (R.16c). Respondent neither prohibits the other States from enjoying the freedom of the high seas nor seeks to regulate vessels and nationals of other States (R.16b).

The RPSA furthers the objectives of the UNCLOS to conserve and manage the living resources of the high seas.

b. The RPSA extends the prohibition imposed upon the rest of the Redondan citizens, with regard to the hunting of the KST, to Respondent's presential sea.

Article 117 requires States to adopt measures for conservation with respect to their nationals who fish in the high seas. Respondent prohibited its nationals from hunting the KST, even extending its applicability to the high seas, ergo, complying with its obligations under said article. The RPSA states that any activity by Respondent's nationals and/or vessels must comply with Redonda's laws and regulations (R.16.b). Therefore, by enacting the RPSA, Respondent exercised its authority over its citizens in accordance with Article 117.

c. Respondent, in fact, encouraged the other States to prohibit respective nationals from hunting the KST within the presential sea.

Respondent, through the RPSA, unilaterally imposed upon itself the duty to negotiate "with the other States to develop mechanism to ensure that any activity undertaken within the presential sea by nationals and/or vessels of other States is consistent with Redondan laws and regulations" (R.16d). Where the RPSA is a preservation and conservation framework which the other States may adopt in promoting the conservation of the KST within their territories, the enactment of a similar legislation actually expands the scope of the collective advocacy to

protect the KST in compliance with the conservation provision of the UNCLOS.¹⁰⁵ In effect, Respondent championed the preservation and conservation of the KST by being stewards of the species in the high seas.

7. Respondent, in allowing the Maroons to hunt the KST in its presential sea, complied with the UNCLOS.

Under Article 116, the rights of the States to engage in fishing in the high seas are subject to (a) their treaty obligations, (b) their rights and duties as well as the interests of coastal States.¹⁰⁶

In this case, Respondent does not violate any of its treaties by allowing the Maroons to exercise their cultural practice in its presential sea and does not impair the rights of States to fish thereat. Thus, the RPSA is valid.

RESPONDENT ACTED IN ACCORDANCE WITH THE ICESCR IN ALLOWING THE MAROONS TO EXERCISE THEIR CULTURAL PRACTICE.

THE MAROONS, BEING A MINORITY, ARE PROTECTED BY THE ICESCR.

8. The Maroons are a minority under International Law.

A minority is a group of nationals of a State who are numerically inferior to the rest of the State's population.¹⁰⁷ They occupy a non-dominant position, possess ethnic, religious or

¹⁰⁵ NORDQUIST, *supra* note 99, at 301.

¹⁰⁶ UNCLOS art.63(2), arts.64-67 & arts.117-119.

¹⁰⁷ Capotorti, The Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/384/Rev.1, ¶568.

linguistic characteristics differing from those of the rest of the population, and show a sense of solidarity, directed towards preserving their culture, traditions, religion or language.¹⁰⁸

The Maroons, consisting of a mere 2.5% of Respondent's entire population (R.3), live in their own communities and have maintained their cultural practices (R.3), one of which is the continued hunting of the KST and the collection of its eggs for their adulthood rites (R.17). As such, the Maroons qualify as a minority.

9. Minority rights are protected under the ICESCR.

Article 15 recognizes the right of minorities to partake in cultural life, including the right to their cultural diversity, traditions, customs, religion, forms of education, languages, and other manifestations of their cultural identity and membership.¹⁰⁹ The right of the minorities to freely enjoy their own culture is also recognized under Article 27 of the ICCPR.¹¹⁰ Thus, the Maroons' unique rite of adulthood involving the KST is protected under the right to partake in cultural practice.

¹⁰⁸ *Id.*

¹⁰⁹ UN Committee on Economic, Social, and Cultural Rights [UNCESCR] General Comment No.21, E/C.12/GC/21., ¶32.

¹¹⁰ International Covenant on Civil and Political Rights, art.27, Dec.16,1966, S. Treaty Doc.No.95-20, 6 I.L.M.368 (1967), 999 U.N.T.S.171 [ICCPR].

10. Respondent’s exemption of the Maroons is a recognition of their rights.

a. Respondent has the duty to protect the rights of the Maroons.

Article 2(1) provides that States must enact domestic legislation and cooperate internationally to ensure that the rights guaranteed under the ICESCR are fully realized.¹¹¹ Respondent, by providing an exemption for the Maroons to continue with its cultural practice (Cl.10), complied with the aforesaid duty. Moreover, in refusing to ratify the CSA because of its concerns regarding the potential impact on the Maroons (R.14), Respondent used “all appropriate means,” in achieving the full realization of the Maroons’ cultural practice.

b. Respondent protected the Maroons’ right to partake in cultural life.

Article 15 of the ICESCR protects the “right of everyone to take part in cultural life,”¹¹² which requires the States Parties to abstain from interference and to take positive action in the promotion of cultural life.

The Maroons’ use of the KSTs is an integral part of their adulthood rites (R.18). Thus, in providing the exemption, Respondent took a positive action to promote the Maroons’ cultural life in compliance with the ICESCR.

¹¹¹ International Covenant on Economic, Social and Cultural Rights, art.2(1), Dec.16,1966, S. Treaty Doc.No.95-19, 6 I.L.M.360 (1967), 993 U.N.T.S.3 [ICESCR].

¹¹² ICESCR, art.15(a).

**THE MAROONS ARE “PEOPLE” WHO ARE AFFORDED THE RIGHT OF SELF-
DETERMINATION.**

Article 1 of the ICESCR and ICCPR recognizes self-determination as a universal right.¹¹³

Where no distinction has been elucidated between “peoples” and “minorities,” Maroons, as minorities, also fall under the term “peoples,”¹¹⁴ thus, afforded the right of self-determination under the ICESCR. Therefore, whether or not the Maroons are indigenous to Redonda will not affect their status as “peoples”

The right to self-determination covers the freedom to pursue one’s “economic, social and cultural development.”¹¹⁵ Such right is provided given that “cultural well-being is a higher collective good which societies cannot afford to forgo.”¹¹⁶ The Maroons’ adulthood rite can be seen as way to keep their culture alive. Without this cultural practice, the distinctiveness of their identity will be lost.

**APPLICANT, IN FORCING RESPONDENT TO PROHIBIT THE CULTURAL PRACTICE OF THE
MAROONS, VIOLATED THE MAROONS’ ABSOLUTE RIGHT OF SELF-DETERMINATION.**

SELF-DETERMINATION IS A NON-DEROGABLE *JUS COGENS* NORM.

Jus cogens is a norm from which no derogation is permitted and can be modified only by

¹¹³ SUMMERS, PEOPLE AND INTERNATIONAL LAW: HOW NATIONALISM AND SELF-DETERMINATION SHAPE CONTEMPORARY LAW OF NATIONS 171 (2007).

¹¹⁴ *Id.* at 173-74.

¹¹⁵ ICESCR, art.1.

¹¹⁶ Cristecu, *The Right of Self-Determination: Historical and Current Development on the Basis of UN Instruments*, UN 1981, 102.

a subsequent *jus cogens*.”¹¹⁷

Self-determination is considered a *jus cogens* norm.¹¹⁸ The character of *jus cogens* is an attribute of the principle of self-determination because it is a prerequisite for the exercise and effective realization of human rights.¹¹⁹

A *JUS COGENS* NORM JUSTIFIES NON-OBSERVANCE OF TREATIES.

Even assuming that Respondent violated its treaty obligations by allowing the Maroons to exercise their cultural practice, the same is justifiable because they are incompatible with the Maroons’ *jus cogens* right of self-determination which is non-derogable in nature.¹²⁰

APPLICANT, IN ATTEMPTING TO OBLITERATE THE MAROONS’ RITUAL, VIOLATED THE *JUS COGENS* NORM OF SELF-DETERMINATION.

Applicant gave no consideration to the preservation of the Maroons’ adulthood rites by resolutely demanding the Maroons to discontinue their cultural practice which gives them a distinct identity (R.24). The adulthood rite is already a vulnerable culture and is the cultural equivalent of an endangered species. Only 0.1% (2,000 people) of Respondent’s population practices such ritual (R.3). Therefore, there is a possibility that their culture may be lost if no preservation measure is enacted. Applicant, in its lack of respect for this community’s vulnerable culture, violated the Maroons’ right of self-determination.

¹¹⁷ VCLT, art.53.

¹¹⁸ East Timor (Port. v. Aus.) I.C.J. Reports 1995, 90 & 102, ¶29.

¹¹⁹ Espiell, *The Right to Self Determination: Implementation of United Nations Resolutions*, 1980 (E/CN.4/Sub.2/405/Rev.1).

¹²⁰ VCLT, art.53; International Law Commission, *Commentaries to the Draft Articles on Responsibility of States for Internationally Wrongful Acts*, fifty-third session 2001.

CONCLUSION AND PRAYER FOR RELIEF

Respondent, the Republic of Redonda, respectfully requests this Honorable Court to adjudge and declare:

1. Respondent did not violate its international environmental obligations;
2. Respondent did not violate the UNCLOS;
3. Respondent acted in accordance with the ICESCR; and
4. Applicant violated Respondent's *jus cogens* right to self-determination.