

**Questions Relating to
Protected Areas and Armed Conflict
(Federal States of Anhur v. Republic of Rongo)**

RECORD
**Twenty-Sixth Annual
Stetson International Environmental
Moot Court Competition
2021–2022**



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NOTIFICATION, DATED 30 JULY 2021, ADDRESSED TO
THE MINISTER OF FOREIGN AFFAIRS OF THE FEDERAL STATES OF ANHUR
AND
THE MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF RONGO

The Hague, 30 July 2021.

On behalf of the International Court of Justice, and in accordance with Article 26 of the Rules of Court, I have the honor to acknowledge receipt of the joint notification dated 23 July 2021. I have the further honor to inform you that the case of Questions Relating to Protected Areas and Armed Conflict (Federal States of Anhur v. Republic of Rongo) has been entered as 2021 General List No. 303. The written proceedings shall consist of memorials to be submitted to the Court by 12 November 2021. Oral proceedings are scheduled for 7–9 April 2022.

/s/

Registrar
International Court of Justice

JOINT NOTIFICATION, DATED 23 JULY 2021, ADDRESSED TO
THE REGISTRAR OF THE COURT

The Hague, 23 July 2021.

On behalf of the Federal States of Anhur and the Republic of Rongo, and in accordance with Article 40, paragraph 1 of the Statute of the International Court of Justice, we have the honor to transmit to you an original copy of the English texts of the Special Agreement Between the Federal States of Anhur and the Republic of Rongo for Submission to the International Court of Justice of Differences Between Them Concerning Questions Relating to Protected Areas and Armed Conflict, signed at Panama City, Panama on 16 June 2021.

For the Federal States of Anhur:

/s/

Pam A. Ratriliy
Minister of Foreign Affairs

For the Republic of Rongo:

/s/

Art L. Leiry
Minister of Foreign Affairs

SPECIAL AGREEMENT
BETWEEN
THE FEDERAL STATES OF ANHUR
AND
THE REPUBLIC OF RONGO
FOR SUBMISSION TO THE
INTERNATIONAL COURT OF JUSTICE
OF DIFFERENCES BETWEEN THEM CONCERNING
QUESTIONS RELATING TO
PROTECTED AREAS AND ARMED CONFLICT

The Federal States of Anhur and the Republic of Rongo,

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

Observing that recent armed conflicts have negatively impacted relations between the Federal States of Anhur and the Republic of Rongo,

Noting that the Federal States of Anhur and the Republic of Rongo disagree as to the status and sovereignty of Kemp Key,

Recognizing that differences have arisen between the Federal States of Anhur and the Republic of Rongo concerning the Menhit Wetland Complex and the Scute Coastal Wetland,

Acknowledging that the Federal States of Anhur and the Republic of Rongo have been unable to settle their differences through negotiation,

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

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

Have agreed as follows:

Article I

The Federal States of Anhur and the Republic of Rongo, hereinafter referred to as “the Parties,” shall submit the questions contained in Annex A of this Special Agreement to the Court pursuant to Article 40, paragraph 1 of the Statute of the International Court of Justice. The Parties agree that the Court has jurisdiction to decide this matter and that they will not dispute the Court’s jurisdiction in the written or oral proceedings.

Article II

1. The Parties shall request the Court to decide this matter on the basis of the rules and principles of general international law, as well as any applicable treaties.
2. The Parties also shall request the Court to decide this matter based on the Agreed Statement of Facts, attached as Annex A, which is an integral part of this Agreement.
3. The Parties also shall request the Court to determine the legal consequences, including the rights and obligations of the Parties, arising from any judgment on the questions presented in this matter.

Article III

1. The proceedings shall consist of written pleadings and oral arguments.
2. The written pleadings shall consist of memorials to be submitted simultaneously to the Court by the Parties.
3. The written pleadings shall be consistent with the Rules for the 2021–2022 Stetson International Environmental Moot Court Competition (International Finals).
4. No changes may be made to any written pleading once it has been submitted to a national or regional round. A written pleading submitted to the International Finals must be an exact copy of the written pleading submitted to the national or regional round.

Article IV

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

Article V

This Special Agreement shall enter into force upon signature.

DONE at Panama City, Panama, this 16th day of June 2021, in two copies, each in the English language, and each being equally authentic.

For the Federal States of Anhur:

/s/ _____
Pam A. Ratrily
Minister of Foreign Affairs

For the Republic of Rongo:

/s/ _____
Art L. Leiry
Minister of Foreign Affairs

ANNEX A

1. Anhur and Rongo are neighboring sovereign states located on Caretta, which is an island in the Caribbean Sea. Anhur and Rongo are the only states on Caretta.
2. Caretta was subject to colonial rule by a European country beginning in the early 1500s and was governed by a series of viceroys. During this colonial period, Caretta was divided into two administrative units, Anhur to the east and Rongo to the west. The border was based largely on geographical features (e.g., a river) and did not take into account the background of the people living in the territory.
3. During this colonial period, Kemp Key, a smaller island to the south of Caretta, was assigned to be part of Anhur. Although the majority of Kemp Key residents were and continue to be of Rongoan heritage and speak Rongoa (now one of the official languages of Rongo along with English), the viceroy based this decision on Kemp Key's proximity to Anhur.
4. In 1898, Anhur and Rongo achieved independence from the colonial power and became part of a federal union, the Union of Carettan States (UCS). The UCS peacefully dissolved in 1985. An agreement between Anhur and Rongo retained the border established during the colonial period. The agreement stated that Anhur had sovereignty over Kemp Key but recognized that the people of Kemp Key had the right of self-determination. A map of the region is provided in Annex B.
5. Anhur and Rongo are Members of the United Nations and are Parties to the Statute of the International Court of Justice.
6. Anhur and Rongo are Parties to the Vienna Convention on the Law of Treaties.
7. Anhur and Rongo are Contracting Parties to the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention). Anhur acceded to the Ramsar Convention in 1987, and Rongo acceded in 1986.
8. Anhur and Rongo are States Parties to the Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention). Anhur and Rongo acceded to the World Heritage Convention in 1987.
9. Anhur and Rongo are Parties to the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC). Anhur and Rongo acceded to the IAC in 2003.
10. Anhur and Rongo are Parties to the Convention on Biological Diversity (CBD). Anhur and Rongo ratified the CBD in 1993, becoming Parties to the CBD in the same year.
11. Anhur and Rongo are States Parties to the 1949 Geneva Conventions (since 1985) but are not States Parties to the 1977 Additional Protocols I and II to the 1949 Geneva Conventions.

12. High-level representatives from the UCS attended and fully participated in the 1972 United Nations Conference on the Human Environment at Stockholm.
13. High-level representatives from Anhur and Rongo attended and fully participated in the 1992 United Nations Conference on Environment and Development at Rio de Janeiro; the 2002 World Summit on Sustainable Development at Johannesburg; and the 2012 Rio+20 Conference at Rio de Janeiro. Anhur and Rongo were part of the consensus of any documents adopted at these conferences.
14. When acceding to the Ramsar Convention in 1986, Rongo designated the Menhit Wetland Complex in Rongo as a Wetland of International Importance (Ramsar Site). The Menhit Wetland Complex is located in northern Caretta on the border with Anhur. The Ramsar Site Information Sheet, which was last updated in 2013, reported that the Menhit Wetland Complex met all nine criteria for listing as a Wetland of International Importance and described the Site as follows:

A vast area of undisturbed peat swamp forest (125,000ha) and freshwater swamp forest (25,000ha), the Site was formerly inhabited by a small group of indigenous people. Typically, the forests are inundated for most of the year. The Site supports more than 150 tree species and over 34 species of fish, and is an important area for migratory birds. Three endangered species of birds and eight species of notable mammals are found here.

15. When Rongo designated the Menhit Wetland Complex as a Ramsar Site, it also declared the area a national park. Under Rongo's domestic legislation, the people who lived within the Site's boundaries were relocated and now live outside the Site. Rongo also listed the Menhit Wetland Complex on its WHC Tentative List in 2015 (using the same boundaries as the Ramsar Site designation), but the Site has not been nominated for inclusion on the World Heritage List.
16. Extended drought since 2014, likely attributable to or exacerbated by global climate change, has adversely affected the ecological character of the Menhit Wetland Complex. Rongo has not submitted an Article 3.2 report to inform the Ramsar Secretariat about this change in ecological character.
17. When acceding to the Ramsar Convention in 1987, Anhur designated one Ramsar Site, the Scute Coastal Wetland, which is located on Kemp Key. The Ramsar Site Information Sheet, which was last updated in 2019, reported that the Scute Coastal Wetland met criteria 1–4 and 9 for listing as a Wetland of International Importance and described the Site as follows:

The Scute Coastal Wetland, which encompasses 2800 hectares, includes coastal and inland wetlands, such as beaches, marshes, salty and freshwater lagoons, and mangroves. Because of its various habitats, the Site has high biological value as it sustains an ample diversity of flora and fauna. In particular, the area is an important nesting site for sea turtles, especially

the critically endangered Royal ridley (Lepidochelys royalis).¹ The beach area is the world's largest nesting site for the Royal ridley, and it is estimated that annually approximately 35% of the nests from the global Royal ridley population are located in the beach area. The Site also provides livelihoods for the local community. Among its main threats, the Scute Coastal Wetland faces inappropriate agricultural practices, subsistence hunting, overexploitation of marine resources, and development pressures.

18. The Royal ridleys that hatch in Kemp Key also spend part of their life cycle in Anhur's territorial waters off the coast of Caretta.
19. After national parliamentary elections in Anhur in 2019, civil disturbances occurred in Anhur's northeastern province, fomented by a paramilitary arm (an organized armed group) of the Anhuri New Party (ANP), a political party that lost all its seats in the election. Anhur's Prime Minister deployed the Anhuri military to quell the disturbances. Approximately 50 members of the ANP's organized armed group, known as the Anhuri New Party Freedom Fighters (ANP-FF), crossed the border into Rongo and set up camp in the Menhit Wetland Complex. Neither Anhur nor Rongo provided any support to the ANP-FF at any time.
20. In early November 2019, the ANP-FF launched attacks with armed drones on the territory of Anhur from the Menhit Wetland Complex. The drone attacks killed several Anhuri citizens and damaged two residential buildings and one government building. In response, on 6 November 2019, Anhur employed unarmed drones to locate the ANP-FF's camp and fired approximately 200 high explosive artillery rounds at the camp. Most of the ANP-FF's members at the camp were killed or injured.
21. Anhur's artillery rounds sparked a fire that, because of the drought conditions, ultimately burned 80,000 hectares of the peat swamp in the Menhit Wetland Complex, resulting in the loss of trees and vegetation, soil, and wildlife.
22. The Government of Rongo strongly condemned the military action and reserved the right to demand compensation once the full extent of the damage to the Menhit Wetland Complex was determined.
23. On 2 February 2020, a démarche was delivered from the Government of Rongo to the Government of Anhur that stated in part:

The artillery attack on the territory of Rongo—with no advance warning—was a gross violation of our national sovereignty and a fundamental breach of international law. Furthermore, the damage to the Menhit Wetland

¹ The Royal ridley shares many of the same characteristics of the Kemp's Ridley Turtle (*Lepidochelys kempii*).

Complex is a violation of international humanitarian law.² The environment must be taken into account during armed conflict, which the International Court of Justice (ICJ) recognized in its 1996 Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*. The Government of Anhur failed to give due regard for the natural environment during military operations, and this failure has resulted in widespread, long-term, and severe damage to the Menhit Wetland Complex. These actions also violate Ramsar Convention Article 3.1, which requires Anhur to “promote the conservation” of Ramsar Sites.

The Government of Rongo demands that no further military actions are taken that might affect the territory or environment of Rongo. The Government of Rongo also demands compensation for the restoration and remedial management related to the environmental damage done to the Menhit Wetland Complex. Compensation has been awarded in similar circumstances, as illustrated in the February 2018 Judgment by the ICJ in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and the August 2017 Reparations Order by the International Criminal Court in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*.

24. On 3 February 2020, the Administrative Authority for Rongo submitted an Article 3.2 notification to the Ramsar Secretariat stating that the human-caused fire in the Menhit Wetland Complex had adversely changed the ecological character of the Site. The notification expressed concern that, with approximately 65% of the peat swamp forest being burned, it would take decades, if not more than a century, for the area to recover.
25. On 10 February 2020, a diplomatic note was forwarded to the Government of Rongo that stated in part:

While the damage to the Menhit Wetland Complex is unfortunate, no violation of international law has occurred. First, with respect to international humanitarian law, the camp was a legitimate military target, despite being located in a Ramsar Site. Furthermore, the natural environment is not civilian in character in this instance because no civilians resided in the Menhit Wetland Complex; international humanitarian law thus does not apply. Nevertheless, the commander conducted a proportionality analysis and determined the anticipated death or destruction was not excessive.

The Government of Anhur notes that although the prohibition of widespread, long-term, and severe damage to the environment as a result of armed conflict appears in certain treaties, Anhur is not a party to those

² See International Committee of the Red Cross (2020), *Guidelines on the Protection of the Natural Environment in Armed Conflict*, <https://shop.icrc.org/guidelines-on-the-protection-of-the-natural-environment-in-armed-conflict-pdf-en>.

treaties, and such a prohibition has not risen to the level of customary international law. Moreover, any damage to the Menhit Wetland Complex is not widespread, long-term, and severe. Fire and drought are part of the natural landscape, and the Site will recover in time.

To the extent the Ramsar Convention is applicable, the principles of self-defense, force majeure, and necessity override any potentially relevant duties. See, for example, the ICJ's discussion of necessity in its September 1997 Judgment in *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*.

Finally, Anhur's military operation was successful. The Government of Anhur does not anticipate the need to take such action again but reserves the right to do so if necessary and circumstances dictate otherwise.

/s/ _____
Lara Ruge
Ambassador

26. On 3 March 2020, a diplomatic note was forwarded to the Government of Anhur that stated in part:

The Government of Rongo wishes to express its profound disappointment in the Government of Anhur's response.

The environment must be taken into account in armed conflict, and as a general rule, all Ramsar Sites are civilian in character even if no civilians reside within the boundaries of a particular Ramsar Site. By definition, a Ramsar Site is internationally important—important for various ecosystem services to people within the Contracting Party designating the Site but also to people throughout the world.

While the Government of Rongo acknowledges that Anhur is not a party to certain treaties governing armed conflict, the prohibition of widespread, long-term, and severe damage to the natural environment is customary international law. See, for example, Principle 13 of the International Law Commission's Draft Principles on the Protection of the Environment in Relation to Armed Conflict. The thousands of hectares of the Menhit Wetland Complex damaged by Anhur's military operations constitutes widespread, long-term, and severe harm to the natural environment.

Further, the Ramsar Convention applies during armed conflict. Indeed, a 2009 report published by the United Nations Environment Programme, *Protecting the Environment During Armed Conflict: An Inventory and Analysis of International Law*, noted that the obligations imposed by the Ramsar Convention and the World Heritage Convention can continue to apply during armed conflict.

The Government of Rongo demands satisfaction and compensation for the damage to the Menhit Wetland Complex. We strongly urge that the Government of Anhur take immediate steps to resolve this matter.

/s/

Pepa W. Mast
Ambassador

27. The dispute regarding Anhur's military operation and its impact on the Menhit Wetland Complex was not settled, and tensions between the two countries escalated.
28. A social media campaign (#FreeKempKey) was started in Rongo that expressed concern about the safety of ethnic Rongoans in Kemp Key, referring to the government of Anhur as international criminals that had no regard for sovereignty, self-determination, and nature. The social media campaign (which was picked up by Rongoan television and radio stations) called on the Rongoan government to take action to protect ethnic Rongoans in Kemp Key.
29. On 8 May 2020, the Government of Rongo dispatched military units to Kemp Key. The military operation, which did not cause any serious injuries or fatalities, resulted in the Government of Rongo obtaining operational control of the island.
30. On 9 May 2020, a démarche was delivered from the Government of Anhur to the Government of Rongo, characterizing Rongo's military action as a gross violation of international law and Anhur's sovereignty. The démarche demanded an immediate withdrawal of Rongo's military personnel from Kemp Key.
31. On 16 May 2020, the President of Rongo issued a statement defending Rongo's military action. The statement also emphasized that the United Nations Charter recognizes the right of self-determination of peoples, and it announced that a referendum on the matter would take place within two weeks.
32. On 25 May 2020, Rongo organized a referendum for all eligible voters on Kemp Key. Voters were asked whether they wanted Kemp Key to be a province of Rongo or Anhur. Ninety-six percent of voters voted in favor of Kemp Key being a province of Rongo. Three percent voted in favor of Kemp Key being a province of Anhur. One percent submitted blank ballots. Turnout was 90% of all eligible voters.
33. The Government of Anhur characterized the referendum as a "sham, with undue influence by the Rongoan military. No free and fair vote can take place while Kemp Key is occupied by a foreign military." The Government of Anhur formally declared that Kemp Key was an "occupied territory."
34. Nine Members of the United Nations have formally recognized what Rongo refers to as the "territorial integration" of Kemp Key into Rongo.

35. On 27 September 2020, the Rongoan Ministry of Environment and Sustainable Development announced that it was granting a permit to build a hotel complex within the Scute Coastal Wetland on Kemp Key to increase eco-tourism and help the impoverished local community. As currently designed, the hotel complex would cover 17 hectares immediately adjacent to Royal ridley nesting habitat. The hotel complex would include two accommodation buildings, each twelve stories high, with a combined total of 304 guest rooms, 3,000 square meters of meeting space, and four restaurants. A marina, which would be sited directly on part of the nesting habitat, is also planned to be part of the hotel complex. The marina will have 250 slips that can accommodate vessels up to 100 meters in length.
36. Prior to the announcement, an environmental impact assessment (EIA) was prepared in accordance with Rongo's domestic legislation. The EIA noted that the lighting of the proposed hotel complex would likely interfere with Royal ridley nesting habitat. Accordingly, the permit would require the installation of shade screens or window tinting in windows and glass doors facing the beach to block interior lights. The permit would allow the use of spotlights in the hotel complex's balconies, stairways, parking lots, restaurants, and marina for safety purposes.
37. On 4 October 2020, a diplomatic note was forwarded to the Government of Rongo that stated in part:

The Government of Anhur strongly protests the proposed desecration of the Scute Coastal Wetland. The planned project clearly would violate international law. Ramsar Article 3.1 imposes a duty on Rongo to conserve Anhur's Ramsar Site. The Scute Coastal Wetland remains on the List of Wetlands of International Importance; it has never been delisted as a Ramsar Site. A hotel complex of this scale is utterly inconsistent with the text of the Ramsar Convention, as well as relevant resolutions such as Resolution XI.9, *An Integrated Framework and guidelines for avoiding, mitigating and compensating for wetland losses*, and Resolution XIII.24, *The enhanced conservation of coastal marine turtle habitats and the designation of key areas as Ramsar Sites*.

The planned project also would clearly violate the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC). The Royal ridley is listed in IAC Annex I. Of particular relevance is IAC Article IV, which requires Rongo to conserve sea turtle nesting areas, especially because the Scute Coastal Wetland is a protected area by virtue of its status as a Ramsar Site. IAC Annex II provides further guidance pertaining to the "location and design of buildings" in sea turtle nesting areas.

38. On 4 October 2020, Anhur submitted an Article 3.2 report to the Ramsar Secretariat, informing the Secretariat that the proposed hotel project is "likely to change" the ecological character of the Scute Coastal Wetland Ramsar Site by disrupting Royal ridley nesting habitat. Although Anhur requested the Secretariat to organize a Ramsar Advisory Mission, no action has been taken on this request.

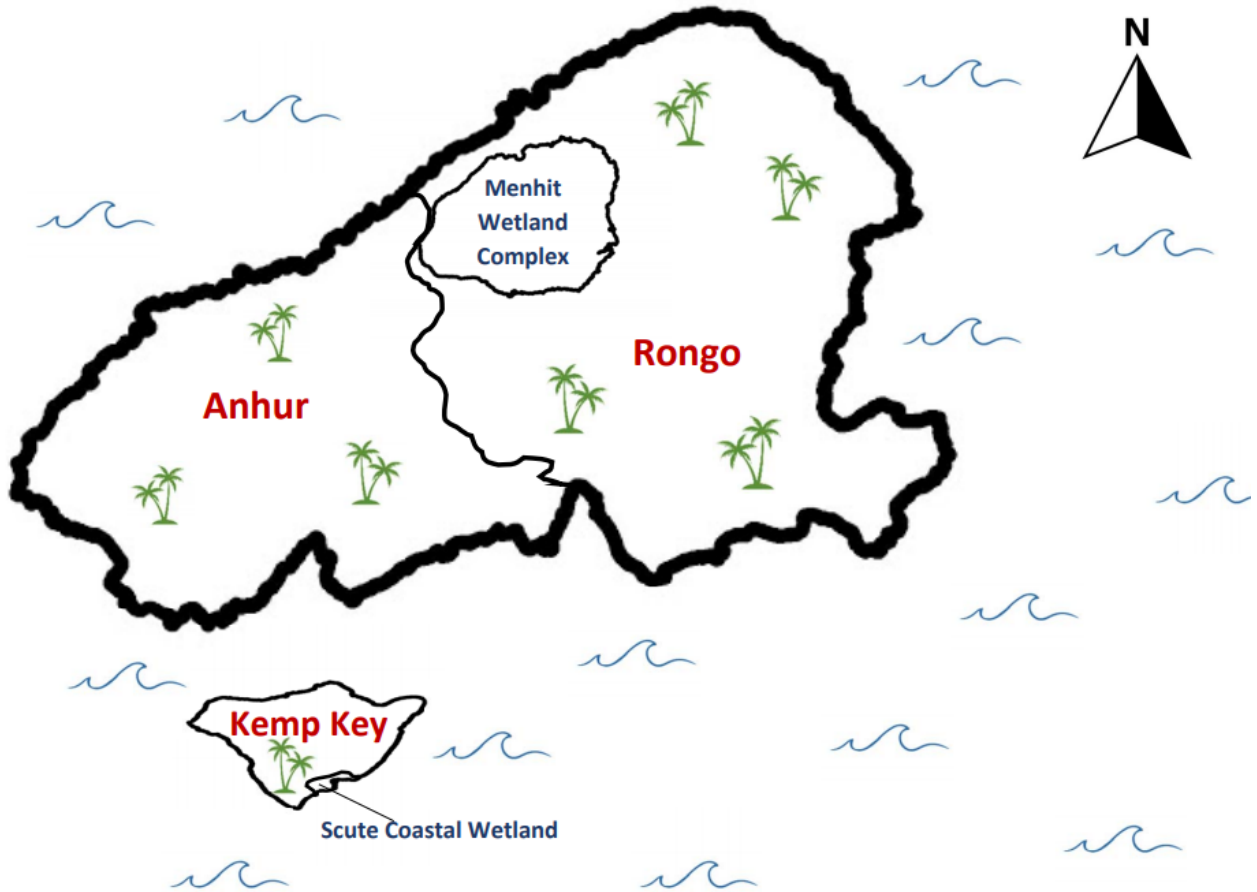
39. On 6 November 2020, a diplomatic note was forwarded to the Government of Anhur that stated in part:

The Government of Rongo has fully complied with its international obligations regarding the proposed project. First, because the Scute Coastal Wetland is now part of Rongo's territory and because Rongo did not designate it as a Wetland of International Importance, Rongo does not recognize the Scute Coastal Wetland as a Ramsar Site. In any event, the proposed project is fully consistent with the Ramsar Convention's "wise use" guidelines, and such projects are encouraged by Resolution XI.7, *Tourism, recreation and wetlands*.

Additionally, the Government of Rongo rejects any suggestion that it has not met its obligations under the IAC. The overall objective of the IAC calls for the socioeconomic characteristics of the Parties to be taken into account. Here the proposed eco-tourism hotel will provide jobs and revenue to the local impoverished population. Furthermore, the IAC does not establish a moratorium on coastal construction. In this case, the Rongoan Ministry of Environment and Sustainable Development considered the trade-offs between benefits to the local community and potential harm to sea turtles and decided to grant the permit.

40. Negotiations between Anhur and Rongo were facilitated by the Government of Switzerland, to which Anhur and Rongo express their deep appreciation. As a result of the negotiations, Anhur and Rongo agreed to submit certain questions to the International Court of Justice (ICJ). Rongo has agreed not to allow construction of the hotel until the ICJ issues its judgment.
41. Anhur opposes the claims in paragraph 42 below and seeks an order from the ICJ declaring that (1) the actions of Anhur with respect to the Menhit Wetland Complex did not violate international law, and (2) the actions of Rongo with respect to the proposed hotel development in the Scute Coastal Wetland violate international law.
42. Rongo opposes the claims in paragraph 41 above and seeks an order from the ICJ declaring that (1) the actions of Anhur with respect to the Menhit Wetland Complex violated international law, and (2) the actions of Rongo with respect to the proposed hotel development in the Scute Coastal Wetland do not violate international law.
43. The ICJ is not requested to decide the ultimate question of Kemp Key's sovereignty, which is the subject of continued discussions in other fora. No argument made by either Anhur or Rongo before the ICJ shall prejudice their positions in the separate discussions concerning the sovereignty of Kemp Key.

ANNEX B



Note: Map is provided for general background information and is not precisely to scale.