
2013 General List No. 118

INTERNATIONAL COURT OF JUSTICE
AT THE PEACE PALACE, THE HAGUE, NETHERLANDS

**Case of Questions Relating to the
Protection of Sea Turtles**

THE FEDERAL STATES OF ATTERAC,

Applicant,

v.

THE REPUBLIC OF REDONDA,

Respondent.

Fall Term 2013

MEMORIAL FOR RESPONDENT

TABLE OF CONTENTS

INDEX OF AUTHORITIES	iv
STATEMENT OF JURISDICTION	ix
QUESTIONS PRESENTED	x
STATEMENT OF FACTS	xi
SUMMARY OF ARGUMENT	xiii
ARGUMENT	1
I. REDONDA IS IN FULL COMPLIANCE WITH ITS INTERNATIONAL OBLIGATIONS BECAUSE IT IS NOT BOUND BY THE CSA, AND ITS ACTIONS DO NOT CONTRAVENE CITES, UNCLOS, OR CBD.	1
A. Redonda Is Neither Bound By the CSA Nor Undermining Its Object or Purpose.	1
1. Redonda is not bound by the CSA because it signed but did not ratify it; the CSA is not CIL; and even if it were, Redonda persistently objected to it.	1
2. As a signatory to the CSA, Redonda is in full compliance with its international obligations because its actions do not undermine the object or purpose of the CSA.	4
B. Redonda’s Use of Kilpkonn Within Its EEZ and Claim to the Presential Sea Are Consistent With Its Obligations Arising Under UNCLOS.	4
1. Under UNCLOS, Redonda has the sovereign right to use its resources in accordance with its domestic environmental policies.	4
2. Under UNCLOS, CIL, and the UN Convention on Straddling Stocks, Redonda may extend its zone of influence and claim the presential sea.	5
C. Redonda’s Taking of Kilpkonn Within the Presential Sea Complies With CITES, and the Maroons’ Cultural Use of the Kilpkonn Is Entitled to Special Allowances Under CITES’ Resolution Conference 16.6.	7

1.	Maroon usage of Kilpkonn is in full compliance with CITES because the Maroons harvest Kilpkonn solely from Redonda’s jurisdiction and for non-trade purposes only.	7
2.	Redonda’s policy of allowing the Maroons to use Kilpkonn is in full compliance with CITES because the Maroons are a rural people and their use of the Kilpkonn is an example of the culture contemplated by Resolution Conference 16.6 of CITES.	8
3.	Redonda must continue to allow the Maroons to take Kilpkonn during longline fishing, in order to comply with ICESCR.	9
D.	Redonda Is Entitled to Harvest Kilpkonn and Their Eggs Because Kilpkonn Are a Natural Redondan Resource, and the CBD Allows a State to Use Its Natural Resources and to Protect Traditional Lifestyles.	9
1.	Pursuant to CBD, Redonda is allowed to harvest the Kilpkonn and their eggs within Redonda’s borders because Kilpkonn are a natural Redondan resource, and this usage does not cause transboundary harm.	9
2.	Article 8(j) of CBD grants the Maroons additional protection when using Kilpkonn and their eggs because it is part of a traditional lifestyle, and it is a sustainable practice.	10
E.	Even if this Court Finds that CITES, UNCLOS, and CBD Prohibit Maroon Cultural Use of Kilpkonn, Redonda, as a SIDS, Is Entitled to Special Considerations.	11
II.	REDONDA IS ACTING IN ACCORDANCE WITH ITS INTERNATIONAL OBLIGATIONS, UNDER ICESCR, BY SUPPORTING AND PROTECTING THE MAROONS’ CULTURAL USE OF THE KILPKONN.	12
A.	ICESCR Requires Redonda to Protect Maroon Culture.	12
B.	Maroon Culture Is Entitled to the Same Rights as Those of Indigenous Cultures.	13
1.	Indigenous rights are not determined by “priority in time.”..	13

2.	International human rights tribunals have granted other Maroon populations indigenous rights.	14
C.	ICESCR and Other Sources of International Law Afford Maroon Culture, and Its Modern Adaptations, Special Protection.	16
1.	Redonda and Atterac, as parties to ICESCR and participants in various UN Declarations, recognize that Maroon culture is entitled to protection.	16
2.	ICESCR’s protections encompass the modernization of Maroon cultural practices.	17
D.	Redonda Is Fulfilling Its International Obligation to Protect an Indispensable Aspect of Maroon Culture.	18
CONCLUSION		20

INDEX OF AUTHORITIES

	<u>Page(s)</u>
Treaties and Conventions	
African Charter on Human and Peoples' Rights art. 21-22, <i>concluded on June 27, 1981</i> , 1520 U.N.T.S. 217	13
Chelonia Sea Agreement (1995).....	4
Continental Shelf Convention, April 29, 1958, 499 U.N.T.S. 311	5, 6
Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79	10
Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries art. 1, June 28, 1989, 1650 U.N.T.S. 383	13
Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 993 U.N.T.S. 243	7, 8
Convention on Migratory Species, 1651 U.N.T.S. 333, June 23, 1979	11, 12
Declaration on the Maritime Zone Aug. 18, 1952, 1006 U.N.T.S. 326	5, 6
International Covenant on Economic, Social and Cultural Rights, <i>opened for signature</i> Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976)	9, 12
Statute of the International Court of Justice	2
United Nations Charter, <i>as amended</i> June 26, 1945, 892 U.N.T.S. 119	1
United Nations Convention on the Law of the Sea, Dec. 10, 1982 1833 U.N.T.S. 397	4, 5
Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331	1, 4

UN Documents

Concluding Observations of the Committee on Economic, Social and Cultural Rights, Finland, U.N. Doc. E/C.12/FIN/CO/5 (Jan. 16, 2008)	16
Concluding Observations of the Committee on Economic, Social and Cultural Rights, Sweden, U.N. Doc. E/C.12/SWE/CO/5 (Dec. 1, 2008)	16
Commission on Economic, Social & Cultural Rights, Guidelines on Treaty-Specific Documents to be Submitted by State Parties Under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, U.N. Doc. E/C.12/2008/2, Annex (Mar. 24 2009)	13, 16
Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, Annex, U.N. Doc. A/RES/61/295 (Sept. 13, 2007)	13
GAOR, 45th Sess., Supp. No. 40, vol. 2, (1994)	15
G.A. Res. 65/2, U.N. Doc. A/RES/65/2 (Sept. 25, 2010)	6
Global Conference on the Sustainable Development of Small Island Developing States, Bridgetown Barb. , April 25-May 6, 1992, <i>Report of the Global Conference On The Sustainable Development of Small Island Developing States</i> , U.N. Doc. A/CONF.167/9, Annex II	11
Special Rapporteur on the Study of the Problem of Discrimination Against Indigenous Populations, <i>Final Report</i> , U.N. ESCOR, Sub-Comm'n on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4 1-4 (1986)	18
U.N. Commission on Economic, Social, & Cultural Rights, General Comment No. 21: Right of Everyone to Take Part in Cultural Life, U.N. Doc. E/C.12/GC/21 (Dec. 29, 2009)	16, 18
United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 13-14, 1992, <i>Rio Declaration on Environment and Development</i> , Principle 22, U.N. Doc. A/CONF.151/26/Rev1. (Vol. I), Annex I	17
United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, July 24-August 4, 1995, <i>Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks</i> , U.N. Doc. A/CONF.164/37 (September 8, 1995)	7

United Nations Conference on Sustainable Development, June 20-22, 2012, <i>Outcome Document: “The future we want”</i> , U.N. Doc. A/CONF.216/16....	17
United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RS/61295, at 5 (Oct. 2, 2007)	13
United Nations, Economic & Social Council, Commission on Human Rights, <i>Standard-setting Activities: Evolution of Standards Concerning the Rights of Indigenous People</i> , U.N. Doc. E/CN.4/Sub.2/AC.4/1996/2 (June 10, 1996)	14
World Summit on Sustainable Development, Johannesburg, S. Afr., Aug. 26-Sept. 4, 2002, <i>Johannesburg Declaration on Sustainable Development</i> , U.N. Doc. A/CONF.199/L.6/Rev.2	11, 17
World Summit on Sustainable Development, Johannesburg, S. Afr., Aug. 24-Sept. 4, 2002, <i>Plan of Implementation of the World Summit on Sustainable Development</i> , U.N. Doc. A/CONF.199/20, Resolution 2.....	11, 12
 Judicial and Arbitral Decisions	
Asylum Case (Col. v. Peru), 1950 I.C.J. 266 (Nov. 20)	3
Corfu Channel Case, (U.K. v. Alb.), 1949 I.C.J. 4 (Dec. 15).....	2
Fisheries Case (U.K. v. Nor.), 1951 I.C.J. 116 (Dec. 18).....	3
Lansman v. Finland, Communication No. 511/1992, Human Rights Comm., 3.1, 9.3 U.N. Doc CCPR/C/52/D/511/1992 (Oct. 26, 1992)	17
Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2004 I.C.J. 136, (July 9)	12
Moiwana Community v. Suriname, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 124 (June 15, 2005)	14, 15
North Sea Continental Shelf Cases (Ger. v. Den.), 1969 I.C.J. 3 (Feb. 20)	1
Ominayak, Chief of the Lubicon Lake Band v. Canada, Communication No. 267/ 1984, <i>Report of the Human Rights Committee</i> , U.N. Doc CCPR/C/21/ Rev. 1/Add. 5	15
Lotus Case, (Fr. v. Turk.), 1927 P.C.I.J. 18 (Sept. 7)	1
Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 172 (Nov. 28, 2007)	14, 15

Books, Treatises, Digests, and Restatements

FRANCISCO ORREGO VICUÑA, <i>THE CHANGING INTERNATIONAL LAW OF HIGH SEAS FISHERIES</i> , (1999).....	6
JAMES CRAWFORD, <i>BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 28</i> (8th ed. 2012).....	3
MAGDALENA SEPULVEDA, <i>THE NATURE OF THE OBLIGATIONS UNDER THE INTERNATIONAL CONVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS</i> (2003)	12, 13
OPPENHEIM'S <i>INTERNATIONAL LAW: PEACE 23</i> (Sir Robert Jennings et al eds., 9th ed. 1992)	2
ROBERT TUCKER, <i>THE LAW OF WAR AND NEUTRALITY AT SEA, 225</i> (1955)	5

Essays, Articles, and Journals

Alexander Gillespie, <i>The Slow Swim From Extinction: Saving Turtles in the South Pacific</i> 21 <i>Int'l Marine & Coastal L</i> 57 (2006)	2, 11
Barbara M. Newman & Philip R. Newman, <i>Group Identity and Alienation</i> , 30 <i>J. of Youth and Adolescence</i> 515 (2001)	18
Christopher Joyner & Peter DeCola, <i>Chile's Presential Sea Proposal: Implications for Straddling Stocks and the International Law of Fisheries</i> , 24 <i>OCEAN DEV. & INT'L L.J.</i> 99 (1993)	6
Daniel G. Scott, <i>Rites of Passage in Adolescent Development</i> , 27 <i>Child & Youth Care Forum</i> 317 (1998)	19
Dino Kritsiotis, <i>On The Possibilities Of and For Persistent Objection</i> 21 <i>Duke J Comp & Int'l L</i> 121 (2010)	3
Donald Rothwell, <i>Fishery Zones and Limits</i> , in <i>MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW</i> (2008).....	5
Enzamaría Tramontana, <i>The Contribution of the Inter-American Human Rights Bodies to Evolving International Law on Indigenous Rights over Lands and Natural Resources</i> , 17 <i>Int'l J. on Minority & Grp. Rights</i> 241 (2010)	15
Ernest A. Young, <i>Sorting Out the Debate Over Customary International Law</i> 42 <i>Vir. J Int'l L</i> 365 (2002)	2

Julia Pfeil, “Fisheries Jurisdiction Case (Spain v. Canada)”, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (2009)	6
Karen L. Eckert, <i>Leatherback Sea Turtles: A Declining Species of the Global Commons</i> , 9 Ocean Y.B. 73 (1991)	10
Lisa M. Campbell, <i>Contemporary Culture, Use, and Conservation of Sea Turtles</i> , in 2 THE BIOLOGY OF SEA TURTLES 301 (Peter L. Lutz, John A. Musick, & Jeanette Wyneken eds., 2003)	18
Paul Kibel, <i>Alone at Sea: Chile’s Presencial Ocean Policy</i> , 12 J. ENVTL. LAW 43 (2000)	6
Roman Kwiecien, <i>In Defence of the Idea of State Sovereignty in International Law</i> , 27 Polish Y.B. Intl L. 87, (2004-2005)	1
Simha Goldin, <i>The Role of Ceremonies in the Socialization Process</i> , 95 Archives de Sciences Sociales des Religions 163 (1996)	19
Walter Kalin, <i>Examination of State Reports</i> , in UN Human Rights Treaty Bodies 32 (Helen Keller & Geir Ulfstein, eds. 2012)	13
Other Authorities	
<i>Caribbean Leatherback Tracking & Conservation Project</i> , SEA TURTLE CONSERVANCY, http://www.conserveturtles.org/seaturtletracking.php?page=sat-leatherback (last visited Oct. 24, 2013)	18
INTERNATIONAL LAW ASSOCIATION COMMITTEE ON THE FORMATION OF CUSTOMARY (GENERAL) INTERNATIONAL LAW, STATEMENT OF PRINCIPLES APPLICABLE TO THE FORMATION OF GENERAL CUSTOMARY INTERNATIONAL LAW 27 (2000)	3
Sixteenth Meeting of the Conference of the Parties to CITES, Bangkok, Thai., March 3-14, 2013, <i>CITES and Livelihoods</i> , Res. Conf. 16.6 [hereinafter CITES Conference of the Parties Res. 16.6], <i>available at</i> http://www.cites.org/eng/res/16/16-06.php	8
The Truman Proclamation of 1945, Exec. Order Nos. 9633, 9634, 10 Fed. Reg. 12305 (1945)	5

STATEMENT OF JURISDICTION

The Federal States of Atterac (“Atterac”) and the Republic of Redonda (“Redonda”) hereby submit the following dispute to the International Court of Justice (“ICJ”). As required by Article 40, paragraph 1 of the Statute of the ICJ, the Parties have signed a special agreement and submitted it to the Registrar of the Court. Statute of the ICJ, Art. 40(1), T.S. No. 993 (1945). *See Special Agreement Between The Federal States of Atterac and the Republic of Redonda for Submission to the International Court of Justice of Differences Between Them Concerning Questions Relating to the Protection of Sea Turtles*, signed at George Town, Cayman Islands, on 14 June 2013. (Record [“R.”] 2.) The Registrar of the Court acknowledged receipt of the joint notification on 21 June 2013. (R. 2.)

QUESTIONS PRESENTED

- I. Is Redonda fulfilling its obligations under CSA, CITES, CBD, and UNCLOS by allowing the Maroons to harvest the Kilpkonn and their eggs?
- II. Under ICESCR, must Redonda protect the Maroons' cultural rite of passage ceremonies?

STATEMENT OF FACTS

Atterac, a developed nation of approximately thirty-five million people, is an international leader in environmental conservation. (R. ¶ 2.) Redonda, a developing island nation of approximately two million people, is home to 50,000 Maroons—all of whom descend from slaves that escaped from plantations in Atterac and other Chelonian States. (R. ¶ 3.) The Maroons generally live in separate communities and maintain their own cultural traditions, including subsistence harvesting from the Chelonia Sea. (R. ¶ 3.)

One population of the Maroons, numbering approximately 2,000, maintains a rite of passage, which involves harvesting Kilpkonn and their eggs. (R. ¶ 3.) This has a limited effect on the Kilpkonn population and no adverse effect on another State. (Clarification of the Record [“CTR.”] A17, A30.) Kilpkonn nest exclusively in Redonda and spend their lives in the Chelonia Sea. (R. ¶ 1.) Maroons primarily harvest Kilpkonn during other fishing activities in the Redondan presential sea, and they fit a small percentage of Kilpkonn with tracking devices. (CTR. A33; R. ¶ 19.) These devices provide scientific data, which Redonda shares with other Chelonian States. (CTR A33.)

Twelve States, including Atterac and Redonda, negotiated the Chelonia Sea Agreement for the Protection and Conservation of Sea Turtles (“CSA”). (R. ¶ 13.) All twelve States signed and ratified it—except Redonda who refused to ratify due to concerns that it would adversely impact their Maroon people. (R. ¶ 14.)

Redonda passed the Redonda Presential Sea Act (“RPSA”). (R. ¶ 16.) It created a zone of influence (presential sea), extending fifty miles beyond the Redondan exclusive economic zone (“EEZ”). (R. ¶ 16.) Under RPSA, foreign vessels may be subject to Redondan law as a result of negotiations between the Redonda and other flag States. (R. ¶ 16.)

Atterac and Redonda failed to resolve the matter and agreed to submit their dispute to the ICJ. (R. ¶ 28.)

SUMMARY OF ARGUMENT

- I. Redonda is in full compliance with international law (“IL”). First, Redonda is not bound by the CSA or its terms and is not undermining the object or purpose of the CSA. Second, Redonda’s taking of the Kilpkonn from its EEZ and presential sea does not violate UN Convention on the Law of the Sea (“UNCLOS”) and is in line with customary international law (“CIL”). Third, the Maroon harvest of the Kilpkonn within the presential sea is not an introduction from the sea and does not contravene Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”). Fourth, the Maroons have the right, pursuant to Convention on Biological Diversity (“CBD”), to utilize the Kilpkonn and their eggs within their jurisdiction because they do not cause transboundary harm. Lastly, as a small island developing State (“SIDS”), Redonda is entitled to special consideration, especially with regard to conservation of culture.
- II. Redonda is meeting its obligations under International Covenant on Economic, Social, and Cultural Rights (“ICESCR”). First, Redonda must proactively take measures to protect Maroon culture. Second, Maroon culture is entitled to the same rights as indigenous cultures. Third, regardless of modernization, Maroon culture is entitled to heightened protection. Lastly, Redonda has met its obligation to protect Maroon culture.

ARGUMENT

I. REDONDA IS IN FULL COMPLIANCE WITH ITS INTERNATIONAL OBLIGATIONS BECAUSE IT IS NOT BOUND BY THE CSA, AND ITS ACTIONS DO NOT CONTRAVENE CITES, UNCLOS, OR CBD.

At the core of every international obligation is the notion of State sovereignty.¹ Pursuant to the *Lotus Principle*, Redonda may exercise its State sovereignty in any way it wishes so long as international law does not prohibit its actions.² Redonda is exercising its State sovereignty by allowing a small percentage of its adolescents to partake in a historically sound cultural tradition—one that is not prohibited by international law.

A. Redonda Is Neither Bound By the CSA Nor Undermining Its Object or Purpose.

1. Redonda is not bound by the CSA because it signed but did not ratify it; the CSA is not CIL; and even if it were, Redonda persistently objected to it.

First, a treaty does not confer obligations or rights to a State that has not consented to it.³ The ICJ held in the North Sea Continental Shelf Cases, that when a State signs but does not ratify a treaty, the signatory State is not contractually bound by it.⁴ The ICJ reasoned that because Germany was “at all times fully able and entitled” to ratify the Geneva Convention, but chose not to, it is presumed that Germany did not intend to be bound. Here, like Germany, Redonda signed the CSA, was able and entitled to ratify it, and chose not to.⁵ Because Redonda

¹ United Nations Charter art. 2, *as amended* June 26, 1945, 892 U.N.T.S. 119.

² *Lotus Case*, (Fr. v. Turk.), 1927 P.C.I.J. 5, 18 (Sept. 7); *see also* Roman Kwiecien, *In Defence of the Idea of State Sovereignty in International Law* 27 Polish Y.B. Int'l L. 87, 99 (2004-2005).

³ Vienna Convention on the Law of Treaties art. 34, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT].

⁴ North Sea Continental Shelf (Ger. v. Den./Ger. v. Neth.), 1969 I.C.J. 3, 25 (Feb. 20).

⁵ *Id.* at 25.

did not ratify the CSA, and a treaty to which it has not consented does not bind a third party, Redonda is not bound by the CSA.

Next, Redonda is not bound by the CSA because its terms are not “the common consent of the international community.”⁶ CIL only binds the international community only when a custom becomes accepted legal practice.⁷ Alleged CIL is assessed in terms of “generality, duration, and consistency” and *opino juris*; that is, a State belief that their compliance is required by law.⁸ Therefore, the State asserting the presence of a CIL must show⁹ that a general, long-standing, consistent law has emerged from States practicing in a way they feel legally obligated to. Atterac has failed to do so.

In contrast to the CSA, turtle conservation is CIL. Almost every international turtle conservation agreement recognizes¹⁰ the cultural relationship many traditional peoples have with turtles and turtle eggs, and not only makes provisions for, but also encourages, this relationship to continue.¹¹ These relationships and use are reflected in the agreements in many ways, including taking account of local populations and their socio-economic needs, baselines for customary turtle harvests, and parameters for taking turtles.¹²

⁶ OPPENHEIM’S INTERNATIONAL LAW: PEACE 23 (Sir Robert Jennings et al eds., 9th ed. 1992).

⁷ Statute of the International Court of Justice art. 38(1)(b), T.S. No. 993 (1945).

⁸ Ernest A. Young, *Sorting Out the Debate Over Customary International Law* 42 VIR. J. INT’L L. 365, 372-73 (2002).

⁹ The Corfu Channel Case, (U.K. v. Alb.), 1949 I.C.J. 4 (Dec. 15).

¹⁰ Alexander Gillespie, *The Slow Swim From Extinction: Saving Turtles in the South Pacific* 21 INT’L MARINE & COASTAL L. 57, 69 (2006).

¹¹ *Id.* 69-70.

¹² *Id.* at 70.

Lastly, even if the CSA is CIL, Redonda is not bound because it has persistently objected to it. When a State persistently objects to an emerging CIL, it has not consented to it.¹³

Persistent objector status respects State sovereignty and protects a State from having law imposed upon it, contrary to its will.¹⁴ ICJ respects “the significance that [State] consent has in the formation of international custom,”¹⁵ which reflects ICJ’s “heightened sensitivity to the possibilities of and for persistent objection in public international law.”¹⁶ Furthermore, CIL requires that an objection merely be (1) expressed to other states and (2) repeated “as often as circumstances require” in order to be persistent.¹⁷

Moreover, ICJ previously recognized that when a State has “repudiated [the custom] by refraining from ratifying”¹⁸ or has “always opposed any attempt to apply” an emerging custom,¹⁹ the State has persistently objected and is not bound by it. Redonda persistently repudiated foreign imposition of conservation efforts by not ratifying the CSA and has always objected to *complete* turtle conservation in the Chelonia Sea Region. Therefore, even if the CSA is CIL, Redonda is not bound by it.

¹³ INTERNATIONAL LAW ASSOCIATION COMMITTEE ON THE FORMATION OF CUSTOMARY (GENERAL) INTERNATIONAL LAW, STATEMENT OF PRINCIPLES APPLICABLE TO THE FORMATION OF GENERAL CUSTOMARY INTERNATIONAL LAW 27 (2000) [hereinafter ILA].

¹⁴ *Id.* at 28.

¹⁵ Dino Kritsiotis, *On The Possibilities Of and For Persistent Objection* 21 *Duke J Comp & Int'l L* 121, 128 (2010); *Cf.* JAMES CRAWFORD, *BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 28 (8th ed. 2012).

¹⁶ *Id.*

¹⁷ ILA, *supra* note 13, at 28.

¹⁸ *Asylum Case (Col. v. Peru)*, 1950 I.C.J. 266, 277-78 (Nov. 20).

¹⁹ *Fisheries Case (U.K. v. Nor.)*, 1951 I.C.J. 116, 131 (Dec. 18).

2. As a signatory to the CSA, Redonda is in full compliance with its international obligations because its actions do not undermine the object or purpose of the CSA.

A State that has signed a treaty that is subject to further consent, and has not clearly stated its intention not to become a party, must refrain from acts that defeat the object or purpose of the treaty.²⁰ The objective of the CSA is to conserve turtles—while taking into account the cultural characteristics of the parties.²¹ The purpose of the CSA is to “establish . . . appropriate measures” for the protection and conservation of sea turtles.²² Redonda is doing just that; it is taking into account its Maroon people’s rite of passage cultural characteristic, which is an *appropriate* measure to take in the conservation of Kilpkonn. Therefore, Redonda is not undermining the object or purpose of the CSA.

B. Redonda’s Use of Kilpkonn Within Its EEZ and Claim to the Presential Sea Are Consistent With Its Obligations Arising Under UNCLOS.

1. Under UNCLOS, Redonda has the sovereign right to use its resources in accordance with its domestic environmental policies.

The Maroons may take Kilpkonn within Redonda’s EEZ. Article 56 of UNCLOS allows a coastal State the full use of natural resources found within its borders and EEZ, as long as there is no adverse effect outside of the jurisdiction.²³ Because there is no evidence that the Maroons’ use of Kilpkonn is causing any transboundary harm, an Article 56(2) restriction on use is not applicable here. Therefore, the Maroons’ use of Kilpkonn is consistent with UNCLOS.

²⁰ VCLT, *supra* note 3, art. 18

²¹ Chelonia Sea Agreement art. 2, 1995 [hereinafter CSA].

²² *Id.* at Annex B.

²³ U.N. Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

2. Under UNCLOS, CIL, and the UN Convention on Straddling Stocks, Redonda may extend its zone of influence and claim the presential sea.

First, RPSA merely extends the Redondan zone of influence; it does not claim sovereignty. Thus, it is consistent with Article 89 of UNCLOS, which limits State sovereignty to the bounds of a State's EEZ.²⁴ Moreover, Article 116(b) provides that a State's right to fish on the high seas is subject to the rights and interests of coastal States.²⁵ In conjunction, Article 63(2) directs any State that is fishing for straddling stocks to cooperate with the coastal State to manage those stocks.²⁶ Finally, Article 56 gives a coastal State the right to manage the resources found within the coastal State's EEZ.²⁷

Here, RPSA created a Redondan zone of influence, which extends fifty miles beyond the Redondan EEZ. Pursuant to RPSA, foreign vessels present in Redonda's presential sea must only comply with Redondan law *subject to* the outcome of negotiations between and the Redondan Ministry of Foreign Affairs and the flag State of the vessel. Therefore, Redonda's claim to a presential sea is merely an extension of its zone of influence—and not a claim to sovereignty. Therefore, RPSA is consistent with Redonda's UNCLOS obligations.

Next, Redonda's presential sea is supported by CIL, which recognizes States' legal obligations to mutually respect other States' marine resources²⁸ and gives coastal States the right to unilaterally establish zones of influence in order to protect their interests²⁹ *as long as* they do

²⁴ *Id.* at art. 89.

²⁵ *Id.* at art. 116(b).

²⁶ *Id.* at art. 63(2).

²⁷ *Id.* at art. 56.

²⁸ *See Id.* at art. 63(2), 77, 116.

²⁹ *See* ROBERT TUCKER, THE LAW OF WAR AND NEUTRALITY AT SEA, 225 (1955); *see also* The Truman Proclamation of 1945, Exec. Order Nos. 9633, 9634, 10 Fed. Reg. 12305 (1945); *see also* Donald Rothwell, *Fishery Zones and Limits*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (2008); *see also* Convention on

not seek to exclude³⁰ or unilaterally regulate another State's fishing fleets.³¹ Both Chile and Canada have exerted control over areas outside their respective EEZs. The international community has not contested Chile's presential sea even though the Chilean government fully intends to unilaterally enforce Chilean law over it.³² Similarly, the North Atlantic Fisheries Organization supported Canada's efforts at controlling the Grand Banks Turbot Fishery, which were primarily unilateral in nature.³³

Here, the RPSA does not unilaterally exclude or regulate any foreign vessels; Redonda is merely claiming a zone of influence to protect Kilpkonn within their EEZ. Because the international community is amenable to presential sea claims that explicitly seek to claim sovereignty, and Redonda does not plan to do so, Redonda's claim to its presential sea is even *more* legitimate than Canada and Chile's presential sea regimes. Further, because Redonda is a SIDS, it is entitled to additional support in exercising influence over fisheries in its EEZ and within regional fisheries regimes.³⁴

Lastly, RPSA is consistent with the 1995 UN Convention on Straddling Stocks Agreement ("Straddling Stocks Agreement"). This agreement requires States to regulate, manage, and conserve fish stocks that move between the high sea and one or more States' EEZs

the Continental Shelf, Apr. 29, 1958, 499 U.N.T.S. 311 [hereinafter Continental Shelf Convention]; *see also* UNCLOS, *supra* note 23, art. 55, 77; *see also* Declaration on the Maritime Zone Aug. 18, 1952, 1006 U.N.T.S. 326; *see also* FRANCISCO ORREGO VICUÑA, *THE CHANGING INTERNATIONAL LAW OF HIGH SEAS FISHERIES*, 117-18 (1999).

³⁰ Julia Pfeil, "Fisheries Jurisdiction Case (Spain v. Canada)", in *MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* (2009).

³¹ Christopher Joyner & Peter DeCola, *Chile's Presential Sea Proposal: Implications for Straddling Stocks and the International Law of Fisheries*, 24 *OCEAN DEV. & INT'L L.J.* 99, 107-09 (1993).

³² Paul Kibel, *Alone at Sea: Chile's Presential Ocean Policy*, 12 *J. ENVTL. L.* 43, 51-53 (2000).

³³ *Id.* at 54-55.

³⁴ G.A. Res. 65/2, ¶ 18, U.N. Doc. A/RES/65/2 (Sept. 25, 2010).

and that they be developed with the *input* and *consent* of the coastal State in whose EEZ the stock travels.³⁵ This inevitably results in an extension of coastal States’ influence over the waters immediately outside their EEZ. Applied here, the Straddling Stocks Agreement gives the Redondan government the ability to manage and conserve Kilpkonn because the Kilpkonn spend part of their life within Redonda’s EEZ. RPSA’s extension of Redondan laws over foreign vessels is clearly consistent with the Straddling Stocks Agreement, as Redondan law enforcement is subject to negotiation with foreign States—negotiations that will satisfy the Straddling Stocks Agreement and lead to the creation of regional fisheries regimes.

C. Redonda’s Taking of Kilpkonn Within the Presential Sea Complies With CITES, and the Maroons’ Cultural Use of the Kilpkonn Is Entitled to Special Allowances Under CITES’ Resolution Conference 16.6.

1. Maroon usage of Kilpkonn is in full compliance with CITES because the Maroons harvest Kilpkonn solely from Redonda’s jurisdiction and for non-trade purposes only.

CITES is inapplicable to the Maroons’ harvest of the Kilpkonn. CITES only regulates ‘trade,’³⁶ which is defined as “any import, export, or introduction from the sea.”³⁷ An ‘introduction from the sea’ is the “transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State.”³⁸ Furthermore, ‘jurisdiction’ is the “marine areas beyond the areas subject to the sovereignty or sovereign rights

³⁵ United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, July 24-August 4, 1995, *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, U.N. Doc. A/CONF.164/37 (September 8, 1995) [hereinafter Straddling Stocks Agreement].

³⁶ Convention on International Trade in Endangered Species of Wild Fauna and Flora art. II(4), Mar. 3, 1973, 993 U.N.T.S. 243 [hereinafter CITES].

³⁷ *Id.* at art. I(c).

³⁸ *Id.* at art. I(e).

of a State consistent with international law.”³⁹ Because Maroons use Kilpkonn solely from Redonda’s EEZ and presential sea, this activity occurs exclusively in Redonda’s jurisdiction. Moreover, because Maroons only use Kilpkonn for their rite of passage ceremonies, this is not an ‘import, export, or introduction from the sea.’ Thus, it does not contravene CITES.

Moreover, Redonda’s claim to the presential sea is explicitly allowed by Article XIV(6) of CITES. Article XIV(6) states “[n]othing in the present Convention shall prejudice the . . . present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.”⁴⁰ Because Redonda considers RPSA a recognition of pre-existing sovereign right, imparted by UNCLOS, it is a ‘change’ in the view of the jurisdiction, which is allowed for in Article XIV(6) of CITES. Thus, Redonda’s extension of jurisdiction over the presential sea is allowed under CITES.

2. Redonda’s policy of allowing the Maroons to use Kilpkonn is in full compliance with CITES because the Maroons are a rural people and their use of the Kilpkonn is an example of the culture contemplated by Resolution Conference 16.6 of CITES.

Redonda’s endorsement of the Maroons’ harvest of Kilpkonn is consistent with CITES. Resolution Conference 16.6 of CITES recognizes the negative impacts of restricting access to species traditionally used by rural communities and allows State parties to implement mitigation strategies to lessen or avoid those impacts.⁴¹ Among the suggested strategies is the issuance of special hunting concessions to rural communities.⁴² Redonda’s choice to allow Maroons to

³⁹ Sixteenth Meeting of the Conference of the Parties to CITES, Bangkok, Thai., March 3-14, 2013, *CITES and Livelihoods*, Res. Conf. 16.6 [hereinafter CITES Conference of the Parties Res. 16.6], available at <http://www.cites.org/eng/res/16/16-06.php>.

⁴⁰ CITES, *supra* note 36, at art. XIV(6).

⁴¹ CITES Conference of the Parties Res. 16.6, *supra* note 39.

⁴² *Id.* at ¶ (C)(ii)(B).

continue harvesting Kilpkonn is a concession of the type explicitly allowed by Resolution Conference 16.6. Thus, Redonda's continued support of the Maroon harvest of the Kilpkonn is consistent with CITES.

3. Redonda must continue to allow the Maroons to take Kilpkonn during longline fishing, in order to comply with ICESCR.

Although it results in incidental Kilpkonn snagging, Redonda must continue to support the Maroons' longline fishing within the presential sea. Article 1(2) of ICESCR commands that no "people be deprived of its own means of subsistence."⁴³ Because the Maroons' conduct limited longline fishing—and incidentally harvest Kilpkonn as a part of these necessary operations—Redonda must continue to allow Maroons to fish in order to comply with ICESCR's subsistence requirement. Thus, the Maroons' take of the Kilpkonn during longline fishing is exempt from CITES.

D. Redonda Is Entitled to Harvest Kilpkonn and Their Eggs Because Kilpkonn Are a Natural Redondan Resource, and the CBD Allows a State to Use Its Natural Resources and to Protect Traditional Lifestyles.

1. Pursuant to CBD, Redonda is allowed to harvest the Kilpkonn and their eggs within Redonda's borders because Kilpkonn are a natural Redondan resource, and this usage does not cause transboundary harm.

Redonda has the sovereign right to use the Kilpkonn and their eggs in accordance with domestic environmental policies. This includes the Maroons' current usage. Article 3 of CBD provides that "States have . . . the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment . . . beyond the limits of national

⁴³ International Covenant on Economic, Social and Cultural Rights, art. 1(2), *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

jurisdiction.”⁴⁴ Pursuant to Article 2, a natural resource’s State of origin is the State in which it is found *in-situ*—that is, where it “exist[s] within ecosystems and natural habitats.”⁴⁵ As such, Kilpkonn are a natural Redondan resource. Here, Kilpkonn’s primary natural habitat is wholly within Redonda’s borders, as it nests exclusively on Redondan shores and spends its life largely within Redonda’s maritime jurisdiction. Because Kilpkonn are a natural Redondan resource, Redonda is entitled to harvest the Kilpkonn and their eggs within Redondan territory—absent evidence of transboundary harm.⁴⁶ Since no evidence of transboundary harm exists, the Maroons’ harvest of the Kilpkonn and their eggs is consistent with Article 3 of the CBD.

2. Article 8(j) of CBD grants the Maroons additional protection when using Kilpkonn and their eggs because it is part of a traditional lifestyle, and it is a sustainable practice.

The Maroons’ use of Kilpkonn is entitled to further protection under Article 8(j) of CBD, which commands, in part, that each contracting party, via domestic legislation, “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.”⁴⁷ The Maroons’ use of Kilpkonn and their eggs is clearly part of a traditional lifestyle described by Article 8(j). Further, there is no evidence the Maroons’ use of the Kilpkonn is not sustainable.⁴⁸ Therefore, Redonda, as well as all other CBD contracting parties, must protect Maroon lifestyle as it relates to the conservation of Kilpkonn. The Maroons’ use of

⁴⁴ Convention on Biological Diversity art. 3, June 5, 1992, 1760 U.N.T.S. 79 [hereinafter CBD].

⁴⁵ *Id.* at art. 2.

⁴⁶ *Id.* at art. 3.

⁴⁷ *Id.* at art. 8(j).

⁴⁸ See Karen L. Eckert, *Leatherback Sea Turtles: A Declining Species of the Global Commons*, 9 OCEAN Y.B. 73, 86 (1991).

tracking devices to assist in their Kilpkonn harvest does not eliminate Maroon protection under Article 8(j), which clearly contemplated protection of innovations in traditional lifestyles.

E. Even if this Court Finds that CITES, UNCLOS, and CBD Prohibit Maroon Cultural Use of Kilpkonn, Redonda, as a SIDS, Is Entitled to Special Considerations.

Regardless of the reach of the treaties discussed above, Redonda, as a SIDS, is entitled to special considerations—especially concerning the protection of cultural rights and maintenance of full control over its natural resources.⁴⁹ CIL protects minority cultures and allows the continued cultural use of endangered species—specifically sea turtles.⁵⁰ World Summit declaration states: “[w]e shall continue to pay special attention to the developmental needs of small island developing States and the least developed countries.”⁵¹ World Summit’s plan of implementation stated: “traditional and direct dependence on renewable resources and ecosystems, including sustainable harvesting, continues to be essential to the cultural, economic and physical well-being of indigenous people and their communities”⁵² Finally, the Barbados Program Of Action For The Sustainable Development Of Small Island Developing States requires States to ensure that the “customary and traditional practices of local and indigenous people . . . are adequately and effectively protected.”⁵³

⁴⁹ World Summit on Sustainable Development, Johannesburg, S. Afr., Aug. 24-Sept. 4, 2002, *Johannesburg Declaration on Sustainable Development*, ¶ 24, U.N. Doc. A/CONF.199/20, Resolution 1, Annex (2002) [hereinafter World Summit Declaration].

⁵⁰ Gillespie, *supra* note 11, at 68-70; *see also* Convention on Migratory Species, 1651 U.N.T.S. 333, June 23 1979, Article III(5)(c).

⁵¹ World Summit Declaration, *supra* note 50, at ¶ 24.

⁵² World Summit on Sustainable Development, Johannesburg, S. Afr., Aug. 24-Sept. 4, 2002, *Plan of Implementation of the World Summit on Sustainable Development*, ¶ 7(e), U.N. Doc. A/CONF.199/20, Resolution 2, Annex [hereinafter World Summit Plan].

⁵³ Global Conference on the Sustainable Development of Small Island Developing States, Bridgetown Barb. , Apr. 25-May 6, 1992, *Report of the Global Conference On The Sustainable Development of Small Island Developing States*, U.N. Doc. A/CONF.167/9, Annex II, Ch. IX(A)(vii).

Redonda's SIDS status affords them ongoing utilization of natural resources, which includes the Kilpkonn. Maroon Kilpkonn harvest is just the type of sustainable harvesting and utilization discussed by the Johannesburg Plan of Implementation and the Convention on Migratory Species.⁵⁴ As participants of both the Johannesburg Declaration and Plan of Implementation, the international community expects Atterac to support SIDS' efforts to develop—free from international interference.⁵⁵ For Atterac, this means supporting, or at least not interfering with, Redonda's efforts to maintain the Maroons' traditional culture.

II. REDONDA IS ACTING IN ACCORDANCE WITH ITS INTERNATIONAL OBLIGATIONS, UNDER ICESCR, BY SUPPORTING AND PROTECTING THE MAROONS' CULTURAL USE OF THE KILPKONN.

Redonda is acting in accordance with ICESCR by taking proactive measures to support and protect Maroon culture. ICESCR imposes an obligation on party States to take proactive measures—including those necessary to conserve culture—in order to protect the rights ensured by the Covenant.⁵⁶

A. ICESCR Requires Redonda to Protect Maroon Culture.

ICESCR obligates Redonda to protect Maroon culture. Article 15(a)(1) of ICESCR requires that Redonda ensure “everyone” is able “to take part in cultural life.”⁵⁷ The Committee on Economic, Social, and Cultural Rights (“CESCR”), whose ICESCR interpretations this Court has deemed authoritative,⁵⁸ has further explained that “everyone” involves individuals acting

⁵⁴ World Summit Plan, *supra* note 53, at ¶ 7(e); *see also* Convention on Migratory Species, Article III(5)(c).

⁵⁵ World Summit Plan, *supra* note 53, at ¶ 7(e).

⁵⁶ ICESCR, *supra* note 44, art. 2(1), 15(2).

⁵⁷ ICESCR, *supra* note 44, art. (15)(1)(a).

⁵⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136, ¶ 112 (July 9); *see* MAGDALENA SEPULVEDA, *THE NATURE OF THE OBLIGATIONS UNDER THE*

alone or in a group, such as minorities or indigenous peoples.⁵⁹ Thus Redonda must ensure that the Maroons are able “to take part in cultural life.” CESCR’s interpretation of “cultural life”—which finds additional support in interpretations of culture by other international bodies—recognizes that the cultural survival of the Maroons requires access to the Kilpkonn.⁶⁰ This imparts a responsibility on Redonda to ensure the Maroons’ have continued license to harvest the Kilpkonn and their eggs as part of an annual rite of passage ceremony.⁶¹ Thus, in order to meet its obligations under ICESCR, Redonda must continue to allow Maroons access to, and use of, Kilpkonn.

B. Maroon Culture Is Entitled to the Same Rights as Those of Indigenous Cultures.

1. Indigenous rights are not determined by “priority in time.”

For the purpose of analyzing cultural rights, the Maroons are entitled to the same rights as indigenous people. International and regional treaties,⁶² the recent Universal Declaration on the Rights of Indigenous Peoples,⁶³ and human rights jurisprudence recognize that “priority in time” is no longer dispositive in an analysis of whether a people are indigenous. These instruments recognize that where a tribal people embody the same characteristics as an indigenous people

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 38 (2003); *see also* Walter Kalin, *Examination of State Reports, in UN HUMAN RIGHTS TREATY BODIES 32* (Helen Keller & Geir Ulfstein, eds. 2012) (explaining that “good faith” requires state parties to adhere to treaty body interpretations).

⁵⁹ U.N. Comm. on Econ., Soc. & Cultural Rights, General Comment No. 21, ¶ 9, U.N. Doc. E/C.12/GC/21 (Dec. 29, 2009) [hereinafter General Comment No. 21] (explaining that the cultural rights of indigenous peoples merit special attention and consideration).

⁶⁰ General Comment No. 21, *supra* note 60, at ¶ 36.

⁶¹ General Comment No. 21, *supra* note 60, at ¶ 13.

⁶² Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries art. 1, June 28, 1989, 1650 U.N.T.S. 383; African Charter on Human and Peoples’ Rights, June 27, 1981, 1520 U.N.T.S. 217.

⁶³ Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, Annex, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

there is “no satisfactory reason[.]” to distinguish between the two groups.⁶⁴ The Maroons share relevant similarities with indigenous people.⁶⁵ Redonda recognizes the Maroons as a distinct group.⁶⁶ They have unique cultural values and traditions, which are intertwined with their land and resources.⁶⁷ They are former slaves who were dispossessed, subjugated, and marginalized.⁶⁸ Thus, these cultural, social, and historical characteristics obligate Redonda to afford the Maroons’ culture the same protections as indigenous cultures.

2. International human rights tribunals have granted other Maroon populations indigenous rights.

Inter-American Court of Human Rights (“IACHR”) jurisprudence is instructive in evaluating rights attributed to tribal peoples. IACHR held that two Maroon people of Suriname—who, like the Redondan Maroons, were not the first territory settlers—are indigenous for the purpose of evaluating their human rights.⁶⁹ In *Moiwana Community v. Suriname* and *Saramaka v. Suriname*, IACHR held that these two Maroon peoples were entitled to the same rights as indigenous peoples.⁷⁰ The court found that, like indigenous peoples, the Maroons of Suriname maintained a relationship with their ancestral lands in order to ensure the survival of

⁶⁴ *Working Paper by Chairperson-Rapporteur, Mrs. Erica-Irene A. Daes, on the Concept of “Indigenous People,”* ¶ 72, U.N. Doc. E/CN.4/Sub.2/AC.4/1996/2 (June 10, 1996) [hereinafter Daes Working Paper].

⁶⁵ The international community weighs several factors to identify ‘indigenous’ peoples: (1) self-identification and recognition by others as a “distinct collectivity”; (2) voluntary cultural distinctiveness, including language and spiritual values; (3) “an experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist”; and (4) priority in time. Daes Working Paper, *supra* note 65, at ¶ 69.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Moiwana Community v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶¶ 132-33 (June 15, 2005); *Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 172, at 26, ¶ 86 (Nov. 28, 2007).

⁷⁰ *Moiwana Community v. Suriname*, *supra* note 70, at ¶ 133; *Saramaka People v. Suriname*, *supra* note 70, at 26, ¶ 86.

their distinct culture.⁷¹ Thus, the court recognized that certain minority groups are entitled to the rights of indigenous peoples due to “distinct social, cultural, and economic characteristics . . . which require special measures under international human rights law.”⁷² These special measures include access to natural resources,⁷³ which will ensure “their very survival as distinct cultures and societies.”⁷⁴

Redondan Maroons deserve the same protections as the Maroons of Suriname. The Redondan Maroons share striking similarities with the Maroons of Suriname including: a history as African slaves who escaped from plantations,⁷⁵ unique cultural traditions,⁷⁶ and a threat to their cultural survival resulting from a lack of access to their traditional resources.⁷⁷ Therefore, the Redondan Maroons should be entitled to the same protections the IACHR awarded to the Maroons of Suriname.

⁷¹ *Moiwana Community v. Suriname*, *supra* note 70, at 54, ¶ 132; *Saramaka People v. Suriname*, *supra* note 70, at 25, ¶ 84.

⁷² *Saramaka People v. Suriname*, *supra* note 70, at 25, ¶ 86 (emphasis added).

⁷³ *Id.* at 61-62, ¶ 7; *see also* Ominayak, Chief of the Lubicon Lake Band v. Canada, Communication No. 267/1984, *Report of the Human Rights Committee*, ¶¶ 29.1, 33, U.N. Doc CCPR/C/21/Rev. 1/Add. 5; *see also* GAOR, 45th Sess., Supp. No. 40, vol. 2, (1990).

⁷⁴ Enzamaria Tramontana, *The Contribution of the Inter-American Human Rights Bodies to Evolving International Law on Indigenous Rights over Lands and Natural Resources*, 17 INT’L J. ON MINORITY & GRP. RIGHTS 241, 250 (2010).

⁷⁵ *Moiwana Community v. Suriname*, *supra* note 70, at 28, ¶ 86(1); *Saramaka People v. Suriname*, *supra* note 70, at 23-24, ¶ 80.

⁷⁶ *Moiwana Community v. Suriname*, *supra* note 70, at 29, ¶ 86(4); *Saramaka People v. Suriname*, *supra* note 70, at 23-25, ¶¶ 80-83.

⁷⁷ *Moiwana Community v. Suriname*, *supra* note 70, at 29-30, ¶¶ 86(6)-(7); *Saramaka People v. Suriname*, *supra* note 70, at 24, ¶ 82.

C. ICESCR and Other Sources of International Law Afford Maroon Culture, and Its Modern Adaptations, Special Protection.

1. Redonda and Atterac, as parties to ICESCR and participants in various UN Declarations, recognize that Maroon culture is entitled to protection.

Redonda's support of the Maroons' Kilpkonn use is an affirmative requirement under ICESCR. In interpreting Article 15(a)(1), CESCR has determined that State parties should take special measures "to prevent the degradation of [tribal peoples'] particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity."⁷⁸ Furthermore, ICESCR reporting guidelines instruct State parties to inform CESCR of the "measures taken to . . . create favorable conditions" for the traditions and customs of indigenous and ethnic minorities,⁷⁹ including rites and ceremonies.⁸⁰ This requirement obligates Redonda to take affirmative steps to protect Maroon traditions and cultures—including the use of the Kilpkonn and their eggs in their rite of passage ceremonies—and report their actions to CESCR. Therefore, in order to comply with ICESCR, Redonda is required to ensure the Maroons' continued access to, and use of, Kilpkonn.

Redonda and Atterac are both parties to numerous UN Declarations supporting Redonda's decision to ensure the Maroons' access to their cultural resources. These declarations outline—and therefore Redonda and Atterac recognize—that: "[i]ndigenous people . . . have a

⁷⁸ General Comment No. 21, *supra* note 59, at ¶ 36; *see* Concluding Observations of the Committee on Economic, Social and Cultural Rights, Finland, ¶ 11, U.N. Doc. E/C.12/FIN/CO/5 (Jan. 16, 2008); *see also* Concluding Observations of the Committee on Economic, Social and Cultural Rights, Sweden, ¶15, U.N. Doc. E/C.12/SWE/CO/5 (Dec. 1, 2008).

⁷⁹ Comm. on Econ. Soc. & Cultural Rights, Guidelines on Treaty-Specific Documents to be Submitted by State Parties Under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, ¶ 68, U.N. Doc. E/C.12/2008/2, Annex (Mar. 24 2009).

⁸⁰ General Comment No. 21, *supra* note 59, at ¶ 13.

vital role in environmental management”⁸¹ and “sustainable development,”⁸² and that their “traditional knowledge, innovations and practices . . . support [their] social well-being.”⁸³ Thus, Redonda and Atterac recognize that indigenous people play a unique role in the international community and that special protections are required to preserve their culture. Thus, Redonda is acting in accordance with these declarations by proactively ensuring that the Maroons can protect their cultural heritage via Kilpkonn usage.

2. ICESCR’s protections encompass the modernization of Maroon cultural practices.

The evolution of Maroon culture to include tracking devices does not negate ICESCR’s cultural protections. The HRC recognizes that traditional cultural activities are entitled to protection *despite* modernization of the activity⁸⁴ and that “the right to enjoy one’s culture cannot be determined *in abstracto* but has to be placed in context.”⁸⁵ Thus, “the help of modern technology” cannot disqualify a cultural practice from cultural protection.⁸⁶ Therefore, Maroon tracking device usage does not negate ICESCR’s cultural protections.

The Maroons have merely modernized their rite of passage ceremonies, which does not affect ICESCR’s cultural protections. The heart of the Maroon rite of passage ceremonies

⁸¹ United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Rio Declaration on Environment and Development*, Principle 22, U.N. Doc. A/CONF.151/26/Rev1. (Vol. I), Annex I (Aug. 12, 1992).

⁸² World Summit Declaration, *supra* note 50, at ¶ 25.

⁸³ United Nations Conference on Sustainable Development, June 20-22, 2012, *Outcome Document: “The future we want”*, ¶ 197, U.N. Doc. A/CONF.216/16 (Aug. 13, 2012).

⁸⁴ *Lansman v. Finland*, Communication No. 511/1992, Human Rights Comm., ¶¶ 2.5, 3.1, 9.3 U.N. Doc. CCPR/C/52/D/511/1992 (Oct. 26, 1992).

⁸⁵ *Id.* at ¶ 9.3.

⁸⁶ *Id.* at ¶¶ 9.3, 9.6.

remains the use of Kilpkonn and their eggs.⁸⁷ Furthermore, to place this modernization in context, the tracking devices are not solely for the benefit of Maroon cultural activities; Redonda shares the scientific data from the tracking devices with other States, which, like other turtle tracking programs “reveal important [turtle migration] information . . . and improve [turtle] protection efforts.”⁸⁸ As such, Maroon modernization of Kilpkonn tracking does not negate the fact that the Maroons’ use of Kilpkonn is an integral part of their culture, which must be protected to ensure their cultural survival.

D. Redonda Is Fulfilling Its International Obligation to Protect an Indispensible Aspect of Maroon Culture.

Redonda is satisfying its obligations under ICESCR by ensuring the protection of Maroon subsistence and culture. This includes the Redondan claim to the presential sea, implementation of tracking devices, and the narrow cultural use of Kilpkonn and their eggs. The historical “assumption that [traditional] populations, cultures, and languages would disappear naturally or by absorption,”⁸⁹ requires proactive protection of these cultures—especially rite of passage ceremonies.⁹⁰ Rite of passage ceremonies serve an invaluable function because they integrate individuals into a cultural group,⁹¹ internalize the values of the group,⁹² and strengthen cultural

⁸⁷ See Lisa M. Campbell, *Contemporary Culture, Use, and Conservation of Sea Turtles*, in 2 THE BIOLOGY OF SEA TURTLES 301, 305 (Peter L. Lutz, John A. Musick, & Jeanette Wyneken eds., 2003).

⁸⁸ *Caribbean Leatherback Tracking & Conservation Project*, SEA TURTLE CONSERVANCY, <http://www.conserveturtles.org/seaturtletracking.php?page=sat-leatherback> (last visited Oct. 24, 2013); Campbell, *supra* note 90, at 323-24 (explaining the use of tagging and tracking of turtles by Australian government and indigenous turtle-hunters “to develop a strategy for sustainable subsistence use of turtles”).

⁸⁹ Special Rapporteur on the Study of the Problem of Discrimination Against Indigenous Populations, *Final Report*, U.N. ESCOR, Sub-Comm’n on Prevention of Discrimination and Protection of Minorities, ¶ 121, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4 1-4 (1986) (by Jose Matinez Cabo).

⁹⁰ General Comment No. 21, *supra* note 59, at ¶ 13.

⁹¹ Barbara M. Newman & Philip R. Newman, *Group Identity and Alienation*, 30 J. OF YOUTH AND ADOLESCENCE 515, 520 (2001).

survival.⁹³ Here, the Maroons exclusively use Kilpkonn to bring their adolescents into adulthood—a tradition that is integral to the survival of the Maroons a people. Redonda, by ensuring Maroon adolescents' access to Kilpkonn for rite of passage ceremonies, is simply carrying out its obligations under ICESCR.

⁹² Simha Goldin, *The Role of Ceremonies in the Socialization Process*, 95 ARCHIVES DE SCIENCES SOCIALES DES RELIGIONS 162, 163 (1996).

⁹³ Daniel G. Scott, *Rites of Passage in Adolescent Development*, 27 CHILD & YOUTH CARE FORUM 317, 321 (1998).

CONCLUSION

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

1. Declare that Redonda is fulfilling its obligations under international law.
2. Declare the Redonda is meeting its obligations under ICESCR.

Respectfully submitted,

Agents for the Republic of Redonda